SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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LEXINGTON INSURANCE COMPANY, as Subrogee of ELDAD LLC, ELDAD PRIME, LLC and all other named insured under policy number 4271656, STRATHMORE INSURANCE COMPANY as Subrogee of MENDY'S GALLERIA, LLC, and TRAVELERS EXCESS AND SURPLUS LINES COMPANY a/s/o AMSTERDAM HOSPITALITY GROUP,

INDEX NO. 156326/12

Plaintiff,

-against-

GALLERIA CONDOMINIUM, BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC, SKY 4, LLC, STREAMLINE WINDOWS, INC., LAWLESS & MANGIONE ARCHITECTS ENGINEERS, LLP, and MARIO LABOT & ASSOCIATES, PC,

Defendants.

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JOAN A. MADDEN, J.:

This is a consolidated action comprised of four separate insurance subrogation actions, involving an accident that occurred on June 6, 2010 at the Galleria Condominium on East 57th Street in Manhattan. Plaintiff Travelers Excess and Surplus Lines Company a/s/o Amsterdam Hospitality Group ("Travelers"), moves for an order pursuant to CPLR 3025 granting leave to amend its complaint to add Mario Labot & Associates, PC ("Labot") as a direct defendant, and further, if amendment is permitted, Travelers seeks an order deeming that its supplemental summons and amended complaint relate back to the summons and complaint in the separate action against Labot, which plaintiff Lexington Insurance Company as Subrogee of Eldad LLC, Eldad Prime, LLC and all other named insureds under policy number 4271656 ("Lexington"),

timely commenced on May 31, 2013 (the "Lexington Action"). Defendant Labot opposes the motion.

The motion is denied. It is undisputed that Travelers' proposed amendment is untimely unless the statute of limitations is tolled by the relation-back doctrine. As determined below, the relation-back doctrine is inapplicable under the circumstances presented.

As codified in CPLR 203(f), the relation-back doctrine provides that an otherwise untimely claim in an amended pleading "is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be provided pursuant to the amended pleading." CPLR 203(f). "The *sine qua non* of the relation back doctrine is notice," and if the allegations in the original pleading do not provide defendant with "notice of the need to defend against the allegations of the amended complaint, the doctrine is unavailable." Pendleton v. City of New York, 44 AD3d 733, 736 (2nd Dept 2007). "Thus, if the new defendant has been a complete stranger to the suit up to the point of the requested amendment, the bar of the Statute of Limitations must be applied." Duffy v. Horton Memorial Hospital, 66 NY2d 473, 477 (1985).

Here, Travelers is seeking to expand the relation-back doctrine to permit it to assert a time-barred negligence claim against Labot and have it relate back to a claim asserted by a different plaintiff in a different action., i.e. Lexington's negligence claim against Labot in the Lexington Action. While the Lexington Action was timely when commenced, and while it was later consolidated with the Travelers action and two other subrogation actions, the actions were not consolidated until after the statute of limitations had expired as to all defendants, including Labot. See Moore v. Nuremore Construction, Inc, 33 Misc3d 1214(A) (Sup Ct, Dutchess Co,

2011). The position taken by Travelers "would significantly expand the relation back doctrine,"since it would have the effect of reviving an otherwise time-barred claim against a new defendant, who was a "stranger" to Traveler's original action. Id; accord Insurance Company of North America v. Hellmer, 212 AD2d 665, 666 (2nd Dept 1995); Krellenstein v. Fieldcrest Mills, Inc, 123 Misc2d 783 (Sup Ct, NY Co 1984). Under such circumstances, the application of the relation-back doctrine would "distort its meaning and purpose." Insurance Company of North American v. Hellmer, supra at 666 (quoting Krellenstein v. Fieldcrest Mills, supra at 785); accord Moore v. Nuremore Construction, Inc, supra.

Travelers cites no legal authority to support its position. Travelers' reliance on cases involving the application of the relation back doctrine to a direct claim against a party originally brought into the action as a third-party defendant, is misplaced as those cases are distinguishable on their facts. Travelers also asserts that the nature of its proposed negligence claims against Labot and Labot's defenses are the same "irrespective of who the damaged plaintiff is," and that the only difference is the "mere increase in the amount of damages." Travelers' assertion is without merit. Even though Travelers' and Lexington's separate subrogation actions involve the same underlying "occurrence," courts have made clear that a plaintiff should not be permitted to use the relation-back doctrine to assert an otherwise time-barred claim "where to do so would increase the measure of liability to which the defendants are exposed." Insurance Company of North American v. Hellmer, supra at 666 (quoting Key International Manufacturing, Inc v. Morse/Diesel, Inc, 142 AD2d 448, 458 [2nd Dept 1988]). In other words, Travelers has failed to demonstrate that the pleadings in the Lexington Action against Labot, put Labot on notice that it would also be potentially liable for damages incurred by Travelers' insured. See New York

Central Insurance Co v. Berdar Equities, Co, 33 Misc3d 1214(A) (Sup Ct, NY Co 2011).

Based on the foregoing, the court concludes that Travelers is not entitled to benefit of the relation back doctrine and its motion for leave to amend its complaint must be denied.

Accordingly, it is

ORDERED that the motion by plaintiff Travelers Excess and Surplus Lines Company a/s/o Amsterdam Hospitality Group, for leave to amend its complaint is denied.

DATED: November 25, 2014

ENTER:

HON. JOAN A. MADDEN
J.S.C. J.S.C.