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Apr 21 2023

SC Court of Appeals

EXHIBIT B

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

LAURA ABERNATHY,)

Plaintiff,)

vs.)

ERVIN W. LAMBERT, SR.,
 PERSONAL REPRESENTATIVE OF
 THE ESTATE OF ERVINE E.
 LAMBERT, JR. Deceased,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022-CP-18-00295

**ORDER DENYING PLAINTIFF'S
 MOTION TO AMEND AND FOR
 JOINDER**

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This Matter came before the Court on October 4, 2022, during a virtual hearing on Plaintiff's Motion to Amend pursuant to Rules 15(a), 18(a), and 20 of the *South Carolina Rules of Civil Procedure (SCRCP)*. Present on behalf of the Plaintiff was Jaan Rannik, Esquire and Lionel S. Lofton, Esquire, on behalf of the Defendant. After reviewing the pleadings, motions and memoranda filed by counsel, the law as it relates to the issues presented, and oral arguments presented during the hearing, the Court finds that Plaintiff's Motion to Amend to join additional defendants and claims and Plaintiff's Motion for joinder additional parties are DENIED for the reasons set forth herein.

BACKGROUND

The Plaintiff initiated this action on June 12, 2020, as a Declaratory Judgment/Quiet Title action against Ervin W. Lambert Sr., Personal Representative of the Estate of Ervin W. Lambert Jr. (Deceased) arising out of ownership rights of a residence located at 106 Sarmiento Lane, Summerville, South Carolina (hereinafter "Subject"). As part of the complaint, the Plaintiff

alleged that she and Ervin W. Lambert Jr. had an arrangement whereby she would become a fifty (50%) owner in the Subject around closing and thereafter a sole and absolute owner. Plaintiff alleged that this arrangement was in lieu of a cash bonus for work she performed while employed at Ervin W. Lambert Jr.'s company, L&L Contractors Inc.¹ The Subject of this action was purchased in 2015 and the General Warranty Deed for the Subject was properly recorded on October 23, 2015, in the Office of the Register of Deeds for Dorchester County in the name of Ervin Lambert *only*.

Around October 25, 2018, Ervin W. Lambert Jr. (hereinafter "Decedent") died intestate in a plane crash in the Atlantic Ocean. Shortly thereafter, Decedent's father, Ervin Wayne Lambert Sr. (hereinafter "Mr. Lambert" or "PR") was appointed as Personal Representative of his Estate. Mr. Lambert was also given authority to manage, operate and conduct business on behalf of L&L Contractors Inc. and was given authority to execute any and all documents necessary to continue business operations and to preserve the value of the estate in the best interests of the heirs.

In December of 2020, Defendant filed its Answer and Counterclaim also seeking to Quiet Title to the Subject. Both parties served written discovery in February of 2021. On March 1, 2021, the parties filed their first Consent Scheduling Order with the Court. Because the parties still needed additional time to take depositions in this case, an Amended Consent Scheduling Order was submitted to the Court for its review in early September of 2021. On September 3, 2021, the Court denied the order and suggested that the parties agree to 40(j) the case. John West, Plaintiff's first attorney and Defense Counsel agreed to 40(j) the case pursuant to a consent order and to complete discovery prior to restoring the case. The parties believed that this was the best way to ensure that the case would be ready to proceed to trial once it was restored.

¹ Plaintiff continued to work at L&L Contractors Inc. for Ervin W. Lambert Sr. until she was terminated in April of 2020.

Mr. West also agreed to limit Mr. Lambert's deposition to the 106 Sarmiento Lane dispute and that which could lead to relevant evidence concerning its ownership². Depositions for both parties were scheduled to take place on October 29, 2021. On October 12, 2021, Mr. West informed Defense Counsel that he no longer represented the Plaintiff and that he didn't believe the depositions could go forward as previously scheduled for October 29, 2021.

