

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

Vieshena Drain,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 12486
	)	
Santa Rosa Systems, Inc.; Santa Rosa	)	
Systems, LLC; MHS Equipment, LLC;	)	
United Parcel Service General Services, Co.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

The Workers' Compensation Act does not prohibit a plaintiff from suing a corporate entity related to the employee's employer even if the same workers' compensation insurance policy names both the employer and the related entity as insureds. Further, the Code of Civil Procedure permits converting respondents in discovery to defendants even after the statute of repose has expired. For those reasons, the defendants' motions to dismiss are denied.

**Facts**

In May 20, 2011, MHS Equipment, LLC ("MHSE")<sup>1</sup> shipped an unloader machine to a United Parcel Service, Inc. ("UPS") facility in Hodgkins, Illinois. The machine had been designed, purchased assembled, and maintained by United Parcel Service General Services, Co. ("UPSGSC"), but was owned by UPS. On February 22, 2019, Vieshena Drain was working at the Hodgkins facility when her left hand got caught between the unloader machine's conveyor belt and a load stand. Drain suffered a crushing injury to her hand.

On November 20, 2020, Drain filed a complaint naming Machinery and Conveyor Services, Inc., as a defendant, and UPSGSC and MHSE as two of four respondents in discovery. On April 1, 2021, Drain filed a first amended complaint against the same defendant and added one additional respondent in discovery. On April 20, 2021, Drain discharged the recently added respondent in discovery. On July 1, 2021, Drain filed a second amended complaint against the same defendant and respondents in discovery named

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<sup>1</sup> MHSE was a successor in interest to Santa Rosa Systems, LLC.

in her original complaint. On September 10, 2021, Drain filed a motion for leave to convert the four respondents in discovery to defendants. On September 16, 2021, this court granted Drain's motion, and Drain filed her third amended complaint, which is the current complaint in this case.

In her current complaint, Drain alleges that the 2011 machine on which she was working did not have a safety mechanism that would have prevented the unloader machine's boom from lowering onto her hand. The complaint brings four causes of action in negligence and strict products liability against MHSE and as successor in interest to four other entities. The complaint also presents two causes of action against UPSGSC, one for negligence and one for strict products liability.

UPSGSC and MHSE each filed motions to dismiss the causes of action against them. The parties fully briefed the motions and provided various exhibits in support of their positions. One of the exhibits provided by UPSGSC is a sworn statement from Ryan Swift, the assistant secretary of UPS. Swift certified that UPSGSC and UPS are each wholly owned subsidiaries of United Parcel Service of America, Inc. ("UPS America"). UPSGSC also supplied a copy of UPS's workers' compensation policy through Liberty Mutual Insurance Company. That policy names both UPSGSC and UPS as insureds. Two other exhibits are Drain's applications for workers' compensation benefits in which she identifies her employer as "UPS."

### Analysis

The defendants' motions to dismiss are brought pursuant to the Code of Civil Procedure. 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). If the basis for the motion does not appear on the face of the complaint, the motion must be supported by an affidavit. 735 ILCS 5/2-619(a). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarowski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarowski*, 227 Ill. 2d at 369.

UPSGSC argues first that all of Drain's claims are barred by the exclusive remedy provision of the Workers' Compensation Act. That section provides that,

No common law or statutory right to recover damages from the employer . . . for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

820 ILCS 310/5(a). UPSGSC argues specifically that the UPS workers' compensation liability policy names both UPS and UPSGSC as insureds; therefore, to permit this case to proceed against UPSGSC could lead to a double recovery for Drain and would result in UPSGSC paying money back to itself to satisfy its workers' compensation lien if a judgment were entered against UPSGSC.

UPSGSC's arguments are dispatched by the Illinois Supreme Court's ruling in *Munoz v. Bulley & Andrews, LLC*, 2022 IL 127067. There, the court held that the exclusive remedy provision's plain language only prohibits an injured employee from suing the employer, not other potentially liable corporations. *Id.* at ¶ 27. Further, that the employee's immediate employer was a subsidiary of a parent company is unimportant. "If a parent company and its subsidiary are operated as separate entities, only the entity that was the immediate employer of the injured worker is entitled to section 5(a) immunity." *Id.* at ¶ 29 (citing *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 297-98 (2007)). This is a sensible result because a contrary finding would require an employer corporation to pay workers' compensation benefits but allow a related company with potential liability based, for example, on management, supervision, training, or control, to escape paying its share of compensatory damages. A contrary finding would also elevate a mere bookkeeping function—one company paying back a related company's workers' compensation benefit payments issued under a single policy—over an injured plaintiff's receiving the full value of compensatory damages. Simply put, if a machine designed and manufactured by an entity unrelated to UPS had caused Drain's injury, she would unquestionably have a claim against that manufacturer. It would be unjust to permit UPSGSC to avoid liability on the same claim merely because Drain's employer owns the machine.

