

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CAROLINE AND CHRISTOPHER FARR,
HER HUSBAND,

Appellants

v.

BLOOMN' THAI, AND UNITED WATER,
INC.,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 983 MDA 2012

Appeal from the Order Entered April 27, 2012
In the Court of Common Pleas of Columbia County
Civil Division at No(s): 2007-CV-002053

BEFORE: BOWES, OLSON, and WECHT, JJ.

MEMORANDUM BY BOWES, J.:

Filed: March 8, 2013

Caroline and Christopher Farr appeal from the April 27, 2012 order denying their petition to amend the caption in this case to reflect that Bloomn' Thai is a fictitious name. We reverse.

On December 24, 2007, Appellants instituted this action by writ of summons against Bloomn' Thai seeking to recover damages that they sustained after Mrs. Farr fell on June 24, 2007, on the sidewalk adjacent to the entrance to Bloomn' Thai, a restaurant located at 442 East Street, Bloomsburg. In the complaint filed on July 31, 2008, Appellants averred that Mrs. Farr's fall was caused by a dangerous and defective condition on the sidewalk. Appellants successfully amended the complaint to add United Water, Inc., which was performing work at the accident site at the time of

the incident, as a defendant in this action.¹ In October 2011, the case against Bloomn' Thai and United Water, Inc. was placed on the jury list, but was continued to the next term of court on March 13, 2012.

On March 19, 2012, after expiration of the applicable statute of limitations, Appellants filed a motion to amend the caption and alleged that Bloomn' Thai is a fictitious name licensed in Pennsylvania, and the owner of Bloomn' Thai was Thongrian Yachaibunruang. They requested leave to amend the caption as to Bloomn' Thai to read, "Thongrian Yachaibunruang t/a and d/b/a Bloomn' Thai." Plaintiffs' Motion to Amend Caption, 3/19/12, at ¶ 10. No response was filed to that pleading, which was denied, after oral argument, on April 27, 2012. Appellants thereafter unsuccessfully sought reconsideration of the April 27, 2012 order, but they did obtain its certification as an appealable order under Pa.R.A.P. 341(c).² This timely appeal followed.

¹ United Water, Inc. was not included in the notice of appeal, even though that entity is contained in the caption in the trial court proceedings, and there is no indication that it was ever dismissed or that a settlement was reached with that defendant. The caption in this appeal was corrected to reflect that it is a party.

² Subsection (c) of Rule 341, determination of finality states:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim or when multiple parties are involved, the trial court or other governmental unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an
(Footnote Continued Next Page)

Appellants raise this contention: "Whether the Trial Court erred in denying Plaintiff's Motion to Amend the Caption when Plaintiffs were not seeking to add a new party after the statute of limitations but were simply moving to amend the caption to provide the correct designation of the existing Defendant." Appellants' brief at 4. The following facts are pertinent to our review of this question. This action was instituted by writ of summons against Bloomn' Thai as the named defendant. The sheriff's affidavit of service established that on December 27, 2007, the writ of summons was served upon Bloomn' Thai at 442 East Street, Bloomsburg, by handing the summons to a person named "Tongrian," whom the sheriff designated as the owner of the restaurant. The complaint was filed on July 31, 2008, and three copies of that document were sent to Bloomn' Thai at the noted address. The complaint averred that Bloomn' Thai was "an entity licensed to do business in the commonwealth of Pennsylvania which

(Footnote Continued) _____

express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order.

In response to this Court's inquiry as to why this appeal should not be dismissed as interlocutory, Appellants maintained that the April 27, 2013 order was a collateral order immediately appealable under Pa.R.A.P. 313. However, since the order was certified as appealable by the trial court under Pa.R.A.P. 341(c), this appeal is properly before us under that provision.

operates a Thai food restaurant located at 422 East Street, Bloomsburg, Cambria County, Pennsylvania.” Complaint 7/31/08, at ¶ 4.

On December 4, 2008, in response to the complaint, Chris Sausser, a layman married to Thongrian Yachaibunruag, filed an answer, and, in that document, contended that he was proceeding *pro se* by representing the named defendant. In the answer to the complaint, Mr. Sausser admitted the averment that Bloomn’ Thai was licensed to conduct business where the summons was served.

Appellants thereafter discovered that Bloomn’ Thai was a fictitious name licensed in Pennsylvania, and Thongrian Yachaibunruang was the listed owner. In seeking to amend, Appellants averred that they had instituted the action against the correct party under an improper designation. The record contains an authenticated copy³ of an application for registration of fictitious name filed with the Secretary of the Department of State of the Commonwealth of Pennsylvania establishing that Thongrian Yachaibunruang was registered to do business under the fictitious name Bloomn’ Thai and that she owned the business. Additionally, Appellants

³ Even though Bloomn’ Thai never responded to the motion to amend the caption and did not deny the averment that Bloomn’ Thai was a fictitious name under which Ms. Yachaibunruang was doing business, the trial court refused to consider Appellants’ representation in that regard. The basis for this refusal was that Appellants failed to submit an authenticated copy of the fictitious name registration. Appellants subsequently rectified any error in this respect.

deposed Chris Sausser, who indicated the following under oath. He and his wife opened Bloomn' Thai in 2000, and rented the premises from 2000 until 2006, when they purchased the entire building and moved into a residence above the restaurant. Mr. Sausser and Ms. Yachaibunruang jointly owned the real property, but Ms. Yachaibunruang was the sole owner of Bloomn' Thai.⁴

We now address the merits of the issue presented on appeal. "We review the trial court's decisions on requests for amendments on an abuse of discretion standard." ***Fredericks v. Sophocles***, 831 A.2d 147, 150 (Pa.Super. 2003). Pa.R.C.P. 1033 governs the amendment of captions and provides in relevant part: "A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading." Even though this rule allows amendments to the caption, "changes effected subsequent to the running of the statute of limitations are restricted to minor rectifications, not substitution of parties." ***Fredericks, supra*** at 150.

