

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

WILLIAMS DRUG, LLC, and
STOKES PHARMACY
INVESTMENT, LLC, derivatively
on behalf of TOWNE DRUGS,
LLC, and 103 RIDGEDALE AVE,
LLC,

Plaintiffs,

v.

NILESH PATEL, RAFAEL
SARITA TEJADA, CRISTINA
MOLINA, HINA PATEL,
YORKSHIRE DRUGS LLC,
JOHN DOES 1-5, ABC Corp.,
ABC Inc. and ABC LLC,

Defendants,

TOWNE DRUGS, LLC and 103
RIDGEDALE AVENUE LLC,

Nominal
Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
DOCKET No. C-211-17

OPINION

Argued: November 9, 2018

Decided: November 14, 2018

Appearances: Eric R. Breslin, (Duane Morris, LLP, attorneys); Jeffrey Eilender, (Schlam Stone & Dolan, LLP, attorneys) for plaintiffs

Damian Conforti, (Mandelbaum Salsburg, P.C., attorneys) for defendants

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter has been opened to the Court by way of Notice of Motion for Leave to Amend the First Amended Complaint and file the Proposed Second Amended Complaint by Duane Morris, LLP, and Schlam Stone & Dolan LLP, attorneys for Plaintiffs and Third-Party Defendants, filed on October 5, 2018. Mandelbaum Salsburg, attorneys for Defendants Yorkshire Pharmacy and Hina

Patel, filed opposition to said motion on October 31, 2018. Plaintiffs filed a reply letter on November 5, 2018. The Court heard oral argument on the matter on November 9, 2018.

BACKGROUND

It should be noted at the outset that this is a complex matter involving numerous parties and was consolidated with Morris County action Docket No. MRS-C-97-17 entitled Dharmendra Patel, et al. v. Stokes Pharmacy Investment, LLC, et al. The trial in this matter is currently scheduled to commence on February 18, 2019. The parties have conducted extensive discovery and have attended mediation.

The initial Complaint alleged that Defendant Nilesh Patel stole narcotic pharmaceuticals from Williams, and resold them through Yorkshire Pharmacy, which he owns and operates with his wife, Hina Patel. The initial complaint also alleges Nilesh misappropriated insurance claims belonging to Williams by selling drugs owned by Williams, cancelling them, and then making fictitious claims on behalf of Yorkshire regarding these same sales and patients.

On April 16, 2018, Plaintiffs filed the First Amended Complaint, which added Hina Patel and Yorkshire Pharmacy as Defendants, due to Plaintiffs theory that, implicitly, these two new parties knowingly participated in these torts.

Now, based on recent testimony given in depositions taken in this action, Plaintiffs seek leave to again amend their Complaint to add Shefali Shah as a Defendant. Plaintiffs claim to have learned for the first time upon deposing Hina Patel and Shefali Shah that Shah is and has always been Yorkshire's only employee. Thus, Plaintiffs contend that Shah may be responsible for any prescription drugs allegedly "stolen" from Williams and delivered to Yorkshire.

LEGAL STANDARD

A party may amend a pleading by leave of the Court. R. 4:9-1. That leave should be granted *liberally* and without consideration as to the ultimate merits of the amendment or the stage of the proceedings at which amendment is sought. Id. (emphasis added); See also Zacharias v. Whatman PLC, 345 N.J. Super. 218, 226 (App. Div. 2001). Courts should, thus, freely grant amendments to pleadings unless the amendment would result in prejudice to the other party. See Tomazewski v. McKeon Ford Inc., 240 N.J. Super. 401, 411 (App. Div. 1990).

While it is true that motions for leave to amend pleadings are to be liberally granted, they nonetheless are best left to the sound discretion of the trial court in light of the factual situation existing at the time each motion is made. Fisher v. Yates, 270 N.J. Super. 458, 468 (App. Div. 1994); R. 4.9-1. It is well settled that an exercise of that discretion will be sustained where the trial court *refuses to permit new claims and new parties to be added late in the litigation* and at a point at which the rights of other parties to a modicum of expedition will be prejudicially affected. Id. (emphasis added) (internal citations omitted).

