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

Renee Steenland,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 L 9268
	)	
Glencrest Healthcare & Rehabilitation Centre, Ltd., and Glen Health and Home Management, Inc.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The relation-back doctrine allows for the filing of an amended complaint adding defendants after the expiration of the statute of limitations so long as the conditions of 735 ILCS 5/2-616(d) are met. Here, the plaintiff mistakenly sued the wrong defendants but, after being notified of the mistake, filed an amended complaint and served the correct defendants less than three months after the running of the applicable statute of limitations. Because the correct defendants were put on notice within the allowable time for service of process under Supreme Court Rule 103(b), the defendants' motion to dismiss must be denied.

Facts

On or about September 21, 2019, Renee Steenland fell at Glencrest Healthcare and Rehabilitation Center and suffered a distal femur fracture of her left leg. At the time of the fall, Glencrest Healthcare & Rehabilitation Centre, Ltd., and Glen Health and Home Management, Inc. (collectively "current defendants") owned, operated, managed, and were the licensees of the nursing home. On December 5, 2019, less than three months after Steenland's fall, Elevate Care, Inc., and Elevate Care Chicago North, LLC (collectively "former defendants") took over all operations of the nursing home. Notably, the transfer agreement contained a provision stating, "New Operator shall not assume and shall not be liable for . . . liabilities or obligations of Old Operator." In other words, the former defendants took over operations of the nursing home without assuming the liability for any claims brought against the current defendants for the period of time the current defendants operated the nursing home.

On September 17, 2021, four days before the running of the applicable statute of limitations, Steenland filed a complaint against the former defendants alleging violations of the Nursing Home Care Act as well as common law negligence

and premises liability claims. On November 18, 2021, the former defendants filed a motion to dismiss pursuant to 735 ILCS 5/2-619(a)(9) on the grounds that they were improper defendants. The former defendants pointed to the fact that they did not operate the nursing home at the time of the alleged fall nor did they assume the liabilities of the current defendants in the transfer agreement. Steenland filed her first amended complaint on December 10, 2021, adding the current defendants. Shortly thereafter, this court granted the motion to dismiss the former defendants without prejudice.

The current defendants both received service on December 15, 2021. On December 20, 2021, the current defendants filed a motion to dismiss on the grounds that they were added as defendants after the passage of the applicable statute of limitations. The parties fully briefed the motion.

Analysis

The current defendants bring their motion to dismiss pursuant to the Code of Civil Procedure. 735 ILCS 5/2-619(a)(5). 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). 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 Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2208). 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." *Czarobski*, 227 Ill. 2d at 369.

Code of Civil Procedure section 2-619(a)(5) provides that defendants are entitled to the dismissal of an action "not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5). Here, the current defendants were added to the lawsuit less than three months after the passage of the applicable two-year statute of limitations for all claims. Because of this, the current defendants argue the claims against them are stale and the action must be dismissed. In response, Steenland contends the first amended complaint is saved from dismissal as it relates back to the timely filed original complaint. *See* 735 ILCS 5/2-616(d). The current defendants argue that the relation-back provision is not applicable as the case does not involve mistaken identity. They also argue that even if the relation-back provision were applicable, the notice requirement was not met.

This motion requires examination into the provisions 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 prongs of this provision; the dispute centers solely on requirements of the second prong. The second prong of the relation-back doctrine requires the case be one involving "a mistake concerning the identity of the proper party." 735 ILCS 5/2-616(d). The current defendants contend that this is not a case of mistaken identity as there was neither false information provided to Steenland as to the identity of the correct defendants nor were the correct defendants hidden through corporate complexities.

Illinois' relation-back provision, 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 as to mistaken identity 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, 143173, ¶ 25; *Borchers*, 2011 IL App (2d) 101257, 143173, ¶ 52; *Maggi v. RAS Dev., Inc.*, 2011 ILL App (1st) 91955, 143173, ¶¶ 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.") Thus, a "mistake" is not limited to instances in which the plaintiff was lead to believe an incorrect party was the correct defendant either through misrepresentations or corporate complexities. Rather, mistaken identity includes all instances in which the correct defendant should have 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 applying the correct test for mistaken identity to this case, it is plain the current defendants should have known they were the correct defendants in the original complaint and would have been named had Steenland not made a mistake. Steenland's original complaint stated she was suing the former defendants as the owners, operators, managers, and licensees of the nursing home at all times relevant to the complaint. The current defendants, however, certainly knew they

were the owners, operators, managers, and licensees of the nursing home at all times relevant to the original complaint. The current defendants also knew the transfer agreement between themselves and the former defendants contained a provision in which the obligations and liabilities of the current defendants did not transfer to the former defendants when they took control of the nursing home.

