

SUMMARY

_____The State of Delaware (the “State”) has filed a Motion for Reargument, pursuant to Superior Court Civil Rule 59(e), in response to Commissioner Freud’s August 25, 2010 Order granting Plaintiff Charles Lovett (“Lovett”) leave to file an amended complaint. Lovett filed his original complaint against Andrew Pietlock and the Delaware State Police on December 17, 2009. On April 23, six days after the 120-day limit for effecting service had expired, Lovett moved for leave to amend his complaint by naming three additional state employees as defendants. Because the three employees never received notice of the institution of Lovett’s action as required by Superior Court Rule 15(c), the State contends that Lovett is procedurally barred from amending his complaint. The Court agrees. Accordingly, the State’s Motion for Reargument is **GRANTED**, and the Commissioner’s Order is **REVERSED**.

FACTS

_____On December 17, 2007, Delaware State Police Corporal Andrew Pietlock obtained a search warrant for Shanun Handy, who was then living at 118 Unity Lane in Greenwood, Delaware. On December 20, 2007, Corporal Pietlock and other members of the Delaware State Police executed the search warrant. Instead of searching 118 Unity Lane, the police searched 162 Unity Lane, the residence of Charles Lovett.

Lovett alleges that members of the Delaware State Police handcuffed him, pointed loaded weapons in his direction, used racial epithets and assaulted him during the execution of the search warrant. Lovett contends that all of these acts were committed by other officers while in the presence of Corporal Pietlock.

_____On December 17, 2009, Lovett filed a complaint naming the Delaware State

Police and Corporal Pietlock as defendants. On April 23, 2010, Lovett moved for leave to amend his complaint to add three additional Delaware State Troopers as defendants: Michael R. Berry, Charles C. Condon, and Brian J. Fitzpatrick. Lovett's motion was briefed and argued before Commissioner Freud on May 13, 2010. On August 25, 2010, Commissioner Freud granted Lovett's motion, finding that Lovett had met his burden with respect to Superior Court Civil Rule 15(c). The State filed its Motion for Reargument on August 31, 2010.

The issue now before this Court is whether Lovett's amendment relates back to the original filing of the complaint under Superior Court Civil Rule 15(c). The State claims that the amended complaint does not relate back; and, therefore, Lovett's claims against the additional defendants are barred by the statute of limitations.¹ Therefore, to resolve this dispute, the Court's inquiry rests entirely on the aforementioned requirements imposed by Superior Court Civil Rule 15(c).

STANDARD OF REVIEW

_____The standard of review for a Rule 59(e) motion for reargument is well-established.² "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

¹ 10 *Del. C.* § 8119 provides that "[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained..."

² *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)).

underlying decision.”³ “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.”⁴ “The movant ‘has the burden of demonstrating newly discovered evidence, a change in the law[,] or manifest injustice.’”⁵

_____The Court finds that the State has met its burden with respect to Rule 59(e). The Court is, therefore, required to reexamine the legal reasoning underpinning the Commissioner’s August 25th ruling. As the contours of this dispute have been well documented by both parties in their written submissions to the Court, this motion will be decided after a careful examination of the parties’ briefs.

DISCUSSION

Delaware law requires a party to satisfy three elements of Superior Court Rule 15(c)(3) before his amended complaint can add an additional party after the statute of limitations for the underlying action has run. They are:

- (1) that the claim “must arise out of the same conduct, transaction, or occurrence;”
- (2) that “the party to be added must have received notice of the institution of the action, so that the party will not be prejudiced;” and,
- (3) that “within the time provided by the rules, the party to be added must have known or should have known that, but for the mistake concerning the identity of the proper party, the action would have been

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

⁴ *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).

⁵ *Id.* (citing *Brooks*, 2008 WL 435085, at *1).

brought against the party to be added...”⁶

_____All of the requirements set forth in Rule 15(c)(3) must be satisfied in order for an amendment, substituting a party after the running of the statute of limitations, to be related back to the filing date of the action.⁷ Accordingly, Lovett’s amended complaint must completely satisfy the strictures of Rule 15(c)(3); otherwise, the amended complaint will not relate back to the date of the original filing, and will be barred by the statute of limitations.

_____The State does not proffer any argument pertaining to the first element of Rule 15(c). In any event, Lovett’s proposed amendment clearly arises out of the same conduct, transaction, or occurrence set forth in the original pleading. The State does, however, challenge the sufficiency of Lovett’s compliance with the other two elements. Specifically, the State argues that the three additional defendants named in Lovett’s amended complaint received no notice of the institution of his original action.

In response, Lovett claims that the three additional defendants received constructive notice of his complaint. Lovett advances two theories of constructive notice, which federal courts colloquially refer to as 1) the shared attorney theory; and 2) the identity of interest theory.⁸ Pursuant to the shared attorney theory, Lovett claims that the newly named defendants were on constructive notice of his lawsuit

⁶ *Flowers v. Witco Chemicals Corp.*, 765 A.2d 951 (Del. 2000) (citing *Taylor v. Champion*, 693 A.2d 1072, 1074 (Del. 1997)).

