

No. 90133-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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Washington State Supreme Court
SEP 12 2014 *bjh*
Ronald R. Carpenter
Clerk

JESSE POWERS,
Plaintiff/Respondent,

vs.

W.B. MOBILE SERVICES, INC.,
Defendant/Petitioner.

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SUPREME COURT
STATE OF WASHINGTON
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BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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ORIGINAL

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ.

WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of persons seeking redress under the civil justice system, including an interest in the proper interpretation and application of statutes and court rules governing commencement of actions and amendment of pleadings.

II. INTRODUCTION AND STATEMENT OF THE CASE

This review principally involves interpretation of RCW 4.16.170, when a plaintiff pleads a “John Doe” defendant and subsequently seeks to substitute the true, named defendant for the John Doe defendant after the applicable statute of limitations has lapsed. In resolving this question, the Court must revisit its dicta in Sidis v. Brodie/Dohrman, Inc., 117 Wn.2d 325, 331, 815 P.2d 781 (1991), and determine whether this dicta should be affirmed.

In this action, plaintiff/respondent Jesse Powers (Powers) sought to substitute defendant/petitioner W. B. Mobile Services Inc. (W.B. Mobile)

as a party defendant, replacing a John Doe defendant in the original complaint. The underlying facts are drawn from the Court of Appeals opinion and the briefing of the parties. See Powers v. W.B. Mobile Servs., Inc., 177 Wn.App. 208, 311 P.3d 58 (2013), *review granted*, 180 Wn.2d 1022 (2014); Powers Br. at 1-8; W.B. Mobile Br. at 1-6; W.B. Mobile Pet. for Rev. at 2-7; Powers Supp. Br. at 1; W.B. Mobile Supp. Br. at 1-2, 4-5.

Briefly, Powers sustained personal injuries on a construction site when a handicap access ramp collapsed. He timely filed a negligence complaint against two named defendants and two John Doe defendants. Powers basically alleged as to one of the John Doe defendants, “JOHN DOE CONSTRUCTION COMPANY is believed to be the builder of the handicap access ramp where the incident occurred.” Powers 177 Wn. App. at 211(quoting record). Powers reserved the right to amend the complaint once the “true name” of the John Doe defendant was known. Id. (quoting record).

Subsequently, following discovery, and after the statute of limitations had lapsed, Powers filed an amended complaint substituting W.B. Mobile for JOHN DOE CONSTRUCTION COMPANY, alleging W.B. Mobile built and/or installed the handicap access ramp. W.B. Mobile moved to dismiss Powers’ claim as untimely under the statute of limitations, and the superior court granted the dismissal with prejudice.

Powers appealed to the Court of Appeals, Division II, which reversed. See id. at 213-15. In so doing, the court applied this Court’s

dicta in Sidis, supra, and concluded that the amendment substituting W.B. Mobile as a defendant was timely under RCW 4.16.170. See Powers at 213-15. The Court of Appeals did not reach the separate issue of whether the amended complaint substituting W.B. Mobile met the requirements of CR 15(c). See id. at 215.

This Court granted W.B. Mobile's petition for review. The petition challenged the application of the Sidis dicta, and separately raised questions regarding whether Powers must prove due diligence at the pre-litigation stage and/or meet the requirements of CR 15(c), for any substitution of W.B. Mobile to relate back and be considered timely. See W.B. Mobile Pet. for Rev. at 1-2.

III. ISSUES PRESENTED

- 1.) Should this Court affirm the dicta in Sidis v. Brodie/Dohrman, 117 Wn.2d 325, 815 P.2d 781 (1991), suggesting that under RCW 4.16.170 a named defendant may be later substituted for a "John Doe" defendant if the John Doe defendant is identified with "reasonable particularity" at the time of commencement of the action? If so, what constitutes "reasonable particularity" under Sidis?
- 2.) If the Sidis dicta is affirmed, must a plaintiff seeking to substitute a named defendant for a John Doe defendant provide proof that due diligence was exercised in seeking the identity of potentially liable parties before resorting to a John Doe pleading? Alternately, must a plaintiff meet the requirements of CR 15(c), governing the relation back of amendments to pleadings?

See W.B. Mobile Pet. for Rev. at 1-2.

IV. SUMMARY OF ARGUMENT

The dicta in Sidis regarding the application of RCW 4.16.170 to pleadings that include a "John Doe" defendant should be affirmed here,

and elevated to precedent. In this event, under RCW 4.16.170, and CR 10(a)(2), the true name of the defendant may be substituted for a John Doe defendant and the action will be deemed timely when the John Doe defendant was identified in the complaint with "reasonable particularity." A complaint that specifies the alleged wrongful acts or omissions by the John Doe defendant meets the requirement of "reasonable particularity".

