

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH M. FLOWERS,)
)
 Appellant,) No. 264, 2000
 Plaintiff Below)
)
 v.) Court Below – Superior Court
) of the State of Delaware,
 WITCO CHEMICALS CORPORATION,) in and for New Castle County
 a New York, corporation, formerly) C.A. No. 997-07-338
 dba Halby Chemicals Co.,)
)
 Appellee,)
 Defendant Below,)

Submitted: October 24, 2000
Decided: November 16, 2000

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

ORDER

This 16th day of November, 2000, it appears to the Court that:

1. This appeal followed a decision of the Superior Court dismissing an amended complaint. The appellant filed the amended complaint in an attempt to correct a defect in an earlier complaint which had misnamed the defendant and for which a writ had returned *non est*.

2. Appellant filed the amended complaint after the statute of limitations had run on the underlying action.

3. The Superior Court granted appellee's motion to dismiss appellant's amended complaint because WITCO, the party the appellant sought to add as a

defendant below, had no notice of the action being filed within the statute of limitations and could not, under the circumstances have known that but for the mistake in naming the original defendant, that the action had been brought against it.

4. Clear controlling Delaware law requires a party to satisfy three elements of Superior Court Civil Rule 15(c) before an amended complaint can add an additional party after the statute of limitations for the underlying action has run.

They are:

(1) that the claim “must arise out of the same conduct, transaction, or occurrence;”

(2) that “the party to be added must have received notice of the institution of the action, so that the party will not be prejudiced;” and,

(3) that “within the time provided by the rules, the party to be added must have known or should have known that, but for the mistake concerning the identity of proper party, the action would have been brought against the party to be added.....”

Taylor v. Champion, Del. Supr., 693 A.2d 1072, 1074 (1997).

5. There is a meaningful distinction between a party knowing that it may be subject to liability and knowing that a lawsuit is pending. WITCO did not receive notice of the complaint until after the statute of limitations had run. The Superior Court, as a result, correctly dismissed the complaint when Flowers could not satisfy all three requirements of Super. Ct. R. 15(c).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Justice