

Exhibit 8

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Steinbuch		:	1:05-CV-970 (PLF) (JMF)
	Plaintiff,	:	Judge Paul L. Friedman
		:	Magistrate Judge John M.
-v-		:	Facciola
		:	
		:	
Cutler and Cox		:	
	Defendants.	:	

PLAINTIFF’S RESPONSE TO COX’S MOTION TO DISMISS

I. Plaintiff’s Claims Against Cox Are Not Time-Barred Because They Relate Back to the Occurrences Set Forth in His Original Complaint

Plaintiff is entitled to add Cox as a defendant in this lawsuit because the claims he asserts against her in his Amended Complaint relate back to the occurrences set forth in his original Complaint. Under Fed. R. Civ. P. 15(c), an amended pleading naming a new party relates back to the original pleading when:

- (1) the claims in the amended pleading arise out of the “conduct, transaction, or occurrence” set forth in the original pleading;
- (2) the party to be brought in by amendment received notice of the action within 120 days of its institution such that the party will not be prejudiced in maintaining her defense on the merits; and
- (3) that party knew, or should have known, that the action would have been brought against the party but for Plaintiff’s mistake concerning identity.

Arthur v. Maersk, Inc., 434 F.3d 196, 203 (3d Cir. 2006); *Alberts v. Arthur J.*

Gallagher & Co., 341 B.R. 91, 97 (Bankr. D.D.C. 2006). Accordingly, this Court

should recognize Cox as a defendant in this lawsuit because (1) Plaintiff’s claims

against Cox in the Amended Complaint arise out of occurrences set forth in the

original pleading, (2) Cox received notice of the action within 120 days of the filing

III. This Court has Already Found that Plaintiff has Stated Valid Causes of Action for Both False Light Invasion of Privacy and Intentional Infliction of Emotional Distress

Cox alleges in her Motion to Dismiss that Plaintiff's claims for both false light invasion of privacy and intentional infliction of emotional distress are insufficient. This Court has already found that Plaintiff has sufficiently met his burden with respect to these two claims. *See* Doc. 24 (denying motion to dismiss).

IV. Plaintiff Preserves for Appeal this Court's Decision to Apply a One-year Statute of Limitations to His Claims

If, as Plaintiff has previously argued, Plaintiff's claim for the disclosure of private facts are governed by the three-year statute of limitations, then his assertions against Cox in his Amended Complaint will no longer need to relate back to the occurrences set forth in his original Complaint as he served her well within three years of the date she publicized Cutler's blog.

As Plaintiff previously argued, we believe that Maryland and D.C. apply the three-year statute of limitation provided for by statute to most invasion of privacy claims; only those invasion of privacy claims that mimic defamation claims are limited to a one-year statute of limitations, i.e., false-light claims. *Smith v. Esquire, Inc.*, 494 F. Supp. 967, (D. Md. 1980). As we discussed previously, in *Smith*, the Court held that if a plaintiff brings a claim for defamation and false light for the same underlying facts, the statute of limitations for the defamation action shall control both claims, because of their similarity, but if there is a distinct invasion of privacy claim for the disclosure of private facts, then there is no such restriction on the statute of limitations; and, the District of Columbia articulated the same distinction, *See Grunseth v. Marriott Corp.*, 872 F. Supp. 1069, 1074-1075 (D.D.C. 1995) (invasion

of privacy only limited to one year because the claim was the same as the one for defamation).

Plaintiff recognizes that this Court ruled against Plaintiff on this aspect of the statute of limitations issue, but Plaintiff preserves his right to appeal this Court's decision as this issue has not yet been decided by the highest Court in D.C.

CONCLUSION

For the foregoing reasons, Defendant Cox's motion should be denied.

Dated: February 20, 2007

/s/ Jonathan Rosen
Jonathan Rosen, Esq.
1645 Lamington Rd.
Bedminster, NJ 07921
(908) 759-1116
Attorney for Plaintiff