For purposes of applying Sidis to John Doe defendants, and in keeping with CR 11, a court should assume the plaintiff was "ignorant" of the true name of the defendant, as required by CR 10(a)(2), and thus justified in pleading a John Doe defendant. The diligence required of the plaintiff under CR 11 should be presumed, and the burden should be on the substituted defendant to show otherwise. To the extent Bresina v. Ace Paving Company, 89 Wn.App. 277, 948 P.2d 870 (1997), *review denied*, 135 Wn.2d 1010 (1998), suggests otherwise, it should be disapproved.

This Court should hold that CR 15(c) does not apply to cases involving RCW 4.16.170 and a John Doe pleading. To the extent Kiehn v. Nelson's Tire Company, 45 Wn.App. 291, 724 P.2d 434 (1986), *review denied*, 107 Wn.2d 1021 (1987), holds otherwise, it should be disapproved, along with any case following Kiehn.

V. ARGUMENT

A.) Overview Of RCW 4.16.170 And *Sidis* Opinion, Including Dicta Relating to John Doe Pleadings.

In Sidis, this Court interpreted RCW 4.16.170, governing tolling of statutes of limitations, and when an action is deemed commenced for such purposes.¹ In a unanimous opinion, this Court held in a multi-defendant context that when an action is timely filed and at least one defendant is served within 90 days of the filing of the complaint, service on any remaining defendants is deemed timely for statute of limitations purposes. See 117 Wn.2d at 328-31. This reading of the statute is now deemed to be part of the statute itself. See State v. Regan, 97 Wn.2d 47, 51, 640 P.2d 725 (1982) (interpretation of statutory language by highest state court is read into the statute as if it were originally in statute).

In the course of its opinion in Sidis, the Court addressed an argument by defendants/respondents registering concern about the effect of any such rule upon unnamed defendants. In dicta, this Court noted:

Respondents assert there is no valid reason to distinguish between named and unnamed defendants for purposes of the tolling statute. That issue is not, however, part of this case. All defendants were named. It has been argued that plaintiffs might attempt to evade the name requirement by naming numerous "John Doe" defendants but only serving one easy target such as the State, resulting in what arguably might be considered an abuse of process. There is no such abuse here and, therefore, a ruling on this issue can await another time. We note, however, that in some cases, if identified with reasonable particularity, "John Doe" defendants may be appropriately "named" for purposes of RCW 4.16.170.

¹ The current version of RCW 4.16.170 is reproduced in the Appendix to this brief. The text of this statute has not changed since this Court's opinion in Sidis.

117 Wn.2d at 331.

The Court has not revisited this issue since Sidis, and Court of Appeals opinions vary on whether this dicta should be followed. Compare Powers, 177 Wn.App. at 213-15 (applying dicta to defendant substituted for John Doe defendant) and Bresina v. Ace Paving Co., 89 Wn.App. 277, 282, 948 P.2d 870 (1997) (assuming validity of Sidis dicta but finding “reasonable particularity” requirement for John Doe pleading not met because evidence of proper investigation lacking), *review denied*, 135 Wn.2d 1010 (1998), with Iwai v. State, 76 Wn.App. 308, 312-14, 884 P.2d 936 (1994) (declining to apply Sidis dicta in face of John Doe pleading, while also finding inexcusable neglect under CR 15(c)), *aff’d on other grounds*, 129 Wn.2d 84, 918 P.2d 1089 (1996) and Martin v. Dematic, 178 Wn. App. 646, 663, 315 P.3d 1126 (2013) (noting Sidis dicta but questioning application to defendant not named when action timely filed), *review granted*, 180 Wn.2d 1009 (2014).

The Court must now resolve existing uncertainty regarding whether RCW 4.16.170, as clarified by Sidis, applies to John Doe defendants, and, if so, what “reasonable particularity” means.

B.) The Court Should Affirm The *Sidis* Dicta, And Clarify That The “Reasonable Particularity” Requirement Is Met When The Complaint Specifies The Alleged Wrongful Acts Or Omissions By The John Doe Defendant.

The dicta in Sidis should be elevated to precedent here, thereby permitting the tolling principle of RCW 4.16.170 to extend to the true,

named defendant substituted for a John Doe defendant. Albeit dicta, this Court's "deliberate expression" in Sidis of the meaning of RCW 4.16.170 should not be lightly disregarded. See State v. Nikolich, 137 Wash. 62, 66, 241 P.2d (1925); see also Redmond v. Growth Hearings Board, 136 Wn.2d 38, 53 n. 7, 959 P.2d 1091(1998).

