IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

SELANDER GATES OWENS,

Plaintiff-Appellee,

Vs.

ADAM'S MARK HOTELS, INC., MEMPHIS, et al,

Defendant-Appellant.

FROM THE SHELBY COUNTY CHANCERY COURT, No. 102843-1
THE HONORABLE NEAL SMALL, CHANCELLOR

C.A. No. 02A01-9409-CH-00221
VACATED AND DISMISSED

Alan Bryant Chambers of Memphis, For Appellee

J. Edward Wise, John W. Simmons of Memphis, For Appellant

MEMORANDUM OPINION[1]

CRAWFORD, J.

This case is before the Court pursuant to T.R.A.P. 9. Defendants, Adam's Mark Hotels, Inc. (Adam's Mark) and Seven Seventeen HB Memphis Corporation (Seven Seventeen), appeal from the order of the trial court that denied a motion to dismiss and allowed plaintiff, Selander Gates Owens, to amend her complaint to add Seven Seventeen as a party.

On May 14, 1993, Plaintiff filed a complaint against Adam's Mark and Eric Ohlsson, personally and in his capacity as Director of Personnel Services.[2] On May 21, 1993, process was served on Barbara Dillon, Director of Human Resources for Seven Seventeen, the corporation that owns and manages the Adam's Mark.

Plaintiff's complaint alleges that she worked at the Adam's Mark and its predecessors from 1975 until May 14, 1992, when she was terminated. Plaintiff, who is an African-American female, was told that her position, Communications Manager, was being eliminated. At the time of her discharge, Plaintiff requested a position as an hourly communications employee; which include the PBX Manager, PBX Supervisor, Chief Operator, and Service Operator, but was told

---

[1]Rules of the Court of Appeals, Rule 10(b): MEMORANDUM OPINION. The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

[2]Mr. Ohlsson was never served and is not a party to the present appeal.

by Mr. Ohlsson that any such position was being eliminated and that all PBX employees would be managed by the front desk. On July 31, 1992, Jacquie Smith, a European-American female, was promoted to PBX Supervisor. Plaintiff was never told of the opening.

The complaint avers that Adam's Mark discharged Plaintiff in violation of T.C.A. §§ 4-21-401 and 4-21-311, and that the defendants:

> [D]iscriminated against her with respect to compensation, terms, conditions, and privileges of employment, and further limited and classified her in a way that deprived her of individual employment opportunities, all of which was based upon race and sex.

Plaintiff further alleges that, as a result of defendants' actions, plaintiff has suffered "great mental anguish, has lost her employment, wages and benefits of employment, and her good name."

On June 21, 1993, Adam's Mark filed a motion to dismiss, stating that on May 14, 1992, and at all times thereafter, the owner and manager of the entity known as the Adam's Mark was Seven Seventeen. The motion avers that no entity named Adam's Mark has ever owned or managed the hotel, that the court lacks jurisdiction over the person of Adam's Mark, and that process and service of process are insufficient as to Adam's Mark. Finally, the motion contends that Seven Seventeen is a necessary and indispensable party whom plaintiff failed to join.

In her reply to the motion to dismiss, plaintiff states that she exercised due diligence in determining the true owner of the Adam's Mark. Plaintiff avers that employees of the hotel told her attorneys that the Adam's Mark was owned by the Adam's Mark Hotel, Inc., Memphis, 939 Ridgelake Boulevard, Memphis, Tennessee. Plaintiff further avers that her complaint alleges that the Adam's Mark is or was a subsidiary of HBE Corporation, and that Seven Seventeen is most likely a successor corporation of HBE.

The trial court denied defendants' motion to dismiss and ordered that plaintiff's complaint be amended to reflect Seven Seventeen as an additional party defendant. The defendants thereafter filed a motion for reconsideration or, in the alternative, for permission for an interlocutory appeal. The court denied defendants' motion for reconsideration, but granted permission for an interlocutory appeal. By order entered October 13, 1994, this Court granted an interlocutory appeal.

Appellants present two issues on appeal, the first of which, as stated in appellants' brief,

is:

> Whether the trial court erred by not dismissing Adam's Mark Hotel, Inc., the original named defendant, as the record reflects there is no such corporation and no such entity was involved in the decision of which Owens complains.

It is undisputed in the record that Adam's Mark was and is not a legal entity. Judgements against a non-entity are void. ***McLean v. Chanabery,*** 5 Tenn. App. 276, 279 (1926).

Appellants' second issue on appeal, as stated in appellants' brief, is:

> Whether the trial court erred by adding Seven Seventeen as a party defendant and thereafter refusing to dismiss Seven Seventeen, as the record reflects Owens' claim against Seven Seventeen is barred by the applicable statute of limitations, Tenn. Code Ann. §28-3-102 or §4-21-311.