In support of their argument that this is not a case of mistaken identity, the current defendants improperly rely on *Pruitt v. Pervan.* 356 Ill. App. 3d 32 (1st Dist. 2005). Pruitt is distinguishable from the case at hand, and a court has already spoken to the improper legal reasoning used in *Pruitt* in light of new precedent. *Zlatev,* 2015 IL App (1st) 143173, ¶ 42. In *Pruitt,* the plaintiff sued the management company of an apartment building where she sustained an injury. 356 Ill. App. 3d at 33. Later, during discovery, it was revealed that the owners of the property, not the management company, were responsible for maintaining the building. *Id.* at 33-34. The plaintiff amended her complaint naming the owners as defendants, but the trial court dismissed the amended complaint as it was filed after the passage of the applicable statute of limitations. *Id.* at 34-35. The appellate court upheld this dismissal finding the case did not involve mistaken identity as the plaintiff had correctly identified the management company, the entity she had originally intended to sue. *Id.* In other words, the plaintiff did not make a mistake as to the identity of the owners, but rather she had not originally intended to sue the owners. *Id.*

In this case, unlike in *Pruitt,* Steenland's intention was always to sue the entities that owned, operated, managed, and were licensees of the nursing home. Indeed, the Nursing Home Care Act strictly limits the universe of entities who may be sued. 210 ILCS 45/3-601 ("The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident."). Steenland's intent is evident through both the original and first amended complaint. Steenland did not make a mistake as to which entity to sue, but rather the identity of that entity. Additionally, in *Zlatev* the same appellate court from *Pruitt* noted, "to the extent that *Pruitt* found the plaintiff's intent itself was the reason that relation-back did not apply, it is no longer good law." 2015 IL App (1st) 143173, ¶ 42. The court went on to state that "[f]ollowing *Krupski* and the Illinois cases adopting its analysis, the plaintiff's intent itself is not at issue; it is the defendant's perception of the plaintiff's intent that matters." *Id. Pruitt* does not, therefore, support the current defendants' contention that this is not a case of mistaken identity. As noted above, through application of the correct test this is a case of mistaken identity and, as such, the relation-back provision is applicable.

The current defendants next argue that if the relation-back provision is applicable, Steenland did not meet the notice requirement of section 2-616(d). The second prong of the relation-back provision requires that:

> [T]he 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. . . .

735 ILCS 5/2-616(d). Steenland argues the current defendants had constructive notice of the lawsuit before the statute of limitations had expired. Steenland points to the fact that the current defendants knew the underlying facts of the case, specifically Steenland's slip and fall, and that they had business dealings with the former defendants during the transfer of operations of the nursing home.

The courts have established three types of notice that comply with the relation-back provision: "(1) actual notice received by the party; (2) actual notice received by the party's agent; or (3) constructive notice." *Polites v. United States Bank Nat'l Ass'n*, 361 Ill. App. 3d 76, 88 (1st Dist. 2005) (internal citations omitted). A plaintiff may, therefore, establish the defendant's constructive notice of the lawsuit to comply with section 5/2-616(d). "Constructive notice occurs where a defendant does not receive notice of an impending lawsuit, but due to its relationship with an entity that received actual notice, knowledge of the action is imputed to the defendant for purposes of adding it as a new party." *Polites*, 361 Ill. App. 3d at 90; *see also Owens*, 2017 IL App (1st) 161709, ¶ 45. "[T]here are three ways to establish constructive notice: (1) notice via sharing an attorney with the original defendant; (2) notice via an identity of interest with the original defendant; or (3) notice via someone who handles the would-be defendant's insurance claims." *Polites*, 361 Ill. App. 3d at 90-91 (internal citations omitted).

Based on these established categories, Steenland has not shown the current defendants had constructive notice of the lawsuit before the statute of limitations expired. Notice via knowledge of the underlying facts of the case is not an accepted method of establishing constructive notice of the commencement of the action. Steenland also contends the current defendants had constructive notice of the complaint based on their business dealings with the former defendants during the transfer of operations of the nursing home. This argument could fall in line with the second way of proving constructive notice, "notice via an identity of interest with the original defendant." *Polites*, 361 Ill. App. 3d at 90-91. This method of establishing constructive notice is, however, used in cases in which the parties are "so closely related in their business operations or other activities that filing suit against one serves to provide notice to the other of the pending litigation." *Owens*, 2017 IL App (1st) 161709, ¶ 50 (quoting *Garvin v. City of Philadelphia*, 354 F.3d 215, 227 (3d Cir. 2003)); *see also Singletary v. Pennsulvania Dep't of Corr.*, 266 F.3d 186, 197 (3d Cir. 2001). Steenland fails to provide any evidence that the current and former defendants performed any business transactions post-transference of the nursing home, much less that the companies maintained closely related

business operations. The transfer of operations of the nursing home alone is not enough to establish an identity of interest. Additionally, the current defendants could not have been put on notice of the lawsuit during the transfer of the nursing home because the transfer occurred almost two years before Steenland filed the original complaint. Thus, Steenland has not been able to establish the current defendants had constructive notice of the lawsuit.