⁷ *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993)

⁸ Because Superior Court Rule 15 is substantially the same as Federal Rule of Civil Procedure 15, Delaware courts find the federal courts’ interpretation of the analogous federal rule persuasive in analyzing Superior court Rule 15. See *Chaplake Holdings, Ltd. v. Chrysler Corp.*, 766 A.2d 1(Del. 2001) (citation omitted).

because the State Attorney General's office, which is charged with representing all individuals sued in their individual capacities as employees of the State, would be tasked with representing the three additional officers. Under the identity of interest theory, Lovett argues that the three additional defendants had constructive notice of the litigation because the Attorney General has an identity of interest with every police officer in the State: an interest sufficient to impute notice onto these three individual officers.

The Court is unpersuaded that either of Lovett's two theories of constructive notice are applicable to the facts presented by this Motion. Both theories require that Lovett produce some evidence from which the Court can infer the existence of a specific relationship or pertinent communication between the State and the three officers.⁹ The State demonstrates that the Department of Justice has not entered an appearance on behalf of the officers, did not notify the officers of the institution of the action, and did not maintain any communication or attorney-client relationship with the officers during the relevant 120-day period. Beyond referencing the general organizational connection between the officers and the Department of Justice, Lovett has failed to supply the Court with any specific evidence that would justify imputing notice on these defendants.

There is no need for a belabored rumination on the proper application of Lovett's theories of constructive notice here, however, because Rule 15(c)(3) does not simply require that the party to be added as a defendant have "notice of the institution of the action" within its specific time period. Rule 15(c)(3) also requires that the "party to be brought in by amendment. . . knew or should have known that, *but for a mistake concerning the identity of the proper party*, the action would have

⁹ See generally *Garvin v. City of Philadelphia*, 354 F.3d 215 (3d. Cir. 2003).

been brought against the party.¹⁰ Thus, even if Lovett were able to show that the three officers knew or should have known about their role in his lawsuit, Lovett must also demonstrate the existence of a mistake.

Delaware courts follow a “strict approach” in analyzing claims of mistake under Rule 15(c).¹¹ Under this approach, a Rule 15(c) mistake occurs only when the moving party makes “a true mistake concerning the identity or name of the proper party.”¹² An amendment will not relate back where the plaintiff “merely chose the wrong party to sue.”¹³ The reasoning behind the strict approach is that, in the absence of a mistake by the plaintiff of which the defendant sought to be added was aware, the defendant could assume that he or she was not originally joined for tactical reasons or lack of proof.¹⁴

The “mistake” element of the test requires the Court to perform a two-part analysis. First, the Court must consider whether Lovett “was mistaken as to the identity of the proper party.”¹⁵ If the Court finds that Lovett was so mistaken, then

¹⁰ SUPER. CT. CIV. R. 15(c)(3) (emphasis added).

¹¹ *Marro v. Gopez*, 1993 WL 138997, at *2 (Del. Super. Ct. Mar. 31, 1993) (quoting *Williams v. Avis Transp. of Canada*, 57 F.R.D. 53, 55 (D. Nev. 1972)).

¹² *Marro*, 1993 WL 138997, at *2. See also *Hess v. Carmine*, 396 A.2d 173, 176 (Del. Super. Ct. Nov. 3, 1978) (finding that where “plaintiffs merely seek to correct a ‘misnomer,’ and the intended defendant is already before the Court, such corrective amendment relates back.”) (internal citations omitted).

¹³ *Brown v. City of Wilmington Zoning Bd. Of Adjustment*, 2007 WL 1828261, at *11 (Del. Super. Ct. June 25, 2007).

¹⁴ 61B AM.JUR.2D PLEADING § 869.

¹⁵ *Trone v. Delaware Alcoholic Beverage Control Comm’n*, 2000 WL 33113799 (Del. Super. Ct. Dec. 28, 2000), *aff’d*, *Trone v. Delaware Alcoholic Beverage Control Comm’n*, 757 A.2d 1278 (Del. 2000).

the court will inquire as to whether “[the officers] knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against [them].”¹⁶ Here, the Court’s analysis need not proceed beyond the first step of the test.

To determine whether a plaintiff’s mistake as to the identity of the proper party crosses this threshold, Delaware courts focus on the reason the moving party failed to include a party in the complaint or petition to determine whether the failure constituted a “mistake.”¹⁷ For example, where a plaintiff intends to sue all parties involved, but is affirmatively misled as to the identity of those parties by a party defendant at a deposition, the court will find that this element is satisfied.¹⁸ On the other hand, where the plaintiff cannot demonstrate an intent to include the unnamed party before the limitations period expired, the court will hold that this element is not satisfied.¹⁹

Lovett’s Motion to Amend his Complaint was not accepted until April 23, 2010. Lovett’s sole explanation for why his Motion was untimely filed is a vague assertion concerning some error with the Court’s e-filing system. This error is not the kind of mistake contemplated by Rule 15(c). Ultimately, Lovett’s counsel is responsible for ensuring that court documents are timely filed. In any event, a filing error should have been corrected prior to the 120-day deadline: not months later in a Motion for Reargument.

¹⁶ *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993).

¹⁷ *Brown*, 2007 WL 1828261, at *12.

¹⁸ *Id.*

¹⁹ *Id.*

CONCLUSION

As Lovett has provided insufficient evidence to support his theories of constructive notice, and as the purported failure of the e-filing system is not supported by any competent evidence and does not constitute a mistake within the strict confines of Rule 15(c), Lovett's Motion to Amend his Complaint cannot succeed. Therefore, the Commissioner's Order is **REVERSED**. The Plaintiff's Motion to Amend his Complaint is **DENIED**.

SO ORDERED this 5th day of January, 2011.

/s/ Robert B. Young
J.

RBY/sal
cc: Counsel