On February 15, 2022, Mr. Rannik, Plaintiff's new counsel, restored the case to the non-jury roster. On August 16, 2022, an electronic notice was sent out by the Dorchester County Clerk's Office stating that this case was on the Back-Up Non-Jury Roster for the week of September 19, 2022. Mr. Rannik reached out to Defense Counsel about seeking a Consent Scheduling Order from the Court. Defense Counsel agreed to the terms and the parties filed a Motion for Consent Scheduling Order along with an accompanying Proposed Consent Order on August 25, 2022. As part of this motion the parties represented to the Court that the "short extensions requested were not intended to cause delay and would work no prejudice on any party or on the orderly administration of justice". The order further provided that discovery would be completed by October 15, 2022, mediation by November 30, 2022, and that the case would be ready for trial after December 15, 2022.

Defendant finished the depositions needed for its case on August 29, 2022. In early September Plaintiff stated that he wished to take Mr. Lambert's deposition but that he would not limit the deposition to the scope of the pending case because he planned on amending his pleadings to add additional parties and claims.

On September 13, 2022, Plaintiff emailed its Notice of Deposition for Mr. Lambert's

² A case designated complex had been filed against the Decedent's Estate on behalf of some of the passengers who were aboard the airplane Decedent was operating when it disappeared. Defendant wanted to ensure Plaintiff was not trying to use the Declaratory Judgment action to elicit information pertaining to the airplane case because Plaintiff had already provided an affidavit in the complex case.

deposition to take place on October 13, 2022. On September 20, 2022 Plaintiff filed its Motion to Amend pursuant to Rules 15(a) and 18(a) of the *SCRCP* along with its proposed Amended Complaint. The Amended Complaint sought to add two additional defendants, Wayne Lambert Sr. individually and L&L Contractors Inc. It further sought to add two additional claims, Wrongful Termination and Malicious Prosecution. Plaintiff alleged that the two additional claims, which occurred on or about April 2020 respectively were in retaliation for (1) her refusal to certify and falsify documents or payments relating to a work project involving the removal of material from a borrow pit and (2) her refusal to delete video footage of a wreck involving one of L&L's trucks.³

Because of the Amended Complaint and scheduling order that was in place, the parties agreed that a status conference was needed with the Court. The Court held a virtual status conference with the parties on October 3, 2022, and agreed to hear the Plaintiff's Motion to Amend the following day. Defendant filed its Memorandum in Opposition to the Plaintiff's Motion to Amend on October 3, 2022. On October 4, 2022 the Plaintiff's Motion to Amend was heard and verbally denied by the Court during the virtual hearing. This Order is the product of the October 4, 2022 hearing.

STANDARD OF REVIEW FOR AMENDMENTS PURSUANT TO RULE 15(a)

The pertinent section of Rule 15(a) provides that "a party may amend [its] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) *SCRCP*. However, "Rule 15(a) only permits an *existing plaintiff* to add, modify, delete, or change claims against an *existing defendant*." *Valentine v. Davis*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995). "It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and

³ Plaintiff's proposed red-lined Amended Complaint was submitted as Ex. A. to its Motion to Amend filed September 20, 2022.

that the party opposing the motion has the burden of establishing prejudice.” “The prejudice contemplated in Rule 15 envisions a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Curry v. Carolina Ins. Grp. Of SC, Inc.*, 428 S.C. 60, 75-76, 832 S.E.2d 760, 768 (Ct. App. 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.” *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 277, 754 S.E.2d 714 (Ct. App. 2014) (*reh’g denied*) citing *Ball v. Canadian Am. Exp. Co., Inc.*, 314 S.C 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994). Factors that may be considered in determining whether permitting an amendment would cause prejudice to the nonmoving party include undue delay, jury confusion, and introduction of remote issues. See *Wilson v. Horsley*, 137 Wash.2d 500, 974 P.2d 316 (1999). A motion to amend a complaint may be prejudicial if it would burden the party with more discovery, preparation, expense, etc. and when the amendment is sought after the majority of discovery is completed and the case is up for trial. See *Wal-Mart Super Center v. Long*, 852 So.2d 568, (2003) *reh’g denied*. A denial of a motion to amend under Rule 15 is within the sound discretion of the circuit court. *Oulla v. Velazques*, 427 S.C. 428, 435, 831 S.E.2d 450, 453 (Ct. App. 2019). “The trial judge’s finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred.” *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232-233, 599 S.E.2d 462, 465 (Ct. App. 2004).

