2017 Amendment Brings Relation-Back Doctrine to State Court

Articles February 26, 2019

Pennsylvania Rule of Civil Procedure 1033 was amended in 2017 to allow for the addition of a new party after the expiration of the statute of limitations, provided certain conditions are met. This rule change was intended to bring Pennsylvania civil procedure in line with that of a majority of states and the federal court system. The amendment is modeled after Federal Rule of Civil Procedure 15(c) and imports the relation-back doctrine to Pennsylvania state court.

Here's how it works: An amendment correcting the name of a party against whom a claim was asserted in the original pleading now relates back to the commencement of the action if within 90 days of the expiration of the statute of limitation, the party received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits *and* the party knew or should have known that the action would be brought against it absent a mistake concerning its identity. Pa R.C.P. 1033 (b). In short, this allows a litigant to correct a misidentified party so long as the new party had notice of the action within 90 days of the expiration of the statute of limitations and is not prejudiced by being named late.

This is a significant rule change. While a pleading always can be amended upon consent of the opposing party, an amendment otherwise requires leave of court. Obviously, few parties will consent to an amendment that cures a statute of limitations problem, and prior to this amendment, Pennsylvania courts normally would not allow such an amendment, either.

The traditional test for determining whether amendment would be allowed after expiration of the statute of limitations is whether the right party was sued but under the wrong designation or whether the wrong party was sued and amendment is designed to substitute a distinct and separate party. Cianchetti v. Kaylen, 361 A.2d 842 (1976). Under this test, Pennsylvania courts routinely would deny motions to amend pleadings to change misidentified parties after the statute of limitations had run. For example, the Pennsylvania Supreme Court held that the Commonwealth and its agencies are not the same legal entities and so a complaint against the Commonwealth could not be amended to substitute a specific Commonwealth agency or employee after the expiration of the statute of limitations. See Tork-Hiis v. Com., 735 A.2d 1256 (Pa. 2009).

The case law is rife with examples of a plaintiff's failure to name the correct party leading to ruin. This is particularly common in personal injury cases. See, for example, Saracina v. Cotoia, 208 A.2d 764 (Pa. 1965) (refusal to permit amendment after statute had run to change name of defendant from "Anthony" to "Robert" was proper); Ferraro v. McCarthy-Pascuzzo, 777 A.2d 1128 (Pa. Super. 2001) (pedestrian struck by vehicle erroneously named driver's wife as sole defendant was not permitted to amend after the statute of limitations expired); and Adams v. Reese, 2017 WL 902232 (Pa. Super. 2017) (affirmed denial of motion to amend complaint even where complaint suggested plaintiffs intended to sue vehicle operator rather than his father).

Yet now, thanks to amended Rule 1033, the relation-back doctrine often will save unwary litigants who name the wrong party and do not realize their error within the statute of limitations. Nevertheless, best practice is to do your homework before filing and get those names right in the first place!

For additional information contact Mark Hamilton.

This article originally appeared as an ACBA Civil Litigation Practice Tip.