

ARAMARK Corp., <i>et al.</i>	*	IN THE
Plaintiffs	*	CIRCUIT COURT
vs.	*	FOR
CSX Transportation, Inc., <i>et al.</i>	*	BALTIMORE CITY
Defendants	*	Case No.: 24-C-04-005368

* * * * *

MEMORANDUM OPINION

This suit is one of many actions that arises out of the derailment of CSX Train L41216 on July 18, 2001, in Baltimore City. ARAMARK filed this Complaint against CSX and the City of Baltimore on July 2, 2004. On August 18, 2004 CSX filed a Motion to Dismiss the Complaint of ARAMARK, or in the alternative, for Summary Judgment. On September 2, 2004 ARAMARK filed an Opposition and a Motion to Add Parties Plaintiff and on September 17, 2004 CSX filed an Opposition to ARAMARK’s Motion to Add Parties Plaintiff. A hearing was held on November 1, 2004 and for the reasons discussed below, the Court will grant CSX’s Motion to Dismiss and deny ARAMARK’s Motion to Add Parties.

DISCUSSION

CSX argues that ARAMARK is not eligible to bring suit in a Maryland court because ARAMARK is a foreign corporation doing business in Maryland that has not registered or qualified to do business in Maryland. A foreign corporation¹ must either “register” or “qualify” with the State Department of Assessments and Taxation (“SDAT”) before conducting any type of business in Maryland. Md. Code Ann., Corps. & Assns §§ 7-202, 7-

¹ Under Maryland law, a foreign corporation is defined as “a corporation, association, or joint-stock company organized under the laws of the United States, another state of the United States, a territory, possession or district of the United States, or a foreign company.” Md. Code Ann., Corps. & Assns § 1-101(1) (1999).

203 (1999).² A foreign corporation that is doing business in Maryland and fails to either “register” or “qualify” with the SDAT is precluded from maintaining a suit in any court in the State. *Id.* § 7-301. ARAMARK Corp. is a foreign corporation,³ and alleged in its Complaint that it was “in the business of concessions and catering at Camden Yards Baseball Stadium.” Compl. at ¶ 1. It did not allege, and it is not, registered or qualified with the SDAT. If that was the end of the story, ARAMARK clearly would not be eligible to file suit in a Maryland State court. But that is not the end of the story.

In its opposition to the motion and its Motion to Add Parties Plaintiffs, ARAMARK points out that its allegation that it was “in the business of concessions and catering at Camden Yards Baseball Stadium” is incorrect. ARAMARK does not do business in Maryland but its subsidiary, ARAMARK Sports and Entertainment Services, Inc. was at the time of the incident in question “in the business of concessions and catering at Camden Yards Baseball Stadium.” Factory Mutual Insurance Co. is the insurer of ARAMARK and its subsidiaries and has paid claims for the damages suffered by ARAMARK Sports and Entertainment Services, Inc. ARAMARK has moved to add ARAMARK Sports and Entertainment Services, Inc. and Factory Mutual Insurance Co. as parties.

CSX argues that the Court should disregard any allegation that ARAMARK does not do business in the State because the allegation that it did is a judicial admission: “Because

² A foreign corporation “qualifies” to do intrastate business in Maryland by certifying to the SDAT the address of the corporation and the name and address of its resident agent in Maryland. Md. Code Ann., Corps. & Assns §§ 7-203(a), 7-203(b). Similarly, a foreign corporation “registers” to do business in Maryland by providing the address of the corporation and the name and address of its resident agent to the SDAT.

³It is incorporated under the laws of Delaware with its principal office in Philadelphia, Pennsylvania.

ARAMARK has judicially admitted to doing business in Maryland and concedes that it has not registered or qualified with SDAT, ..., under Maryland law, ARAMARK is barred from pursuing its claims against CSX.” CSX argues further that because the original complaint is a nullity, ARAMARK may not add party plaintiffs after the statute of limitations has expired.

Judicial Admissions

Although CSX correctly cites the law that allegations in a complaint are a form of judicial admissions, its argument overlooks the provision of the rules that permits a plaintiff to amend its complaint. Maryland Rules are quite liberal in permitting a party to amend its complaint. *See* Rule 2-341(c) which provides “Amendments shall be freely allowed when justice so permits.” The scope of a permitted amendment is extremely broad:

An amendment may seek to (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change.

Id. When an amendment is made 15 days prior to the trial date, the burden is on the opposing party to show that the amendment should not be allowed. Rule 2-341(a). Thus, the Court rejects the argument that ARAMARK is prohibited from changing an incorrect allegation in its complaint.

Real Parties In Interest

ARAMARK argues that the Court must permit it to add ARAMARK Sports &

Entertainment Services, Inc. and Factory Mutual Insurance Company as plaintiffs because they are the real parties in interest and Rule 2-201 provides that “[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest.” CSX correctly notes that it has not moved to dismiss the complaint on this ground but on the grounds that ARAMARK could not file suit in a Maryland court.