As an additional note, Swift's sworn statement provides a factual predicate in this case, but does not alter the legal outcome. The defendants

are wrong to argue that Drain had to present an affidavit to counter Swift's sworn factual statement because the facts to which Swift attests are irrelevant to a controlling legal opinion in *Munoz*. As the factual setting in *Munoz* is similar to that in this case, and the court's reasoning in *Munoz* is highly persuasive, UPSGSC's motion to dismiss must be denied.

UPSGSC and UPS also seek to dismiss the complaint based on the statute of repose. Underlying this argument are three controlling facts. First, Drain named UPSGSC and UPS as respondents in discovery in her original complaint filed on November 20, 2020. Second, Drain did not name UPSGSC and UPS as defendants until she filed her third amended complaint on September 16, 2021. Third, Drain named UPSGSC and UPS as defendants for the first time after the ten-year statute of repose for products liability claims had expired. Given those central facts, the essential legal question is whether respondents in discovery may be converted to defendants after the expiration of the applicable statute of repose.

This question of law implicates two statutes. The first is the limitations provision in the Code of Civil Procedure. That section provides, in part:

no product liability action based on any theory or doctrine shall be commenced except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease or delivery of possession by a seller or 10 years from the date of first sale, lease or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, of any product unit that is claimed to have injured or damaged the plaintiff. . . .

735 ILCS 13-213(b). The second statute is the relation-back doctrine codified elsewhere in the Code. As provided:

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 5/22-616(b).

The plain language of the relation-back provision requires no additional statutory construction—the section applies to any statutory limitations periods, including statutes of repose. Further, as long as three requirements are met, the section allows a cause of action to be brought against a person not named as a defendant in the original action even after a limitations period has expired. Those requirements are met in this case. First, it is undisputed that Drain filed her original complaint within all limitations periods. Second, it is undisputed that UPSGSC and UPS received notice of the original complaint because Drain named and served both as respondents in discovery. Third, it is undisputed that the causes of action against UPSGSC and UPS grew out of the same transaction or occurrence leading to Drain's hand crushing injury. Even in instances in which the fulfillment of the requirements is not so clear cut, courts are to construe section 2-616(b) liberally "to allow the resolution of litigation on the merits and to avoid elevating questions of form over substance." *Boatmen's Nat'l Bank of Belleville*, 167 Ill. 2d 88, 102 (1995). This interpretation jibes with section 2-616(a) that describes the types of amendments that may be made "any time before final judgment," and includes changing a cause of action, adding defenses, and "introducing any party who ought to have been joined as plaintiff or defendant. . . ." 735 ILCS 5/2-616(a).

In light of the legislative purpose of section 2-616(b), courts have allowed the relation-back doctrine to save otherwise stale claims in instances in which parties, not claims, were added after the expiration of a limitations period. Thus, in the case of a special administrator being subsequently named as a plaintiff, one court held that "whether the amended complaint added a new party or the same party in a new capacity does not affect our relation-back analysis." *Calkins v. Alden Park Strathmoor, Inc.*, 2015 IL App

(2d) 150063, ¶ 35. Similarly, a change in a plaintiff's capacity from a trustee to an individual plaintiff and beneficiary is "a technical deficiency which, in light of the legislative purpose behind section 2-616(b), should not defeat the application of the relation-back doctrine." *Zeid v. Hays*, 2016 IL App (1st) 153275-U, ¶ 28.

This conclusion is not altered by UPSGSC and UPS's reliance on the respondent in discovery statute. That section of the Code provides, in part, that:

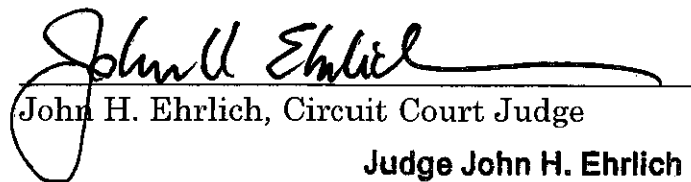
A person or entity named as a respondent in discovery in any civil action may be made a defendant in the same action at any time within 6 months after being named as a respondent in discovery, even though the time during which an action may otherwise be initiated against him or her may have expired during such 6 month period. An extension from the original 6-month period for good cause may be granted only once for up to 90 days for (i) withdrawal of plaintiff's counsel or (ii) good cause. Notwithstanding the limitations in this Section, the court may grant additional reasonable extensions from this 6-month period for a failure or refusal on the part of the respondent to comply with timely filed discovery.

735 ILCS 5/2-402. This provision favors Drain, not the defendants, for at least two reasons. First, the section permits converting a respondent in discovery to a defendant even after a limitations period has expired. That period may even be extended further by court order. Second, the section makes no mention of the relation-back doctrine; indeed, it does not need to. If section 2-402 permits converting respondents in discovery to defendants after the expiration of a limitations period, the section is wholly consistent with the legislative purpose behind section 2-616(b).

### Conclusion

For the reasons presented above, it is ordered that:

The motions to dismiss brought by UPSGSC and UPS are denied.

  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

DEC 29 2022

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