

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TANYA J. TERRY,

Plaintiff-Appellant,

v

TRI CITY FOODS, INC., d/b/a PIZZA HUT,

Defendant-Appellee.

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UNPUBLISHED  
February 28, 2006

No. 257095  
Ingham Circuit Court  
LC No. 04-000004-NO

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

In this slip and fall case, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff alleges that, on January 5, 2001, after patronizing a Pizza Hut in Lansing, she fell in the parking lot while returning to her car. On January 2, 2004, just days before expiration of the statute of limitations, MCL 600.5805(10), she filed a premises liability claim, naming as defendants YUM Corporation and Ted Swan. According to plaintiff, while trying to complete service of process, she discovered that Pizza Hut in fact was a constituent of Tri City Foods, not YUM Corporation. On March 11, 2004, plaintiff filed an amended complaint that made no mention of Swan, and named Tri City Foods, doing business as Pizza Hut, as the only defendant.

Defendant insists that the original summons and complaint were never served on YUM Corporation, Swan, or any agent of the Lansing establishment where plaintiff allegedly fell, and plaintiff nowhere suggests otherwise. In an affidavit, defendant's president, Theodore Swan, asserted that the first notification that the corporation received of the action "was the receipt of the Summons and Complaint in mid-March 2004." Swan added that neither he nor defendant were "officers, directors, or shareholders of YUM Corporation, and that defendant did not share an address or corporate premises with YUM Corporation.

Defendant sought summary disposition on the ground that plaintiff's first amended complaint brought it into the case after the applicable limitations period had expired. The trial court granted the motion under MCR 2.116(C)(7), observing that "Plaintiff does not provide any evidence that service was effectuated on any party as a result of the filing of the original complaint," and opining that "this does not appear to be a case where the correct party was

served but under the wrong name, but, rather, a situation where the lawsuit was started and it was not served and an amendment after the statute of limitations had expired was filed naming a new party Defendant.”

We review a trial court’s decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). When deciding a motion under MCR 2.116(C)(7), the court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999).

“Although an amendment generally relates back to the date of the original filing if the new claim asserted arises out of the conduct, transaction, or occurrence set forth in the original pleading, the relation-back doctrine does not extend to the addition of new parties.” *Employers Mut Cas Co v Petroleum Equip, Inc*, 190 Mich App 57, 63; 475 NW2d 418 (1991), citing MCR 2.118(D). However, “[a]n . . . additional defendant may be brought in after the expiration of the statute of limitations where the new party is a necessary party, . . . or where the amendment merely corrects a defect in the original proceeding.” *Amer v Clarence A Durbin Assoc*, 87 Mich App 62, 65; 273 NW2d 588 (1978) (internal quotation marks and citations omitted).

Plaintiff’s characterization of her first amended complaint as merely correcting the name of the business entity behind Pizza Hut, as opposed to introducing a new party, is a strained one. Her original complaint names “YUM CORPORATION, located at 6200 South Cedar, Lansing, Ingham County, Michigan, a Michigan Corporation,” but the amended complaint names “TRI CITY FOODS, INC., a Foreign Corporation, located at 150 North Oliver, Wichita, Kansas.” Plaintiff’s descriptions themselves thus indicate contemplation of decidedly distinct entities.

To determine whether service of process on one corporate defendant is sufficient to toll the statute of limitation as to another, a court should consider:

(1) whether service was had upon one who was a proper representative of both corporations; (2) whether the corporations share the same legal address; (3) whether the corporations are in the same general business; (4) whether the corporations have most of the same officers; (5) whether the corporations are represented by the same law firm; and (6) whether the officers of the corporations which plaintiff is seeking to add were clearly informed of facts which would indicate which entity plaintiff intended to sue. [*Cobb v Mid-Continent Tel Service Corp*, 90 Mich App 349, 354; 282 NW2d 317 (1979), citing *Wells v Detroit News, Inc*, 360 Mich 634, 639; 104 NW2d 767 (1960).]

In this case, plaintiff points to no evidence giving her the advantage in connection with any of these factors, leaving unchallenged Swan’s affidavit refuting several of the factors.

Plaintiff also cites MCR 2.205 for purposes of characterizing defendant as a necessary party who thus may be brought into the case after expiration of the statute of limitations, but this argument is also strained. That rule provides that “persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with

their respective interests.” That the premises owner is a necessary party in a premises liability case is obvious. But MCR 2.205 clearly envisions the joinder of additional parties to litigation already in progress. In this case, defendant stands as the only defendant, and so was not joined for purposes of this rule. Moreover, if the recognition in *Amer, supra*, that a necessary party may be joined after the statute of limitations has run extended to the mere *naming* of defendants with the commencement of action, then the statute of limitations would be a nullity.

For these reasons, we conclude that the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey