STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	
ARTHUR WASHINGTON, Plaintiffs, vs. RESORT SERVICES, INC., AND JOHN DOE, Defendants.	Civil Action No. 2011-CP-07-0001
	ORDER GRANTING DEFENDANT JOHN DOE'S MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

THIS MATTER comes before this Court on Defendant, John Doe's Motion to Dismiss based on the Statute of Limitations and Plaintiff's Motion for Entry of Default against Defendant, John Doe. A hearing took place on these Motions at the Beaufort County Courthouse on April 8, 2014. Present at the hearing were William Barnes, Esquire, on behalf of the Plaintiff, Robert Sansbury, Esquire, on behalf of Defendant, John Doe, and Wesley Sawyer, Esquire, on behalf of Defendant, Resort Services, Inc.

Based on the arguments of counsel, South Carolina law, and the various Motions and memoranda filed by the parties, I hereby GRANT Defendant, John Doe's Motion to Dismiss based on the Statute of Limitations, DENY Plaintiff's Motion for Entry of Default against Defendant, John Doe, and make the following findings of law and fact.

Background

This is a personal injury case arising out of an automobile accident that occurred on February 26, 2009. (Plaintiff's Amended Complaint, p. 1). The Plaintiff claims personal injuries stemming from this automobile accident. (*See generally* Plaintiff's Amended Complaint). Therefore, Plaintiff had three years in which to file his lawsuit

against Defendant John Doe, with a deadline of February 26, 2012. S.C. Code Ann. § 15-3-530. Plaintiff filed the original Summons and Complaint on January 3, 2011, well within the Statute of Limitations, naming only Resort Services, Inc. as a Defendant. (*See generally* Plaintiff's Complaint). In addition to serving the Defendant, Resort Services, Inc., the Plaintiff also served the Underinsured Motorist Carrier ("UIM"), 21st Century Insurance, through the South Carolina Department of Insurance, and UIM served a Notice of Appearance and Conditional Answer on behalf of Defendant, Resort Services, Inc. on March 14, 2011, also well within the Statute of Limitations.

Then, after the Statute of Limitations had already run, Plaintiff filed a Motion to Amend the Complaint on March 12, 2012, to add Defendant, John Doe as a party to this lawsuit. The Amended Complaint naming Defendant, John Doe, was not filed until August 2, 2012. The Plaintiff did not seek to substitute Defendant, John Doe as a party after the Statute of Limitations; rather, the Plaintiff sought to add John Doe as a new party in addition to Defendant, Resort Services, Inc.

After filing the Amended Complaint on August, 2, 2012, the Plaintiff did not serve the Amended Complaint on the Uninsured Motorist Carrier ("UM"), 21st Century Insurance, via the South Carolina Department of Insurance until a year and a half later, on January 31, 2014. Mr. Sansbury then served an Answer on behalf of Defendant, John Doe on February 10, 2014, which was filed by the Clerk of Court on February 11, 2014. The Answer asserted the Statute of Limitations as one of John Doe's defenses. Shortly thereafter, Mr. Sansbury filed this Motion to Dismiss based on the Statute of Limitations, and Plaintiff filed his Motion for Entry of Default against Defendant, John Doe thereafter.

Applicable Law

"[S]tatutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (citing C.S.J. Limitations of Actions § 2 (1989)). "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation." Id.

In an action for personal injury, the Plaintiff has three (3) years from the date of the accident in which to file a lawsuit against the Defendant. S.C. Code Ann. § 15-3-530; *See also* S.C. Code Ann. § 15-3-535. Although in some cases a Plaintiff may substitute a one party for another after the Statute of Limitations pursuant to Rule 15, SCRCP, a Plaintiff may not add an additional party. Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000),

Discussion

(A) Defendant, John Doe's Motion to Dismiss

In Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000) the Court of Appeals addressed the precise issue which is before the Court in the instant case, and held that a Plaintiff may not *add* a party after the statute of limitations. Plaintiff nevertheless makes several arguments to avoid dismissal of John Doe. First, the Plaintiff argues that the *addition* of John Doe as a party after the Statute of Limitations should be permitted under Rule 15(c); however, Jackson makes clear that rule 15(c) does not apply to the

addition of a new party, only the *substitution* of one party for another (and even then in very narrow circumstances).