ANALYSIS

The Court entertained lengthy oral argument on this matter, in which both parties argued different interpretations of the Appellate Division's stance on amending pleadings outlined in the Fisher case. In Fisher v. Yates, 270 N.J. Super. 458, 468 (App. Div. 1994), the Appellate Division affirmed the trial court's decision to deny the plaintiff's motion to amend the pleadings in a case similar to the instant case.

There, the Appellate Division denied Plaintiff's second request to amend the pleadings because of the plaintiff's *own failure* to secure a title search of a servient tenement prior to commencing the litigation which caused the case to be pleaded, discovered, and defended under an

erroneous theory. Id. at 467 (emphasis added). When the plaintiff in Fisher attempted to correct the pleadings for a second time under an alternative theory, the Appellate Division found that the Plaintiff sought to “reap a benefit from her lack of diligence, gaining a second chance to challenge” the action. The Court held that “litigants must be judicially [estopped] from asserting a position to the Court that not only contradicts their pleadings up to then, but was *available* – or *knowledge of which was available to them.*” Id. at 468 (emphasis added).

Here, Plaintiff distinguished the situation in Fisher from the facts before the Court by emphasizing that it has been unable to obtain the requisite knowledge of Shefali Shah’s potential liability in this matter until recently. Specifically, it was not until Shefali Shah’s and Hina Patel’s depositions on September 20, 2018, that Plaintiffs first learned that: (1) Yorkshire Drugs was asserting the Fifth Amendment regarding its participation in the drug thefts at issue in this action; and (2) Ms. Shah was Yorkshire Drugs’ *only* employee. See Breslin Cert. Ex. 2 at 18:7-8; 27:16-20; 28:4-13; 44:21-51; see also Breslin Cert. Ex. 3 at 34:4-1; 39:17-23; 54:5-10. The Court recognizes that it was not until this point in the litigation that Plaintiffs could have *potentially* drawn an adverse inference of guilt. Further, Plaintiffs motion to amend the Complaint reflecting said inference was made less than two weeks after the depositions described above.

Defendant takes a position similar to that of the Appellate Division in Fisher, arguing that Plaintiffs are now attempting to take a proverbial third bite at the apple in pinpointing the liable parties. Further, the Court concedes that Plaintiffs fail to account for the fact that Dhiman Parikh and the Parikh family – the “protagonists against the Yorkshire Defendants,” as Defendant coins them – are “long-time acquaintances” of Ms. Shah and surely had information regarding her role at Yorkshire. See Conforti Cert. at ¶6. While Defendant argues the matter is clear, the Court reserves

opinion on whether Plaintiffs *should have known* of Shefali Shah's potential liability before her recent deposition.

The Court must also consider potential repercussions Plaintiff's Motion could have not only on Shefali Shah, but also on other parties to this suit.

Nevertheless, this Court notes the interplay of the entire controversy and judicial economy doctrines in the instant matter. The fundamental principle behind the inclusion policy of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in the litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy. Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 322 (1995). The objectives behind the doctrine are threefold: (1) to encourage the comprehensive and conclusive determination of a legal controversy; (2) to achieve party fairness, including both parties before the court as well as prospective parties; and (3) to promote judicial economy and efficiency by avoiding fragmented, multiple and duplicative litigation. Id. at 322-23 (internal citations omitted).

Here, Plaintiff highlighted its intention to file a separate suit against Shefali Shah *immediately* in the event that the instant motion was denied. However, given that the current trial date is approximately four months away from the date of this decision, the Court cannot find the mandating of such duplicative litigation to be a wise exercise of its discretionary powers.

Although the Court is accepting of Defendant's stance on the Fisher case as it applies to the instant matter, the Court does *not* find the facts directly on point to warrant such a blatant dismissal of the judicial economy doctrine. Here, we are not "on the eve" of trial, but instead we are several months away. Further, Plaintiffs here are not asserting a position that was *contradictory* to their previous position, but rather adds a new component that is in fact consistent with its original theories

of liability, generally. Lastly, the Court is not fully convinced that the requisite information regarding Shefali Shah's potential liability was "fully available" to them," as the facts indicated it was to the prosecuting party in Fisher. It would be an abuse of discretion at this time to deny Plaintiff's Motion for Leave to Amend.

For the foregoing reasons, Plaintiff's motion for leave to amend their complaint is hereby granted. An order accompanies this decision.