

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: September 15, 2015]

MELISSA B. KORSAK,
Plaintiff,

v.

HONEY DEW ASSOCIATES, INC., and
BOWEN INVESTMENT, INC.
Defendants.

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C.A. No. PC 13-0105

DECISION

TAFT-CARTER, J. Before the Court for decision is Plaintiff’s motion pursuant to Super. R. Civ. P. 15 (Rule 15) for leave to file a second amended complaint to add Defendant, R.B. Donuts, Inc. (R.B. Donuts). Defendants object to the motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-14. For the reasons set forth below, the Court grants the Plaintiff’s motion.

I

Facts and Travel

The basic facts of this matter were previously recounted by this Court in its Decision of September 15, 2015 regarding Defendants’ motion to dismiss for lack of personal jurisdiction and motion for summary judgment. Accordingly, the Court will relate only the facts necessary to decide the instant motion.

This law suit was initially brought against Honey Dew Associates, Inc. (HDA) and Bowen Investment, Inc. (BII) for the alleged sexual harassment of the Plaintiff while she worked at a HDA franchise. During the deposition of Robert Bowen—the co-owner of BII, and sole owner of R.B. Donuts—the existence of R.B. Donuts was first disclosed to the Plaintiff. Robert

Bowen stated that R.B. Donuts is the management company for BII which manages, on a “day-to-day” basis, the franchises owned by BII. Robert Bowen Dep. 8:22-23, Apr. 15, 2015. As to the independently owned franchises, such as the Centerdale store, R.B. Donuts provides “support[.]” Id. at 9:23-24. Such support involves “conduct[ing] two full inspections every year to make sure the standards are being maintained, and also [conducting] visitations on a monthly basis.” Id. at 10:4-6. Additionally, R.B. Donuts helps the independent franchisees with vendors, electricians, and contractors. Id. at 10:1-3. R.B. Donuts, on behalf of BII, hired Mr. Frigault, the man accused of sexually harassing Plaintiff, to perform “secret shopper” operations at all of the HDA stores in Rhode Island, including the Centerdale store. Robert Bowen Dep. 61:9-10; 65:10-17; 108:23-25. Furthermore, R.B. Donuts, on behalf of BII, hired Mr. Frigault to perform “mini visitations,”¹ “tape reviews,”² and “deal with security equipment”³ at company owned stores.

II

Standard of Review

Rule 15(c) allows for an amended pleading to relate back to the date of the original pleading when the claim or defense arose out of the same conduct, transaction, or occurrence, provided that:

“the party to be brought in by amendment (1) has received such notice of the institution of the action that the party would not be prejudiced in maintaining a defense on the merits; and (2) knew or should have known that but for a mistake by or against the plaintiff or defendant to be added the action would have been brought.”⁴

¹ Id. at 79:25-80:2; 98:23-25; 105:18-22.

² Id. at 104:12-19.

³ Id. 79:4-6.

⁴ Our Supreme Court has recognized that “[o]ur Rule 15 . . . is virtually identical to its federal analogue, Rule 15 of the Federal Rules of Civil Procedure.” Hall v. Ins. Co. of N. Am., 727 A.2d 667, 669 (R.I. 1999). Furthermore, the Court “ha[s] repeatedly stated that federal-court interpretations of a procedural rule that is substantially similar to one of our own state rules of civil procedure should serve as a guide to the construction of our own rule.” Id.

“As a preliminary matter, the second condition above inquires whether the party to be brought in by amendment, in this case [R.B. Donuts], knew or should have known that, but for [P]laintiff[’s] mistake concerning the identity of the proper party, the action would have been brought against [R.B. Donuts].” DeSantis v. Prella, 891 A.2d 873, 880 (R.I. 2006); see Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 548 (2010) (“The question under Rule 15(c)(1)(C)(ii) is not whether [the plaintiff] knew or should have known [the] identity [of the new party] as the proper defendant, but whether [the party to be added to the suit] knew or should have known . . . that it would have been named as a defendant but for an error.”).

