SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **13**

Justice

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CHRISTINE MARIA KESHANECH, DENISE M. WILSON,

Plaintiff,

- v -

AVON PRODUCTS, INC.,REVLON, INC.,L'OREAL USA INC.,INDIVIDUALLY AND AS SUCCESSOR TO YSL BEAUTE INC.,SUCCESSOR TO YVES SAINT LAURENT PARFUMS CORP., F/K/A CHARLES OF THE RITZ GROUP LTD., CRG-YSL INC. AND CRG ACQUISITION CORP. INC.,L'OREAL USA PRODUCTS INC.,INDIVIDUALLY AND AS SUCCESSOR TO YSL BEAUTE INC.,SUCCESSOR TO YVES SAINT LAURENT PARFUMS CORP., F/K/A CHARLES OF THE RITZ GROUP LTD., CRG-YSL INC. AND CRG ACQUISITION CORP. INC.,WHITTAKER, CLARK & DANIELS, INC.

Defendant.

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INDEX NO. 190080/2019

MOTION DATE 06/21/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and for the reasons set forth below, the Court (i) grants the motion brought by defendant L'Oreal USA, Inc. ("Defendant") to dismiss the complaint of the plaintiffs, Christine Maria Keshanech and Denise M. Wilson ("Plaintiff"), individually and as co-administrators for the estate of the decedent, Elaine M. Wilson ("Decedent") and (ii) denies Defendant's request for sanctions against Plaintiff, raised for the first time in Defendant's reply papers such that plaintiff did not have an opportunity to respond.

I. Motion to Dismiss

A defendant may move to dismiss a plaintiff's complaint "on the ground that[]" the "statute of limitations" bars the complaint, as the plaintiffs was late in bringing his claims. CPLR § 3211(a)(5); *see also Monahemi v Gohari*, 2021 NYLJ LEXIS 925, *8 (Sup Ct, Nassau County, Sept. 8, 2021, No. 604531/2020) ("[T]o determine the timeliness of the plaintiff's claims … , the Court must first consider what the statute of limitations is for each cause of action alleged in the summons and complaint."). With limited exceptions, an action for personal injury from exposure to substances with latent effects, as here, must be brought within three years of "the date of discovery of the injury by the plaintiff" or of "the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier." CPLR § 214-c(2). Two exceptions are at play here.

The first exception, equitable estoppel, is less a defense to the statute of limitations and more an affirmative argument that the statute of limitations has not kicked in due to tolling of the limitations period. *See Putter v N. Shore Univ. Hosp.*, 7 NY3d 548, 552-553 (2006). "[E]quitable estoppel … preclude[s] a defendant from using the statute of limitations as a defense 'where it is the defendant's affirmative wrongdoing … which produced the long delay between the accrual of the cause of action and the institution of the legal proceeding.'" *Id.* at 552, quoting *Zumpano v Quinn*, 6 NY3d 666, 673 (2006) (second omission in original); *see also Simcuski v Saeli*, 44 NY2d 442, 448-449 (1978) ("[A] defendant may be estopped to plead the Statute of Limitations where plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action."). The plaintiff bears the burden of showing that they "reasonabl[y] reli[ed] on the defendant's" wrongdoing. *Zumpano*, 6 NY3d at 674.

The second exception, the relation-back doctrine, allows a plaintiff to add a new defendant after the statute of limitations shield kicks in. To do so, the plaintiff must prove three

things: (1) that the claims against the new defendant "arose out of [the] same conduct, transaction or occurrence" as the claims against the original defendants; (2) that the new defendant "is 'united in interest' with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that [the new defendant] will not be prejudiced in maintaining [a] defense on the merits"; and (3) that the new defendant "knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the [original] action would have been brought against [the new defendant] as well." *Buran v Coupal*, 87 NY2d 173, 178 (1995), quoting *Brock v Bua*, 83 AD2d 61, 69 (2d Dep't 1981) (internal quotation marks omitted); *see also* CPLR § 203(c), (f) (providing the statutory bases for the relation-back doctrine); *Garcia v New York-Presbyt. Hosp.*, 114 AD3d 615, 615 (1st Dep't 2014) (establishing that the "plaintiff[] b[ears] the burden of demonstrating the applicability of the relation-back doctrine").

Here, Decedent was diagnosed with mesothelioma between October 2016 and March 2017.[1] *See* Affirmation in Support of Plaintiff's Opposition to Defendant L'Oreal USA Products Inc.'s Motion to Dismiss ("Affirmation"), Exh. 1, Expert report of Dr. David Y. Zhang, dated August 26, 2020, at 2-3. Plaintiff now alleges that Defendant is liable in part for Decedent's mesothelioma because of Defendant's alleged ties to the Jean Nate talcum powder that exposed Decedent to asbestos and caused her mesothelioma. *See* Plaintiff's Memorandum of Law in Support of Opposition to Defendant L'Oreal USA Products, Inc.'s Motion to Dismiss Pursuant to CPLR 3211(a)(5) ("Opposition") at 4.

