

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DWYAINÉ EDWARDS : CIVIL ACTION  
 :  
 v. : NO. 13-6602  
 :  
 JEANNE PIERRE ORIGINALS, INC. :  
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**ORDER-MEMORANDUM**

AND NOW, this 21<sup>st</sup> day of September 2016, upon consideration of Defendant Jeanne Pierre Originals, Inc.'s ("JPO") Motion for reconsideration and to vacate an August 28, 2014 Order (ECF Doc. No. 197), it is **ORDERED** Defendant's Motion (ECF Doc. No. 197) is **DENIED**.

*Analysis*

Dwyaine Edwards allegedly suffered personal injury on October 18, 2011 when boxes fell out of a commercial truck onto him. Edwards filed his original complaint in the Philadelphia Court of Common Pleas on October 15, 2013. Defendants Marmaxx Operating Corporation and TJX Companies, Inc. removed this action on November 13, 2013 under 28 U.S.C. § 1332. On January 15, 2014, ninety-two (92) days after filing his original complaint, Edwards moved for leave to file an amended complaint seeking to add JPO as a defendant and attaching his proposed amended complaint.<sup>1</sup> Edwards served his motion for leave, as confirmed in the certificate of service, by overnight and regular mail on JPO. The Honorable Norma L.

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<sup>1</sup> ECF Doc. No. 14.

Shapiro granted Edwards' motion to amend and Edwards filed his amended complaint on February 7, 2014. Edwards served JPO on March 6, 2014.<sup>2</sup>

JPO moved to dismiss the amended complaint as time-barred under Pennsylvania's two year statute of limitations for personal injury actions. JPO argued the amended complaint does not "relate back" to the original complaint because Edwards could not show JPO "knew or should have known that the action would have been brought against it, but for the mistake concerning the proper party identity," an element of Fed.R.Civ.P. 15(c)(1)(C)(ii). Judge Shapiro heard oral argument on JPO's motion to dismiss and, after hearing from all parties, ordered further briefing on the import of *Arthur v. Maersk, Inc.*<sup>3</sup>, a 2006 opinion from our Court of Appeals addressing "mistake" under Rule 15's "relation back" analysis.

After oral argument and considering the parties' supplemental briefing, Judge Shapiro denied JPO's motion to dismiss on August 28, 2014.<sup>4</sup> Judge Shapiro found the Amended Complaint relates back to the original complaint because: his claim against JPO arises out of the same conduct alleged in the original complaint; JPO had notice on January 16, 2014, within 120 days of the initial action; and, Edwards would have included JPO in the original complaint but for a mistake concerning which company packed the truck involved in the incident. JPO elected to not file a motion for reconsideration under Local Rule 7.1(g). Over a year later, on February 1, 2016, JPO filed a motion for summary judgment confined *only* to the issue of Edwards' failure to produce expert testimony on the standard of care.

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<sup>2</sup> ECF Doc. No. 28.

<sup>3</sup> 434 F.3d 196 (3d Cir. 2006).

<sup>4</sup> ECF Doc. No. 45.

On August 31, 2016, long after the date for the timely submission of summary judgment motions, JPO moved to vacate the August 28, 2016 Order and/or for summary judgment on the statute of limitations.<sup>5</sup> JPO argued, *inter alia*, the law of the case doctrine does not preclude us from vacating Judge Shapiro's Order "in light of new evidence adduced during discovery" and clear error of law. We denied JPO's motion as not compliant with our Policies and permitted it to resubmit a compliant motion upon a specific showing of "new evidence."<sup>6</sup> JPO chose not to do so, instead moving for reconsideration to vacate Judge Shapiro's Order.

***JPO's motion is untimely.***

JPO argues we should reconsider Judge Shapiro's August 28, 2014 Order under Local Rule 7.1(g) or grant relief under Federal Rules of Civil Procedure 60(b) or 59(e). As a threshold matter, JPO's motion is untimely. JPO failed to file a motion for reconsideration within fourteen (14) days of the August 28, 2014 Order required by Local Rule of Civil Procedure 7.1(g). JPO argues we may depart from our Local Rules "where (1) [we] ha[ve] a sound rationale for doing so, and (2) so doing does not unfairly prejudice a party who has relied on the local rule to his detriment."<sup>7</sup> JPO argues a "sound rationale" for vacating the August 28, 2014 Order is to "preserve judicial resources which would otherwise be wasted on a costly trial, as this issue is likely to be reversed on appeal." We disagree. To the extent JPO is concerned with the expenditure of judicial resources, we query why JPO failed to challenge the August 28, 2014 Order either in a timely motion for reconsideration or a motion for summary judgment and

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<sup>5</sup> ECF Doc. No. 191.