⁴ Although neither Appellants nor the trial court raised this concern, we note that once it was established that Mr. Sausser was not a co-owner of the fictitious business solely owned by his wife, he was no longer authorized to proceed *pro se* in this action. In ***Kohlman v. Western Pennsylvania Hospital***, 652 A.2d 849 (Pa.Super. 1994), we observed that a person who is not an attorney cannot represent another person in court. ***Accord Commonwealth v. Carroll***, 517 A.2d 980, 981 (Pa.Super. 1986) ("a non-lawyer cannot represent others in court").

Hence, if, as in the present case, amendment is sought after the statute of limitations has run, a plaintiff is not permitted to amend the complaint to “bring in a new party or change the capacity in which he is sued. If the effect of the amendment is to correct the name under which the right party is sued, it will be allowed; if it is to bring in a new party, it will be refused.” **Blaine v. York Financial Corp.**, 847 A.2d 727, 729 (Pa.Super. 2004) (quoting **Girardi v. Laquin Lumber Company**, 232 Pa. 1, 81 A. 63 (1911)); **see also Clark v. Wakefern Food Corp.**, 910 A.2d 715, 719 (Pa.Super. 2006) (“For more than half a century, the test applied when determining whether to allow an amendment to the caption of a complaint has been whether the correct party was sued under the wrong name, or whether the amendment would bring a new party into the litigation.”)

As we observed in **Ferraro v. McCarthy-Pascuzzo**, 777 A.2d 1128, 1133 (Pa.Super. 2001), “If the proper party was sued but under the wrong designation, the correction will be allowed. However, where the wrong party was sued and the amendment is designed to substitute another, distinct party, it will be disallowed.” The focus of this determination is on “whether different assets will be subject to liability by allowing the amendment.” **Fredericks, supra** at 150. (citation omitted).

In this case, we conclude that Appellants were merely attempting to correct the name of the same party already joined in the lawsuit and that the trial court committed an abuse of discretion in determining otherwise.

Bloomn' Thai is a fictitious name used by Ms. Yachaibunruang. The same assets will be subject to liability after the amendment since she owns that restaurant. Service of process was made at the proper place because it was made at the business address, which she designated as the address where she operated her business under its fictitious name. She owned the restaurant both when the accident occurred and when process was served. Further, Ms. Yachaibunruang actually received notice of these proceedings, as evidenced by the fact that her husband proceeded to defend this matter. **See Clark, supra** (amendment permitted, in part, since same entity owned premises when accident occurred as when complaint was served and notice of action was served at business so operator of business had notice of the suit).

The decision in **Waugh v. Steelton Taxicab Co.**, 89 A.2d 527 (Pa. 1952), cannot cogently be distinguished. Therein, the plaintiff was injured while a passenger in a taxicab and instituted the action against Steelton Taxicab Company, which was designated as a corporation in the complaint's caption. After the statute of limitations expired, the plaintiff discovered that Steelton Taxicab Company was not a corporation but a fictitious name used by an individual for purposes of operating his taxicab business. The plaintiff asked to amend the complaint to name, as defendant, the individual who was trading and doing business as Steelton Taxicab Company rather than

Steelton Taxicab Company, as a corporation. That request was denied, and, on appeal, our Supreme Court reversed.

The Court noted that the complaint was served at the business office of the owner's taxicab enterprise and service was effectuated on one of his employees. Under these facts, it determined that there was "no doubt . . . that the correct agency charged with responsibility for the accident was served even though under a wrong name." *Id.* at 528. It concluded that since service was obtained upon the correct party, albeit under the wrong name, that the amendment should have been permitted. Our Supreme Court rejected the notion that the individual was a new party and reasoned that he was not a different party since he operated fictitiously as Steelton Taxicab Company, the entity named as the defendant and served in the action.

In this case, Bloomn' Thai was served at its place of business. In addition, the inference in the affidavit of service is that service of process actually was obtained on the owner of Bloomn' Thai, Ms. Yachaibunruang. Specifically, the sheriff outlined that the person receiving process had the name "Tongrian" and was the restaurant's owner. "Tongrian" has only one letter missing from Thongrian, Ms. Yachaibunruang's unique first name, and Ms. Yachaibunruang is the business's owner. The suggestion that she was personally served is confirmed by the fact that her husband has been defending this action since it was commenced. Ms. Yachaibunruang and

Bloomn' Thai are one and the same, as the latter is a fictitious name under which she does business. Thus, it is clear that Appellants sued and obtained service on the correct person under the wrong designation. Accordingly, the amendment should have been permitted under applicable law.

Chris Sausser is hereinafter prohibited from filing documents in this present action. **See** footnote 4 **supra**. Order reversed. Case remanded. Jurisdiction relinquished.