Despite the lack of constructive notice, it is uncontested that the current defendants received actual notice of the lawsuit when Steenland served them on December 15, 2021. Federal courts have established that service of process is sufficient to show actual notice of the lawsuit to comply with the notice requirement of Rule 15(c). *See Urrutia v. Harrisburg Cnty. Police Dep't*, 91 F.3d 451, 461 (3d Cir. 1996) ("actual service of the complaint clearly satisfies the notice requirement" even when beyond the statute of limitations); *Robinson v. Clipse*, 602 F.3d 605, 609 (4th Cir. 2010) (service after the statute of limitations but within the Rule 4(m) period satisfied notice requirement for relation back); *McGraw v. Gore*, 31 F.4th 844, 850 (4th Cir. 2022) (service within the Rule 4(m) period plus any "good cause" extensions "clearly" satisfied Rule 15(c) notice requirement). As noted earlier, 735 ILCS 5/2-616(d) is patterned after the federal relation-back rule, and, therefore, federal cases are persuasive authority. *Borchers*, 2011 IL App (2d) 101257, ¶ 45; *Zlatev*, 2015 IL App (1st) 143173, ¶ 24.

Current defendants argue, however, that the notice requirement of the relation-back doctrine precludes a lawsuit if the defendants did not receive notice of the complaint until after the passage of the statute of limitations. That is not, in fact, what the statute says; rather, the statute requires notice within the statute of limitations "plus the time for service permitted under Supreme Court Rule 103(b)." *Id.* Federal courts have also established the correct period for notice is not the statute of limitations, but the statute of limitations plus the Federal Rule of Civil Procedure 4(m) service period (federal equivalent to Rule 103(b)). *McGraw*, 31 F.4th at 849 (citing Fed. R. Civ. P. 15 advisory committee's note to 1991 amendment); *Urrutia*, 91 F.3d at 458 (discussing relevant history of Rule 15(c)).

The current defendants cite to *Lumpuy v. Chicago Wax 2, LLC*, an unpublished opinion from the First District Illinois Appellate Court, to support their argument that parties cannot file an amended complaint and serve a defendant after the passage of the statute of limitations. 2021 IL App (1st) 200864-U, ¶ 25. *Lumpuy* is, however, distinguishable from the present case. The court in *Lumpuy* upheld a Rule 103(b) dismissal of a case because the defendant was added almost four months after the passage of the statute of limitations. *Id.* at ¶ 28. The court found that because there was no notice provided to the defendant until four months after the passage of the statute of limitations, the notice requirement for relation back had not been met. *Id.* at ¶ 26. In its reasoning, the court focused on a distinguishable factor from the case at hand—the defendant in *Lumpuy* made a

strong showing that notice after the passage of the statute of limitations was prejudicial in their ability to defend themselves in the lawsuit. *Id.* at ¶¶ 25 & 27. Thus, the court in *Lumpuy* found the service was inadequate notice not solely because it was notice after the statute of limitations, but also because the defendant strongly evidenced that this passage of time was prejudicial. *Id.* at ¶¶ 27-28. Here, the current defendants have made no such showing, and, for that reason, this case is distinguishable from *Lumpuy*.

The question then becomes whether or not the current defendants received sufficient notice within the 103(b) period. Illinois Supreme Court Rule 103(b) does not set out a specific time period within which the defendant must be served, but it does authorize dismissal of a lawsuit if the plaintiff fails to exercise reasonable diligence to obtain service of process after the statute of limitations has expired. Rule 103(b) specifically provides:

> If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice. If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice as to that defendant only and shall not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct. The dismissal may be made on the application of any party or on the court's own motion. In considering the exercise of reasonable diligence, the court shall review the totality of the circumstances, including both lack of reasonable diligence in any previous case voluntarily dismissed or dismissed for want of prosecution, and the exercise of reasonable diligence in obtaining service in any case refiled under section 13-217 of the Code of Civil Procedure.