[1] The parties do not agree on the precise date of diagnosis: Plaintiff suggests that Decedent was diagnosed in October 2016 whereas Defendant suggests that Decedent was diagnosed before Decendent's death on March 28, 2017. *Compare* Opposition at 7 *with* [sic]emorandum of Law in Support of Defendant *L'Oreal USA, Inc.'s* Motion to Dismiss Plaintiff's Complaint on the Basis of CPLR § 3211(a)(5) and, in the Alternative, Based on the Equitable Doctrine of Laches ("Motion") at 2. Because this issue is not material to the Court's decision against Plaintiff, the Court need not decide the precise date between October 2016 and March 2017 on which Plaintiff was diagnosed.

Since Plaintiff alleges injuries from exposure to a substance with a latent effect (asbestos), Plaintiff had three years from the date of Decedent's mesothelioma diagnosis to sue Defendant. *See* CPLR § 214-c(2). Yet Plaintiff did not sue Defendant until 2024, long after expiration of the statute of limitations, so Plaintiff's claims against Defendant are untimely. *See generally* Second Amended Complaint, dated April 3, 2024. And neither equitable estoppel nor the relation-back doctrine saves Plaintiff's claims against Defendants.

As to equitable estoppel, Plaintiff has not shown any wrongdoing by Defendant. At best, Plaintiff has merely suggested that Defendant's story does not pass the smell test because Defendant has vague ties to corporate entities that in turn have ties to the defendants in this matter. *See* Opposition at 17-18. But such vague and far-removed ties do not amount to wrongdoing by Defendant, as the following review of the history of this case, including the relevant corporate transactions, makes clear.

In 1935, Charles of the Ritz allegedly introduced the Jean Nate product line. *See* Affirmation at 3; Opposition at 12. After several corporate transactions in the intervening decades, Yves Saint Laurent, S.A. ("YSL"), acquired Charles of the Ritz and the Jean Nate product line in 1986, and YSL agreed to indemnify the sellers for certain liabilities, including those related to the Jean Nate line. *See* Affirmation at 14; Affirmation, Exh. 57, Purchase agreement between Yves Saint Laurent S.A. and various sellers, dated November 17, 1986, at 16-17. In another corporate transaction, YSL, through Charles of the Ritz, transferred the Jean Nate line to Yves Saint Laurent International B.V. ("YSLI"). *See* Reply Memorandum of Law in Further Support of Defendant *L'Oreal USA, Inc.'s* Motion to Dismiss ("Reply") at 6; Affirmation, Exh. 64, USPTO assignment history of the Jean Nate trademark, at 1. Then, YSLI sold Jean Nate to Revlon, which agreed to indemnify the then sellers, along with the 1986

sellers, for Jean Nate liabilities. *See* Affirmation, Exh. 60, Purchase agreement between Revlon Group Incorporated and YSLI and other sellers, dated June 15, 1987, at 1, 3, 11-22. Revlon discontinued the Jean Nate line in 2016 and filed for bankruptcy in 2022. *See* Opposition at 13-14.

Plaintiff claims that Revlon's bankruptcy proceedings finally shed light on the underlying indemnification agreements and that the agreements shed light on "the true identity of … the responsible parties for the Jean Nate product" line and, thus, for Decedent's mesothelioma. Opposition at 18. One of the responsible parties exposed in the bankruptcy proceedings, according to Plaintiff, is Defendant. *See id.* Having "acquired YSL Beaute" ("YSLB") in 2008, Defendant allegedly was part of a cover-up with Revlon, YSL, and other entities to mitigate Jean Nate liabilities. *See* Opposition at 10, 13, 17.

Plaintiff's cover-up theory fails as to Defendant for two independent reasons. First, Plaintiff fails to show any specific wrongdoing that the bankruptcy proceedings shed light on. That Revlon agreed to indemnify YSLI, as well as prior owners of the Jean Nate brand, is no wrongdoing, as Plaintiff insinuates, *see* Opposition at 17, but rather a customary part of normal corporate transactions.

Second, even if Plaintiff had shown wrongdoing by Revlon and YSLI, Plaintiff has not shown how such hypothetical wrongdoing would legally implicate Defendant. Defendant has established that it is an entity separate and apart from YSLI (or Revlon), with the only connection being the purchase of YSLB. Plaintiff tries to lump YSLI and YSLB under the broader YSL umbrella to impute knowledge onto Defendant, based on Defendant's relationship to YSLB. *Compare* Opposition at 13 (noting that Defendant "acquire[d] YSL Beaute" in 2008) *with* Opposition at 10 (stating that Defendant "acquired YSL" in 2008). Such attenuated ties fail

to prove any "affirmative wrongdoing" by Defendant—or, indeed, by anyone related to Defendant, as there is no evidence that YSLB had any connection to the Jean Nate line other than having YSL in their name. *Putter*, 7 NY3d at 552, quoting *Zumpano*, 6 NY3d at 673 (internal quotation marks omitted). As such, Plaintiff's equitable estoppel arguments fails.

