

Quan-En Yang, et al.,

Plaintiffs,

v.

G & C Gulf, Inc., et al.,

Defendants.

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

* * * * *

DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT AND REQUEST FOR HEARING

Defendant Bruce Patner t/a Patner Properties ("Patner"), on his own behalf and on behalf of the Defendant Class (collectively, "Defendants"), by counsel and pursuant to Maryland Rule 2-501, moves for summary judgment as to any claim asserted by Plaintiffs Quan-En Yang ("Yang"), Mary Lois Pelz ("Pelz"), and Darcy Pelz-Butler ("Pelz-Butler") (collectively, "Plaintiffs") or the "plaintiff class"¹ in this case, for any occurrence before April 26, 2013. There is no genuine issue of material fact that any such claims are barred by the statute of limitations. Therefore, Defendants are entitled to summary judgment as a matter of law on any such claims.

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&G") 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&G and Cade as defendants.

¹ Defendants do not concede that a class has been properly certified against Defendants in this case. Nevertheless, Plaintiffs and the Court have proceeded as if such a class has been certified. Defendants reserve all rights with respect to this issue, and refer to the "plaintiff class" without waiving Defendants' rights to maintain that a class has never been certified against them.

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 and a putative class of other property owners as additional defendants.

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&G 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&G,² the one defendant against whom all the members of the plaintiff class – including Yang – had a claim.

5. This Court certified a defendant class of parking lot owners on November 14, 2016, including Patner as the class representative. The Complaint was amended two more times, so the operative pleading is the Fourth Amended Complaint.

6. The claims in the Fourth Amended Complaint arise out of occurrences when a plaintiff's vehicle was towed from a property owned by one of the Defendants (a "tow"). There is no genuine dispute as to the date that each alleged tow occurred. Therefore, claims arising from tows that occurred more than three years prior to the filing of the Complaint against Patner are untimely as a matter of law.

7. A motion for summary judgment should be granted when "there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Md. Rule 2-501.

² 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.

8. The expiration of the statute of limitations is a proper basis for granting summary judgment. *See, e.g., Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 436 (2000) (affirming this Court's grant of summary judgment based on time-bar of statute of limitations).

9. "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." Md. Code Ann., Cts. & Jud. Proc. § 5-101. No other period of time can apply to the claims against Defendants in this case, under the Code or any other applicable law.

10. "Knowledge of facts, . . . not actual knowledge of their legal significance, starts the statute of limitations running." *Moreland v. Aetna U.S. Healthcare, Inc.*, 152 Md. App. 288, 297 (2003) (alteration in original) (citation and quotations omitted). Here, each member of the "plaintiff class" became aware of his or her injury on the date his or her car was towed.

11. Because the Complaint against Patner was filed on April 26, 2016, any claim that accrued more than three years earlier, *i.e.*, before April 26, 2013, is untimely as a matter of law. Claims arising out of the tows alleged in this case accrued on the date of each tow. Accordingly, because there is no dispute as to the date of the statute of limitations bar, Defendants are entitled to judgment on claims for tows occurring before April 26, 2013.

12. Attached hereto as Exhibit A is Plaintiffs' Response to Defendants' Interrogatory No. 5. In Interrogatory No. 5, Defendants asked Plaintiffs to provide, among other things, the date each member of the "plaintiff class" car was towed. Thus, there is no dispute regarding when a "plaintiff class" member's car was towed.

13. Attached hereto as Exhibit B is the affidavit of Cory Clark attesting that she downloaded the information provided in Exhibit A into an excel sheet, sorted the tows by date, extracted all tows that occurred before April 26, 2013, and pasted information pertaining to those

tows into the table attached to Exhibit B-1. Each tow is identified by the name of the member of the "plaintiff class" and the date of the tow.

14. Finally, attached as Exhibit B-2 is a subset of Exhibit B-1: all tows of "plaintiff class" members who were towed out of a lot owned or managed by Defendant Patner before April 26, 2013.

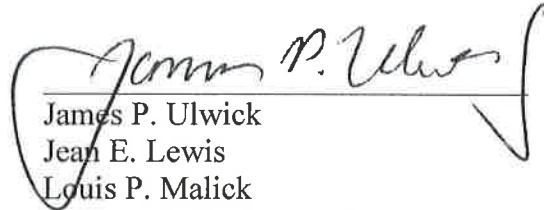
15. Defendant Patner is entitled to summary judgment against all of the "plaintiff class" members listed in Exhibit B-2 with respect to each tow identified therein.

