

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

ROSALIND SMITH : CIVIL ACTION  
 :  
 v. :  
 :  
 :  
 PSI SERVICES INC., TROY HUGHES, :  
 AND JOHN DOES 1-10, J/S/I : NO. 97-6749

MEMORANDUM ORDER

Plaintiff asserts an employment discrimination claim and various pendent state law claims. Plaintiff named as one of the defendants in this action PSI Services Inc. ("PSI")

After being served with plaintiff's Complaint, PSI filed Motions to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and (5) or alternatively to Quash Service of Process. PSI contends that service upon it was ineffective since the individual served, Ms. Norma Romano, was not an employee, officer or director of PSI, was not in any way even associated with PSI and was not authorized to accept service on behalf of PSI. Defendant also represents without contradiction that plaintiff was never an employee of PSI, but was an employee of Creative Resources Inc. d/b/a PSI Services II, Inc. ("PSI II").

Plaintiff responded with cross-Motions to Amend Summons and Not Require Additional Service and To Amend Complaint to Name Proper Defendant.

It is uncontradicted that Ms. Romano was not authorized to accept service on behalf of PSI. Ms. Romano is, however, the Director of Operations of PSI II. She states in an affidavit that she was "handed a copy of the Complaint in this case at the Office of [PSI II] located at 1617 JFK Boulevard, in Philadelphia, Pennsylvania." Ms. Romano confirms that plaintiff was employed by PSI II.

Plaintiff now seeks to amend her summons to name PSI II as a defendant pursuant to Fed. R. Civ. P. 4(a) and wishes to amend her complaint to name PSI II. Plaintiff asks that her amended complaint relate back to the date the original complaint was filed to avoid the bar of the statute of limitations.

Plaintiff invokes the so-called "misnomer" rule. "The 'misnomer' rule applies to situations in which the plaintiff has actually sued and served the correct party, the party he intends to sue, but merely mistakenly has used the wrong name of the defendant in the caption of the complaint." Munetz v. Eaton Yale and Towne, Inc., 57 F.R.D. 476, 479 (E.D. Pa. 1973).

It clearly appears that plaintiff intended to sue her former employer, PSI II. As she is Director of Operations, it appears that Ms. Romano would be authorized to accept service on behalf of PSI II.

A complaint may be amended at any time before a "responsive pleading" is served. See Fed. R. Civ. P. 15(a).

PSI's motions to dismiss or quash service are not responsive pleadings. Sun Co. v. Badger Design & Constructors, 939 F. Supp. 365, 367 n.3 (E.D. Pa. 1996). The court will allow plaintiff to amend her summons and serve an amended complaint upon PSI II.

For an amendment involving a new party to relate back, the party to be brought in must have received such notice of the suit within the 120 day period for service that it will not be prejudiced in maintaining its defense and it should have known that, but for a mistake concerning identity, the action would have been brought against it. See Fed. R. Civ. P. 15(c). It appears that receipt by Ms. Romano of plaintiff's Complaint within 120 days of its filing with knowledge that plaintiff was a former employee of PSI II would satisfy the requirements of Rule 15(c). See Greiss v. Mail Line Auto Wash, 1989 WL 81514, \* (E.D. Pa. July 19, 1989)(applying misnomer rule and allowing amended complaint to relate back under Rule 15(c)).

**ACCORDINGLY**, this                    day of May, 1998, **IT IS**  
**HEREBY ORDERED** that defendant PSI Services' Motion to Dismiss (Doc. #3, Part 1) is **GRANTED** and plaintiff's claims against that defendant are **DISMISSED** without prejudice, and defendant PSI Services' alternative Motion to Quash Service of Process (Doc. #3, Part 2) is **DENIED** as moot. **IT IS FURTHER ORDERED** that plaintiff's cross-Motion to Amend Complaint (Doc. #5, Part 2) is **GRANTED** without prejudice to PSI II to assert any good faith

defense it may have, and plaintiff's Motion to Amend Summons and Not Require Additional Service (Doc. #5, Part 1) is **GRANTED** in part in that plaintiff may amend her summons and Complaint and is **DENIED** in part in that plaintiff shall file and serve her Amended Complaint within fifteen (15) days.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**