

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PATRICIA HERNANDEZ :
 :
 Plaintiff, :
 :
 v. : C.A. No. 04C-12-053
 :
 PRIDE COURT APARTMENTS :
 AND WESTMINISTER :
 MANAGEMENT CORPORATION :
 :
 Defendants. :

Upon Consideration of Defendant's Motion to Dismiss.
DENIED.

Date submitted: April 13, 2005
Date decided: July 29, 2005

Lois J. Dawson, Esquire, Wilmington, Delaware, Attorney for the Plaintiff.

Timothy J. Wilson, Esquire, Margolis Edelstein, Wilmington, Delaware, Attorney for Defendants.

SCOTT, J.

I. Background

Before this Court is a motion to dismiss filed by Wellington Arms Associates LLC (“Wellington”) and Westminster Management LLC.¹ The Plaintiff, Patricia Hernandez (“Hernandez”), has filed an opposition to the motion to dismiss, and, in the alternative, a motion to amend the complaint. The issue before this Court is whether Superior Court Civil Rule 15(c)(3)(B) applies to allow Hernandez to substitute Westminster Management LLC as the defendant in the litigation where the named party in the caption was a misnomer and Westminster Management LLC should have known that they were the real party in interest.

II. Facts

Hernandez filed a complaint against Pride Court Apartments and Westminster Management Corporation on December 6, 2004, alleging personal injuries due to a slip and fall. Hernandez notified Pride Court’s management of the accident in a letter dated December 8, 2002. Hernandez’ attorney was told that his client’s lease was with Pride Court/Westminster Management Corporation. In fact, Wellington Arms Associates LLC (“Wellington”) owns Pride Court Apartments. Westminster Management LLC, a New Jersey LLC, manages Wellington’s property.

On June 21, 2004, Westminster Management LLC’s lawyer mistakenly designated himself as the attorney for Westminster Management Co. in a letter to Hernandez. Similarly, the caption on Hernandez’ lease reads “Westminster Management.” Pride Court’s “Welcome to Our

¹ Westminster Management LLC has failed to register with the Secretary of State as required by 6 *Del. C.* §18-902. Clearly Westminster Management LLC “does business” within the State by acting as the landlord to Pride Court Apartments. More importantly, Westminster Management LLC is carrying on a business, Pride Court Apartments, without obtaining the necessary business license. *See* 30 *Del. C.* § 2101. These actions violate the legislative intent that entities that benefit from monetary gain should pay taxes to this State in return.

Community” pamphlet also bares a Westminster Management emblem. A designation as to Corporation or LLC is not indicated on either of these documents.

Westminster Management Corporation is not related to Westminster Management LLC or Wellington. Westminster Management Corporation is a Delaware not-for profit religious association. Accordingly, the named Defendant, Westminster Management Corporation does not manage Pride Court Apartments.

Pride Court Apartments is not a legal entity that can be sued. It does not have a business license or checking account. Tenants are instructed to pay rent to Westminster Management LP located in Newark, New Jersey. Hernandez’ checks made payable to Pride Court, however, were cashed when received.

Wellington and Westminster Management LLC were not and have not been named as defendants in either the caption or the body of the Complaint. They argue that Hernandez may not amend the complaint to add them as the real party in interest because to do so would violate the Statute of Limitations. Hernandez contends that designating Westminster Management Corporation as the defendant was a misnomer and can be cured through court rules.

III. Discussion

A. Standing

This Court notes initially that Wellington and Westminster Management LLC do not have standing to file a motion to dismiss in this case. They are not yet named parties, therefore, they cannot be dismissed from the action. This Court will, however, consider Westminster Management LLC’s opposition to Hernandez’ motion to amend the complaint to add them as a real party in interest.

B. Relation Back of Amendments

Under court rules, a party may amend a pleading if the Court so orders in the interest of justice.² Where an amendment would be performed after the Statute of Limitations has run,

Superior Court Civil Rule 15(c)(3) applies. It states

(c) *Relation back of amendments.* An amendment of a pleading relates back to the date of the original pleading when

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by statute or these Rules for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense of the merits, and (b) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Wellington and Westminster LLC argue that Hernandez should not be granted leave to amend the complaint because they were not put on notice until after the Statute of Limitations had run.³

This Court disagrees.

There is no doubt that the requirement of 15(c)(2) is satisfied.⁴ Hernandez originally filed the complaint for injuries sustained on Pride Court's premises. Her amended complaint will focus again on the accident at Pride Court Apartments. The Court must look to the remaining requirements of 15(c)(3) in order to determine if Westminster Management LLC can be added.

It is undisputed that Hernandez failed to name Wellington and Westminster Management LLC in the complaint. Hernandez, however, has satisfied the mistake in identity requirement of Rule 15(c)(3)(B) and may amend the complaint. "The mistake in identity of the proper party

² Super. Ct. Civ. Rule 15(a).

³ See *Frantz v. Benson*, 1992 WL 276441 *2 (Del. Supr.) (remanding case back to Superior Court to determine whether the original complaint, considered as a whole, coupled with the parties' actions put the defendants on notice as to lawsuit before statute had run).

⁴ Superior Court Civil Rule 15(c)(2) states "the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading."

requirement of 15(c)(3)(B) undoubtedly applies in instances where there has been a misnomer or misidentification of a party and a plaintiff seeks to substitute a real party in interest.”⁵ The Court finds that Hernandez had a reasonable basis for believing that Westminster Management Corporation was the owner of the apartment building.⁶ The lease stated Westminster Management. The apartment welcome guide also stated Westminster Management. Notably, Westminster Management LLC’s own attorney confused Hernandez by stating he represented Westminster Management Co. This Court, therefore, rejects Westminster Management LLC’s assertion that this is not the case of a misnomer. Westminster Management LLC cannot hide from litigation because Pride Court is not an entity that can be sued; rather, this Court finds that Westminster Management LLC should have reasonably anticipated it would be named as a real party in interest sooner or later.

Westminster Management LLC and Wellington had notice that a lawsuit was brought by Hernandez against Pride Court apartments. At the hearing, counsel for Westminster Management LLC admitted that an employee of Pride Court received a letter from Plaintiff about the personal injury lawsuit. This Court disagrees with Westminster Management LLC’s contention that it was not notified either directly or indirectly of the lawsuit before the Statute of Limitations ran. Once the Complaint was filed, Hernandez had 120 days to serve defendants. Westminster Management LLC was served through Pride Court on December 27, 2004 when Patricia Mcalpin accepted the summons and complaint. It is also logical to assume that Westminster Management LLC knew about the litigation because they are the parties who instituted the current motions before this Court. This Court finds that Westminster Management

⁵ *Mailey v. SEPTA*, 204 F.R.D. 273, 275 (E.D. Pa. 2001).

⁶ *See also Claypotch v. Heller, Inc.*, 823 A.2d 844 (N.J. Super. 2003)(where punch press that caused injury to plaintiff had “Heller” printed all over it, the Court held that plaintiff was reasonable in believing Heller was the maker and real party in interest).

LLC will not be prejudiced if named as defendants to the litigation. Minimal discovery has been performed and Westminster Management LLC has known about the lawsuit since late 2004.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.