16. The Court should also grant summary judgment against the members of the "plaintiff class" who are listed in Exhibit B-1, with respect to each member of the Defendant class who owned or managed the lot from which one of these cars was towed and with respect to each tow identified therein.

17. Plaintiffs cannot avoid the statute of limitations by claiming that their Second Amended Class Action Complaint "relates back" to any of the previous complaints filed in this action, because the Second Amended Class Action Complaint adds new defendants. "A plaintiff is not permitted to add a new defendant to a case after the limitations period has expired except to correct the name of a defendant." *Hansberger v. Smith*, 229 Md. App. 1, 23 (2016) (citing *Talbott v. Gegenheimer*, 237 Md. 62, 63 (1964)). See also *Poole v. Coakley & Williams Constr., Inc.*, 423 Md. 91, 129 n.18 (2011) (citing, e.g., *Crowe v. Houseworth*, 272 Md. 481, 486 (1974)); *Nam v. Montgomery County*, 127 Md. App. 172, 186 (1999) ("if a new defendant is added, the doctrine of relation back does not apply"). Thus, the statute of limitations was not "tolled" by the filing of any previous complaint as to any Defendant or Defendant class member who was not yet a party or putative class member at the time the previous complaint was filed. Summary judgment is appropriate on this ground.

WHEREFORE, Defendants respectfully request that this Court grant judgment in their favor on all claims arising out of tows that allegedly took place before April 26, 2013.

Dated: February 8, 2018

A handwritten signature in cursive script, appearing to read "James P. Ulwick", is written over a horizontal line. The signature is enclosed within a large, stylized, handwritten flourish that loops around the text.

James P. Ulwick

Jean E. Lewis

Louis P. Malick

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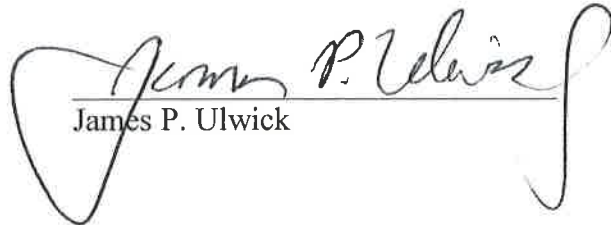
jlewis@kg-law.com

lmalick@kg-law.com

Counsel for Defendant Bruce Patner

REQUEST FOR HEARING

Defendants request a hearing on this motion and propose that it occur during the already scheduled hearing on March 2, 2018.

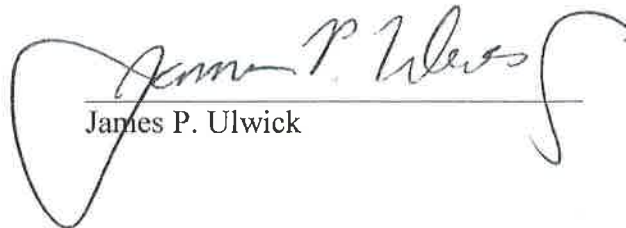

James P. Ulwick

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February, 2018, a copy of Defendants' Motion for Partial Summary Judgment was sent via electronic and first class mail to:

Richard S. Gordon, Esquire
Benjamin H. Carney, Esquire
GORDON, WOLF & CARNEY, CIITD.
102 West Pennsylvania Avenue, Suite 402
Towson, Maryland 21204

Counsel for Plaintiff


James P. Ulwick

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* * * * *

[PROPOSED] ORDER AND JUDGMENT

Upon consideration of Defendants' Motion for Partial Summary Judgment, any opposition, the record in this case, and the applicable law, it is this _____ day of _____, 2017, by the Circuit Court for Montgomery County, hereby

ORDERED that Defendants' Motion for Partial Summary Judgment is GRANTED;

ORDERED that JUDGMENT be and hereby is entered in favor of Defendant Patner t/a Patner Properties and against each of the Plaintiff class members listed in Exhibit B-2 to Defendants' Motion for Partial Summary Judgment as to all claims set forth in the Fourth Amended Complaint arising out of any occurrence prior to April 26, 2013; and

ORDERED that counsel for Plaintiffs and Defendants shall confer and provide an agreed Order specifying, for each member of the Plaintiff class identified in Exhibit B-1 to Defendants' Motion for Partial Summary Judgment, the corresponding member of the Defendant Class in whose favor judgment will be entered.

Hon. Ronald B. Rubin
Circuit Court for Montgomery County