

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

<b>DONYALE LONDON,</b>	:	
	:	<b>C.A. 09C-04-027 (RBY)</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ALPINE CONTRACTORS,</b>	:	
	:	
<b>Defendant.</b>	:	

*Submitted: January 15, 2010*

*Decided: February 5, 2010*

*Upon Consideration of Defendant's  
Motion for Reargument*

**DENIED**

**OPINION AND ORDER**

Patrick C. Gallagher, Esq., Grad & Hampton, LLC, Dover, Delaware for Plaintiff.

Raymond C. Radulski, Esq., Chrissinger & Baumberger, Wilmington, Delaware for Defendant.

**Young, J.**

## SUMMARY

\_\_\_\_\_Defendant Alpine Contractors, Inc. (“Defendant”) filed a Motion for Reargument, pursuant to Superior Court Civil Rule 59(e) (“Rule 59(e)”), following Commissioner Freud’s Order granting Plaintiff, Donyale M. London (“Plaintiff”), leave to file an amended complaint. Defendant contends that Plaintiff should not have been allowed the benefits of Superior Court Civil Rule 15©) (“Rule 15©”). Because the original Complaint placed Defendant on sufficient notice of Plaintiffs’ claims, and because the Commissioner’s Order has not misapprehended the law or facts of this case, Defendant’s Motion for Reargument is **DENIED**.

## PROCEDURAL HISTORY

On April 20, 2009, the day the statute of limitations expired, Mrs. London filed the original Complaint *pro se*. It alleged damages for personal injury and property damage. Mrs. London named only herself as a Plaintiff in the lawsuit, failing to identify Defendant’s incorporated status. After obtaining counsel, Mrs. London filed a Motion to Amend the Complaint on October 13, 2009. Mrs. London wanted to add a breach of contract claim, to add her husband as a co-Plaintiff, and to add herself as next friend for six of her children. On November 2, 2009, Defendant filed a response to Plaintiff’s Motion.

On November 5, 2009, Commissioner Freud heard the parties’ arguments, and granted Plaintiff leave to file an amended complaint. The Court ruled that Plaintiff was entitled to the benefit of “relation back” because she adequately placed Alpine on notice of the claims for each of her six children and her husband within the statute of limitations. Thus, Plaintiff satisfied the requirements of Rule 15©).

## **STANDARD OF REVIEW**<sup>1</sup>

The standard of review for a Rule 59(e) motion for reargument is well-established.<sup>2</sup> “A motion for reargument will usually be denied unless the Court has ‘overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.’”<sup>3</sup> “A motion for reargument should not be used merely to rehash the arguments already decided by the Court, nor will the Court consider new arguments that the movant could have previously raised.”<sup>4</sup> “The movant ‘has the burden of demonstrating newly discovered evidence, a change in the law[,] or manifest injustice.’”<sup>5</sup>

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<sup>1</sup> On a procedural matter, Plaintiffs raise the issue that Defendant brought this Motion for Reargument, pursuant to Rule 59(e), instead of complying with Superior Court Civil Rule 132 (“Rule 132”) which addresses Commissioners. Plaintiffs cite *Figueira v. Jevic Transp., Inc.*, 2001 WL 789648 (Del. Super. Ct. June 15, 2001), as support for their position. The Court will not dismiss the Motion for Reargument on these technical grounds, and will review the Commissioner’s Order *de novo*.

<sup>2</sup> *Reid v. Hindt*, 2008 WL 2943373, at \*1 (Del. Super. Ct. July 31, 2008) (citing *State v. Brooks*, 2008 WL 435085, at \*1 (Del. Super. Ct. Feb. 12, 2008)).

<sup>3</sup> *Id.* (citing *Lamourine v. Mazda Motor of Am., Inc.*, 2007 WL 3379048, at \*1 (Del. Super. Ct. Sept. 24, 2007)).

<sup>4</sup> *Id.* (citing *Brooks*, 2008 WL 435085, at \*1). *See also St. Search Partners, L.P. v. Ricon Int’l, L.L.C.*, 2006 WL 1313859, at \*1 (Del. Super. Ct. May 12, 2006); *Steadfast Ins. Co. v. Eon Labs Mfg.*, 1998 WL 442668, at \*1 (Del. Super. Ct. Aug. 18, 1999).

<sup>5</sup> *Id.* (citing *Brooks*, 2008 WL 435085, at \*1).

## DISCUSSION

The issue before the Court is whether Plaintiff's original Complaint provided sufficient notice, within the statute of limitations, to Defendant that Defendant's alleged negligent conduct caused injury to Plaintiff's children and her husband. Defendant asserts that it does not, and, as such, Plaintiff is not entitled to the benefit of Rule 15©). The Court finds that the Commissioner correctly applied the law in her finding that, under these facts, Plaintiff is entitled to "relation back" under Rule 15©).

According to Rule 15©), an amendment of a pleading relates back to the date of the original pleading when:

- (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
- (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
- (3) an amendment changes the party or the naming of the party against whom a claim is asserted of the foregoing provision (2) is satisfied and, within the period provided by statute or these Rules for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) 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.

Plaintiff posits that "Rule 15(c) and its case law progeny do not allow the Court to add multiple Plaintiffs with separate and distinct claims to a cause of action without the Plaintiff's first meeting the minimum obligation of placing the Defendant on notice of these claims, and establishing that these claims are part of the same transaction." The Court is satisfied that Plaintiff has, in fact, met her obligations under Rule 15(c).

First, all of the claims in the Amended Complaint arise from Defendant's installation of a sewer lateral at Plaintiff's home, which resulted in sewage backing up into her home. This is the occurrence complained of in the original Complaint. Second, the original Complaint, in paragraphs six and twelve, noted that children were affected by the sewage backup, thereby placing Defendant on notice of the children's claims. Third, with regard to adding Mr. London as a party to the Complaint, he was a party to the contract with Defendant for the installation of the sewer lateral as well as the co-owner of the property. Defendant was aware, from the original Complaint, that Plaintiffs' home was damaged. Therefore, because of his contractual capacity and his co-ownership of the home, Defendant was on sufficient notice of Mr. London's claims. In sum, Defendant is not prejudiced by the addition of Mr. London and the children's claims because their addition does not alter the basis or nature of the claims previously made in the original Complaint.

### **CONCLUSION**

After careful and *de novo* review, Defendant's Motion for reargument is **DENIED**. The operative Complaint in this matter is the Amended Complaint filed on November 6, 2009.

**SO ORDERED** this 5<sup>th</sup> day of February, 2010.

/s/ Robert B. Young  
J.

RBV/sal  
cc: Counsel  
File