Furthermore, “[o]ur Rule 15, like its Federal counterpart, permits an amendment to relate back only where there has been an error [or mistake] made concerning the identity of the proper party” Hall, 727 A.2d at 669. In interpreting the term “mistake,” our Supreme Court has found that the “rule was not intended to ‘permit relation back where . . . there is a lack of knowledge of the proper party[.]’” but rather “only where there has been an error made concerning the identity of the proper party” Id. at 669 (quoting Wilson v. U.S. Gov’t, 23 F.3d 559, 563 (1st Cir. 1994)). “This so-called ‘mistake proviso was drafted to resolve the problem of a misnamed defendant and allow a party to correct a formal defect such as a misnomer or misidentification[.]’” not a lack of knowledge as to the proper party. Bussell v. Rhode Island, 2014 WL 3732096, at *2 (D.R.I. July 25, 2014) (quoting Cholopy v. City of Providence, 228 F.R.D. 412, 418 (D.R.I. 2005)); see also Ferreira v. City of Pawtucket, 365 F. Supp. 2d 215, 217 (D.R.I. 2004).

III

Parties' Arguments

Defendants argue that Plaintiff's motion should be denied because the applicable statute of limitations has expired and the proposed amendment does not relate back to the date of the original complaint, as required by Rule 15(c). Specifically, Defendants contend that (1) because the statute of limitations has run, the motion is futile; (2) under our Supreme Court's interpretation of the term "mistake," the Plaintiff's "lack of knowledge" as to the existence of R.B. Donuts does not satisfy the requirements of Rule 15(c); and (3) Plaintiff has failed to show that R.B. Donuts knew or should have known that but for a mistake concerning its identity, it would have been named in Plaintiff's Complaint. In response, Plaintiff argues that the motion to amend should be granted because it was not until April 15, 2015, during the deposition of Robert Bowen, that he identified R.B. Donuts as the management company of BII. In the alternative, Plaintiff relies on the doctrine of equitable estoppel or equitable tolling arguing that, due to no fault of her own, she was unable to learn the name of R.B. Donuts prior to the running of the statute of limitations.

IV

Analysis

Preliminarily, this Court notes that the

“Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.’ This purpose is not furthered by giving Rule 15 lip service rather than full fealty. Nor is the purpose of the federal rules furthered by denying the addition of a party who has a close identity of interest with the old party when the added party will not be prejudiced. The ends of justice are not served when forfeiture of just claims because of technical rules is allowed.” Travelers Indem. Co. v. U.S., for Use of Constr.

Specialties Co., 382 F.2d 103, 106 (10th Cir. 1967) (quoting Conley v. Gibson, 355 U.S. 41, 48 (1957)); see Hill v. Shelander, 924 F.2d 1370, 1375 (7th Cir. 1991) (quoting Schiavone v. Fortune, 477 U.S. 21, 27 (1986)) (“Consistent with the purpose of the Rules of Civil Procedure, the Supreme Court has recognized that Rule 15(c) ‘should . . . serve as [a] useful guide[] to help, not hinder, persons who have a legal right to bring their problems before the courts.’”) (Alterations in original.)

Here, all potential applicable limitations statutes have run.⁵ Thus, in order for Plaintiff’s claim to be timely, it must relate back to the filing of the original claim under Rule 15(c). Pursuant to Rule 15(c), Plaintiff must show: (1) “the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading[;]” (2) the Defendant “received such notice of the institution of the action that the party would not be prejudiced in maintaining a defense on the merits[;]” and (3) the Defendant “knew or should have known that but for a mistake the action would have been brought by or against the plaintiff or defendant to be added.” Rule 15(c).

In applying this test to the case at bar, it is obvious to the Court that the amended complaint arises out of the same transaction as the one set forth in the original pleading. Here, “the factual situation in the original complaint remains the same, and [thus this Court] hold[s] that [D]efendants had fair notice.” Manocchia v. Narragansett Capital Partners Television Investments, 658 A.2d 907, 910 (R.I. 1995) (holding defendants have fair notice when claim arises from factual situation in original Complaint). Furthermore, the “parties do not dispute that the amended complaint arises out of the same occurrence set forth in the original complaint.”