Relation Back

The real argument between CSX and ARAMARK is whether an amendment adding new parties will relate back to the time the original complaint was filed. If it does not, the complaint is barred by the statute of limitations. Relying on *Stein v. Smith*, 358 Md. 670, 674 (2000), *Kitchen v. Himelfarb*, 254 Md. 372, 376 (1969), and *Atlantic Mill & Lumber Realty Co. V. Kreefer*, 179 Md. 496, 500 (1941), CSX argues that ARAMARK may not amend its complaint because under Maryland law it is a non-entity because it does business in the State and is not registered or qualified as required by Corps. & Assns § 7-301. In *Stein* and *Atlantic Mill & Lumber Realty Co.* suit was filed by a defunct corporation and the Court held that there was nothing to which an amended complaint could relate back. “The original mechanics’ lien, ..., was inoperative, null and void as the *petitioner was not in existence* and had no power to file the lien.” *Atlantic Mill & Lumber Realty Co.*, 179 Md. at 500 (emphasis added). Plaintiff could not escape “the statute of limitations by doing business and filing suit in the name of a defunct corporation.” *Stein*, 358 Md. at 684 (emphasis added).

In *Kitchen v. Himelfarb*, the bill of complaint in a mechanic’s lien case was dismissed *with prejudice* because the plaintiff was a Virginia corporation that was not “registered or

otherwise qualified to do business in Maryland.” 254 Md. at 374. *Eleven months* later the plaintiffs sought to amend the lien by substituting new plaintiffs. In upholding the trial court’s dismissal of the amended lien with prejudice, the appellate court stated:

We agree with the parties that *Atlantic* is dispositive of this case. The appellants may not take advantage of a 'lien' previously filed by a nonentity, and their attempted amendment of the mechanics' lien must be considered on its own merits. Since it was not filed until more than eleven months after the original mechanics' lien claim was filed, it is readily apparent that their attempted lien was not filed in compliance with Code (1968 Repl. Vol.), Article 63, Section 23, which requires that the claim be filed no later than six months after the claimant has furnished labor or materials.

254 Md. at 376. CSX argues that *Atlantic* is likewise dispositive of this case. ARAMARK argues that *Atlantic* does not apply because in *Atlantic* and *Stein* the original complaint was filed by a defunct corporation, a non-entity. In contrast, ARAMARK points out that it was and is a fully functioning and properly registered (in Delaware) corporation that does not do business in Maryland and thus was not required to register in Maryland in the first instance.

ARAMARK does not cite *Kitchen*, but this Court is not convinced that *Kitchen* requires dismissal of ARAMARK’s complaint. First, as noted above, ARAMARK in fact does not do business in Maryland and thus, unlike the corporation in *Kitchen* was authorized to file suit in a Maryland court. Second, in *Kitchen* the original lien was dismissed *with prejudice* and the new plaintiff waited over 11 months to file an amended lien. Under any view of the law that was too little, too late.

ARAMARK emphasizes two points that CSX does not address. The first is that it alleged in its complaint that it was filing suit “on its own behalf and as trustee and on behalf of others as their interests may appear.” The second related point is that ARAMARK Sports

and Entertainment Services, Inc. is one of its subsidiaries.⁴ ARAMARK argues, without citation to any authority⁵, that it is one of three real parties in interest who could have brought the suit, the other two being ARAMARK Sports and Entertainment Services, Inc. and its insurer.

The question of whether a corporation can file suit on behalf of its subsidiary was not briefed by either side. In the absence of any law suggesting that it cannot, this Court concludes that the motion to dismiss should be denied. In *Crowe v. Houseworth*, 272 Md. 481, 489 (1974), the Court held that a motion to add parties plaintiff was not barred by the statute of limitations where the interests of the new parties were identical to those of the original plaintiff, there was no change in substance, and the defendant was not prejudiced by the addition. Further, the Court stated that

when a defendant has had notice from the beginning that the plaintiff sets up and is trying to enforce a claim against it because of specified conduct, the reasons for the statute of limitations do not exist, and we are of the opinion that a liberal rule should be applied.

Id. at 489 (quoting *New York Central & H.R.R. Co. v. Kinney*, 260 U.S. 340, 346 (1922)).

As noted above, ARAMARK alleged that it was suing “on its own behalf and as trustee and on behalf of others as their interests may appear,” thus CSX was on notice that other party’s might be involved. More importantly, CSX has been on “notice from the beginning” that the

⁴In *Kitchen* there was nothing to indicate the relationship, if any, between the original Virginia corporation and the new plaintiff.

⁵ARAMARK cites two subrogation cases, *South Down Liquors, Inc. v. Hayes*, 323 Md. 4, 7 (1991) and *Bacon & Associates v. Rolly Tasker Sails (Thailand) Co.*, 154 Md. App. 617 (2003), that are inapposite as there is no claim of subrogation in the instant case.

plaintiff “is trying to enforce a claim against it” for the train derailment and fire that occurred on July 18, 2001, thus “the reasons for the statute of limitations do not exist.” Adding these parties does not change the theory of liability.

CONCLUSION

For the foregoing reasons, the Court will deny the Motion to Dismiss and grant the Motion to Add Parties Plaintiff.

Date: November 12, 2004

JUDGE EVELYN OMEGA CANNON

cc: David Skeen, Attorney for Plaintiff
Richard Magid, Attorney for Defendant

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