As to Plaintiff's relation-back-doctrine argument, Plaintiff has not shown that Defendant "is 'united in interest' with [any of] the original defendant[s]" such that Defendant "can be charged with … notice of the [original] action." *Buran*, 87 NY2d at 178 (quoting *Brock*, 83 AD2d at 69) (internal quotation marks omitted). Plaintiff argues, however, that Defendant is united in interest with the original defendants because "they all did or do hold liability for the asbestos-contaminated Jean Nate branded talcum powder line." *See* Opposition at 9. This argument fails for the same reasons that Plaintiff's collateral estoppel argument fails: Plaintiff has not shown that Defendant has any ties to any of the defendants in this case.

Defendant's lone, attenuated tie to this case is through YSLB, which was never a party to this action and is solely tied to this action through the broader YSL umbrella. Judgment against any of the original defendants does not "similarly affect" or implicate Defendant, so as to warrant a finding of unity of interest, *see Prudential Ins. Co. of Am. v Stone*, 270 NY 154, 159 (1936), because Defendant never had anything to do with the Jean Nate product line. As Defendant is a "new defendant [that] has been a complete stranger to the suit up to th[is] point … , the bar of the Statute of Limitations must be applied." *Duffy v Horton Mem. Hosp.*, 66 NY2d 473, 477 (1985). Thus, Plaintiff's relation-back argument fails.

For the reasons above, the Court must grant Defendant's motion to dismiss Plaintiff's complaint pursuant to CPLR § 3211(a)(5).[2]

[2] Arguing in the alternative to an outright denial of Defendant's Motion, Plaintiff asks the Court to at least stay the Motion and allow Plaintiff to conduct further discovery into Defendant's ties to the Jean Nate product line, pursuant

II. Sanctions

A court may impose sanctions on an attorney "who engages in frivolous conduct." Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1(a). Frivolous conduct includes the use of dilatory tactics, the use of meritless tactics, and lying. *See id.* § 130-1.1(c). As such examples exemplify, to warrant sanctions, a party must engage in "extreme behavior." *Hunts Point Term. Produce Coop. Assn., Inc. v New York City Economic Dev. Corp.*, 54 AD3d 296, 296 (1st Dep't 2008). In determining whether conduct is frivolous and, thus, whether to award sanctions, the court should carefully consider the context in which the conduct occurs. 22 NYCRR § 130-1.1(c).

In support of its motion for sanctions, Defendant argues that Plaintiff's counsel had documents (including purchase agreements, affidavits, and deposition testimony) that showed that Defendant had no ties to this case. *See* Reply at 11-13. In support of this argument, Defendant points out that Plaintiff's counsel did not oppose a 2020 decision absolving L'Oreal from any liability of Jean Nate by YSLA. *See id.* at 10. Whatever the reasons for Plaintiff not opposing YSLA's summary judgment motion then, at least one material fact is different now: Revlon went bankrupt in 2022. Plaintiff's counsel believes that Revlon's bankruptcy proceedings revealed information tying Defendant to this case. Although the Court disagrees with Plaintiff's counsel, the Court declines to find that, in suing Defendant, Plaintiff's counsel engaged in such "extreme behavior" as to warrant sanctions. *Hunts Point*, 54 AD3d at 296. Thus, Defendant's motion for sanctions against Plaintiff, pursuant to 22 NYCRR § 130-1.1(a), must be denied.

Accordingly, it is

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to CPLR § 3211(d). *See* Opposition at 15, 18-19. Given the "serious[] ... policy concerns" when a plaintiff tries to "add[] [a] new defendant[]" to an action after the statute of limitations period, *see Buran*, 87 NY2d at 178, coupled with the clear evidence that Defendant does not have ties to the Jean Nate product line, the Court declines to do so.

ORDERED that Defendant's motion to dismiss Plaintiff's complaint, pursuant to CPLR § 3211(a)(5), is granted and the complaint is dismissed as against such Defendant only, with costs and disbursements to said Defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said Defendant; and it is further

ORDERED that any and all cross-claims against said Defendant are dismissed, and the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Defendant shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the Court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the Court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that Defendant's motion for sanctions against Plaintiff, pursuant to 22 NYCRR § 130-1.1(a), is denied; and it is further

ORDERED that within 30 days of entry Defendant shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

3/31/2025
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE