

Court of Appeals, State of Michigan

ORDER

Damond Pryor v Allstate Insurance Company

Docket No. 336233

LC No. 15-016595-NF

Cynthia Diane Stephens
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the trial court's November 30, 2016 order denying the motion for summary disposition is REVERSED. The trial court's order granting leave to amend the pleadings did not retroactively render the amended complaint filed on May 11, 2016, timely. See *Moore v Flower*, 121 Mich App 235, 237; 329 NW2d 35 (1982) (explaining that an action against an additional party commences when the complaint is filed against that party, not when the order is entered permitting the filing of a complaint against an additional party). Further, neither George Ezra nor Sierra Automotive is a necessary party whose presence is essential to the resolution of this case. See *Graham v Foster*, 311 Mich App 139, 145; 874 NW2d 355 (2015) (holding that if a plaintiff adds a party to an otherwise timely filed suit after the limitations period has expired, the claim against the new party is untimely unless the party to be added is a necessary party); see also *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 96-97; 535 NW2d 529 (1995) (a necessary party is one whose presence is essential "to a determination of the rights and obligations between plaintiffs and [the parties already in the lawsuit]" or is essential "to permit the court to render complete relief."). Accordingly, where plaintiff failed to obtain leave to file an amended pleading before May 12, 2016, MCR 2.118(A)(2), and where he otherwise filed his newly amended complaint three days after the trial court subsequently granted leave, the amended complaint filed on May 23, 2016 is untimely, MCL 600.5805(10). Summary disposition should have been granted.

The motion for stay is DENIED.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 11 2017

Date


Chief Clerk