<sup>6</sup> ECF Doc. No. 192.

<sup>7</sup> *U.S. v. Eleven Vehicles, Their Equipment and Accessories*, 200 F.3d 203, 215 (3d Cir. 2000).

instead continued litigating this matter for another two years.<sup>8</sup> We find no sound rationale for a departure from the Local Rule. As to the second prong for a departure from Local Rule 7.1(g), JPO does not explain why Mr. Edwards would not be unfairly prejudiced if we vacate the August 28, 2014 Order after two years of further litigation and weeks away from the November 7, 2016 trial. Similarly, we find JPO failed to make a Rule 60(b) motion within a “reasonable time” required by Rule 60(c)(1).

***The August 28, 2014 Order is not clearly erroneous.***

Even if JPO timely moved for reconsideration, we find its arguments lack substantive merit. The purpose of a motion for reconsideration under Rule 59(e) is “to correct manifest errors of law or fact or to present newly discovered evidence.”<sup>9</sup> A party seeking reconsideration must demonstrate “at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.”<sup>10</sup> Motions for reconsideration “should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court.”<sup>11</sup> As such, motions for reconsideration are not a vehicle for a “second bite

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<sup>8</sup> JPO elected to move for reconsideration in other contexts including moving to reconsider a May 6, 2015 Order on May 11, 2015. (ECF Doc. No. 126). JPO provides us with no reason to depart from the Local Rules other than an vague reference to “the circumstances of this case,” apparently concluding our review of the previous bifurcation Order justifies its instant motion.

<sup>9</sup> *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985).

<sup>10</sup> *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).

<sup>11</sup> *Jarzyna v. Home Properties, L.P.*, No. 10-4191, 2016 WL 2623688, at \*7 (E.D. Pa. May 6, 2016) (quoting *PBI Performance Prods. Inc. v. NorFab Corp.*, 514 F.Supp.2d 732, 744 (E.D. Pa. 2007)).

at the apple” or to “ask the Court to rethink what it had already thought through – rightly or wrongly.”<sup>12</sup>

JPO argues it seeks to vacate the August 28, 2016 Order because of clear error of law, not on the basis of new evidence. A finding of “clear error” requires a “definite and firm conviction that a mistake has been committed.”<sup>13</sup> To show clear error or manifest injustice, JPO “must base its motion on arguments that were previously raised but were overlooked by the Court.”<sup>14</sup>

Edwards sought to amend his timely filed original complaint to add JPO as a defendant after the statute of limitations expired.<sup>15</sup> Judge Shapiro granted leave to amend. JPO, although being served with the motion for leave, elected not to raise the statute of limitations until after Judge Shapiro granted leave to amend. After oral argument and substantial briefing, Judge Shapiro denied JPO’s motion to dismiss because the amended complaint relates back to the timely complaint under Fed.R.Civ.P. 15 (c).

Federal Rule of Civil Procedure 15(c) “governs when an amended pleading ‘relates back’ to the date of a timely filed original pleading and is thus itself timely even though it was filed outside an applicable statute of limitations.”<sup>16</sup> JPO argues: Rule 15(c) does not apply here

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<sup>12</sup> *Id.* (quoting *Bhathagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220, 1231 (3d Cir. 1995) and *Glendon Energy Co. v. Borough of Glendon*, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993)).

<sup>13</sup> *U.S. v. Jasin*, 292 F.Supp. 2d 670, 676 (E.D. Pa. 2003) (quoting *Easley v. Cromartie*, 532 U.S. 234, 242 (2001)).

<sup>14</sup> *Id.*

<sup>15</sup> We apply Pennsylvania substantive law, including its statute of limitations, in this diversity action. *Lafferty v. St. Riel*, 495 F.3d 72, 76 (3d Cir. 2007) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) and *Guaranty Trust Co. v. York*, 326 U.S. 99, 110 (1945)). Pennsylvania has a two-year statute of limitations for personal injury actions. 42 Pa.C.S.A. §5524. The statute of limitations in this action expired on October 18, 2013, two years after the October 18, 2011 incident allegedly injuring Edwards. Edwards filed his original complaint on October 15, 2013.

