

Zatek v Wachs

2022 NY Slip Op 33656(U)

October 19, 2022

Supreme Court, New York County

Docket Number: Index No. 150056/2018

Judge: James G. Clynnes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X

PAUL ZATEK,

Plaintiff,

- v -

GERALD WACHS,

Defendant.

-----X

GERALD WACHS

Plaintiff,

-against-

HYLAN DATACOM

Defendant.

-----X

INDEX NO. 150056/2018

MOTION DATE 03/15/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595331/2018

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is hereby ordered that plaintiff's motion pursuant to CPLR 203 and 3025 (b) to amend Plaintiff's Complaint to relate back and assert a direct claim against Third-Party Defendant, Hyland Datacom is granted.

This is an action for personal injuries allegedly sustained by plaintiff, Paul Zatek (Plaintiff), as a result of an accident involving plaintiff, who was on a bicycle, and a vehicle operated by defendant/third-party plaintiff, Gerald Wachs (Wachs), on September 17, 2017. Plaintiff now moves to amend the caption to include third-party defendant, Hylan Datacom (Hylan). Hylan

opposes the motion on the grounds that the proposed cause of action is barred by the Statute of Limitations pursuant to CPLR 214 since Hylan did not have adequate notice.

Under the statute of limitations, the time within which a plaintiff must commence an action arising out of a motor vehicle accident is three years (CPLR 214). In the case at bar, the statute of limitations for the accident that occurred on September 17, 2017 expired on January 16, 2021.¹ Zatek would have had to bring Hylan into this action by the expiration date unless he demonstrates that he is entitled to utilize the relation back doctrine, upon which he relies for this motion. The relation back doctrine is aimed at liberalizing strict formalistic requirements while respecting the important “notice” policies inherent in the statute of limitations. The doctrine enables a plaintiff to correct a pleading error by adding either a new party or a new claim after the statute of limitations has expired.

There are two alternative approaches in which a plaintiff can establish the relation back doctrine. (*Buran v Coupal*, 87 NY2d 173 [1995]).

The first approach to the relation back doctrine is where a third-party defendant has been served with the third-party complaint within the statute of limitations. Although the New York Court of Appeals has adopted a three-part test for determining whether to apply relation back to an amended pleading that adds a new defendant, as discussed below, where a proposed amended complaint contains an untimely claim against a defendant who is already a party to the litigation, the relevant considerations are (1) whether the original complaint gave the defendant notice of the transactions or occurrences at issue and (2) whether there would be undue prejudice to the defendant if the amendment and relation back are permitted. (CPLR 203 (f); 3025 (b); *O'Halloran v Metro. Transp. Auth.*, 154 AD3d 83, 84 [1st Dept 2017]); see also *Giambrone v Kings Harbor*

¹ The Statute of Limitations would have ordinarily expired on September 17, 2020, but with the COVID-19 EOS tolling, the new expiration date was January 16, 2021. (*Brash v Richards*, 195 AD3d 582 [2d Dept 2021]).

Multicare Ctr, 104 AD3d 546 [1st Dept 2013] where the court further clarified the first consideration is not whether defendant had notice of the claim, but whether, as the statute provides, the original pleading gives notice of the transactions or occurrences to be proved pursuant to the amended pleading). The court in *Boyd v United States Mtge. & Trust Co.*, 187 NY 262 [1907] clarified this type of defendant, stating that if the amendment was “to bring in a new party in the fullest sense of that term -- that is to say, a defendant who had never before been brought into court in this action for any purpose” then the party would have the benefit of the plea of Statute of Limitations. However, if the amendment “merely changes the capacity in which the person is sought to be charged” the individual is one that fits into this first approach to the relation back doctrine. (*Id* at 270.)

In such cases, the third-party defendant has adequate notice of the transactions or occurrences underlying the litigation and has notice of the plaintiff's potential claim against defendant. As such, an amendment asserting a direct claim against the third-party defendant relates back to the date of service of the third-party complaint. (CPLR 203 [f]; *Duffy v Horton Mem. Hosp.*, 66 NY2d 473 [1985]; see *Peretich v City of NY*, 263 AD2d 410 [1st Dept 1999], where the court found that the third-party defendants had notice of the claims from the time they were served with the third-party complaint pursuant to CPLR 1007, the amended complaint relates back to the time of service; see also *O'Halloran v Metro. Transp. Auth.*, 154 AD3d 83, 84 [1st Dept 2017], where the court held that although the original complaint did not allege certain specific facts contained in the amended complaint, defendants had sufficient notice and did not need to have been put on notice of every factual allegation on which the subsequent claims depended).

In contrast, a claim asserted against an entirely new person, or someone who was a “stranger” to the original litigation prior to the expiration of the statute of limitations, was held not to relate back to the first action. (*Liverpool v Arverne Houses, Inc.*, 67 NY2d 878 [1986]).

Here, Hylan is not a new party to this matter. Hylan was served with the third-party complaint on May 7, 2018. Since it was served prior to the expiration of the statute of limitations, Hylan is considered to be timely served. Insofar as this third-party defendant had notice of plaintiff’s potential claim, Hylan should have conducted discovery knowing that it could be brought in as a direct defendant and it cannot claim that an amendment will result in prejudice to it. Even so, Hylan has failed to demonstrate sufficient prejudice caused by the amendment.

The First Department has observed that:

“The kind of prejudice required to defeat an amendment ... must ... be a showing of prejudice traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added. There must be some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add.” (*Jacobson v Croman*, 107 AD3d 644 [1st Dept 2013], quoting *A.J. Pegno Constr. Corp. v New York*, 95 AD2d 655 [1st Dept 1983]).

Hylan generally argues it would be prejudiced. However, Hylan fails to outline what right would be lost, or what significant trouble or expense could have been avoided. Therefore, Plaintiff’s amended complaint relates back to the date of service of the third-party complaint and is deemed to be interposed within the statute of limitations. Accordingly, Plaintiff’s motion to amend the complaint to add Hylan is granted.

The second approach to the relation back doctrine deals with the situation where a third-party defendant was not served with the third-party complaint within the statute of limitations.

(*Buran v Coupal*, 87 NY2d 173 [1995]). In that scenario, the plaintiff seeks to add as a direct defendant, a stranger to the action. The relation back doctrine allows a claim asserted against a defendant in an amended complaint to relate back to claims previously asserted where the two defendants are “united in interests.” (*Id.*) Courts have applied the following three-prong test in determining whether the relation back doctrine should apply to a totally new defendant: (1) both claims arose out of the same conduct, transaction or occurrence; (2) the new party is “united in interest” with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that the new party will not be prejudiced in maintaining his defense on his merits; and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well. (*Id.*; *Cintron v Lynn*, 306 AD2d 118 [1st Dept 2003]).

As the court finds that Hylan cannot be characterized as a stranger to the action, the three-prong test does not apply here. As such, Plaintiff’s amended complaint relates back to the date of service of the third-party complaint and is deemed to be interposed within the statute of limitations. Plaintiff’s motion to amend the complaint to add Hylan is granted.

Accordingly, it is

ORDERED that Plaintiff’s motion to add Third Party Defendant Hylan Datacom as a direct party is granted and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that within 30 days, counsel for the plaintiff shall serve a copy of this order with notice of entry upon all parties and upon the Clerk of the Court (60 Centre Street, Room

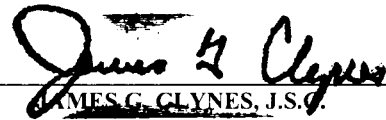
141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the Court.

10/19/2022

DATE


JAMES G. GLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE