**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**[Filed: November 9, 2023]**

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| **JANICE M. MURRAY, as Surviving Spouse and as Executrix of the Estate of HAROLD WAYNE MURRAY,** ***Plaintiff,*** | : | |
| **v.** | : | **C.A. No. PC-2016-0151** |
| **3M COMPANY, et al.,** ***Defendants.*** | : | |

**DECISION**

**GIBNEY, P.J.** Before this Court for decision is Defendant Hajoca Corporation's (Hajoca) Motion to Dismiss. (Def.'s Mem. in Supp. Mot. to Dismiss (Def.'s Mot.) 1.) Hajoca contends that the Complaint fails to state a claim because it does not provide notice of the legal grounds on which Plaintiff is relying on. *Id*. at 4-6. As such, Hajoca asserts that the Tennessee Innocent Retailer Statute, Tenn. Code § 29-28-106 (the TN Statute), protects Hajoca from liability. *Id*. Plaintiff maintains that this Motion should be denied because Hajoca is aware of the specific claims against it. (Pl.'s Mem. Opp'n to Hajoca's Mot. Dismiss (Pl.'s Opp'n) 5-6.) Plaintiff asserts that at least one of the TN Statute's exceptions apply and do not bar Hajoca's liability. *See generally id*. The Court exercises jurisdiction pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure.

## I

## Facts and Travel

Plaintiff alleges that her husband, Harold Wayne Murray, suffered personal injuries as a result of his alleged exposure to asbestos-containing products. *See* Complaint (Compl.). Harold and Janice Murray filed the original Complaint on January 12, 2016, prior to Harold's death. *See* Docket. After multiple amendments, Plaintiff filed the Seventh Amended Complaint (Am. Compl.) on November 17, 2017 to name Janice as the surviving spouse and executrix of Harold's estate. *See* Am. Compl.

The Amended Complaint named approximately 267 Defendants, including Hajoca. *Id*. at 5. Hajoca is a "seller of plumbing and HVAC supplies." (Def.'s Mot. 1.) The Amended Complaint alleged that "[Harold Murray] was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles that came from the asbestos products that were contracted for, mined, milled, processed, manufactured, designed, tested, assembled, fashioned, fabricated, packaged, supplied, distributed, delivered, marketed and/or sold by the Defendants." (Am. Compl. ¶ 6.)

Prior to filing the Amended Complaint, this Court granted Defendants' Motion to Apply Foreign Law of Tennessee on February 1, 2017. *See* Order. Some seven years later, on September 25, 2023, Hajoca filed the instant Motion to Dismiss. *See* Docket. On October 5, 2023, Plaintiff filed their Opposition. *Id.* On October 26, 2023, this Court heard oral arguments regarding this Motion to Dismiss (the Hearing). *See generally* Oct. 26 Transcript (Tr.).

## II

## Standard of Review[1]

It is well settled that "the sole function of a motion to dismiss is to test the sufficiency of the complaint." *Rhode Island Affiliate, American Civil Liberties Union, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989). In ruling on a Rule 12(b)(6) motion, "the trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor." *Id.* '"The motion may . . . only be granted if it appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts[.]"' *Pontarelli v. Rhode Island Department of Elementary & Secondary Education*, 176 A.3d 472, 476 (R.I. 2018) (quoting *Laurence v. Sollitto*, 788 A.2d 455, 456 (R.I. 2002)). "[B]ut unless amendment could avail the plaintiff nothing, the order of dismissal should usually be with leave to amend." Robert B. Kent et al., *Rhode Island Civil Procedure*, § 12:9.