<sup>16</sup> *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 541 (2010).

because it had no notice of the action until service of the Amended Complaint; Rule 15(c) is “trumped” by Pennsylvania law which does not permit “relation back” after expiration of the applicable statute of limitations; and, Judge Shapiro erroneously relied on *Arthur v. Maersk*.

JPO argues Rule 15(c) cannot apply because Pennsylvania law does not permit relation back. Rule 15(c)(1)(A) applies where the law providing the applicable statute of limitations – here Pennsylvania - “allows relation back.”<sup>17</sup> Rule 15(c)(1)(A) “gives a party the benefit of whichever standard for relation back is most lenient.”<sup>18</sup> Pennsylvania does not provide “a more forgiving principle of relation back” than federal law.<sup>19</sup> Accordingly, Rule 15(c)(1)(A) does not apply here.<sup>20</sup> JPO’s argument Rule 15(c) is inapplicable because Pennsylvania law does not permit relation back is incorrect. To the contrary, Rule 15(c)(1)(A) works the other way; it would permit relation back if Pennsylvania’s law allowed it and the federal rules would not so allow. “The rationale behind the determination that the more forgiving rule governs is the liberal amendment policy of the Rules and the goal of avoiding harsh results when applied to diversity cases in federal court. This result is also consistent with the demands of the *Erie* doctrine that federal courts follow state substantive law, since a more forgiving state rule is a modification of the state’s own substantive statute of limitations policy, which a federal procedural rule should not supplant.”<sup>21</sup>

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<sup>17</sup> Fed.R.Civ.P. 15(c)(1)(A).

<sup>18</sup> *Anderson v. Bondex Int’l, Inc.*, 552 F.App’x 153, 156, n.3 (3d Cir. 2014).

<sup>19</sup> *Nelson v. Cnty. of Allegheny*, 60 F.3d 1010, 1014, n.4 (3d Cir. 1995) (citing Advisory Committee Note and *Aivazoglou v. Drever Furnaces*, 613 A.2d 595, 599 (Pa. Super. 1992)).

<sup>20</sup> *Stroud v. Abington Mem’l Hosp.*, No. 06-4840, 2008 WL 2061408, at \*18 (E.D. Pa. May 13, 2008).

<sup>21</sup> 3-15 Moore's Federal Practice - Civil § 15.19 (2015) (footnote omitted).

Our Rule 15(c) relation back inquiry focuses on subsection (c)(1)(C) applicable to an amended pleading adding a new defendant. Under Rule 15(c)(1)(C), an amendment “chang[ing] the party or the naming of the party against whom a claim is asserted” relates back to the date of the original pleading when three conditions are met: “(1) the claim or defense set forth in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading; (2) within the time period provided in Rule 4(m), the party or parties to be added received notice of the institution of the suit and would not be prejudiced in maintaining a defense; and (3) the party sought to be added knew that, but for a mistake concerning his or her identity, he or she would have been made a party to the action.”<sup>22</sup>

The first factor requires satisfaction of Rule 15(c)(1)(B); the claim against the new defendant must arise from the same conduct, transaction, or occurrence as set out in the original pleading. JPO does not contest this factor. The second factor requires JPO receive notice within the period provided by Rule 4(m) so “that it is not prejudiced in defending on the merits.”<sup>23</sup> The notice period in Rule 15(c)(1)(C) requires JPO receive notice of the action within 120 days provided by Rule 4(m).<sup>24</sup> Although JPO argues it had no notice of this action until service of the Amended Complaint on March 6, 2014, the record reflects JPO received Edwards’ proposed amended complaint on January 16, 2014, ninety-two (92) days after the filing of the original complaint on October 15, 2013.<sup>25</sup> “[N]otice does not require actual service of process on the

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<sup>22</sup> *Garvin v. City of Phila.*, 354 F.3d 215, 222 (3d Cir. 2003) (citing *Singletary v. Pa. Dep’t of Corrs.*, 266 F.3d 186, 194 (3d Cir. 2001)).

<sup>23</sup> Rule 15(c)(1)(C)(i).

<sup>24</sup> At the time of this action, Rule 4(m) provided 120 days for service upon a defendant. Rule 4(m), as amended, now reduces the time for service from 120 days to 90 days.