Although not mentioned or discussed in Sidis, presumably the Court had in mind the enabling language in CR 10, permitting John Doe-type pleadings. CR 10(a)(2) provides:

Unknown Names. When a plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding **by any name**, and when his true name has been discovered, the pleading or proceeding may be amended accordingly.

(Bold emphasis added)² This rule likely contained substantially similar language at the time Sidis was decided. See Kiehn, 45 Wn.App. at 293-94 (quoting portion of rule, as it existed in 1986). CR 10(a)(2) allows a plaintiff who cannot identify a defendant to name a placeholder defendant, such as a "John Doe". Thereafter, when the "true name" is discovered, the plaintiff may amend the pleading "accordingly." CR 10(a)(2). Any such amendment involving RCW 4.16.170 and multiple defendants is seemingly governed by CR 15(a), providing for amendments as a matter of right before a responsive pleading, or otherwise by consent or leave of court, "which shall be freely given when justice so requires." This is consistent with the notion that CR 15 should be liberally construed to

² The full text of the current version of CR 10 is reproduced in the Appendix to this brief. The corresponding federal rule, Fed. R. Civ. Proc. 10, has no provision comparable to subsection (a)(2).

facilitate disposition of claims on the merits. See Herron v. Tribune Publishing Co., 108 Wn.2d 162, 165, 736 P.2d 249 (1987). In this context, a CR 15(c) analysis is unnecessary because the timeliness of a “true name” amendment for statute of limitations purposes is governed by RCW 4.16.170.³

A plaintiff who is unable to identify a defendant when facing a statute of limitations problem in a multiple tortfeasor context should be allowed to reserve the right to substitute that defendant at a later time. See Sidis, 117 Wn.2d at 330 (recognizing difficulties involved in multi-defendant actions). A “true name” defendant ultimately substituted under these circumstances is in essentially the same position as a defendant initially named in the case but not served until after the statute of limitations has expired. See Sidis at 330-31.

Plaintiffs invoking the John Doe procedure authorized under CR 10(a)(2) should be presumed to have been “ignorant” of the identity of what turns out to be the “true name” defendant, and should not have to prove diligence in attempting to identify the proper defendants. CR 10(a)(2) itself contains no diligence requirement, nor does RCW 4.16.170 or Sidis. Such a presumption is in keeping with CR 11(a), and its premise that a party or attorney’s signature on a pleading certifies that he or she has read the pleading and to the best of their knowledge believe it is well grounded in fact and law. A substituted defendant challenging whether the plaintiff was “ignorant” at the time of the original pleading should

³ The full text of the current version of CR 15 is reproduced in the Appendix to this brief.

have the burden of showing a basis for such a claim. See 3A, Karl B. Tegland, Wash. Prac., CR 11 at 238 (5th ed. 2006 & 2011 Pocket Part) (noting under CR 11 burden is on moving party to justify request for sanctions). To the extent that the “reasonable particularity” analysis in Bresina, supra imposes an obligation on plaintiff to establish diligence it should be disapproved. See 89 Wn.App. at 282.⁴

If the Court elevates the Sidis dicta to precedent, then it must also clarify what constitutes “reasonable particularity” when identifying a John Doe defendant. This test should be met when the complaint specifies the wrongful acts or omissions allegedly committed by the John Doe defendant. In making this determination, a court may take into consideration whether the “true name” defendant sought to be substituted for the John Doe defendant is alleged to have committed similar acts or omissions, as seems to be the case here. See Powers at 212.

C.) Under *Sidis*, CR 15(c) Should Not Apply to RCW 4.16.170 and Amendments Of Pleadings Involving A John Doe Defendant.

W.B. Mobile argues that in considering elevation of the Sidis dicta the Court must necessarily also determine under CR 15(c) whether Powers can demonstrate lack of “inexcusable neglect,” asserting a need to show due diligence in seeking out the true name of a defendant before being allowed to substitute a defendant for the John Doe placeholder. See W.B. Mobile Supp. Br. at 3-4. This argument finds support in the pre-Sidis

⁴ The full text of the current version of CR 11 is reproduced in the Appendix to this brief.

Court of Appeals opinion in Kiehn, 35 Wn.App. at 294-98, and post-Sidis opinion in Iwai, 76 Wn.App. at 312-15. However, the discussion in Kiehn regarding the relationship between CR 10(a)(2) and CR 15(c) overlooks the rule of construction that a specific provision will control over a general one. See Flight Options, LLC v. Revenue, 172 Wn.2d 487, 504, 259 P.3d 234 (2011) (stating “a more specific statute prevails over a general one should an apparent conflict exist”); see also State v. McEnroe, 174 Wn.2d 795, 800, 279 P.3d 861 (2012) (recognizing court rules are interpreted using the rules of statutory construction). Further, the discussion in Kiehn did not take into account the impact of RCW 4.16.170, or have the benefit of this Court’s analysis in Sidis. In Kiehn, RCW 4.16.170 is only discussed in relation to the nature of the 90-day period referenced in the statute, and that it is not an extension of the applicable limitation period. See 45 Wn.App at 297-98. Iwai simply relied on Kiehn, while otherwise declining to apply the Sidis dicta. See Iwai, 76 Wn.App at 312.

