

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	C/A NO.: 2020-CP-21-00565
)	
Cathryn Hilty,)	
)	
Plaintiff,)	<u>ORDER</u>
vs.)	
)	
Shriji Hari LLC; Palmetto Hospitality LLC;)	RECEIVED
Travelodge Hotels, Inc.; and Wyndham)	Nov 18 2020
Hotels & Resorts, Inc.,)	SC Court of Appeals
)	
Defendants.)	
)	

THIS MATTER is before the Court on Motion of the Defendant, Palmetto Hospitality, LLC, for a dismissal pursuant to Rule 12(b)(6), *SCRCP*, for failure to state facts sufficient to constitute a cause of action. This Motion is made on the grounds that the Plaintiff failed to file and serve the Amended Summons and Complaint upon it within the applicable three-year statute of limitations. The Amended Complaint alleges that the Plaintiff sustained a fall at a hotel being operated by this Defendant on March 4, 2017. The Amended Summons and Complaint were filed June 23, 2020.

A hearing was held on this matter via WebEx on September 16, 2020. J. Boone Aiken, III, a member of the Florence County Bar, represents Palmetto Hospitality LLC, and the Plaintiff is represented by Ryan Christopher Andrews, a member of the Charleston County Bar, and the Co-Defendant, Shriji Hari LLC, is represented by Brian Lincoln Craven, Julius Carnes Nicholson, III, and Daniel R. Settana, Jr., all members of the Richland County Bar.

The Plaintiff advanced two arguments in opposition of Defendant Palmetto Hospitality LLC's Motion to Dismiss. First, that the Amended Complaint is not barred

by the statute of limitations because it relates back to the timely filed original pleading, *SCR Civ. P. 15(c)*. Second, that if the Amended Complaint does not relate back, the statute of limitations should be equitably tolled.

The Plaintiff alleges that on March 4, 2017, she rented a room at the Travelodge Hotel located at 3783 W. Palmetto Street, Florence, South Carolina. The Plaintiff further alleges that on this date, she was walking up an outside staircase and fell sustaining certain injuries.

On March 4, 2017, Palmetto Hospitality LLC was an owner and/or operator of the Travelodge Hotel where the Plaintiff allegedly fell.

Palmetto Hospitality LLC was not named in the original Complaint and was only named when the Amended Complaint was filed June 23, 2020.

In this case, the Amended Complaint added Palmetto Hospitality LLC. Relation back applies only when an existing party is changed, not when a new party is added to a complaint. See Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000). As a result, the Amended Complaint does not relate back to the timely filed initial Complaint.

On the issue of equitable tolling, the party claiming the statute of limitations should be tolled, bears the burden of establishing sufficient facts to justify its use. The equitable power of court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted only when, in view of all circumstances, to deny it would permit one party to suffer gross wrong at the hands of another. Equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use. See Hooper v.

Ebenezer Senior Services and Rehabilitation Center, 386 S.C. 108, 687 S.E.2d 29 (2009).

In this case, the Plaintiff has offered insufficient facts to justify equitable tolling of the statute of limitations. Plaintiff has offered no explanation for why she failed to discover that Palmetto Hospitality LLC owned the premises on the date of her injury. There have been no allegations that any of the Defendants in this case sought to impede the Plaintiff's ability to ascertain whether Palmetto Hospitality LLC was a necessary party and serve Palmetto Hospitality LLC with a complaint within the statute of limitations.

Based upon the evidence before the Court, equitable tolling is not applicable in this particular case.

For the reasons stated, it is

ORDERED, ADJUDGED AND DECREED that Palmetto Hospitality, LLC's Motion to Dismiss is hereby granted.

R. KIRK GRIFFIN
CIRCUIT COURT JUDGE

October ____, 2020

At Chambers



Florence Common Pleas

Case Caption: Cathryn Hilty VS Shriji Hari Llc , defendant, et al
Case Number: 2020CP2100565
Type: Order/Dismissal

So Ordered

s/ R. Kirk Griffin 2768

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