

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04083
	)	
Charleston Carriage Works, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charleston Animal Society, Ellen Harley	)	
and Charleston Carriage Horse Advocates,	)	
Inc.,	)	
	)	
Defendants.	)	
_____	)	

**RECEIVED**  
**Aug 11 2022**  
**SC Court of Appeals**

**ORDER DENYING PLAINTIFF’S MOTION TO AMEND**

This matter is before the Court on Plaintiff Charleston Carriage Works, LLC’s Motion to Amend, which was heard on September 29, 2021. Plaintiff’s Motion seeks leave to amend its Complaint to add two plaintiffs, five defendants, and additional causes of action. For the reasons stated below, Plaintiff’s Motion to Amend is DENIED.

This lawsuit arises out of an incident in which one of Plaintiff’s carriage horses, Big John, fell to the pavement during a carriage tour on April 19, 2017. Defendants Charleston Animal Society (CAS) and Charleston Carriage Horse Advocates (CCHA) posted eyewitness videos of the incident online and the videos “went viral.” Plaintiff alleges that use of the word “collapse” to describe the horse, as well as the subtitles superimposed on the video, such as: “Was Big John exhausted or did he just ‘trip’?” renders the video defamatory.

Plaintiff’s Complaint was filed on August 17, 2018, and, in addition to defamation, states causes of action for civil conspiracy, “Violation of Plaintiffs’ Civil Rights under Article I, § 3, South Carolina Constitution – Gross Negligence, Recklessness”, and tortious interference with business relations.

By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020. Mediation was completed but was not successful.

Plaintiff filed its Motion to Amend on April 6, 2020, seeking to amend its Complaint to: 1) add Broderick Christoff, the sole member/owner of Plaintiff, and his wife, Amber Christoff, as plaintiffs; 2) add Catherine Poag, Elizabeth Fort, Elizabeth Slagsvol<sup>1</sup>, Domangue Consulting, and Digital Solutions, Inc.<sup>2</sup>, as defendants; and 3) add additional causes of action, titled “Fraud/Slander/Libel Defamation Per Se”, “Fraud/Piercing the Corporate Veil”, “Slander per se/Outrage”, and “Outrage”.

### **LEGAL DISCUSSION**

A motion to amend or supplement a pleading is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). “A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.” Skydive Myrtle Beach, Inc. v. Horry Cty., 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action. Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994); Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (stating “a proper reason” to deny a motion to amend could be “bad faith, undue delay, or prejudice”); Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (under Rule 15(a), the circuit court should consider whether the defendants were prejudiced by the amendment, or

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<sup>1</sup> These individuals are alleged to be affiliated with CCHA.

<sup>2</sup> These entities are alleged to be CCHA’s “media companies”.

whether there is some other substantial reason to deny it); Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Ct. App. 2014) (affirming the denial of a proposed amendment after the conclusion of discovery and the case had been placed on the trial roster because it would cause significant delay and impose substantial additional discovery costs that would not have been necessary if the plaintiff had timely made the motion to amend); Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012) (amendment properly denied where the proposed amendment would be futile).

**I. Rule 15, SCRPC, does not allow the addition of new parties.**

Plaintiff has moved pursuant to Rule 15, SCRPC, to amend its Complaint in order to name additional persons and entities as plaintiffs and defendants. However, Rule 15, SCRPC, does not permit such an amendment.

Rule 15, SCRPC, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant. ***Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant.*** Rule 15(b) addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments. None of these subsections addresses a motion to add a plaintiff as contemplated in this case.

Valentine v. Davis, 319 S.C. 169, 171, 460 S.E.2d 218, 219 (Ct. App. 1995) (emphasis added) (“We are unwilling to torture the rules in such a way to correct possible mistakes in the filing of motions or misjudgments in strategic procedural decisions.”); Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992) (the rules of procedure, like statutes, should be given their plain meaning). Plaintiff’s Motion, insofar as it attempts to add new parties, is DENIED.

**II. Plaintiff’s Motion to Amend is untimely and would prejudice Defendants.**

**A. The addition of Broderick and Amber Christoff as Plaintiffs is untimely and prejudicial to the Defendants.**

Defendants presented evidence that Plaintiff, as well as Mr. and Mrs. Christoff, have been aware of the facts giving rise to the claims made in the Amended Complaint, including the damages and injuries allegedly sustained by Mr. and Mrs. Christoff, since shortly after the incident occurred on April 19, 2017. Plaintiff has failed to provide an adequate explanation for its delay in seeking to add Mr. and Mrs. Christoff as plaintiffs when the action has been pending for over three years, discovery concluded in February 2020, and the claims sought to be asserted were known over four years ago.

Additionally, Defendants would be prejudiced by the addition of new plaintiffs in this lawsuit at this juncture. The proposed Amended Complaint seeks to assert, on behalf of Mr. and Mrs. Christoff, each of the original four causes of action as well as the four new causes of action which would require Defendants to introduce additional and different evidence. See Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action).