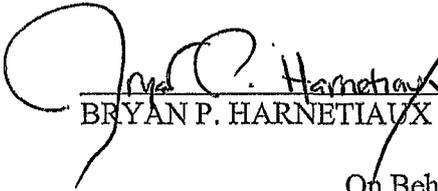
The Court of Appeals analysis below is correct and W.B. Mobile’s argument should be rejected. See Powers at 213-15. The Court of Appeals properly finds it unnecessary to consider CR 15(c). See id. at 215. This Court should clarify that under RCW 4.16.170, amendments involving John Doe pleadings are governed by CR 10(a)(2) and CR 15(a), not CR 15(c). To the extent the Court of Appeals opinions in Kiehn and Iwai suggest otherwise, they should be disapproved.

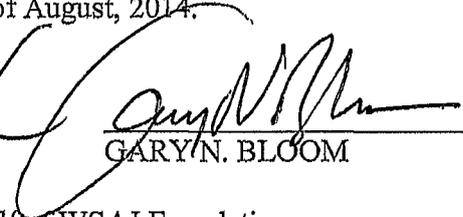
As interpreted by Sidis, RCW 4.16.170 has its own relation back principle, providing that timely filing and service on one defendant renders the action timely as to other defendants served after the limitation period has expired. This should include a “true name” defendant substituted for a John Doe defendant that was pleaded with reasonable particularity in the original complaint.

VI. CONCLUSION

The Court should consider the arguments advanced in this brief in resolving the issues on review.

DATED this 26th day of August, 2014.


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GARY N. BLOOM

On Behalf of WSAJ Foundation

Appendix

RCW 4.16.170

Tolling of statute — Actions, when deemed commenced or not commenced.

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.

[1971 ex.s. c 131 § 1; 1955 c 43 § 3. Prior: 1903 c 24 § 1; Code 1881 § 35; 1873 p 10 § 35; 1869 p 10 § 35; RRS § 167, part.]

RULE CR 10
FORM OF PLEADINGS AND OTHER PAPERS

- (a) Caption. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and an identification as to the nature of the pleading or other paper.
- (1) Names of Parties. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.
 - (2) Unknown Names. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.
 - (3) Unknown Heirs. When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of the "unknown heirs" of the deceased. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, unknown parties shall be designated as "also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein."
- (b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.
- (c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.
- (d) Format Requirements. [Reserved. See GR 14.]
- (e) Format Recommendations. It is recommended that all pleadings and other papers include or provide for the following:
- (1) Service and Filing. Space should be left at the top of the first page to provide on the right half space for the clerk's filing stamp, and space at the left half for acknowledging the receipt of copies.
 - (2) Title. All pleadings under the space under the docket number should contain a title indicating their purpose and party presenting them. For example:

USE
Petition for Dissolution
Defendant's Motion for Support, etc.
Order for Support
Plaintiff's Trial Brief

DO NOT USE
Petition
Motion
Order
Trial Brief

- (3) Bottom Notation. At the left side of the bottom of each page of all pleadings and other papers an abbreviated name of the pleading or other paper should be repeated, followed by the page number. At the right side of the bottom of the first page of each pleading or other paper the name, mailing address and telephone number of the attorney or firm preparing the paper should be printed or typed.
 - (4) Typed Names. The names of all persons signing a pleading or other paper should be typed under their signatures.
 - (5) Headings and Subheadings. Headings and subheadings should be used for all paragraphs which shall be numbered with roman and/or arabic numerals.
 - (6) Numbered Paper. Use numbered paper.
- (f) Personal Identifiers Prohibited. [Reserved. See GR 31(e).]
- (g) Unpublished Opinions. [Reserved. See GR 14.1.]
- [Amended effective September 1, 1990; September 1, 2007.]
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RULE CR 11
SIGNING OF PLEADINGS, MOTIONS, AND LEGAL
MEMORANDA: SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially

insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

[Amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 15, 2002; September 1, 2005.]

RULE CR 15
AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments To Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) Interlineations. No amendments shall be made to any pleading by erasing or adding words to the original on file, without first obtaining leave of court.

[Adopted effective July 1, 1967; Amended effective September 1, 2005.]