⁵ Under the laws of Rhode Island, employment discrimination claims brought under the Rhode Island Civil Rights Act (RICRA) are governed by Rhode Island’s three-year residual statute of limitations for actions for injuries to a person. G.L. 1956 § 42-112-2; Rathbun v. Autozone, Inc., 361 F.3d 62 (1st Cir. 2004). Plaintiff alleges that she was constructively discharged on January 13, 2010 and thus, the statute of limitations expired on January 13, 2013. See Pl.’s Am. Compl. ¶ 56.

Sanders-Burns v. City Of Plano, 594 F.3d 366, 378 (5th Cir. 2010). Similarly, the Court is also satisfied—and the Defendants do not dispute—that R.B. Donuts had notice of the institution of the action and thus, it will not be prejudiced in maintaining a defense on the merits.⁶ See Stewart v. Philadelphia Hous. Auth., 487 F. Supp. 2d 584, 589 (E.D. Pa. 2007) (“Courts have found adequate notice and a lack of prejudice where the newly named party shares the same attorneys as, and has an identity of interests with, the existing parties.”). Therefore, the only issue posed by the motion is whether R.B. Donuts knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against it.

“The burden of showing knowledge on the part of the party to be brought in by amended pleading is on the plaintiff.” Strasmich v. Cuculo, 110 R.I. 460, 463, 293 A.2d 509, 511 (1972) (citing Laliberte v. Providence Redevelopment Agency, 109 R.I. 565, 576, 288 A.2d 502, 509 (1972)). Here, the issue involves whether: (1) the Plaintiff made a “mistake” as to the appropriate party; and (2) R.B. Donuts knew or should have known of that mistake.

A

“Mistake” as to the Appropriate Party

The Plaintiff misidentified the proper party when she initially commenced the action against HDA and BII. Roberts v. Michaels, 219 F.3d 775, 778 (8th Cir. 2000). As the Eighth Circuit noted:

⁶ “The identity of interests concept, a judicial gloss on Rule 15(c)(1), provides that the institution of the action serves as constructive notice of the action to the parties added after the limitations period expired, when the original and added parties are so closely related in business or other activities that it is fair to presume the added parties learned of the institution of the action shortly after it was commenced. The identity of interest principle is often applied where the original and added parties are a parent corporation and its wholly owned subsidiary, two related corporations whose officers, directors, or shareholders are substantially identical and who have similar names or share office space, past and present forms of the same enterprise, or co-executors of an estate.” Hernandez Jimenez v. Calero Toledo, 604 F.2d 99, 102-03 (1st Cir. 1979) (internal quotations omitted).

“This misnomer principle is most obviously appropriate in cases where the plaintiff has sued a corporation but misnamed it *But the principle has been applied more broadly, for example, to complaints that named a corporation instead of a partnership, a parent corporation instead of a subsidiary, a building instead of its corporate owner, and a corporation in liquidation instead of its successor.*” Id. (Emphasis added).

Clearly, this case mirrors a scenario in which the plaintiff mistakenly names “a parent corporation instead of a subsidiary[.]” Id. In naming HDA and BII, Plaintiff named the franchisor and subfranchisor rather than the management company that operated at the direction of the subfranchisor. See Chumney v. U.S. Repeating Arms Co., 196 F.R.D. 419, 429 (M.D. Ala. 2000) (finding that a plaintiff—who named one manufacturer, but later realized that another manufacturer was involved—was “mistaken as to the identity of the proper defendant”). R.B. Donuts shall not be permitted to “hid[e] in the bushes[,] so to speak” and then, after the statute of limitations has run, “str[i]ke the [P]laintiff from ambush.” Travelers Indem. Co., 382 F.2d at 106 (internal quotations omitted) (allowing plaintiff, who mistakenly named Travelers Indemnity Company, to amend her complaint to include the parent corporation, Travelers Insurance Company).