Second, Plaintiff argues that the appearance of 21st Century Insurance on behalf of the UIM carrier prior to the expiration of the Statute of Limitations should be viewed as the equivalent of an appearance on behalf of the UM carrier for Defendant, John Doe; however, this argument fails for several reasons. To begin, the Jackson case makes clear that you cannot add a party after the Statute of Limitations, so irrespective of when UIM was served vs. UM, the fact remains the same – John Doe was not added as a Defendant until after the Statute of Limitations, which is impermissible under South Carolina law. Next, the function of UIM and UM insurance occupies two entirely separate realms; on the one hand, UIM serves as additional coverage for a Defendant who is underinsured, whereas UM serves as coverage for a Defendant who is uninsured, such as an unknown "John Doe." In the instant case, UIM was served prior to the Statute of Limitations to appear on behalf of Defendant, Resort Services, Inc. and represent its interests, not John Doe's. UM, on the other hand, was served to represent Defendant, John Doe, an entirely different party to the lawsuit. Finally, service of process on UIM carriers and UM carriers are governed by two separate statutes - S.C. Code Ann. §§ 38-77-160 for UIM, and 38-77-150 for UM – and each statute provides the exclusive method of service for UIM and UM, respectively. Equilease Corp.v. Weathers, 275 S.C. 478, 484, 272 S.E.2d 789, 792 (1980) (service by any other method on an insurance company other than the method proscribed by law is invalid).

Third, Plaintiff's argument that the law license suspension of Plaintiff's previous attorney, Charles Houston, should equitably toll the Statute of Limitations is also without

merit. Mr. Houston's law license was not suspended until December 7, 2012, almost a full year after the Statute of Limitations expired. (*See* In the Matter of Charles E. Houston, Jr.; appellate case no. 2012-213047).

Here, we are faced with facts virtually identical to Jackson. In the instant case, Plaintiff sued only Defendant, Resort Services, Inc. in the original Complaint, which was filed January 3, 2011. Plaintiff's counsel however did not move to amend the Complaint to add John Doe as a Defendant until March 12, 2012 – after the Statute of Limitations had already run. Finally, an Amended Complaint first naming John Doe as a Defendant was not filed until August 2, 2012. So, whether the Court applies the date that Plaintiff moved to amend the Complaint, or the date Plaintiff filed his Amended Complaint, the result is the same: John Doe was added after the Statute of Limitations, and should therefore be dismissed as a party.

(B) Plaintiff's Motion for Entry of Default

Plaintiff's Motion for Entry of Default is based on the fact that the "John Doe" statute states, "service of process [on John Doe] may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought." S.C. Code Ann. § 38-77-180. However, Plaintiff's argument is misplaced as he neglects to include the statute regarding service on the UM Carrier on behalf of John Doe which is as follows:

> No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

S.C. Code Ann. § 38-77-150. The above statute makes clear that **no action** can be brought binding a UM Carrier in a John Doe case unless the pleadings are served on the UM Carrier in a manner prescribed by law, which in South Carolina is through the Department of Insurance. S.C. Code Ann. § 38-5-70. In fact service upon the Department of Insurance as agent for insurance companies is the *exclusive* means of service, and service upon an insurer made in any other way is invalid. Equilease Corp.v. Weathers, 275 S.C. 478, 484, 272 S.E.2d 789, 792 (1980). Additionally, the above statute further states that a UM carrier "has the right to appear and defend in the name of the uninsured motorist . . . and has thirty days to answer after service of process on it", not after service on "John Doe." S.C. Code Ann. § 38-77-150 (emphasis added).

Here, even though a lawsuit was filed against Defendant, John Doe on August 2, 2012, the UM Carrier was not served via the Department of Insurance until January 31, 2014. The UM Carrier filed a timely Answer to the Amended Complaint on behalf of Defendant, John Doe, only 12 days later, on February 11, 2014. Additionally, because John Doe was added as a party after the Statute of Limitations, which is impermissible under South Carolina law, any resulting default would be void as a matter of law. Rule 60(b)(4), SCRCP. Finally, Plaintiff's contention that the UM carrier should be bound in default without any proper notice of this lawsuit naming John Doe violates the Due Process Clause under the United States Constitution, and the South Carolina Constitution. *See* Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950) (adequate notice of a pending lawsuit, hearing or trial is the hallmark of Constitutional Due Process in the civil arena).

Conclusion

For the foregoing separate and independent reasons, it is therefore ORDERED, ADJUDGED, and DECREED that Defendant, John Doe's Motion to Dismiss based on the Statute of Limitations is GRANTED, and Plaintiff's Motion for Entry of Default against Defendant, John Doe is DENIED.

IT IS SO ORDERED!

J. Ernest Kinard, Jr., Circuit Judge

Dated: 4/23/14