

Quan-En Yang et al.,
Plaintiffs,
v.
G & C Gulf, Inc., et al.,
Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY
* Case No. 403885V

RECEIVED

AUG 09 2016

Clerk of the Circuit Court
Montgomery County, Md.

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**DEFENDANT BRUCE PATNER'S
MOTION TO STRIKE FOURTH AMENDED CLASS ACTION COMPLAINT**

Defendant Bruce Patner ("Patner"), by his undersigned counsel and pursuant to Maryland Rule 2-341, moves to strike the Fourth Amended Class Action Complaint and Demand for Jury Trial (the "Fourth Amended Complaint") of Plaintiffs Quan-En Yang ("Yang"), Mary Lois Pelz ("Pelz"), and Darcy Pelz-Butler ("Pelz-Butler") (collectively, "Plaintiffs"), and for cause states:

1. Yang filed the original Class Action Complaint in this matter on April 16, 2015. That complaint named just two defendants, G&C Gulf, Inc. ("G&C") and Glenn W. Cade, Jr. ("Cade").
2. Yang filed a First Amended Class Action Complaint on July 27, 2015. That complaint, like the original Class Action Complaint, named only G&C and Cade as defendants.
3. On April 26, 2016, more than a year after he filed his original complaint and after negotiating settlements with the defendants then in the case, Yang filed a Second Amended Class Action Complaint in this matter, which named Patner as an additional defendant.
4. In or around May 2016 – before any attorney had entered an appearance on behalf of Patner and before Patner had responded to any complaint in this matter – the Court approved a settlement among G&C and the members of the putative plaintiff class. It appears that the Court

certified a *settlement class* of plaintiffs to resolve the claims against G&C,¹ the one defendant against whom all the members of the plaintiff class – including Yang – had a claim.

5. On June 17, 2016, this Court issued a Scheduling Order, which provided that all discovery relating to certification of the putative defendant class had to be completed by July 28, 2016.

6. On June 20, 2016, Yang filed a Third Amended Class Action Complaint, which joined Blair Shopping Center, LLC, Blair House Holdings, LLC, Blair Towers, LLC, and Blair Plaza Holdings, LLC (collectively, the "Tower Companies") as defendants.

7. On July 5, 2016, Patner filed a Motion to Dismiss the Third Amended Class Action Complaint (the "Motion to Dismiss"). The Motion to Dismiss argues that Yang has failed to state a claim against Patner because the Third Amended Class Action Complaint contains no allegation that Patner was involved in any way in the incident of which Yang complains.²

8. On July 28, 2016 – the deadline for completing discovery relating to the putative defendant class – Plaintiffs filed the Fourth Amended Complaint, which seeks to add Pelz and Pelz-Butler as additional representatives of the putative plaintiff class.³ According to the Fourth Amended Complaint, Pelz's car, which was being driven by Pelz-Butler, was towed from a property that Patner owns or manages. *See* Fourth Am. Compl., ¶¶ 55-61.

9. Yang has not filed an opposition to Patner's Motion to Dismiss, effectively conceding that he does not have a claim against Patner.

¹ On May 5, 2016, the Court entered an Order granting summary judgment in favor of Cade on all counts of the Second Amended Class Action Complaint.

² Yang's response to the Motion to Dismiss was originally due on July 25, 2016. At the request of Yang, and with Patner's consent, the deadline for Yang to respond to the Motion to Dismiss was extended to August 1, 2016.

³ The Fourth Amended Complaint also removes the Tower Companies as defendants.

10. Maryland Rule 2-341(a) provides that "[w]ithin 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment."

11. The Fourth Amended Complaint should be stricken because Plaintiffs' attempt to add Pelz and Pelz-Butler as party plaintiffs to this lawsuit is untimely and would, if permitted, result in substantial prejudice to Patner. The Court's Scheduling Order required discovery on the putative defendant class to be completed by July 28, 2016. Accordingly, Yang and Patner propounded written discovery and conducted depositions prior to that deadline. Plaintiffs chose to wait until July 28 – the deadline for completing discovery (and more than 15 months after the commencement of this litigation) – to amend their complaint to add Pelz and Pelz-Butler as plaintiffs. As a result, compliance with the Court's Scheduling Order would deprive Patner of his right to take discovery from Pelz and Pelz-Butler.

