IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

	*	
GUILLERMO A. ARGUETTA,	*	
Plaintiff	*	
v.	*	**CIVIL NO. JKB-11-1102**
McGILL AIRFLOW, LLC, *et al*.,	*	
Defendants	*	
	*	

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MEMORANDUM & ORDER

Guillermo Arguetta ("Plaintiff") brought this suit against McGill Airflow, LLC, McGill Airsilence, LLC, United McGill Corporation, Baldor Electric Company, Rockwell Automation, Inc., Reliance Electric Co., and Cincinnati Fan Co. ("Defendants") for alleged negligence, products liability, and breach of warranty. Defendant Cincinnati Fan Co. now moves to dismiss the claims against it as untimely. The issues have been briefed and no oral argument is required. Local Rule 105.6. For the reasons set forth below, Defendant's Motion To Dismiss (ECF No. 40) is DENIED.

I. BACKGROUND

This products liability case arises from injuries that Plaintiff suffered while using a tool called a Leak Detective Testing Kit, allegedly designed and manufactured by Defendants. Plaintiff alleges that on June 13, 2008, while he was using the Leak Detective to locate and seal leaks at a biomedical facility in Frederick, Maryland, his hand was sucked through the machine's air inlet and into its unguarded fan housing. The blade of the fan allegedly struck Plaintiff's hand and crushed the bones in three of his fingers, which then had to be amputated.

Shortly after the accident, Plaintiff filed a worker's compensation claim against his employer, Hess Mechanical Corporation, and received a first award of compensation on August 18, 2008. About two-and-a-half years later, on March 16, 2011, Plaintiff filed this suit in the Circuit Court for Frederick County against McGill Airflow, LLC, McGill Airsilence, LLC, and United McGill Corporation, whom he alleges designed, manufactured, and distributed the Leak Detective. The original Complaint asserted causes of action for negligence, strict products liability based on defective design and inadequate warnings, strict liability for abnormally dangerous activity, and breach of warranty. On April 27, 2011, Defendants removed the case to this Court.

In the process of conducting discovery, Plaintiff subsequently learned the identity of several additional businesses whom he alleges were involved the design or sale of component parts of the Leak Detective. First, in June of 2011, Plaintiff's investigator photographed the Leak Detective, which was being stored at Hess Mechanical's headquarters. The investigator photographed the machine only in the upright position in which he found it. The photographs showed two labels on top of the machine's motor that allowed Plaintiff, after further investigation, to determine that the motor was formerly manufactured by Reliance Electric Co. Plaintiff then filed an amended complaint adding Reliance and its successors in interest, Baldor Electric Co. and Rockwell Automation, Inc., as defendants. Second, on August 12, 2011, the parties conducted a joint physical inspection of the Leak Detective, during which they discovered additional labels under the machine's fan indicating that the fan was manufactured by Cincinnati Fan Co. Plaintiff filed a second amended complaint on September 19, 2011, adding Cincinnati Fan Co. as a defendant.

Cincinnati Fan Co. now moves to dismiss the claims against it on the grounds that Plaintiff's second amended complaint is untimely. The parties exchanged the normal response and reply memoranda, and the motion became ripe for resolution on November 28, 2011. Additionally, Plaintiff filed a sur-reply memorandum, without seeking leave of court, on December 7, 2011.

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) is a test of the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). In evaluating the complaint's sufficiency, the court must view all well-pled factual allegations as true and construe them in the light most favorable to the Plaintiff. *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). To survive the motion, the claims in the complaint need only be plausible; that is, they must allege enough facts to allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The plaintiff may not, however, rely on naked assertions, speculation, or legal conclusions. *Bell Atlantic v. Twombly*, 550 U.S. 544, 556-57 (2007). If, after taking all factual allegations as true, the court determines that it cannot infer more than "the mere possibility of misconduct," the motion should be granted and the complaint dismissed. *Iqbal*, 129 S.Ct. at 1950.

Ordinarily, affirmative defenses must be raised in a responsive pleading rather than a motion to dismiss. *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (*en banc*). However, where all the facts necessary to rule on an affirmative defense are alleged on the face of the complaint, a court may properly reach the defense on a motion to dismiss. *Id.*

III. ANALYSIS

A. Motion to Dismiss

In Maryland, the statute of limitations for tort claims is three years. *Bosse v. Baltimore County*, 692 F.Supp.2d 574, 594 n.11 (D. Md. 2010); Md Code Ann., Cts. and Jud. Proc. § 5-101. The statute begins to run when "the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95-96, 756 A.2d 963 (2000). However, in the context of work-related injuries, if the Maryland Worker's Compensation Commission orders an award of compensation, the statute is tolled for a

period of two months after the date of the first award. *See* Md. Code Ann., Labor & Employment § 9-902.

