



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 23, 2018

LETTER OPINION

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Counsel for the Plaintiff

Janet W. Cochran, Esq.
Allstate Insurance Co Staff Counsel
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Counsel for the Defendant

Re: *Patricia Sparks vs. Eddy Lucas*, Case No: CL-2017-5282

Dear Counsel:

Before the Court is the Defendant's Plea in Bar. For the reasons stated herein, the Plea in Bar is sustained, and the case will be dismissed with prejudice.

FACTUAL BACKGROUND

On April 4, 2014, the Plaintiff and the Defendant were in a car accident. According to the Amended Complaint, the Plaintiff was stopped at a red light when her car was struck from behind by the Defendant. Plaintiff testified that after the accident she spoke to the Defendant. The Plaintiff testified at the evidentiary hearing on the instant Plea in Bar that the Defendant told her that his name was "Jose Vasquez," that he did not have his driver's license or insurance card with him, that he was insured with Allstate, and that his mother, who he correctly identified as Rosalba Vasquez, held the policy. Hr'g Tr. 47 (02/15/18); see also 93. In contrast, the

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Defendant testified at a deposition that he did, in fact, show the Plaintiff his driver's license and insurance card, and that he did not know a person named "Jose Vasquez." Def.'s Trial Ex. 6.

On March 30, 2016, four days before the statute of limitations was due to expire, the Plaintiff, by her initial counsel, filed a Complaint against "Jose Vasquez." Pl.'s Trial Ex. 1; Def.'s Trial Ex. 3. That complaint was not served. Allstate did not become aware of the Complaint until May 24, 2016. Hr'g Tr. 28 (02/15/18).

On October 13, 2016, the Complaint was non-suited. Pl.'s Trial Ex. 2.

On April 11, 2017, the Plaintiff, *pro se*, filed a new Complaint, styled "Patricia Sparks v. Jose Vasquez, AKA: John Doe." Pl.'s Trial Ex. 5; Def.'s Trial Ex. 4. That Complaint was not served.

On May 5, 2017, after retaining new counsel, Plaintiff filed a Motion for Leave to Amend the Complaint, along with an Amended Complaint. That Amended Complaint was styled "PATRICIA SPARKS Nee PATRICIA DEJAMES v. EDDY LUCAS, aka JOHN DOE, aka JOSE VASQUEZ." Pl.'s Trial Ex. 6; Def.'s Trial Ex. 5.

On May 12, 2017, the Court authorized the filing of the Amended Complaint.

On June 8, 2017, the Defendant was served with the Amended Complaint. There is no evidence before the Court to indicate that the Defendant was aware of the lawsuit prior to being served with the Amended Complaint. Def.'s Trial Ex. 6.

On June 27, 2017, the Defendant filed the instant Plea in Bar, alleging that the lawsuit was not timely filed within two years of the accident, pursuant to Virginia Code § 8.01-243.

The Plea in Bar came before the Court on February 15, 2018 for an evidentiary hearing. A portion of the Plea in Bar was resolved at the February 15th hearing, but the remainder was continued for further briefing. The parties each filed a supplemental brief, and the matter is now ripe for a final decision on the Plea in Bar.

THE PLEA IN BAR

The Plea in Bar is based on the assertion that the first Complaint that actually named Eddy Lucas as the Defendant was filed on May 5, 2017, well beyond the two year statute of limitations. There is no question that: (1) the pertinent statute of limitations is two years; see VA Code Ann. § 8.01-243(A); (2) the accident occurred on April 4, 2014; (3) the Amended Complaint that first correctly named the Defendant was filed on May 5, 2017, along with a Motion for Leave to Amend the Complaint, which was granted on May 12, 2017.

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The Plaintiff makes two arguments against the Plea in Bar. First, Plaintiff argues that Virginia Code § 8.01-6 authorizes the late filing of the Amended Complaint. Second, Plaintiff argues that Virginia Code § 8.01-229(D) provides an alternative justification for the late filing.

1. VIRGINIA CODE § 8.01-6

Virginia Code § 8.01-6 reads as follows:

A misnomer in any pleading may, on the motion of any party, and on affidavit of the right name, be amended by inserting the right name. An amendment changing the party against whom a claim is asserted, whether to correct a misnomer or otherwise, relates back to the date of the original pleading if (i) the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, (ii) within the limitations period prescribed for commencing the action against the party to be brought in by the amendment, that party or its agent received notice of the institution of the action, (iii) that party will not be prejudiced in maintaining a defense on the merits, and (iv) that party knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

VA Code Ann. § 8.01-6.

At the hearing on February 15, 2018, the Court found Ms. Sparks to be credible with respect to her claim that Mr. Lucas told her his name was Jose Vasquez. This finding is contested by the Defendant. The Court also found that the first two lawsuits, which were filed against "Jose Vasquez," were misnomers. In other words, the Court found that Ms. Sparks sued the right person in the wrong name. This finding is also contested by the Defendant.

Based on these two findings, an Amended Complaint would relate back to the date of the original pleading if, and only if, each of the four criteria listed in the statute applies. The Court finds, however, that criteria (ii) has not been satisfied. That provision requires the Plaintiff to establish that "within the limitations period prescribed for commencing the action against the party to be brought in by the amendment, that party or its agent received notice of the institution of the action." VA Code Ann. § 8.01-229(D). The "limitations period prescribed for commencing the action" was two years from the date of the accident, i.e., by April 4, 2016. No evidence was presented that Mr. Lucas received notice of the Complaint within two years of this date. To the contrary, the uncontradicted evidence is that Mr. Lucas did not learn of the lawsuit until 2017. Given that the Plaintiff does not satisfy criteria (ii), the "relation back" provisions of Virginia Code § 8.01-6 do not apply in the instant case.

2. VIRGINIA CODE § 8.01-229(D)

Virginia Code § 8.01-229(D) reads as follows:

When the filing of an action is obstructed by a defendant's (i) filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United States Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action, then the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought.

VA Code Ann. § 8.01-229(D).

The Plaintiff asserts that the Defendant—by giving Ms. Sparks the name "Jose Vasquez" instead of his true name—used a "direct or indirect means to obstruct the filing of an action." The Court recognizes that the Defendant contests that he gave the Plaintiff a false name, and therefore asserts that this provision could not be applicable to the instant case. Having found, however, that Ms. Sparks was credible on the "Jose Vasquez" issue, the Court will reach the applicability of Virginia Code § 8.01-229(D). For the reasons stated below, the Court finds that the Plaintiff has not carried her burden of proof that the requirements of Virginia Code § 8.01-229(D) have been met.

The Plaintiff relies on one act in support of her claim, i.e., that the Defendant gave her a false name, Jose Vasquez. There is, however, compelling other evidence that this was not intended to "obstruct the filing of an action."

First, it is uncontested that the Defendant gave the Plaintiff the true name of his mother, Rosalba Vasquez, and the true name of her insurance company, Allstate. Ms. Sparks' testimony on this issue is as follows: When she asked the Defendant who insured him, he answered "I am insured by Allstate, and my mother holds the policy, Rosalba Vasquez." Hr'g Tr. 47 (02/15/18). Thus, the Defendant gave the true name of his insurance company; he gave the true name of the policyholder; and, significantly, he gave his true familial relationship to the policyholder. In other words, the Defendant provided the Plaintiff accurate and truthful information that would lead directly back to himself, conduct inimical to a goal of obstructing the filing of an action.

Second, the Defendant's insurer, Allstate, repeatedly sought to engage with Ms. Sparks. The Allstate claims adjuster, Ms. Jackson, called Ms. Sparks three times. See Hr'g Tr. 27 (02/15/18). The first call was substantive in nature. See id. As to the second and third call, Ms. Jackson testified that when she identified herself, Ms. Sparks hung up. See id. at 27-28. Allstate also wrote Ms. Sparks' counsel. In a January 20, 2016 letter, which Plaintiff's counsel attached to his Opposition to Defendant's Plea in Bar, Allstate sought additional information regarding Ms. Sparks' "treatment, recovery and demand package." Opp'n to Def.'s Plea in Bar, Pl.'s Ex. 1. In addition, at some point subsequent to the accident, Allstate paid for repairs on Ms. Sparks'

vehicle, both for the initial estimate (\$589), and a supplement (around \$150). Hr'g Tr. 36-37 (02/15/18). Thus, this is not a situation where a Defendant and his insurance company were engaging in a scheme, or a course of conduct, to hide their involvement in, or responsibility for, an accident.

Under all these circumstances, and given that it is Plaintiff who has the burden of proving the obstruction, the Court finds that the requirements of Virginia Code § 8.01-229(D) have not been met. The case upon which the Plaintiff relies, Newman v. Walker, 270 Va. 291 (2005), is not helpful to the Plaintiff because its facts are in stark contrast to the instant case. In Newman, the defendant stole the identification of an individual by the name of Kareem Brooks, took a company vehicle without permission, and then falsely told police at the scene of an accident that he was Kareem Brooks. By contrast, in the instant case, it is undisputed that the Defendant gave the Plaintiff true information regarding his mother, Rosalba Vasquez, and her insurance company, Allstate, and identified his familial relationship to Ms. Vasquez.

Finally, it must be emphasized that the Virginia Supreme Court in Newman made clear that it is not enough for a court to find that a driver gave a false name. The Plaintiff must also prove that the misidentification was "designed or intended, directly or indirectly, to obstruct" the filing of the action. 270 Va. at 298, quoting Grimes v. Suzukawa, 262 Va. 330, 332 (2001). The facts before the Court do not support such a finding.

THEREFORE, the Court finds that the Plea in Bar must be sustained and, therefore, the Amended Complaint must be dismissed with prejudice.

Defense counsel shall prepare an order in accordance with this opinion, provide it to Plaintiff's counsel for review and to note his objections, and submit it to the Court within fourteen (14) calendar days.

Sincerely,

A black rectangular redaction box covering the signature of Randy I. Bellows.

Randy I. Bellows
Circuit Court Judge

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