DISCUSSION

The Plaintiff argues that pursuant to Rules 15(a), 18(a), and Rule 20 of the *SCRCP*, the Court should grant its Motion to Amend to add additional causes of action for Wrongful Termination and Malicious Prosecution, and to add defendants, Mr. Lambert individually and L&L Contractors Inc. to the existing Declaratory Judgment action because all of the actions new and

old are related and arise out of the Plaintiff's retaliation claim. The Plaintiff further argues that there is no prejudice to the Defendant or bad faith because the addition of new defendants will give the Defense more time to prepare its case.

The Defendant argues that Plaintiff's new causes of action and additional defendants are totally unrelated to the existing Declaratory Judgment action. The Declaratory Judgment action has to do with a piece of real estate that was purchased by the Decedent back in 2015 while the new action arises out of Plaintiff's termination of employment at L&L which occurred in 2020. The new action also involves two additional parties, Mr. Lambert in his individual capacity and L&L Contractors Inc. Defendant further argues that to allow these actions to come in this late in the game would be highly prejudicial to the Defendant because he has completed discovery, the case is up for trial in less than two months, the case has been pending for over two years, and this amendment could have been made much earlier if Plaintiff had used reasonable diligence. See *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (a prejudicial amendment is one that "raises a new legal theory that would require the gathering and analysis of facts not already considered by the [Defendant, and] is offered shortly before or during trial"); *Wal-Mart Super Center v. Long*, 852 So.2d 568, (2003) *reh'g denied.*; (Amendment may be prejudicial if it would burden the party with more discovery, preparation, expense, etc. and when the amendment is sought after the majority of discovery is completed and the case is up for trial).⁴ Finally, the Defendant argues that the new causes of action can be tried in a separate law suit and are still within the applicable statute of limitations period.

FINDINGS AND CONCLUSIONS

After reviewing the law, pleadings, memoranda and arguments by Counsel the Court

⁴ Rule 15(a) of the SCRCF is substantially the same rule as the Federal rule.

makes the following findings and conclusions:

First, I find that these are separate and distinct law suits and as such should be tried separately. The topics, legal issues and parties are quite different. The pending Declaratory Judgment action arises out of ownership rights to a residence which was purchased by the Decedent in 2015 and recorded by General Warrant Deed in the Decedent's name "only" in the Dorchester County Register of Deeds in 2015. Plaintiff's allegations in that case revolve around an alleged arrangement she had with the Decedent and the Decedent only in regard to that residence. The only connection that these new claims have with this action, is the fact that Mr. Lambert just happens to be managing L&L Contractors now and is PR of the Decedent's Estate.

Secondly, given the fact that this case is almost three years old, and that a jury is going to have to decide without getting confused is yet another reason that these matters should be filed separately. In the Declaratory Judgment action with regards to whether or not the Plaintiff had an equitable ownership is light years away from a wrongful discharge action. Furthermore, the Plaintiff will not be prejudiced because the Plaintiff can still file this new law suit within the applicable statute of limitations and should not have an issue with any collateral estoppel.

Third, while you are allowed to amend freely under Rule 15, you shouldn't be able to shoehorn additional parties that are fairly unrelated with additional causes of action which are in great part unrelated to the existing lawsuit, which is supposed to be ready for trial. Moreover, it is absolutely prejudicial to the Defendant to add these unrelated causes of action and these parties to the existing Declaratory Judgment action. Furthermore, I believe that in combining these actions and parties creates a substantial likelihood that the jury would be confused.

With that said, the Plaintiff's Motion to Amend are DENIED. All of the Plaintiffs issues can still be brought in a separate lawsuit, which would be much cleaner and easier for a jury to

understand. Bringing unrelated causes of action and parties to this action right before trial would be prejudicial and not serve the ends of Justice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Amend be hereby **DENIED**.

IT IS SO ORDERED!

Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

December_____, 2022



Dorchester Common Pleas

Case Caption: Laura Abernathy VS Ervin W Lambert Sr , defendant, et al

Case Number: 2022CP1800295

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein