

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
)
Jeri C. Inman and Johnny Inman,)
)
Plaintiffs,)
)
vs.)
)
Itema America, Inc. and Itema S.p.A.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C. A. No. 2021-CP-44-00207

ORDER **RECEIVED**
Dec 29 2022
SC Court of Appeals

This matter is before the Court upon Motion of Itema S.p.A to dismiss the Complaint with prejudice. The Motion is made pursuant to Rules 12(b)(2), 4, 5, 6 and 8 of the *South Carolina Rules of Civil Procedure*. Also before the Court is Plaintiff’s Motion to Enlarge Time under Rule 6(b)(2) of the *South Carolina Rules of Civil Procedure* allowing service of the Summons and Complaint under 15 days subsequent to the “safety net”¹ granted by Rule 3(a)(2) of the *South Carolina Rules of Civil Procedure*. Plaintiffs also cite Rule 6 of the *South Carolina Rules of Civil Procedure* in their Notice of Motion to Enlarge Time.

Both parties filed Memoranda of Law and other supporting documents in support of their positions. The matter came on for hearing before the Court on May 16, 2022. The matter was argued virtually by Order of the Chief Justice of the Supreme Court of South Carolina.

This lawsuit is a products liability action brought by Plaintiffs Jeri Inman and Johnny Inman against Itema America, Inc. (“Itema USA”) and Itema S.p.A. (“Itema Italy”). It appears Plaintiff Jeri Inman was employed at Milliken’s Cedar Hill Plant in Union County where she worked for some period of time, when on November 14, 2018, she suffered an injury to her right

¹ The term used by the South Carolina Supreme Court in the case of Mims ex rel. Mims v. Badcock Center, Inc. for the 120 day period referred to in Rule 3(a) and Section 15-3-20(B). See 732 S.E.2d 395, 397-398 (2012).

dominant hand, when it became entangled in an air jet loom machine, manufactured by Itema Italy, and delivered to Itema USA, its American subsidiary, and then sold to Milliken as one of the machines in a batch of such machines within a few months prior to the Plaintiff's injury.

Itema USA was served with a Summons and Complaint on June 28, 2021 and has appeared and answered through counsel.

Johnny Inman, husband of Jeri Inman makes a claim for loss of consortium arising out of his wife's injury.

Based upon the affidavits submitted by Plaintiffs, it appears that on July 19, 2021, Plaintiffs' counsel sent the suit papers for service upon Itema Italy according to the *Hague Convention*. The entire package of materials including service instructions and translations to Italian have been provided to the Court through the filing of an affidavit of Plaintiffs' counsel. Thereafter, within a few days, FedEx provided a transaction receipt to Plaintiffs' counsel. Subsequently, after having heard nothing, a letter of inquiry was written by Plaintiffs' counsel's paralegal through the appropriate authority in Italy, translated to Italian. That letter was written on October 12, 2021.

With Itema Italy continuing to remain silent, other than contact with Plaintiffs' attorney through its South Carolina counsel, Plaintiffs' counsel's paralegal again wrote on January 10, 2022. The package of materials was returned, reflecting that Itema Italy was served with the papers, translated to Italian, on or about November 29, 2021. The service of the papers, therefore, occurred 154 days after filing of the Summons and Complaint and some 15 days after expiration of the statute of limitations, but for the safety net permitted under Rule 3(a)(2) of the *South Carolina Rules of Civil Procedure*.

It is noteworthy that here, Plaintiffs Motion to Enlarge Time seeks to enlarge the 120 day safety net found in Rule 3(a)(2) *SCRCP*. That safety net is found also in Section 15-3-20 of the

Carolina Code of Laws (1976 as amended) so the statute of limitations has already been extended by both statute and court rules.

The issue therefore is whether under the circumstances of this case the safety net under SCRCP 3(a)(2) for service of the Summons and Complaint may be extended. This appears to be a matter of novel impression in the state of South Carolina.

Citing *Stokes-Craven Holding Corp. v Robinson*, 416 SC 517, 427, 787 S.E.2d 485, 490 (2016), defense counsel argues that the statutes of limitations are not simply technicalities. Further, the statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. Other legitimate arguments are made by able defense counsel, but those arguments and the propositions of law they support are not circumvented or even denied by this Court's ultimate decision.

None of the legitimate public policy arguments made by Iteima Italy in this case are offended here. Plaintiffs could have waited until November 13, 2021 to file the Summons and Complaint in this action. Then, under Rule 3(a)(2), as well as 15-3-20, the Plaintiffs would have had through and including March 13, 2022 to serve Iteima Italy. In this case, service was had more than 3 months earlier than that. Moreover, the subsidiary corporation had been served well before that and even with an extension of time, had filed its Answer on August 25, 2021. Obviously, Iteima Italy had notice of the claim, inasmuch as its counsel contacted counsel for Plaintiffs only 11 days after the suit was filed, and maintained a steady stream of contact thereafter.

The Summons and Complaint were transmitted by Federal Express, properly translated according to the *Hague Convention* of July 19, 2021. For some reason, they were laid aside until served on November 29, 2021, 15 days after the original date of expiration of the statute of limitations, but for the 120 days allowed for service subsequent to normal expiration of the statute.

It is important that Rule 6 of the *South Carolina Rules of Civil Procedure*, also providing a basis for the Motion to Enlarge by Plaintiffs specifically enumerates in subsection (b) of that Rule, the only occasions for which the Court may not extend time under Rule 6 are where taking action under Rules 50(b), 52(b), 59 and 60(b), are sought to be extended. None of the actions contemplated by those rules are involved in the instant case.

Defendant cites *Moore's Federal Practice* and various federal cases for the proposition that Rule 6 cannot extend a statutory deadline, but only a deadline imposed by the Rules. However, the South Carolina and Federal Rule Sixes are not the same – the method of determining when an action is commenced is not even the same. The federal rule has no analog to the 120 day service grace period because a federal action is commenced upon filing, not upon service. Further, the South Carolina version of Rule 6(b) begins: “When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended. . .” (emphasis added). The federal rule does not have the “by these rules” language, either. Plaintiffs seek an extension of the 120-day grace period, a period clearly set “by these rules.” The fact a statute also sets a 120-day period does not alter the fact the 120-day period appears in the Rules. As a deadline appearing in the Rules, it may be extended pursuant to SCRCP 6(b).

Based upon the foregoing, the Court finds and concludes Plaintiffs Motion to Enlarge Time under Rules 3 and 6 of the *South Carolina Rules of Civil Procedure* should be granted. Additionally, the Motion to Dismiss with Prejudice of Itema S.p.A. must be, and it is hereby denied.

IT IS SO ORDERED.

William A. McKinnon, Judge

Sixteenth Judicial Circuit of South Carolina

York, South Carolina

July _____, 2022



Union Common Pleas

Case Caption: Jeri C Inman , plaintiff, et al VS Itema America, Inc.

Case Number: 2021CP4400207

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge