

Notes

134

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 2284CV00831

JANE DOE 1,^{1,2}

PLAINTIFF,

vs.

JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.) & OTHERS,³

DEFENDANTS.

MEMORANDUM AND ORDER
ON PLAINTIFFS' MOTION TO AMEND THE COMPLAINT TO JOIN
JANE DOES 4-11 AS ADDITIONAL NAMED PLAINTIFFS (PAPER NO. 106)

In this civil action, Jane Does 1 and 2, seek damages against John Hancock Life Insurance Company (U.S.A.) ("John Hancock" or "the company"), their employer as of April 2019, for permitting a hidden surveillance camera to be installed in the women's

¹ On her own behalf and on behalf of others similarly situated

² There is some confusion – see Note 5, *infra* – as to which plaintiffs (Jane Does 1-3) have brought this motion to amend. The motion to amend, itself, lists Jane Doe 1 and Jane Doe 2 as plaintiffs; the proposed Motion to Amend, which is appended to the plaintiffs' Memorandum in Support [of] Motion to Amend the Complaint to Join Jane Does 4-11 as Additional Named Plaintiffs (Paper No. 107), lists only Jane Doe 1 as a currently named plaintiff. I need not resolve that confusion to decide the motion to amend. For the sake of convenience, I refer to the moving plaintiff(s) and the putative new plaintiffs, collectively, as "the plaintiffs."

³ First Fitness Management, LLC, and Commonwealth Flats Development Corp. d/b/a Second Wave Health & Fitness

locker room of John Hancock's employee gym. Eight additional putative plaintiffs, designated Jane Does 4-11 ("the Jane Does"), have moved – along with Jane Doe 1 – to amend the complaint to add themselves as plaintiffs. See Motion to Amend the Complaint to Join Jane Does 4-11 as Additional Named Plaintiffs ("motion" or "motion to amend," Paper No. 106). They seek to assert the same claims as Jane Does 1 and 2. John Hancock opposes the motion to amend, contending that Jane Does 4-11 unduly delayed in seeking to join the lawsuit and, in doing so, caused John Hancock significant prejudice. John Hancock further contends that the proposed amendment is futile because the proposed new causes of action are barred by the applicable statute of limitation and that the doctrine of relation back does not apply in this case because of what John Hancock characterizes as undue delay by Jane Does 4-11 in asserting their claims. Finally, John Hancock contends that the proposed amendment is futile as to Jane Doe 5 because she signed a release that precludes her from raising these claims.

I conclude that, although Jane Does 4-11 unduly delayed in bringing their claims, the delay did not sufficiently prejudice John Hancock as to require denial of the motion to amend. Denial of the motion to amend is, therefore, unwarranted on that ground. I also conclude that the doctrine of relation back defeats John Hancock's argument that the statute of limitation applicable to tort actions precludes the proposed amendment. Finally, I conclude that, with respect to Jane Doe 5 only, John Hancock has demonstrated that the release that she signed before leaving her employment at the company prohibits her from asserting the present claims and that, therefore, amendment is futile as to her claims. The motion to amend is, therefore, **ALLOWED IN PART**, as to all claims except those pertaining to Jane Doe 5, and **DENIED IN PART**, as to Jane Doe 5's claims.

BACKGROUND

The plaintiffs, Jane Does 1, 2, and 3, initially filed the Complaint (Paper No. 1) in this case on April 15, 2022. On July 18, 2023, Jane Does 1 and 2 filed an Amended Complaint ("amended complaint," Paper No. 38), which is now the operative complaint

in the case. In sum, the amended complaint alleges that someone with access to the restricted area of John Hancock's building at 601 Congress Street, Boston, installed a hidden camera in the ceiling of the women's locker room in the employee gym and was thus able to observe and potentially record female employees as they changed clothes.⁴ The camera allegedly was in place from sometime in 2015 until December 28, 2018. The amended complaint further alleges that John Hancock reported the situation to the Massachusetts State Police ("state police") forty-eight days after the company purportedly discovered the camera, on April 16, 2019. The amended complaint alleges that this period, which it characterizes as delay, was part of an effort by John Hancock personnel to cover up the company's liability, a charge that John Hancock disputes.

The amended complaint further alleges that, for a period of at least six months between the spring or summer of 2017 and the first half of 2018, employees noted a "camera-like object," Amend. Comp. at 19, ¶¶ 92-94, protruding from the ceiling tiles above a toilet in the women's bathroom on the fourth floor. The "camera-like object" disappeared sometime in the first half of 2018.

DISCUSSION

Leave to amend a pleading "shall be freely given when justice so requires." Mass. R. Civ. P. 15(a). A motion to amend should be allowed unless good cause exists for denying it. See *Mathis v. Massachusetts Elec. Co.*, 409 Mass. 256, 264 (1991), quoting *Castellucci v. United States Fid. & Guar. Co.*, 372 Mass. 288, 289 (1977). Examples of good cause to deny a motion to amend include: "undue delay, bad faith or dilatory motive on

⁴ The amended complaint does not allege the motivation(s) of the individual(s) who placed the camera. The amended complaint sets out in detail John Hancock's extensive network of cameras positioned throughout the company's building to monitor activities therein. The amended complaint does not attempt to specify whether the cameras discovered in the ceiling of the women's locker room and the fourth-floor women's bathroom were placed there as part of John Hancock's wide-ranging internal surveillance project, for prurient reasons, and/or for some other purpose.

the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment,” among others. *Id.*, quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962). See *Tocci v. Tocci*, 490 Mass. 1, 24 (2022) (leave to amend may be denied if “amendment would be futile”). A proposed amendment is futile if it would not survive a motion to dismiss. *Mancuso v. Kinchla*, 60 Mass. App. Ct. 558, 572 (2004).

John Hancock advances three arguments in opposition to the motion to amend. First, it contends that Jane Does 4-11 delayed unduly in bringing their claims and that permitting them to join the case as plaintiffs at this stage would cause John Hancock significant prejudice. Second, it argues that the claims that the Jane Does seek to add to the complaint are barred by the statute of limitation applicable to tort actions, G. L. c. 260, §2(A). As part of this argument, John Hancock argues that, even if the doctrine of relation back can be used to permit new plaintiffs to join a cause of action – a contention that John Hancock disputes – the Jane Does’ undue delay should preclude them from invoking the doctrine in this case. Finally, John Hancock argues that, as to Jane Doe 5, the proposed amendment is futile because of the Release of Claims & Severance Agreement that she signed at the end of her employment at the company. I address each argument in turn.

I. Undue Delay

At the threshold, I am inclined to agree with John Hancock that Jane Does 4-11, all of whom were John Hancock employees at the time the existence of the hidden camera in the women’s locker room became known publicly, delayed unduly in seeking to assert claims against John Hancock. The Jane Does’ argument to the contrary – that they did not realize that they might have causes of action against John Hancock until the current plaintiffs uncovered in discovery proof that John Hancock delayed for forty-eight days in reporting the matter to the State Police – is unpersuasive. There appears to be no dispute that, when John Hancock publicly announced the existence of the concealed camera in April 2019, it was widely known among John Hancock employees and, in fact,

the broader public. The Jane Does contend that, subsequently, evidence emerged in discovery suggesting that, for roughly forty-eight days after the discovery of the camera by an outside crew, John Hancock officials sought to prevent that information from becoming public and that it was not until then that they realized that John Hancock's conduct had harmed them. This is implausible, however, both because of John Hancock's wide dissemination of the information to its employees after reporting it to the State Police and because three of their fellow employees, Jane Does 1, 2, and 3, filed this lawsuit in 2022, within the statutory limitation period.

II. Prejudice

That the Jane Does delayed unduly in bringing their claims, however, does not end the analysis. "Delay alone is generally not sufficient reason to deny a motion to amend." *Brown v. Savings Bank Life Ins. Co.*, 93 Mass. App. Ct. 572, 587 n.17(2018), quoting *Vakil v. Vakil*, 450 Mass. 411, 419 (2008). Rather, the critical inquiry is whether the amendment would prejudice the opposing party. *Id.* ("Prejudice to the nonmoving party is the touchstone for the denial of a[] [proposed] amendment."), quoting *Vakil*, 450 Mass. at 419, quoting *Goulet v. Whittin Mach. Works, Inc.*, 399 Mass. 547, 550 n.3 (1987). Although John Hancock is no doubt correct that adding the Jane Does as plaintiffs will expand the scope of discovery, it has not established that this will delay the trial, which, as the plaintiffs note, has not yet been scheduled. See *Walsh v. Chestnut Hill Bank & Trust Co.*, 414 Mass. 283, 287 (1993) (Although undue delay can justify denial of a motion to amend, courts "usually require . . . some factor other than delay such as the imminence of trial or the plaintiff's attempting to introduce a totally new theory of liability."), quoting *Goulet*, 399 Mass. at 552.

John Hancock has not plausibly contended that adding the Jane Does as plaintiffs will delay the scheduling of the trial or introduce "a totally new theory of liability." *Id.* Both sides in this case have argued, not without apparent justification, that the opposing party has not moved expeditiously to address outstanding discovery requests. John

Hancock contends that the plaintiffs have not been forthcoming in producing responsive medical records of the existing plaintiffs. John Hancock's primary argument regarding prejudice is: if the named plaintiffs are reluctant to comply with discovery, imagine how difficult it will be to secure similar discovery (i.e. the putative plaintiffs' medical records) from eight additional plaintiffs. This argument – though not, perhaps, without some merit – is insufficient to defeat the motion to amend. Trial courts regularly resolve discovery disputes by requiring parties to speed up discovery compliance. John Hancock has not suggested that such remedies are unavailable to it or inadequate to the task.

Likewise, John Hancock cannot plausibly claim that the proposed amendment – adding eight Jane Doe plaintiffs – introduces “a totally new theory of liability.” *Id.* To the contrary, it is clear from a comparison of the proposed new complaint and the currently effective amended complaint that the theories of liability asserted by the eight proposed new plaintiffs are identical to those advanced by the current plaintiffs, arising, as they do, out of the same alleged conduct on John Hancock's part. There is, therefore, no ground other than undue delay to deny the motion to amend. Generally, delay alone is insufficient to defeat a motion to amend; I see no reason to deviate from that principle in this situation.

III. The Statute of Limitation, G. L. c. 260, § 2A, and the Doctrine of Relation Back

John Hancock's argument based on the statute of limitation for tort actions, G.L. c. 260, § 2(A), fares no better. John Hancock argues that the proposed amendment – to add Jane Does 4-11 as plaintiffs – is futile because the three-year statute of limitation applicable to tort actions bars their claims. The plaintiffs do not dispute that the proposed new claims would be time-barred if filed independently now. They argue, instead, that the doctrine of relation back renders the three-year statute of limitation applicable to torts, see G. L. c. 260, § 2A, inapplicable to their claims.

The Massachusetts relation back “rule . . . permits new parties to be added to an ongoing case even after the expiration of the limitations period.” *Curley v. North Am. Man Boy Love Ass’n*, 2003 WL 21696547 at *3 (D. Mass. 2003) (O’Toole, J.), citing *Wadsworth v. Boston Gas Co.*, 352 Mass. 86, 89 (1967). The relation back rule requires that the claims raised by or against the new party/parties arise “out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading” *Atchue v. Benchmark Senior Living LLC*, 98 Mass. App. Ct. 572, 576 (2020), quoting Mass. R. Civ. P. 15(c). See also G. L. c. 231, § 51. As the claims of Jane Does 4-11, set out in the proposed second amended complaint, are essentially identical to those advanced by Jane Does 1 and 2 in the amended complaint, I have no difficulty concluding that they arise out of the same “conduct, transaction, or occurrence” set out in the existing amended complaint.