12. There are no circumstances that have been presented, or could be presented, that would justify Plaintiffs' untimely amendment. Plaintiffs have known since the inception of this matter of any alleged causes of action that Pelz and Pelz-Butler have against Patner.⁴ Under these circumstances, there is no justification for Plaintiffs' delay, and the Motion to Strike should therefore be granted.

13. The Fourth Amended Complaint should also be stricken because Plaintiffs' attempt to add Pelz and Pelz-Butler as party plaintiffs is improper under Maryland law. Although amendments of pleadings are liberally allowed, the scope of a proposed amendment must fall within the parameters of Maryland Rule 2-341(c). *See* Rule 2-341(c) (providing that an amendment may, *inter alia*, correct a misnomer of a party, add a party, or correct misjoinder or

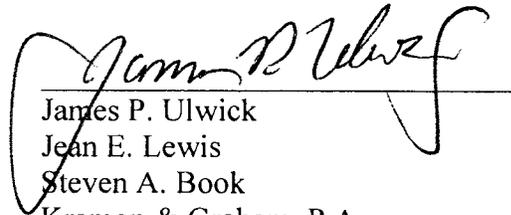
⁴ Indeed, the alleged incident involving Partner of which Pelz and Pelz-Butler complain occurred on March 29 and 30, 2014. *See* Fourth Am. Compl., ¶¶ 55-70.

nonjoinder of a party). A complaint *cannot* be amended to add a new party or correct the misjoinder or nonjoinder of a party if the original named plaintiff is no longer a party to the action. See *Ebert v. Ritchey*, 54 Md. App. 388, 394-95 (1983) (additional plaintiffs may be added as long as at least one original plaintiff remains a party to the action); *Washington Homes, Inc. v. Interstate Gen. Dev., Inc.*, 29 Md. App. 244, 252, *cert. denied*, 277 Md. 738 (1975) (the mere fact that the original plaintiff's name remained in the caption of the case as a party plaintiff did not satisfy the requirements of Rule 2-341 that one of the original plaintiff's must remain a party to the action). Of course, that is precisely what the Fourth Amended Complaint seeks to do.

14. It is undisputed that the members of the putative plaintiff class (including Yang) have settled their claims against G&C and, as a consequence, Yang's initial action against G&C has been resolved. Moreover, as discussed in greater detail in Patner's Motion to Dismiss, Yang has not – because he cannot – stated a claim against Patner. Thus, as a practical matter, Yang is no longer a party to this action, notwithstanding the fact that his name remains in the case caption. Under settled law, Pelz and Pelz-Butler cannot be added as party plaintiffs in an amended complaint where the original plaintiff is no longer a party to the action. For those reasons, the Fourth Amended Complaint is fatally flawed under Maryland law and should be stricken.

WHEREFORE, Defendant Bruce Patner respectfully requests that this Court strike the Fourth Amended Complaint in its entirety.

Dated: August 8, 2016

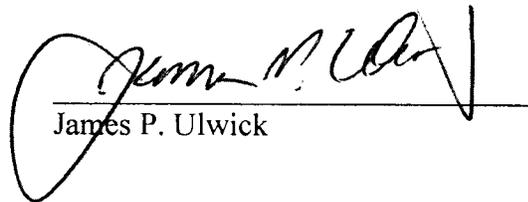


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REQUEST FOR HEARING

Defendant Bruce Patner requests a hearing on this motion.



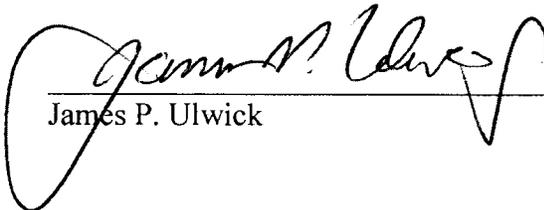
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of August, 2016, a copy of Defendant Bruce Patner's Motion to Strike Fourth Amended Class Action Complaint was sent via electronic and first class mail to:

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