<sup>25</sup> In its supplemental briefing to Judge Shapiro, and in its August 30, 2016 Motion to Vacate and/or Motion for Summary Judgment (ECF Doc. No. 191), JPO submitted the June 17, 2014

party sought to be added; notice may be deemed to have occurred when a party who has some reason to expect his potential involvement as a defendant hears of the commencement of litigation through some informal means.”<sup>26</sup> Upon receipt of Edwards’ motion for leave to amend to add JPO as a defendant, JPO had notice of the action within the 120-day period.<sup>27</sup>

As to the third factor, JPO asserts Judge Shapiro erred in her reliance upon *Arthur v. Maersk* to determine “mistake” under Rule 15(c)(1)(C)(ii). In *Arthur*, our Court of Appeals examined whether the proposed new defendant (there, the United States) “knew or should have known that, but for a ‘mistake’ concerning the identity of the proper party, it would have been named in the original complaint.”<sup>28</sup> Our Court of Appeals held “mistake” can be “based on lack of knowledge or mere misnomer.”<sup>29</sup> The United States Supreme Court in *Krupski*, resolving a

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affidavit of Bradley Skalet, General Manager of JPO, swearing JPO first received notice of Edwards’ action “when [he] was served with Plaintiff’s Motion for Leave to File an Amended Complaint on or after 1/15/2014.” See Skalet Affidavit at ¶ 5 (ECF Doc. No. 191-4). We, like Judge Shapiro, find JPO received a copy of the proposed amended complaint on January 16, 2014. There is no evidence to dispute JPO’s receipt of the proposed amended complaint on January 16, 2014. If a factual dispute existed regarding the January 15, 2014 Certificate of Service asserting service upon JPO, by overnight and regular mail, of Edwards’ motion for leave to file an amended complaint with proposed amended complaint, we would expect to see some evidence adduced in discovery and raised in a summary judgment motion. JPO did not do so.

<sup>26</sup> *Singletary*, 266 F.3d at 195.

<sup>27</sup> JPO’s reliance on *Glover v. F.D.I.C.*, 698 F.3d 139 (3d Cir. 2012) is misplaced and its argument Judge Shapiro erred in “ignoring” *Glover* is without merit. *Glover* examined whether a proposed amended complaint seeking to add claims against existing defendants related back under Rule 15(c)(1)(B). Our Court of Appeals held the plaintiff’s proposed claim did not relate back because it “differed in time and type” from the claims in the original complaint against the defendants and, consequently, failed to provide “fair notice.” *Id.* at 147 (citations omitted). *Glover*’s holding is distinguishable because JPO does not dispute Edwards’ claim against it arises “out of the conduct, transaction, or occurrence” in the original complaint and where JPO received notice within the 120-day period provided by Rule 4(m).

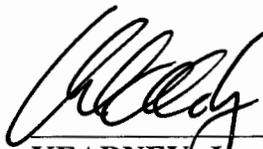
<sup>28</sup> *Arthur*, 434 F.3d at 207 (footnote omitted).

<sup>29</sup> *Id.* at 209.

split in the circuit courts, held “Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known **during the Rule 4(m) period**, not what the *plaintiff* knew or should have known at the time of filing [his] original complaint.”<sup>30</sup>

JPO’s arguments *Arthur* does not apply or is distinguishable are without merit. JPO first argues *Arthur* is distinguishable because the defendant United States, unlike JPO, “had notice of the suit immediately after it was filed.” This is the incorrect standard; the standard is what the prospective defendant knew or should have known **during the Rule 4(m) period**. As set forth above, JPO received notice of the Amended Complaint adding it as a defendant within Rule 4(m)’s 120-day period. We similarly reject JPO’s argument Judge Shapiro erred in applying *Arthur* because it “was decided on Rule [(c)(1)(C)] not Rule 15(c)(1)(A) as here.” This argument is based on a flawed interpretation of Rule 15(c)(1)(A) addressed above.

After oral argument and full briefing, Judge Shapiro found the Amended Complaint satisfied all three elements of Rule 15(c)(1)(C): the claim against JPO arises out of the same conduct set forth in the original complaint; JPO had notice of the action on January 16, 2014 - within 120 days of the original action filed on October 15, 2013; and Edwards would have included JPO in the original complaint but for a “mistake” under *Arthur v. Maersk, Inc.* Judge Shapiro’s well-reasoned order correctly applies Rule 15(c) and relevant case law. There is no basis for concluding a “definite and firm conviction that a mistake has been committed” to support a finding of “clear error.” JPO’s untimely motion lacks merit and is denied.




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KEARNEY, J.

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<sup>30</sup> *Krupski*, 560 U.S. at 548 (bolded emphasis added) (italicized emphasis in original) (footnote omitted).