“In addition to satisfying the requirements of [Rule 15(c)], [Plaintiff] meets the standards for invoking the traditional misnomer principle.” In the License Agreement between HDA and BII and the Franchise Agreement between BII and CDI, there was no indication that R.B. Donuts was the management company of BII. Therefore, Plaintiff was “not illogical in inferring” that BII dealt directly with local franchisees. Roberts, 219 F.3d at 779. Finally, it was not until April 15, 2015, during Robert Bowen’s deposition, that Plaintiff first became aware of the existence of

R.B. Donuts and its function within the HDA hierarchy. Accordingly, this Court finds that the Plaintiff, in naming HDA and BII, made a mistake concerning the identity of the proper party.⁷

B

R.B. Donut's Knowledge

“When a party argues that the [third] element has not been satisfied, courts apply ‘something akin to a reasonableness test to determine whether the party ‘should have known’ [it] was the one intended to be sued.’” Bowden ex rel. Bowden v. Wal-Mart Stores, Inc., 124 F. Supp. 2d 1228, 1242 (M.D. Ala. 2000) (quoting 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1498.3 (3d ed. 1998)). “Relation back will be refused only if the court finds that there is no reason why the party to be added should have understood that [it] was not named due to a mistake.” 6A Wright & Miller, supra § 1498.3. “Because the inquiry is an objective one, the court should consider the totality of the circumstances and the relevant facts at issue.” Bowden ex rel. Bowden, 124 F. Supp. 2d at 1242.

Here, R.B. Donuts “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.” Rule 15(c). In fact, it would defy all logic to hold that R.B. Donuts—which is wholly owned by the co-owner of BII, and whose sole purpose is to manage BII’s franchisees—did not know that, but for the mistake, Plaintiff would have named it in the original complaint. BII and R.B. Donuts are “related corporate entities,” and thus, this “interrelationship . . . heighten[s] the expectation that [R.B. Donuts] should [have] suspect[ed] a mistake ha[d] been made when [HDA and BII] [were] named in a complaint that actually describes [R.B. Donut’s] activities.” Krupski, 560 U.S. at 556; see Morel v. DaimlerChrysler AG, 565 F.3d 20, 27 (C.A.1 2009) (holding that where

⁷ The fact that HDA and BII may still be liable to the Plaintiff does not change the fact that the Plaintiff was mistaken as to the identity of the proper party.

complaint conveyed plaintiffs' attempt to sue automobile manufacturer and erroneously named the manufacturer as Daimler-Chrysler Corporation instead of the actual manufacturer, a legally distinct but related entity named DaimlerChrysler AG, the latter should have realized it had not been named because of plaintiffs' mistake); Goodman v. Praxair, Inc., 494 F.3d 458, 473–475 (C.A.4 2007) (en banc) (finding that where complaint named parent company Praxair, Inc., but described status of subsidiary company Praxair Services, Inc., subsidiary company knew or should have known it had not been named because of plaintiff's mistake).

V

Conclusion

As this Court has found that the requirements of Rule 15 are satisfied, it grants Plaintiff's motion to file a second amended complaint adding Defendant, R.B. Donuts, Inc. Plaintiff's amendment will relate back for the purposes of the statute of limitations. Mainella v. Staff Builders Indus. Servs., Inc., 608 A.2d 1141, 1143 (R.I. 1992). Therefore, "the amendment will effectively replace the original complaint so as to prevent the running of the limitations period from barring the claim or defense."⁸ Id. Counsel shall submit an appropriate Order for entry.

⁸ Accordingly, this Court finds that Defendants' argument, that Plaintiff's claim is futile, is of no moment. Furthermore, as this Court has found that the amendment will relate back for purposes of the statute of limitations, this Court need not reach the Plaintiff's argument regarding equitable estoppel or equitable tolling.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Melissa B. Korsak v. Honey Dew Associates, Inc. and Bowen Investment, Inc.

CASE NO: PC 13-0105

COURT: Providence County Superior Court

DATE DECISION FILED: September 15, 2015

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

For Plaintiff: Chip Muller, Esq.; Nancy Sheinberg, Esq.

For Defendant: Michael D. Chittick, Esq.; Julie A. Sacks, Esq.