John Hancock cites no authority for the proposition that the doctrine of relation back does not permit the addition of new plaintiffs. To be sure, the doctrine is most commonly invoked to add or substitute defendants even after the running of the statute of limitation. *National Lumber Co. v. LeFrancois Const. Corp.*, 430 Mass. 663, 671-672 (2000) (“In Massachusetts, ‘where an action has been commenced before the statute of limitations has run, a plaintiff may be allowed to substitute one defendant for another after the statute of limitations has run against the proposed substitute defendant.’”), citing *Wadsworth*, 352 Mass. at 88-89). See also, e.g., *Herrick v. Essex Reg’l Ret. Bd.*, 68 Mass. App. Ct. 187, 190 (2007) (permitting amendment of complaint to substitute defendant even though thirty-day filing deadline pursuant to G. L. c. 30A, § 14(1) had passed). That this is the most common application of the doctrine, however, does not indicate that it is the only permissible application.

Indeed, in *Walsh v. Curcio*, 358 Mass. 819, 819 (1971) (rescript), the Supreme Judicial Court held that, although the claims of the plaintiffs who sought to join the civil action by amendment were barred by the statute of limitation, “there was no abuse of discretion in allowing the amendment in the circumstances of this case, where the claims of the

plaintiffs arose out of the same incident.” In *Walsh*, the original plaintiff had been a passenger in an automobile that was involved in a collision. After the expiration of the applicable limitation period, the plaintiff moved to amend the complaint to add as plaintiffs two other individuals in the same automobile, one of whom was the driver. The *Walsh* court noted that “General Laws c. 231, ss 4A, 51 and 138, are to be liberally construed.” *Id.* See also *NES Rentals v. Maine Drilling & Blasting, Inc.*, 465 Mass. 856, 865 (2013) (“Massachusetts practice is more liberal than other jurisdictions in allowing amendments adding or substituting defendants after expiration of a period of limitations.”), quoting *National Lumber Co.*, 430 Mass. at 671. Given the Commonwealth’s liberal approach to application of the doctrine of relation back, I discern no reason to deny the plaintiffs’ motion to amend.

IV. Jane Doe 5’s Release

In its opposition to the motion to amend, John Hancock represents that, before leaving her employment at John Hancock, Jane Doe 5 signed a “Release of Claims and Severance Agreement (“release agreement”) that “released John Hancock ‘from any claims, demands, damages, liabilities, and actions of any kind whatsoever, known or unknown, that Employee has or may have against the Releasees individually and/or together with others, arising out of or relating to Employee’s employment with the Company, the termination of that employment and/or any other events occurring before the signing of this Agreement.” Op. at 11-12.⁵ The release agreement is, on its face, broad enough to encompass the claims at issue in this case. The plaintiffs do not dispute that Jane Doe 5 signed the release agreement.

Instead – at the hearing but, notably, not in their pleadings – the plaintiffs argue that they are entitled to discovery as to the validity and enforceability of the release

⁵ This citation is to John Hancock’s Opposition to Plaintiffs’ Motion to Amend the Complaint to Join Jane Does 4-11 as Additional Named Plaintiffs.

agreement. The plaintiffs, however, advance no evidence to conclude that the release agreement was invalid and/or unenforceable. Absent such evidence, I conclude that John Hancock has met its burden of demonstrating that the release agreement Jane Doe 5 signed precludes her from bringing these claims and, therefore, renders the proposed amended complaint futile as to her claims.⁶

CONCLUSION & ORDER

For the foregoing reasons, the motion to amend is **ALLOWED IN PART**, as to all claims except those pertaining to Jane Doe 5, and **DENIED IN PART**, as to Jane Doe 5's claims.



David A. Deakin
Associate Justice

DATED: November 17, 2025

⁶ John Hancock argues that the plaintiffs' Proposed Amended Complaint, appended to their Memorandum in Support [of] Motion to Amend the Complaint to Join Jane Does 4-11 as Additional Named Plaintiffs (Paper No. 107), lists as plaintiffs: "JANE DOE 1 and JANE DOES 4-11," and makes no reference to Jane Does 2 and 3. Although I am not prepared to rest my decision on this point, I note that John Hancock argues, and the plaintiffs do not dispute, that Jane Does 2 and 3 – still at least nominally plaintiffs in this case – signed releases similar to the one signed by Jane Doe 5. The omission of Jane Does 2 and 3 from the caption of the proposed amended complaint, John Hancock argues, reflects a tacit omission by the plaintiffs that the release agreements that they signed defeats their claims in this action.