Claims brought pursuant to the Federal Civil Rights statute as well as the Tennessee Human Rights Act, T.C.A. § 4-21-101 *et seq.*, are governed by the one year statute of limitations contained in T.C.A. § 28-3-104 (Supp. 1995). ***Bennett v. Steiner-Liff Iron and Metal Co.***, 826 S.W.2d 119, 121 (Tenn. 1992). The statute of limitations begins to run on the day the discharge decision is made and communicated. ***Webster v. Tennessee Bd. of Regents***, 902 S.W.2d 412, 414 (Tenn.App. 1995). A party may amend its original complaint to add additional parties; however, the amendment only relates back to the date of the original pleading, for statute of limitations purposes, if:

> [W]ithin the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a misnomer or other similar mistake concerning the identity of the proper party, the action would have been brought against him. Except as above specified, nothing in this rule shall be construed to extend any period of limitations governing the time in which any action may be brought.

Tenn.R.Civ.P. 15.03 (1994).[3]

---

[3]We note that, since the time an interlocutory appeal was granted in this matter, Tennessee Rule of Civil Procedure 15.03 has been amended. As amended, the rule provides that an amendment shall relate back if the other conditions of Rule 15.03 are satisfied and the new party is added "within the period provided by law for commencing an action *or within 120 days after commencement of the action.*" Tenn.R.Civ.P. 15.03 (1995). (Emphasis added.) However, the advisory comments to the rule state that the amendment shall be effective July 1, 1995. Under the Tennessee Constitution, Article I, § 20 "no retrospective law, or law impairing the obligations of contracts, shall be made." A retrospective law is one which takes away or impairs vested rights acquired under existing laws. ***Morris v. Gross***, 572 S.W.2d 902, 907 (Tenn. 1978). A party has a vested right in the defense that the

In ***Allen v. River Edge Motor Lodge***, 861 S.W.2d 364 (Tenn. App. 1993), the Eastern Section of this Court considered a case with issues similar to the case at bar. In ***Allen***, the plaintiff fell from a balcony at the River Edge Motor Lodge (Lodge) on June 16, 1990, and subsequently filed a complaint for personal injuries, naming the Lodge as defendant. A clerk at the Lodge accepted service of process on June 18, 1991, just over one year from the date of the accident. The defendant filed an answer which revealed that Booth Enterprises, Inc., owned the Lodge. The trial court dismissed plaintiff's suit, based on the fact that the proper defendant did not receive notice of the lawsuit within the applicable statute of limitations period. ***Id***. at 364. In affirming the trial court's decision, the Court of Appeals stated:

> The clear language of Rule 15.03, the Committee comment to the Rule and applicable cases, establish that a party sought to be added by amendment must receive notice of the lawsuit before the limitation period expires, in order for the amendment to relate back to the filing of the complaint.
>
> * * *
>
> [F]or purposes of Rule 15.03 'notice' means notice that a lawsuit has been filed, not awareness of the underlying incident. ***Id***. at 365 (citing ***Smith v. Southeastern Properties, Ltd.,*** 776 S.W.2d 106 (Tenn. App. 1989)).

Id. at 365. Similarly, in ***Duke v. Replogle Enterprises,*** 891 S.W.2d 205 (Tenn. 1994), the Supreme Court stated that a complaint which is timely filed but fails to correctly name the defendant by its legal name, and is served on the defendant after the statute of limitations has run, will not relate back under Tenn.R.Civ.P. 15.03. ***Id***. at 206. The court stated:

> As Rule 15.03 now stands, had the service of process on Nathan Replogle [the defendant] been ***served*** before the expiration of statutory limitations, the plaintiff's amendment to add the proper party-defendant would have related back to the date of the original complaint and the cause would not have been time barred.

Id. at 207.

Service was effected on Seven Seventeen more than one year after the alleged discrimination occurred. There is no indication that Seven Seventeen had notice of plaintiff's suit prior to May 21, 1993. Plaintiff's failure to effect service on the proper defendant prior to the

---

statute of limitations has expired. ***Ford Motor Co. v. Moulton***, 511 S.W.2d 690, 695-97 (Tenn. 1974). Thus, we decline to apply Tenn.R.Civ.P. 15.03 retroactively in the instant case.

expiration of the statute of limitations; May 14, 1993, prevents relation back of the amended complaint under Tenn.R.Civ.P. 15.03. ***Duke***, 891 S.W.2d at 204-05; ***Allen***, 861 S.W.2d at 365-66.

For the reasons stated herein, we hold that plaintiff's cause of action against Adam's Mark is dismissed for failure to name a legal entity, and plaintiff's cause of action against Seven Seventeen is barred by the statute of limitations. T.C.A. § 28-3-104. Accordingly, the order of the trial court is vacated, and plaintiff's suit is dismissed. Costs of appeal are assessed against the Appellant.

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

DAVID R. FARMER, JUDGE

HEWITT P. TOMLIN, JR.
SENIOR JUDGE