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

BOBBY RUCKER	:	CIVIL ACTION
v.	:	
MARRIOTT INTERNATIONAL INC. CORPORATE PARENT t/a PHILADELPHIA DOWNTOWN MARRIOTT HOTEL	:	NO. 03-4729

MEMORANDUM

Dalzell, J. January 2, 2004

Bobby Rucker suffered an injury at a Marriott hotel, and he sued the entity that he believed to be responsible for owning and operating those premises, Marriott International, Inc. ("Marriott International"). Marriott International has moved for summary judgment,[1] and we here address that motion and other related matters.

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[1] Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must view the evidence, and make all reasonable inferences from the evidence, in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The moving party bears the initial burden of proving that there is no genuine issue of material fact in dispute. Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986). Once the moving party carries this burden, the nonmoving party must "come forward with 'specific facts showing there is a genuine issue for trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). The task for the Court is to inquire "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Lobby, 477 U.S. at 251-52; Tabas v. Tabas, 47 F.3d 1280, 1287 (3d Cir. 1995) (en banc).

Factual Background

On October 15, 2001, Rucker visited the Marriott hotel located at 1201 Market Street, Philadelphia, Pennsylvania[2] as part of his duties as a deliveryman for Consolidated Freightways. While making his delivery, Rucker allegedly "skidded" on a greasy loading dock, fell to the ground, and suffered personal injuries. Compl. ¶ 6.

Rucker initiated this action by filing a complaint in the Philadelphia County Court of Common Pleas on August 4, 2003. Def.'s Mot. Summ. J. Ex. A. The complaint named Marriott International as a defendant because Rucker believed that it was the "the owner[] and/or operator[]" of the Hotel and was therefore "responsible for [its] maintenance." Compl. ¶ 3. The complaint's sole cause of action sounded in negligence. See Compl.

Marriott International removed the case to this Court on August 15, 2003 and shortly thereafter answered the complaint. In its answer, Marriott International "specifically denied that [it was] the owner or operator" of the Hotel. Answer ¶ 2.

On November 17, 2003, Marriott International filed a motion for summary judgment asserting that it did not owe Rucker a duty of care because it did not own or operate the Hotel and concluding that, absent any duty to him, Rucker's negligence

[2] Although the parties dispute the correct name for this hotel, compare Compl. (referring to "Philadelphia Downtown Marriott Hotel") with Def.'s Mem. Supp. Mot. Summ. J. at 1 (calling the premises the "Philadelphia Marriott Hotel"), its popular name carries no legal significance, so "Hotel" will do for our purposes.

claim could not succeed as a matter of law. Def.'s Mem. Supp. Mot. Summ. J. at 5. The exhibits supporting the motion for summary judgment revealed, for the first time, that Philadelphia Market Street HMC Limited Partnership (the "Market Street Partnership") actually owns the Hotel and that Marriott Hotel Services, Inc. ("Marriott Services") operates it. See Def.'s Mot. Summ. J. Ex. C. Marriott Services is a wholly-owned subsidiary of Marriott International. See Def.'s Mot. Summ. J. Ex. D ¶ D, at 2.[3]

Analysis

In his response to the motion for summary judgment, Rucker insists that he "properly named Marriott International" as a defendant. See Pl.'s Mem. Opp'n Mot. Summ. J. at 8. Rucker also suggests that we should permit him to amend his complaint to join the Market Street Partnership and Marriott Services as defendants, with the amendment relating back to the date on which he filed the original complaint. We address each argument in turn.

[3] The record contains no direct evidence of the relationship, if any, between the Market Street Partnership and Marriott International, but Rucker infers that the Market Street Partnership must also be a wholly owned subsidiary of Marriott International because it shares a mailing address of 10400 Fernwood Road, Bethesda, Maryland 20817 with Marriott Services. See Pl.'s Mem. Opp'n Summ. J. at 8; Def.'s Mot. Summ. J. Ex. D at 1. Because we must make all reasonable inferences in favor of the party not moving for summary judgment, we will accept Rucker's inference and assume that both the Market Street Partnership and Marriott Services are wholly owned subsidiaries of Marriott International.