## III

## Analysis

Plaintiff and Hajoca disagree as to whether the TN Statute bars Hajoca from liability. At issue is whether the Amended Complaint sufficiently sets forth claims for the application of one of the exceptions listed in the TN Statute. In relevant part, the TN Statute states:

> "No product liability action, as defined in § 29-28-102, shall be commenced or maintained against any seller, other than the manufacturer, unless:
> "(1) The seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the alleged harm for which recovery of damages is sought;

[1] '"[T]he procedural law of the forum state applies even if a foreign state's substantive law is applicable."' *McBurney v. The GM Card*, 869 A.2d 586, 589 (R.I. 2005) (quoting *Oyola v. Burgos*, 864 A.2d 624, 626, n.2 (R.I. 2005)) (internal citations omitted). Accordingly, procedural law of Rhode Island is applicable.

> "(2) Altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought;
> "(3) The seller gave an express warranty as defined by title 47, chapter 2;
> "(4) The manufacturer or distributor of the product or part in question is not subject to service of process in this state and the long-arm statutes of Tennessee do not serve as the basis for obtaining service of process; or
> "(5) The manufacturer has been judicially declared insolvent." Tenn. Code § 29-28-106.

Essentially, "a plaintiff may not sue a seller in strict liability" unless an exception applies. *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 899 (Tenn. 2011).

**A**

**Parties' Arguments**

Hajoca contends that the Amended Complaint "fails to even mention – much less allege facts to support the application of – any exception to the broad protection of the [TN Statute]." (Def.'s Mot. 2-3.) At the Hearing, Hajoca asserted that the Amended Complaint "contains no allegations regarding the [TN Statute]" and "no allegations with respect to Hajoca, the seller." (Oct. 26 Tr. 5:24-6:1.) Accordingly, Hajoca asserts that dismissal is warranted because Plaintiff has failed to plead facts to support an exception to the TN Statute. (Def.'s Mot. 6.) Alternatively, Hajoca insists that it will "incur substantial prejudice" if Plaintiff may amend their Complaint to allege facts specific to Hajoca. *Id*. at 11. However, Hajoca urges that, if the Court permits re-pleading, re-pleading must be done with specificity and within ten days. *Id*. at 11-12. Finally, at the Hearing, Hajoca insisted that Plaintiff's request is a motion for summary judgment because of the extrinsic evidence relied upon in its Opposition and urged this Court to review only the operative Complaint. *See* Oct. 26 Tr. 6:22-7:2.

Plaintiff objects and insists that Hajoca is aware of the allegations against it. *See* Oct. 26 Tr. 11:3-4. At the outset, Plaintiff reminds this Court of the lengthy passage of time that has occurred between the filing of Plaintiff's Amended Complaint on November 17, 2017 and Hajoca's Motion to Dismiss on September 25, 2023. (Pl.'s Opp'n 2); *see also* Oct. 26 Tr. 10:15-12:10.) Plaintiff maintains that Hajoca's claim that it does not have sufficient notice to defend itself is "absurd" because "Hajoca has been well aware of these specific facts and the claims asserted against Hajoca." (Pl.'s Opp'n 5-6.) Plaintiff additionally asserts that it can plead sufficient facts to support that (1) Hajoca "exercised substantial control over that aspect of the . . . packaging or labeling of the product that caused the alleged harm for which recovery of "damages is sought" (TN Statute Exception 1); and (2) the manufacturers used by Hajoca have been "judicially declared insolvent." (TN Statute Exception 2). *Id*. at 3-5. As such, Hajoca is neither protected from liability by the TN Statute, nor will Hajoca be prejudiced if this Court finds that Plaintiff must re-plead allegations specific to Hajoca. *Id*. at 5-6.

**B**

**Preliminary Issue: Extrinsic Documents**

In its Opposition, Plaintiff directs this Court to review Exhibits 1 through 8.[2] *See* Pl.'s Opp'n 4-6. However, the Court need not reach this issue because the Amended Complaint, on its own, satisfies the notice pleading requirement. *See Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 22 (R.I. 2018) (noting that the motion to dismiss will not automatically convert to a

[2] The exhibits include the following, as named by Plaintiff: Exhibit 1: April 15, 2011 Hajoca PMK, William Mertz Deposition; Exhibit 2: Deposition Testimony of Harold Murray (Video); Exhibit 3: Hajoca Industrial Equipment Catalog; Exhibit 4: Deposition Testimony of Harold Murray; Exhibit 5: Deposition Testimony of Harold Murray (Discovery); Exhibit 6: Murray Bankruptcy Creditors Matrix; Exhibit 7: Plaintiffs' Request for Admission; and Exhibit 8: Notice of Videotaped 30(b)(6) Deposition to Hajoca.

motion for summary judgment if the hearing justice "explicitly exclude[s] them from consideration").

