

D. N. X06 UWY-CV14-6025333-S : SUPERIOR COURT/CLD  
ROBIN SHERWOOD, ET AL : J.D. OF WATERBURY  
V. : AT WATERBURY  
STAMFORD HOSPITAL : NOVEMBER 10, 2016

RE: REQUEST TO AMEND, DN 167, OBJECTION, DN 180, REPLY, DN 181

Plaintiffs' August 13, 2014 one count Complaint alleges only a cause of action sounding in product liability, CPLA – C.G.S. 52-572m, et seq., against the defendant. Negligence<sup>1</sup>, breach of implied and express warranty<sup>2</sup>, recklessness<sup>3</sup>, and misrepresentation – innocent, negligent, and intentional<sup>4</sup> are specifically alleged within the original CPLA cause of action. Civil conspiracy, lack of informed consent, and CUTPA causes of action are not mentioned by name within the original CPLA cause of action.

Plaintiffs' September 23, 2016 Amended Complaint contains eleven (11) counts: CPLA, negligence<sup>5</sup>, breaches of implied and express warranty<sup>6</sup>, recklessness<sup>7</sup>, misrepresentation – innocent, negligent, and intentional<sup>8</sup> are specifically alleged within the original CPLA cause of action, while civil conspiracy, lack of informed consent, and CUTPA<sup>9</sup> are not mentioned in the original complaint.

Stamford timely objects, DN 180, to the Amended Complaint because: 1) all claims, other than CPLA, are barred by the exclusivity provision of the Connecticut Products Liability Act

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<sup>1</sup> ¶s 69-70

<sup>2</sup> ¶ 63-68

<sup>3</sup> ¶ 71-72

<sup>4</sup> ¶ 74-78

<sup>5</sup> Second Count

<sup>6</sup> Third and Fourth Counts

<sup>7</sup> Fifth Count

<sup>8</sup> Eighth, Ninth, & Tenth Counts

<sup>9</sup> Sixth, Seventh, & Eleventh Counts

("CPLA") C.G.S. 52-572m *et seq.*; 2) the Amended Complaint contains new allegations barred by the Statute of Limitations; and 3) unfairly prejudice caused by the lateness of the amendment.

Plaintiffs' Reply, DN 181, cites substantial and recent appellate precedent for liberally permitting amendments to pleadings<sup>10</sup> and that the Amended Complaint adds no new factual allegations to the original complaint hence the 'relation-back doctrine'<sup>11</sup> operates when applying the applicable limitations of actions statute. Last, plaintiffs argue that as they add no new facts and only press new theories of recovery from common nucleus of facts, defendants are not prejudiced by the timing of the proposed Amended Complaint.

#### Legal Standard:

Practice Book §§ 10-59 to 10-67 and General Statutes §§ 52-128 to 52-138 address amendments to pleadings. Section 10-60 (b) provides: "The judicial authority may restrain such amendments so far as may be necessary to compel the parties to join issue in a reasonable time for trial. If the amendment occasions delay in the trial or inconvenience to the other party, the judicial authority may award costs in its discretion in favor of the other party. . . ." See also General Statutes § 52-130.

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<sup>10</sup> "Connecticut Courts have consistently held that "unless there is a sound reason, refusal to allow an amendment is an abuse of discretion". *Esposito v. Presnick*, 15 Conn. App. 654, 660 (1988)(quoting *Tedesco v. Julius C. Pagano, Inc.*, 182 Conn. 339, 341 (1980)(emphasis added); see also *Falby v. Zarembski*, 221 Conn. 14, 24-26 (1992)(abuse of discretion to deny permission to amend complaint absent "some sound reason"); *Cook v. Lawlor*, 139 Conn. 68, 71-72 (1952); *Clayton v. Clayton*, 115 Conn. 683, 686 (1932).

"In the interest of justice, our courts have generally been most liberal in allowing amendments." *Moore v. Sergi*, 38 Conn. App. 829, 835 (1995). Connecticut Courts have consistently held that "unless there is a sound reason, refusal to allow an amendment is an abuse of discretion." *Esposito v. Presnick*, 15 Conn. App. 654, 660 (1988)(quoting *Tedesco v. Julius C. Pagano, Inc.*, 182 Conn. 339, 341 (1980)(emphasis added); see also *Falby v. Zarembski*, 221 Conn. 14, 24-26 (1992)(abuse of discretion to deny permission to amend complaint absent "some sound reason")." Reply, DN 181, p. 2

<sup>11</sup> "Our relation back doctrine provides that an amendment relates back when the original complaint has given the party fair notice that a claim is being asserted stemming from a particular transaction or occurrence, thereby serving the objectives of our statute of limitations, namely, to protect parties from having to defend against stale claims.... To relate back to an earlier complaint, the amendment must arise from a single group of facts.... *Briere v. Greater Hartford Orthopedic Group, P.C.*, 158 Conn. App. 66, 74 (2015) ... "[I]f the alternate theory of liability may be supported by the original factual allegations, then the mere fact that the amendment adds a new theory of liability is not a bar to the application of the relation back doctrine." *Id.*, 82.

“While our courts have been liberal in permitting amendments . . . this liberality has limitations. Amendments should be made seasonably. Factors to be considered in passing on a motion to amend are the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment. . . .” (Internal quotation marks omitted.) *Intercity Development, LLC v. Andrade*, 286 Conn. 177, 190, 942 A.2d 1028 (2008). “Our courts have followed a liberal policy relative to permitting amendments to pleadings after the expiration of the time during which, under § 7852, amendments may be filed as a matter of right. Practice Book §§ 93, 94, 95. The essential tests are whether the ruling of the court will work an injustice to either the plaintiff or the defendant and whether the granting of the motion will unduly delay a trial. *Cook v. Lawlor*, supra, 139 Conn. 72, 90 A.2d 166.” *Smith v. City of New Haven*, 144 Conn. 126, 132 (1956).

A ruling on a motion to amend the pleading should not be a vehicle to decide an issue of law. *Beckenstein v Reid & Reige, P.C.*, 113 Conn. App. 428 (2009), *Rizzuto v Davidson Ladders, Inc.*, 280 Conn 225 (2006).

#### Discussion:

The amendment, though late, is permitted. The court does not find that delay or prejudice will result from the amendment.

The trial is scheduled for January 2017, nearly four months after the proposed Amended Complaint, and, as no new facts are alleged in the Amended Complaint as compared with the original Complaint, the defendant has not established that prejudice will result from the new labeling of causes of action previously incorporated in the CPLA nor has defendant asserted a factual basis to support alleged prejudice.

Stamford claims that plaintiff apparently has no expert witnesses to support their newly alleged causes of action but, plaintiffs’ late filing precludes Stamford from filing dispositive motions thereby prejudicing Stamford. Yet, Stamford has not sought either an extension of time within which to file dispositive motions or a continuance of the trial. Assuming arguendo that Stamford

is correct: plaintiffs need expert testimony, have none, and Stamford seeks permission to file dispositive motions, the court is inclined to provide Stamford relief.

Access to courts is a fundamental right of citizens. This court declines to foreclose plaintiffs' rights in a case alleging serious harm has been suffered based upon unsupported allegations of prejudice arising from tardiness of amending the pleading. The rights of the defendant can be adequately protected if counsel seeks relief.

The court declines to address other substantive rights of the parties in a ruling on a request for permission to amend and an objection thereto. Parties have a right to adequately brief the substantive issues and preserve the record for appellate review.

Wherefore, the Objection is overruled.