A. Summary Judgment

Rucker's only claim against Marriott International is for negligence. In Pennsylvania,[4] "[t]he necessary elements to maintain an action in negligence are: a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; a failure to conform to the standard required; a causal connection between the conduct and the resulting injury and actual loss or damage resulting to the interests of another." Morena v. South Hills Health System, 501 Pa. 634, 642 n.5, 462 A.2d 680, 684 n.5 (1983).

Marriott International argues that it deserves summary judgment because it owed no duty to Rucker and, thus, it could not have been negligent. See Def.'s Mem. Supp. Mot. Summ. J. at 5. Although Rucker believed that Marriott International owed him a duty of reasonable care by virtue of its apparent ownership and operation of the Hotel, Marriott International has presented uncontroverted evidence that it neither owned nor operated the Hotel on October 15, 2001. See Def.'s Mot. Summ. J. Ex. C. As

[4] In this diversity action, we apply Pennsylvania law because Pennsylvania has the most significant contacts with the issues involved in this case. See Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 496 (1941) ("The conflict of laws rules to be applied by the federal court [sitting in diversity jurisdiction] must conform to those prevailing in . . . courts [of the state where the federal court sits]."); see also In re Estate of Agostini, 457 A.2d 861, 871 (Pa. Super. Ct. 1983) (explaining that Pennsylvania choice-of-law rules "call for the application of the law of the state having the most significant contacts or relationships with the particular issue"). Pennsylvania has the most significant contacts here because the Hotel is located in Pennsylvania, Rucker is a Pennsylvania citizen, and the injury occurred in Pennsylvania. Moreover, the parties implicitly concede that Pennsylvania law applies because their briefs rely almost exclusively on it.

Rucker has not explicitly advanced any other basis for imposing on Marriott International a duty to maintain premises that it did not own or operate, we hold that Marriott International owed no duty to him.

Still, Rucker suggests that we should pierce Marriott International's corporate veil and hold it responsible for the negligence of its "shell corporations which were created . . . to avoid any potential liability." See Pl.'s Mem. Opp'n Mot. Summ. J. at 8. This suggestion faces a heavy burden because "courts will disregard the corporate entity only in limited circumstances when used to defeat public convenience, justify wrong, protect fraud or defend crime." Kiehl v. Action Mfg. Co., 517 Pa. 183, 190, 535 A.2d 571, 574 (1987). In this case, there is no evidence that Marriott International created the Market Street Partnership or Marriott Services for any of the purposes that Kiehl forbids, so there is no basis for piercing the corporate veil.

Marriott International owed no duty to Rucker, and it is not legally responsible for the acts and omissions of its wholly owned subsidiaries. In these circumstances, Marriott International could not have been negligent, so we shall enter summary judgment in its favor. See Clark v. Marriott Envtl. Servs., No. 93-3279, 1994 U.S. Dist. LEXIS 1328 (E.D. Pa. Jan. 6, 1994) (R. Kelly, J.) (granting summary judgment to defendant when its wholly owned subsidiary was responsible for maintaining the premises where plaintiff slipped and fell).

B. Amending the Complaint

Perhaps expecting that his claims against Marriott International would not survive summary judgment, Rucker also has requested "leave to amend [his] Complaint to relate back to the date of the original pleading." Pl.'s Mem. Opp'n Mot. Summ. J. at 9. Federal Rule of Civil Procedure 15(a) permits amendment of a complaint "by leave of court" and directs that such leave "shall be freely given when justice so requires."

The Rule leaves to our discretion whether to permit amendment, but the Supreme Court has emphasized that district courts should grant permission "freely," except in cases of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." Foman v. Davis, 371 U.S. 178, 182 (1962); see also Zenith Radio Corp. v. Hazeltine Research, 401 U.S. 321, 330-31 (1971) ("[I]n deciding whether to permit . . . amendment [to the answer], the trial court was required to take into account any prejudice that [the plaintiff] would have suffered as a result."); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) ("Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility."). In short, Rule 15(a) creates a presumption in favor of permitting a party to amend his pleading, but we may refuse to allow amendment that would unduly prejudice an opposing party.

The Market Street Partnership and Marriott Services would suffer prejudice if we allowed Rucker to amend and join them as defendants. Rucker has not yet asserted any claims against either of these entities. If he filed a new lawsuit against them, Pennsylvania's two-year statute of limitations for negligence actions would condemn it to an unceremonious demise. See 42 Pa. Cons. Stat. § 5524(7). Thus, permitting Rucker's amendment would prejudice the Market Street Partnership and Marriott Services because it would breathe new life into claims that are now time-barred.