Because Plaintiff was aware of the claims it now seeks to add and assert on behalf of Mr. and Mrs. Christoff, and because its undue delay in seeking amendment of its Complaint and the resulting prejudice to the Defendants, the Motion to Amend to add additional plaintiffs is DENIED.

**B. The addition of new causes of action is untimely and would prejudice the Defendants.**

Plaintiff's proposed Amended Complaint seeks to add four causes of action: "Fraud/Slander/Libel Defamation Per Se"; "Fraud/Piercing the Corporate Veil"; "Slander per se/Outrage"; and "Outrage". Although arising out of the same incident, these new claims have

elements distinct from those of the original Complaint and thus would require additional discovery. See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014), reh'g denied (amendment seeking to add claims against defendant following conclusion of discovery would have been prejudicial to defendant, where plaintiff had all knowledge necessary to alert him as to the claim prior to the close of discovery, and the new claim would have required defendant to conduct additional discovery). There is no justification for Plaintiff's delay in seeking this amendment, and the Motion to Amend to add additional causes of action is DENIED.

**C. The addition of new defendants is untimely and would prejudice the existing Defendants.**

For the same reasons as set forth above, the addition of new defendants, against which entirely new and separate causes of action are alleged in the Amended Complaint, is untimely and would prejudice the existing Defendants. Therefore, the Motion to Amend to add additional defendants is DENIED.

**III. Plaintiff's Motion to Amend is futile because the claims are barred by the Statute of Limitations.**

A trial court may deny a motion to amend if the amendment would be clearly futile. Skydive Myrtle Beach, Inc. v. Horry Cty., 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) (citing Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010)); Health Promotion Specialists, L.L.C. v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 812–13 (2013) (affirming the circuit court's denial of a party's motion to amend its complaint when the amendment would be futile).

It has long been recognized that an amendment adding a claim barred by the applicable statute of limitations is futile and should be denied. See Coral Gables v. Palmetto Brick Co., 183 S.C. 478, 191 S.E. 337, 341 (1937) ("The court will not do a useless and a futile thing, by allowing

an opportunity for setting up a new cause of action by amendment, which is barred by the statute of limitations.”).

Plaintiff argues (in its Reply Memorandum Supporting Motion to Amend, filed May 26, 2020) that Rule 20<sup>3</sup> allows the joinder of additional plaintiffs and defendants, and submits that “the proposed amendments arise out of the same transaction, the same occurrences, and the same allegations of defamation and add nothing other than to address the fact that, based on Ms. Harley’s January 31st deposition, she identified for the first time two additional corporate entities that she claims are responsible for her defamatory content.” Pltf. Reply Memo, p. 6; see also p. 9 (“The amended complaint alleges nothing new other than responding to Ms. Harley’s January 31st identification of who is responsible for the allegations arising out of the original transaction and occurrence.”); p. 5 (“The addition of the principals of the plaintiff are only to meet the allegations of the defendants that some of the damages pertain to the principals individually and not their limited liability company, but their claims are based on the original identification of defamatory publications.”). A comparison of the original Complaint and the proposed Amended Complaint shows that there are no new substantive allegations – the proposed Amended Complaint is based on the same facts. Given that all claims are based on the facts as set forth in the original Complaint, the statute of limitations began to run at the very latest on August 17, 2018, when Plaintiff filed its Complaint. More than three years have passed, therefore all new claims sought to be asserted in the proposed Amended Complaint are stale.

Moreover, there is no “relation back” argument available to Plaintiff and its attempt to add additional parties, even if Rule 15 was applicable. See Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 371, 597 S.E.2d 27, 29 (Ct. App. 2004) (relation back to original pleadings applies only

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<sup>3</sup> Plaintiff’s Motion to Amend was made solely pursuant to Rule 15, SCRPC.

when an existing party is changed, not when a new party is added to a complaint, emphasizing that “under South Carolina law, the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations”); Gause v. Smithers, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009) (police officer’s naming of son, in amended complaint, as actual driver of vehicle he stopped when officer was hit by second vehicle, amounted to the addition of a defendant and not the change of a party within meaning of relation back rule, and as such, the addition of son, while keeping father in case, did not relate back to original complaint filed against father as owner and erroneously assumed driver of the stopped vehicle, for statute of limitations purposes.); Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) (“The language of Rule 15(c) clearly speaks to a change in party, not the addition of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of party.”).

Because the addition of new parties is not permitted by Rule 15, SCRPC, and further because the claims sought to be added are barred by the statute of limitations, the proposed amendment is futile and, therefore, Plaintiff’s Motion to Amend is DENIED.

AND IT IS SO ORDERED!

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Mikell R. Scarborough  
Master-In-Equity

Charleston, South Carolina  
May 11, 2022



Charleston Common Pleas

**Case Caption:** Charleston Carriage Works L L C VS Charleston Animal Society ,  
defendant, et al  
**Case Number:** 2018CP1004083  
**Type:** Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062