Control No. 18062709

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

JAMES MILEY, JR. and HEATHER MILEY, h/w **Plaintiffs**	:	
vs.	:	MAY TERM, 2017
CARPENTER TECHNOLOGY CORPORATION **Defendant**	:	NO. 4262
vs.	:	
READING CRANE AND ENGINEERING COMPANY, POLLOCK RESEARCH & DESIGN, INC. d/b/a READING CRANE AND ENGINEERING COMPANY and THE REES COMPANIES, INC. **Additional Defendants**	:	DOCKETED JUL 31 2018 F. BROWN DAY FORWARD

ORDER

And Now, this 31st day of July, 2018, upon consideration of the Motion of Additional Defendants, Reading Crane and Engineering Company (improperly identified) and Pollock Research & Design, Inc. d/b/a Reading Crane and Engineering Company, to Strike Plaintiffs, James and Heather Miley's Answer to the Joinder Complaint of Defendant Carpenter Technology Corporation, and Plaintiffs' Response thereto, and for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that said Motion is **GRANTED** and Plaintiffs' Answer to the Joinder Complaint of Defendant Carpenter Technology Corporation is hereby **STRICKEN With Prejudice**.

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.

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MEMORANDUM in SUPPORT OF ORDER GRANTING THE MOTION TO STRIKE PLAINTIFFS' ANSWER TO THE JOINDER COMPLAINT

MASSIAH-JACKSON, J.

July 31st, 2018

A. CHRONOLOGY

August 1, 2015	–	James Miley, Jr. injured at work. He was employed by the Rees Companies, Inc.
May 30, 2017	–	Writ of Summons filed naming Carpenter Technology Corporation.
August 1, 2017	–	Statute of Limitations expires.
October 27, 2017	–	Plaintiffs' Motion for Pre-Complaint Discovery.
December 11, 2017	–	Plaintiffs file Complaint naming Carpenter Technology only.
December 14, 2017	–	Court denies Motion for Pre-Complaint Discovery.
January 2, 2018	–	Carpenter Technology files Answer and New Matter to Plaintiffs' Complaint.
January 2 and 11, 2018	–	Carpenter Technology files Writ of Summons.
January 30, 2018	–	Carpenter Technology files Joinder Complaint against Reading Crane and the Rees Companies.
March 8, 2018	–	Reading Crane files Answer, New Matter and Cross-Claim to Joinder Complaint.
June 15, 2018	–	Plaintiffs file Answer to Joinder Complaint.
June 28, 2018	–	Reading Crane files Motion to Strike Plaintiffs' Answer (Control No. 18062709).

B. LEGAL DISCUSSION

On January 30, 2018, Defendant-Carpenter Technology filed a Joinder Complaint naming Reading Crane and The Rees Company as Additional Defendants. Count I is Carpenter Technology's common law claim for indemnity and/or contribution. Count II is Carpenter Technology's claim for contractual indemnification. Count III is a claim for breach of contract for failure to maintain liability insurance.

On June 15, 2018, the Plaintiffs, James and Heather Miley, filed an Answer to Defendant's Joinder Complaint, which states **in full**:

> "To the extent that this Court deems the Joinder Complaint to have been properly filed, Plaintiffs James Miley, Jr. and Heather Miley, h/w, plead all rights available to them by virtue of Pennsylvania Rule of Civil Procedure 2255(d), permitting them to recover from said Additional Defendants as though they had been joined as defendants originally and duly served in the initial pleading, that is, as though the initial pleading averred the liability pled by the original defendant."

After consideration of the facts and the law applicable to these circumstances, the Motion filed by the Additional Defendants to Strike the Answer to the Joinder Complaint filed by the Plaintiffs is **GRANTED** in its entirety.

1. Plaintiffs Answer to the Joinder Complaint is Improper and Untimely.

It is true that the rule requiring the filing of a responsive pleading within 20 days is not absolute. It is also true that these Plaintiffs have offered no explanation or excuse for filing their "Answer" five months after the Joinder Complaint was filed. Specifically, the

Supreme Court held in Peters Creek Sanitary Authority v. Welch, 681 A.2d 167 at 170 (Pa. 1996):

> "When a party moves to strike a pleading, the party who files the untimely pleading must demonstrate just cause for the delay."

In this civil action, the Miley Plaintiffs blatantly disregarded the time limits established by the Rules of Civil Procedure without offering any cause for their delay in filing an Answer to the Joinder Complaint. Their Answer is stricken. See also, Francisco v. Ford Motor Co., 580 A.2d 374 (Pa. Superior Ct. 1990).

