

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Michael J. Baske,)	
)	
Plaintiff,)	
)	
v.)	No. 18 M4 5322
)	
Ion Vuluta; Grand Turismo)	
Trucking, Inc., a corporation; and)	
Radu Infinity, Inc., a corporation,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

The relation-back doctrine authorizes the filing of an amended pleading to name a defendant after the statute of limitations has expired if the plaintiff mistakenly failed to name the defendant previously. Here, the plaintiff mistakenly failed to name originally a defendant-driver's corporate employer although the employer knew of the lawsuit. For that reason, the defendant's motion to dismiss must be denied.

Facts

On May 8, 2017, Michael Baske was driving south on Interstate 57 near 159th Street in Markham. At the same time and in the same vicinity, Ion Vuluta was driving a truck. Vuluta moved his truck into Baske's lane of traffic and struck the side of Baske's vehicle, injuring Baske.

On July 27, 2018, Baske filed a complaint against Vuluta and Radu Infinity. Baske alleged that Vuluta had a duty to drive safely so as not to injure other persons. Baske claims Vuluta breached his duty by failing to: keep a proper lookout; drive at a reasonable speed given traffic conditions; slow down; warn by

using his vehicle's horn; exercise due care to avoid a collision; keep his vehicle under control; and drive in a single lane.

On November 2, 2020, Baske filed a first amended complaint. The complaint repeats nearly identically most of the allegations and claims in the original complaint. The amended complaint additionally alleges, however, that Vuluta was driving as an actual or apparent agent of Grand Turismo Trucking, Inc. Given that allegation, the amended complaint names Grand Turismo as a defendant for the first time.

On July 26, 2021, Grand Turismo filed a motion to dismiss. The parties fully briefed the motion. One of the exhibits attached to the motion is the May 8, 2017 Illinois traffic crash report. Page two of that exhibit identifies the "carrier name" as Grand Turismo Trucking, Inc. Additionally, one of the exhibits attached to Baske's response brief is a report from the Secretary of State identifying Vuluta as Grand Turismo's president and registered agent.

Analysis

Grand Turismo brings its motion pursuant to Code of Civil Procedure section 2-619(a)(5), authorizing the dismissal of an action "not commenced within the time limited by law." 735 ILCS 5/2-619(a)(9). Grand Turismo argues that the applicable two-year statute of limitations for personal injury cases, 735 ILCS 5/13-202, required Baske to file his complaint by May 8, 2019, two years after the crash date; consequently, the claims against Grand Turismo in the November 2, 2020 first amended complaint are stale. Grand Turismo also argues that Baske cannot meet the requirements of the Code of Civil Procedure's relation-back provision. 735 ILCS 5/2-616(d).

This motion turns on the application of the relation-back doctrine. The relation-back doctrine as to naming additional defendants provides that:

A cause of action against a person not originally named a defendant is not barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if all the following terms and conditions are met: (1) the time prescribed or limited had not expired when the original action was commenced; (2) the person, within the time that the action might have been brought or the right asserted against him or her plus the time for service permitted under Supreme Court Rule 103(b), received such notice of the commencement of the action that the person will not be prejudiced in maintaining a defense on the merits and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her; and (3) it appears from the original and amended pleadings that the cause of action asserted in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery when the condition precedent has in fact been performed, and even though the person was not named originally as a defendant. For the purpose of preserving the cause of action under those conditions, an amendment adding the person as a defendant relates back to the date of the filing of the original pleading so amended.

735 ILCS 5/2-616(d). The parties do not contest the first and third requirements; consequently, the dispute centers solely on the second requirement.