Ill. S. Ct. R. 103(b). The purpose of Rule 103(b) "is to protect defendants from unnecessary delay in the service of process on them and to prevent the circumvention of the statute of limitations." *Segal v. Sacco*, 136 Ill. 2d 282, 286 (1990). At the same time, a Rule 103(b) dismissal is considered, "a harsh penalty which is justified when the delay in service of process is of a length which denies a defendant a 'fair opportunity to investigate the circumstances upon which liability against [the defendant] is predicated while the facts are accessible.'" *Id.* at 288 (quoting *Geneva Constr. Co. v. Martin Transfer & Storage Co.*, 4 Ill. 2d 273, 289-90 (1954)).

In this case, the current defendants received service on December 15, 2021, less than three months after the expiration of the two-year statute of limitations. Typically, to make a *prima facie* showing of a failure to exercise reasonable diligence under 103(b), Illinois courts look for a delay of five to seven months

between filing and service of process. 3 R. Michael, Illinois Practice § 8.7, at 45 (Supp. 2007); *Verploegh v. Gagliano*, 396 Ill. App. 3d 1041, 1045 (3rd Dist. 2009). Three months is far less than the typically required five months. Thus, the current defendants have not made out a *prima facie* showing.

Even if the current defendants had made a *prima facie* showing, this court would still find that Steenland served process within a reasonable period of time. To determine a reasonable period for service, a court is to consider multiple factors. *Segal*, 136 Ill. 2d at 287. While there exists no exclusive list of factors, the following have been recognized as significant: (1) length of time to obtain service; (2) plaintiff's activities; (3) plaintiff's knowledge of defendant's location; (4) ease with which defendant's whereabouts could have been ascertained; (5) actual knowledge on the part of the defendant of pendency of the action as a result of ineffective service; (6) special circumstances that would affect plaintiff's efforts; and (7) actual service. *Id.*

The first factor considered is the length of time to obtain service. Here, less than three months elapsed from the date the action might have been brought to the date the correct defendants were served. The courts have certainly allowed for greater lengths of time for service in multiple cases. *See Segal*, 136 Ill. 2d at 288 (four and one-half months after expiration of statute of limitations was too short to permit dismissal); *Matthews v. Donnelly*, 265 Ill. App. 3d 1016, 1021 (1st Dist. 1994) (service of process less than five months after the passage of the statute of limitations); *see also Zlatev*, 2015 IL App (1st) 143173, ¶¶ 33-34 (court allowed service five months after passage of the statute of limitations); *Verploegh*, 396 Ill. App. 3d at 1046-47 (trial court abused discretion in dismissing case in which defendant was served seven months after expiration of statute of limitations).

As to the second factor, the activities of the plaintiff, Steenland has stated that in the three months after the statute had expired she was commencing with the lawsuit against the former defendants. At that time, Steenland believed the former defendants were the correct defendants. On November 18, 2021, the former defendants notified Steenland that she had sued the incorrect parties. In less than one month, Steenland corrected this mistake by filing her first amended complaint and serving the correct and current defendants. Steenland claims that during this month she was investigating the representations made by former defendants to ensure that the current defendants were, in fact, the correct defendants. Steenland was also investigating whether or not she had claims against both the former and the current defendants.

The third and fourth factors for consideration are the plaintiff's knowledge of the defendant's location and the difficulty in obtaining correct addresses. It does not appear from the record that Steenland had difficulty locating or serving the current defendants once she learned of her mistake in naming the former

defendants. As to the fifth factor, the defendant's knowledge of the lawsuit, there is not enough on the record to show that the current defendants had any knowledge of the lawsuit until December 15, 2021.

The sixth factor considers any special circumstances that affected the plaintiff's efforts. Here, Steenland contends she was not aware of the correct defendants' identities until the former defendants notified her almost two months after the statute of limitations had expired. That mistaken identity is presumably the reason for the short delay in service. Lastly, the seventh factor is actual service on the defendants. As noted, the current defendants received service on December 15, 2021.

In weighing these factors, the court finds that less than three months is a reasonable amount of time for service of process, especially considering that the current defendants have not shown any resulting prejudice from this passage of time. In applying the *Segal* factors, this court finds that the current defendants received notice within a reasonable period of time to comply with the notice requirement of the relation-back statute. This finding falls in line with the general principle that "[c]ourts liberally construe 2-616(d) so that cases are decided on their merits rather than on procedural technicalities." *Siebert v. Bleichman*, 306 Ill. App. 3d 846 (2d Dist. 1999). Steenland has, therefore, met all requirements of the application of the Illinois relation-back statute. 735 ILCS 5/2-616(d).

Conclusion

For the reasons presented above, it is ordered that:

The defendants' motion to dismiss is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 12 2022

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