2. The Failure to File a Timely Cause of Action Is Negligence Per Se.

These Plaintiffs also contend that because the Court denied their Motion for Pre-Complaint Discovery, they were unable to file a timely Complaint -- to include the Additional Defendants. The record does not support this notion. Plaintiffs assert in their Memorandum, unpaged:

> "As a laborer, Mr. Miley had no way of knowing the nature of the relationships among Defendant Carpenter, The Rees Company and Moving Additional Defendants Reading Crane and Engineering, and Pollock Research & Design. Plaintiffs believe that Mr. Roth, an employee of Carpenter, may have issued an instruction to strip off the hanger brackets that caused steel to be loaded onto or off of a truck in an unsafe manner. As a result, the steel fell on Mr. Miley, causing severe injuries."

Mr. Miley, a laborer, did not prepare or file the Writ of Summons or the Complaint. The Plaintiffs' Complaint was filed by counsel on December 11, 2017, prior to the Court Order, dated December 14, 2017. The failure to initiate a timely cause of action against the Additional Defendants was not due to the Court's ruling.

Not only has the statute of limitations expired thus barring any direct claims against the Additional Defendants, but this record does not support reliance on the Discovery Rule exception. The Discovery Rule tolls a statute of limitations until the point when there is a recognition that an injury occurred and that it was caused by another. Pulli v. Ustin, 24 A.3d 421 (Pa. Superior Ct. 2011). These Miley Plaintiffs knew of the injury on August 1, 2015. In August, 2015, these Miley Plaintiffs knew that the Additional Defendants had business arrangements with Carpenter Technology. These Plaintiffs reasonably knew that the injuries had been caused by the conduct of others. Fine v. Checcio, 870 A.2d 850 (Pa. 2005); Colona v. Rice, 664 A.2d 979 (Pa. Superior Ct. 1995). Plaintiffs' Memorandum, unpaged, concedes that the limitation period commences without the necessity of notice of the fact of actual negligence or precise cause of injury. There is no caselaw to support the suggestion that Plaintiffs were required to have precise knowledge about relationships between corporate defendants before naming them in a cause of action.

These Plaintiffs did possess sufficient knowledge, as expressed in their Complaint, inter alia, at Paragraphs 4, 6 and 7, to identify principles of agency, vicarious liability, sole liability, joint and several liability, statutory employer, negligence, carelessness, substantial factor, causation, damages and much more. These Plaintiffs did specifically identify the Additional Defendants in the chain of causation and communication.

3. Because the Additional Defendants were Joined After Expiration of the Two Year Statute of Limitations, the Miley Plaintiffs Have No Direct Cause of Action Against Them.

In Hileman v. Morelli, 605 A.2d 377 (Pa. Superior Ct. 1992), the Superior Court provided a comprehensive overview of situations, such as here, when an original defendant joins an additional defendant after the statute of limitations applicable to the plaintiff's cause of action. At 605 A.2d 382, the Superior Court noted:

> ". . . a defendant may not bring another party into the case on the theory that he is solely liable to the plaintiff if the plaintiff himself is already time-barred from suing the new defendant."

The Miley Plaintiffs are prohibited from attempting to recover directly from the Additional Defendants "as though they had been joined as defendants originally . . .". The Defendant, Carpenter Technology, did not bring in the Additional Defendants on a theory of sole liability. Any claims these Plaintiffs might have had are time-barred. The Joinder Rules of Civil Procedure do not provide relief for the Miley Plaintiffs. Rule 2255(d) does not supersede the two year statute of limitations. 42 Pa. C.S.A. §5524(2).

4. Mr. Miley is Not an Intended Beneficiary of the Joinder Complaint's Breach of Contract Count.

The Miley Plaintiffs acknowledge that they proffer the argument of "intended beneficiary" to try to take advantage of a four year statute of limitations afforded to breach of contract claims. Under the circumstances and in the absence of a viable contract claim, the two year tort limitation is applicable herein.

In Guy v. Liederbach, 459 A.2d 744 (Pa. 1983), the Supreme Court adopted Restatement (Second) of Contracts §302, as a guide for analysis of third party beneficiary claims. The Guy Court concluded:

> "There is thus a two part test for determining whether one is an intended third party beneficiary: (1) the recognition of the beneficiary's right must be 'appropriate to effectuate the intention of the parties,' and (2) the performance must 'satisfy an obligation of the promisee to pay money to the beneficiary' or 'the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.'"

The first part of the test sets forth a standing requirements for this Court to make a determination whether recognition of third party beneficiary status is appropriate. Only if the Miley Plaintiffs satisfy both parts of the test may an intended beneficiary claim be asserted.

It is apparent that these Plaintiffs have no rights and received no promises to effectuate the purposes or intentions of Count III of the Joinder Complaint. See also, Restatement (Second) of Contracts §302. This argument is meritless.

C. CONCLUSION

For all of the reasons set forth above, the Motion to Strike Plaintiffs' Answer to the Joinder Complaint is **GRANTED in its Entirety**.

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.