**C**

**Notice Pleading**

Pursuant to Rhode Island's notice pleading standard, "[a]ll that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted." *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992). Rule 8(a) of the Superior Court Rules of Civil Procedure provides that a claim for relief shall contain "[a] short and plain statement of the claim showing that the pleader is entitled to relief[.]" Super. R. Civ. P. 8(a). As such, "one drafting a compliant [sic] in a civil action is not required to draft the pleading with a high degree of factual specificity." *Hyatt v. Village House Convalescent Home, Inc.*, 880 A.2d 821, 824 (R.I. 2005). If the complaint does not show the plaintiff is entitled to relief, dismissal is warranted under Rule 12(b)(6). *See* Super. R. Civ. P. 8(a). For example, "[a]lthough a statement of circumstances and occurrences in support of the claim being presented is plainly contemplated in order to provide such notice, great generality in such a statement is allowed as long as defendant is in fact given fair notice of what is claimed." *Haley*, 611 A.2d at 848 (citing 5 Wright & Miller, *Federal Practice and Procedure:* Civil 2d § 1215 at 145 (West 1990)).

This Court has reviewed the Amended Complaint as set forth by Plaintiff. *See Cipolla v. Rhode Island College, Board of Governors for Higher Education*, 742 A.2d 277, 280 (R.I. 1999) ("A motion to dismiss must be made strictly on the pleadings[.]") This Court is not sympathetic to Hajoca's claims that it does not "know what products it's being sued for, the alleged products that would take the plaintiff's claim outside of the presumptive protection of the [TN Statute]." (Oct. 26 Tr. 7:12-15.) The Amended Complaint named Hajoca as one of the Defendants and

states how it allegedly contributed to Mr. Murray's injuries. *See* Am. Compl. ¶¶ 2, 6-7, 9-10, 17-19, 21-27, 30-32, 34, 36-39, 47. Any further details regarding specific products or the TN Statute are for discovery to uncover. *See United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958) ("Modern instruments of discovery serve a useful purpose . . . They together with pretrial procedures make a trial less a game of blind man's buff [sic] and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.")

In *Bresnick v. Baskin*, our Supreme Court addressed a similar pleading issue. *See Bresnick v. Baskin*, 650 A.2d 915, 916 (R.I. 1994). The complaint attempted to raise assertions of adverse-possession. *Id*. at 915. The complaint "alleged trespass, willful destruction of trees and shrubbery, conversion . . . , and wrongful erection of the chainlink fence." *Id*. at 916. The Court determined that such a complaint failed to "put defendants on fair notice of an adverse-possession claim" because [t]he plaintiffs failed to use the well-known language of the adverse-possession statute, . . . [particularly,] 'actual, open, notorious, hostile, under claim of right, continuous, and exclusive.'" *Id*.

Here, Plaintiff has asserted sufficient claims to put "[Hajoca] on fair notice" of a TN Statute exception. *See id*. Indeed, the Amended Complaint does not mention the TN Statute. Nonetheless, Plaintiff is not required to plead with a "high degree of factual specificity." *See Hyatt*, 880 A.2d at 824-25 (remanding dismissal of count entitled "Intentional Interference with Contract and Prospective Economic Relations" because Court concluded "[i]t alleges (albeit just barely) that the 'agents and/or servants' . . . actually committed the intentional tort that is the subject of this count"). Whereas in *Bresnick,* 650 A.2d at 916, the plaintiff failed to plead any language attributable to an adverse-possession claim, the Amended Complaint provided sufficient language. The allegations are sufficient to warn Hajoca of its alleged contribution to