Section 2-616(d) is similar in language to Federal Rule of Civil Procedure 15(c). Fed. R. Civ. P. 15(c). Under Illinois law, if a Code of Civil Procedure section is patterned after a federal rule, federal cases are persuasive authority. *Borchers v. Franciscan Tertiary of the Sacred Heart, Inc.*, 2011 IL App (2d) 101257, ¶ 45;

Zlatev v. Millette, 2015 IL App (1st) 143173, ¶ 24. Given that legal principle, the guiding case in this dispute is *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010). In *Krupski*, the court found the appellate court had erred by focusing on the plaintiff's knowledge to determine whether a mistake had been made in naming a defendant. As explained:

The question under Rule 15(c)(1)(C)(ii) is not whether [the plaintiff] knew or should have known the identity of [the newly added party] as the proper defendant, but whether [the newly added party] knew or should have known that it would have been named as a defendant but for an error. Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known during the [period for service], not what the *plaintiff* knew or should have known at the time of filing her original complaint.

Id. at 548 (emphasis in original). Thus, “[i]nformation in the plaintiff’s possession is relevant only if it bears on the defendant’s understanding of whether the plaintiff made a mistake regarding the proper party’s identity.” *Id.*

Illinois appellate courts have followed the *Krupski* holding and applied it in a variety of circumstances. See *Walstad v. Klink*, 2018 IL App (1st) 170070, ¶ 20; *Zlatev*, 2015 IL App (1st) 143173, ¶ 31; *Mann v. Thomas Place, L.P.*, 2012 IL App (1st) 110625, ¶ 25; *Borchers*, 2011 IL App (2d) 101257, ¶ 52; *Maggi v. RAS Dev., Inc.*, 2011 IL App (1st) 91955, ¶¶ 33, 37. Under Code of Civil Procedure section 2-616(d), a “mistake” occurs if a plaintiff’s allegations and the record show the new defendant was the party responsible for the claimed misconduct in the original complaint. *Walstad*, 2018 IL App (1st) 170070, ¶ 20; *Owens v. VHS Acquisition Subsidiary No. 3, Inc.*, 2017 IL App (1st) 161709, ¶ 40. “[T]he proper focus is not on whether plaintiff made a reasonable mistake, but whether or not the defendant could reasonably believe that plaintiff had made a mistake in not naming the defendant in the initial complaint.” *Zlatev*, 2015 IL

App (1st) 143173, ¶ 31; *see also* ¶ 47 (“the focus is whether the new defendant knew or should have known that, when the plaintiff filed the initial complaint, the plaintiff made a mistake in excluding him or her as a party defendant.”). In other words, a “mistake” is not limited to a misnomer, but extends to whether the new defendant understood that, in failing to name the defendant in a prior complaint, the plaintiff “made a mistake regarding the proper party’s identity.” *Krupski*, 560 U.S. at 548.

In this case, the inexorable conclusion is that Baske made a mistake by not naming Grand Turismo in the original complaint. The allegations in the original and amended complaints are nearly identical, except for Baske now identifying Vuluta as an agent or employee of Grand Turismo. In addition, Grand Turismo knew of the collision when it occurred because it is named on the traffic crash report. Most telling is that the Secretary of State’s report indicates that Vuluta is Grand Turismo’s president and registered agent. In short, Grand Turismo had direct and immediate knowledge of the accident and that it was a likely defendant.

Finally, there certainly is no prejudice to Grand Turismo in being named as a defendant. Any defense Grand Turismo will present will be identical to that already presented for Vuluta. Further, adding Grand Turismo as a defendant will not delay this case because any additional written or oral discovery will be minimal, if at all.

Conclusion

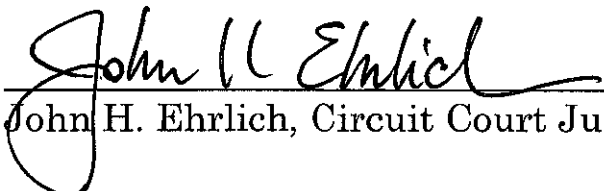
For the reasons presented above, it is ordered that:

1. Grand Turismo’s motion to dismiss is denied; and
2. Grand Turismo is to answer the complaint on or before December 16, 2021.

Judge John H. Ehrlich

NOV 18 2021

Circuit Court 2075


John H. Ehrlich, Circuit Court Judge