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Guess Who's Back? Recent Application of the Relation Back Doctrine Under New York Law

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Usually, if a litigant seeks to assert a new claim against a new party in a lawsuit that is already underway, it can only do so if the claim it seeks to assert against that new party is timely. Under certain circumstances, however, the "relation back" doctrine enables the addition of a party mistakenly omitted from an initial pleading—even after the expiration of the statute of limitations. But what constitutes an acceptable mistaken omission?

A recent New York Court of Appeals decision, *Nemeth v. K-Tooling*, No. 48, 2023 NY Slip Op 05349 (N.Y. Oct. 24, 2023), brings some clarity to that question and moves the relation back doctrine under New York law closer to the tenets of Rule 15(c) of the Federal Rules of Civil Procedure.

As a general matter, to utilize the relation back doctrine under New York law, a plaintiff must demonstrate that "(1) both claims arose out of the same conduct, transaction or occurrence, (2) the new party is 'united in interest' with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well." *Buran v. Coupal*, 87 N.Y.2d 173, 178 (1995) (citation omitted); CPLR §203(c) (modeled after Fed. R. Civ. P. 15(c)).

With respect to prong three in particular, prior to *Nemeth*, courts were more permissive in applying the doctrine to a mistake of fact (e.g., not knowing the correct name or identity of an entity) rather than a mistake of law (e.g., not knowing that inclusion of the omitted party was legally necessary). *Nemeth*, however, clarifies that the third prong of the relation back doctrine is also applicable when a party misunderstands or misinterprets the legal consequences or requirements—so long as the missing party was omitted due to oversight rather than a strategic decision. *See Nemeth*, 2023 N.Y. Slip Op. 5349 at *2; *see also Buran,* 87 N.Y.2d at 181.

In *Nemeth*, respondents Kuehn Manufacturing and K-Tooling conducted manufacturing operations on a residentially-zoned property owned by Rosa and Perry Kuehn, located adjacent to petitioners. For over a decade, the parties engaged in multiple legal disputes over land use nonconformities. This time, however, unlike previous actions, petitioners named only the corporate entities as respondents and omitted Rosa and Perry Kuehn.

The Kuehn respondents moved to dismiss the petition for failing to include them as necessary parties. The trial court agreed and dismissed the petition, but the Third Department reversed and remanded, order-

ing "Rosa Kuehn be joined as a necessary party" and to "allow [her] and the Kuehn respondents to raise any defenses they might have" (alteration in original) (citation omitted). On remand, Rosa moved once more to dismiss the petition, arguing in relevant part, that the claim against her was time barred because the relation back doctrine did not apply. Once again, the trial court dismissed the petition.

This time, the Third Department affirmed. Although the Third Department noted that "[p]recedent from all four Departments of the Appellate Division demonstrates the difficulty of applying the third prong of the [relation back] doctrine," it ruled that petitioners' omission of Rosa was a mistake of law such that the relation back doctrine did not apply. *Nemeth v. K-Tooling*, 205 A.D.3d 1093, 1101 (3d Dep't 2022).

Despite the fact that Rosa was united in interest with the corporate respondents, because the petitioners "knew of the existence of the proper parties at the time of their initial filing" and could not claim "that they were unaware of [her] identity as the owner of the subject property or that there was a question of or misunderstanding regarding her status," relief could not be granted (citation omitted).

In front of the Court of Appeals, petitioners argued that the addition of a mistakenly omitted necessary party relates back where the omission was simply an oversight and not a deliberate choice motivated by gamesmanship.

The court agreed, holding that the doctrine (i) expressly applied to mistakes of law as well as mistakes of fact, (ii) was not limited to cases where the omission resulted from doubts regarding the omitted party's identity or status, and (iii) applied *when the non-amending party* knew or should have known that, but for the mistake—including failure to recognize the party as a legally necessary party—it would have been named initially. *Nemeth*, 2023 N.Y. Slip Op. 5349, at *3-4.

Importantly, the court likened the petitioners' mistaken omission of Rosa Kuehn to the mistake that the court permitted years prior in *Buran*. In *Buran*, plaintiffs brought a lawsuit for trespass, naming only the husband-tenant as a defendant. *See* 87 N.Y.2d at 176. Eventually, after having filed two answers, the husband sought to dismiss the complaint for failure to name a necessary party because plaintiffs did not name his wife as a defendant.

Even though plaintiffs could not point to any mistake in identity that would explain why they had failed to name the wife as a defendant originally, the court permitted the addition of the wife as a defendant under the relation back doctrine because the "linchpin" of the doctrine is notice to the defendant within the applicable limitations period.

Thus, after *Nemeth*, the clarified scope of the relation back doctrine under New York law unquestionably re-aligns with the federal approach, which focuses the inquiry on notice to the defendant and any potential prejudice, rather than whether the plaintiff made a mistake of law or fact. *See Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538 (2010) (noting that the crucial inquiry is whether the *defendant* knew or should have known it would have been sued but for a plaintiff's error).

To return to the question we started with, thanks to its decision in *Nemeth*, the New York Court of Appeals is clear that an acceptable omission can be the result of a mistake of law in addition to a mistake of fact.

Although whether or not a plaintiff will be able to add a new defendant will remain a fact-specific inquiry, it appears that New York state courts should more closely follow federal courts and their focus on whether (i) the newly named party had notice of the lawsuit within the statute of limitations period and (ii) allowing the amendment would prejudice the newly named party.

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