Decedent's injury. For example, the TN Statute's first exception provides that "[t]he seller exercised substantial control over that aspect of the design, testing, *manufacture*, *packaging* or labeling of the product that caused the alleged harm for which recovery of damages is sought[.]" TN Code § 29-28-106 (emphasis added). The Amended Complaint alleged that the Defendants "manufactured," "packaged," and "marketed" products. (Am. Compl. ¶¶ 6-7, 10, 25.) Accordingly, such a pleading was sufficient notice of the applicability of the TN Statute pursuant to Rhode Island's notice pleading standard. *See* Super. R. Civ. P. 8(a).

Hajoca directs this Court to rely on *Woods v. Tom Williams BMW*, No. 18-cv-1110-STA-jay, 2019 WL 3462550, at *1 (W.D. Tenn. July 31, 2019). The Tennessee District Court explained that "Courts applying [the TN Statute] and its bar on seller liability have granted sellers' Rule 12(b)(6) and 12(c) motions where a plaintiff alleged a products liability claim against the seller but failed to allege any facts to establish one of [the TN Statute's] exceptions." *Id.* at *3*; see also* Def.'s Mot. 5. Importantly, the cases relied upon by the Tennessee District Court are cases in which the operative complaint alleged no facts whatsoever showing that an exception was applicable. *See Woods*, 2019 WL 3462550, at *3. Here, the Amended Complaint is distinguishable. The assertions put Hajoca on notice that at least one exception to the TN Statute may be invoked. Thus, the allegations in the Amended Complaint, taken as true, are sufficient to withstand a motion to dismiss.

**D**

**Re-Pleading and Prejudice**

Pursuant to Rule 15 of the Superior Court Rules of Civil Procedure, after a party has once amended a pleading as a matter of course, "[a] party may amend the party's pleading only by leave of court or by written consent of the adverse party[.]" Super. R. Civ. P. 15(a). "[T]rial

justices should liberally allow amendments to the pleadings." *Serra v. Ford Motor Credit Co*., 463 A.2d 142, 150 (R.I. 1983). The trial justice has "the sound discretion" to "permit a party to amend his or her pleading[.]" *Normandin v. Levine*, 621 A.2d 713, 715 (R.I. 1993). "The question of prejudice to the party opposing the amendment is central to the investigation into whether an amendment should be granted." *Faerber v. Cavanagh*, 568 A.2d 326, 329 (R.I. 1990).

As explained above, this Court is satisfied that the Amended Complaint sufficiently sets forth allegations to put Hajoca on notice that an exception to the TN Statute may apply. Accordingly, re-pleading by Plaintiff is not necessary. However, this Court notes that even if re-pleading were allowed, such amendments will not prejudice Hajoca. Hajoca is responsible for the passage of time between the Amended Complaint and the Motion to Dismiss. Hajoca did not raise the Rule 12(b)(6) issue until the instant Motion to Dismiss in September 2023. *See* Docket. Its Motion to Dismiss comes approximately six years after the Amended Complaint. *See id*. Had Hajoca brought this issue before the Court sooner, the prejudice it now alleges—namely, that trial is two months away—would be moot. *See* Def's Mot. 11. Accordingly, Hajoca's claims that it will suffer prejudice from amendment of the Amended Complaint fail.

## IV

## Conclusion

For the reasons set forth herein, Hajoca's Motion to Dismiss is denied. Counsel shall prepare the appropriate order for entry.

**RHODE ISLAND** **SUPERIOR COURT**
***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Janice M. Murray, as Surviving Spouse and as Executrix of the Estate of Harold Wayne Murray** |
| **CASE NO:** | **PC-2016-0151** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **November 9, 2023** |
| **JUSTICE/MAGISTRATE:** | **Gibney, P.J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **John E. Deaton, Esq.** |
| **For Defendant:** | **Mark O. Denehy, Esq.** |