Whether this prejudice would be "undue" -- that is, undeserved -- is a more difficult question. When the amending party could have identified the proper party in its original pleading[5] and when amending the pleading would prejudice the opposing party, we cannot permit the amendment unless the amending party demonstrates that the opposing party's actions justify the imposition of the prejudice. Here, Rucker insists

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[5] Rucker could have readily discovered that the Market Street Partnership owned the Hotel by performing a simple title search before filing his complaint. At the very least, he could have determined instantaneously that Marriott International did not own the Hotel by searching the Board of Revision of Taxes's website, available at http://brtweb.phila.gov/searchAdd.aspx. Such a search would have revealed that the first twenty-five characters of the name of the Hotel's owner were "Philadelphia Market Stree", an entity clearly distinct from Marriott International, Inc.

Though he might not have discovered that Marriott Services operated the Hotel until after filing, he might have then moved to amend the complaint to join Marriott Services. Even if that motion to amend had been filed outside of the statute of limitations, Marriott Services would have had difficulty arguing that amendment would unduly prejudice it because Rucker could not have known of its relationship with the Hotel any sooner.

that Marriott International deserves any prejudice that it suffers because it failed to disclose that the Market Street Partnership owned the Hotel and that Marriott Services operated the Hotel until after the statute of limitations had expired.[6] See Pl.'s Mem. Opp'n Summ. J. at 5-6.

Marriott International may not have assisted Rucker in identifying the proper defendants, but it had no obligation to do so. Marriott International was obliged to answer the complaint, and, about six weeks before the statute of limitations ran, it timely filed an answer in which it "specifically denied" that it owned or operated the Hotel. See Answer ¶ 2. Even though it did not identify the entities that actually did own and operate the Hotel, this response fully complied with the Rules.[7] Marriott International had no obligation to disclose the Hotel's owner and/or operator arose until Rucker sought discovery, which he did nearly two weeks after the statue of limitations had expired. See Pl.'s Surreply at 4 n.1 (reporting that Rucker sent discovery requests on or about October 28, 2003). Because Marriott International had no duty to identify the owner and operator of

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[6] Though one could quibble over whether Marriott International's allegedly insufficient disclosures are even relevant to whether amendment would unduly prejudice the other entities, we assume arguendo that we may evaluate Marriott International's conduct when considering the issue.

[7] Rucker argues that Federal Rule of Civil Procedure 9(a) required Marriott International to include a "specific negative averment" identifying the actual owner and operator of the Hotel, but he misconstrues that provision. Rule 9(a) is a special pleading rule for matters of capacity to sue or be sued. In this case, Marriott International did not claim that Rucker lacked capacity to sue it or that it lacked capacity to be sued, so Rule 9(a) does not apply.

the Hotel until after the statute of limitations had passed, we hold that allowing Rucker to amend his complaint would unduly prejudice the Market Street Partnership and Marriott Services. See Jacobs v. McCloskey & Co., 40 F.R.D. 486 (E.D. Pa. 1966) (John W. Lord, J.) (concluding that permitting plaintiff to amend complaint to add a new defendant after expiration of statute of limitations would unduly prejudice the new defendant). Thus, we shall not permit Rucker to amend his complaint.

An appropriate Order follows.

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ORDER

AND NOW, this 2nd day of January, 2004, upon consideration of defendant's motion for summary judgment (docket entry # 8), plaintiff's response thereto, defendant's motion to file reply brief (docket entry # 10), and plaintiff's motion to file surreply (docket entry # 11) and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. Defendant's motion to file reply brief is GRANTED;

2. The Clerk shall DOCKET defendant's reply brief, a copy of which is attached hereto, as entry # 12;

3. Plaintiff's motion to file surreply is GRANTED;

4. The Clerk shall DOCKET plaintiff's surreply brief, a copy of which is attached hereto, as entry # 13;

5. Plaintiff's request to amend the complaint is DENIED;

6. Defendant's motion for summary judgment is GRANTED;

7. JUDGMENT IS ENTERED in favor of defendant Marriott International, Inc. and against plaintiff Bobby Rucker; and

8. The Clerk shall CLOSE this civil action statistically.

BY THE COURT:

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Stewart Dalzell, J.