There is no dispute that Plaintiff became aware of his injury the moment it occurred on June 13, 2008. Plaintiff, however, argues that his cause of action did not accrue until two months after he received his first award of worker's compensation on August 18, 2008. By his calculation, then, the statute of limitations expired on October 18, 2008, one month after he filed his second amended complaint. That is plainly incorrect. As Defendant points out, it is well settled that once a cause of action has accrued, an award of worker's compensation does not change the date of accrual, but only tolls the running of the statute of limitations. *See Locklear v. Bergman & Beving AB*, 224 F.R.D. 377, 379 n.2 (D.Md. 2004), *aff'd*, 457 F.3d 363 (4th Cir. 2006) ("This section does not postpone the accrual of an injured employee's cause of action against a third party until two months after his first award of compensation, but, rather, merely interrupts the running of limitations for a period of two months after his first award.") (internal quotation marks and citation omitted); *See also Smith v. Bethlehem Steel Corp.*, 303 Md. 213, 228, 492 A.2d 1286 (1985). In other words, an award of compensation extends the statute of limitations to three years and two months from the original date that the cause of action accrued. Therefore, the statute of limitations on Plaintiff's personal injury claims expired three years and two months after the date of the accident, *i.e.*, August 13, 2011, about five weeks before Plaintiff filed his second amended complaint.

Plaintiff also argues, however, that regardless of the statute of limitations the addition of Cincinnati Fan Co. in the second amended complaint "relates back" to the date of the original complaint and is therefore timely. Fed. R. Civ. P. 15(c) allows a change in parties or party names to relate back to the filing date of the original complaint under the following conditions: First, the amendment must "[arise] out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading"; second, during the time allowed by Rule 4(m) for serving the

summons and complaint, the party sought to be added by the amendment must have "received such notice of the action that it will not be prejudiced in defending on the merits"; and, third, it must be the case that during the same period the new party "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity."[1]

Determining whether or not Defendant received the notice required by Rule 15(c) would require the Court to consider evidence and make findings of fact with regard to matters outside the scope of the pleadings. Dismissal under Rule 12(b)(6) would therefore be improper. *See Bruno v. Paulison*, Civil No. RDB 08-0494, 2009 WL 377300 at *5 (D. Md. Feb. 12 2009) (citing *Andrews v. Lakeshore Rehab. Hosp.*, 140 F.3d 1405, 1409 (11th Cir. 1998) (unpublished). Instead, the parties shall conduct any necessary discovery on this issue, after which Defendant may, if it chooses, raise the issue again in a motion for summary judgment. *See id*.

B. Plaintiff's Sur-reply

The Local Rules prohibit the filing of sur-reply memoranda without leave of court. Local Rule 105.2(a). Plaintiff has not sought – and the Court has not granted – such leave in this case. The Court therefore has not considered any arguments contained in Plaintiff's sur-reply (ECF No. 49) in ruling on this motion, and the sur-reply memorandum will be stricken from the record.[2]

[1] Both parties are under the impression that relation back is only proper in cases of misnomer, and not where a plaintiff simply lacked knowledge of the proper party. Although that is apparently the rule in a majority of other jurisdictions, the Fourth Circuit has expressly rejected it in favor of a stricter reading of the text of Rule 15, focusing on notice and prejudice to the new defendant rather than the plaintiff's state of mind. *Goodman v. Praxair, Inc.*, 494 F.3d 458 (4th Cir. 2007).

[2] The Court notes, however, that nothing in the sur-reply would have affected the present ruling because the arguments it contains are without merit. First, the sur-reply contains additional arguments that Plaintiff's second amended complaint seeks only to *substitute* the proper name of a party in order to correct a *misnomer*. As explained above, these arguments are irrelevant. Second, the sur-reply intimates that Cincinnati Fan Co. had notice, or should have had notice, of this suit prior to the expiration of the statute of limitations. As explained above, these are factual issues outside the scope of the pleadings, which cannot be addressed in this motion. Finally, the sur-reply urges the Court to disregard the Maryland Court of Appeals' decision in *Bethlehem Steel*, 303 Md. 213 – holding that § 9-902 tolls the statute of limitations after a worker's compensation award but does not change the date on which the statute starts to run – because he believes it was wrongly decided. The Court notes simply that the *Bethlehem Steel* construction of § 9-902 has been previously adopted by judges in this Court and, implicitly, by the Fourth Circuit. *See Locklear, 224 F.R.D.* at 379 n.2, *supra*. The Court sees no reason to disturb these precedents.

IV. ORDER

Accordingly, it is ORDERED that:

(1) Defendant Cincinnati Fan Co.'s Motion to Dismiss (ECF No. 40) is DENIED; and

(2) Plaintiff's Response (ECF No. 49) (*i.e.*, his sur-reply) is STRICKEN.

Dated this 9th day of December, 2011

BY THE COURT:

/s/
James K. Bredar
United States District Judge