PALM BEACH COUNTY BAR ASSOCIATION
BULLETIN
www.palmbeachbar.org October 2012

Rules of Civil Procedure Corner

Rule 1.190(c): Relation Back of Amendments

By Matt Triggs and Jonathan Galler

Call it the Flux Capacitor of civil procedure. It's Rule 1.190(c) – the relation back rule – and, as Doc Brown would say, it's what makes time travel possible. Great Scott![1]

"When 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 shall relate back to the date of the original pleading." Fla. R. Civ. P. 1.190(c).

The rule is liberally construed.[2] It essentially tinkers with the time-space continuum by allowing "an amendment which merely makes more specific what has already been alleged generally, or which changes the legal theory of the action, to relate back [to the original pleading] even though the statute of limitations has run in the interim."[3]

But, as anyone with a time machine will tell you, this kind of thing is fraught with problems. A couple of recent appellate opinions highlight why.

New Cause of Action

A litigant cannot use the relation back rule to defeat the statute of limitations by filing a new and distinct cause of action under the guise of an amended complaint.[4] But just how strictly is that principle applied?

In *Fabbiano v. Demings*, the Fifth District recently addressed that very question.[5] The appeal arose from a case in which the plaintiff sought to amend his complaint to change his cause of action from negligence to battery. Both claims were based on the identical set of facts involving the plaintiff's interaction with a security officer. The trial court denied the motion to amend because the "new" cause of action would not relate back and was otherwise time-barred.

The Fifth District reversed, adopting the Fourth District's longstanding approach to the issue. Quoting from a 1977 Fourth District case, the Fifth District wrote that "the proper test of relation back of amendments is not whether the cause of action stated in the amended pleading is identical to that stated in the original."[6] Rather, "[i]f the amendment shows the same general factual situation as that alleged in the original pleading, then the amendment relates back even though there is a change in the precise legal description of the rights sought to be enforced, or a change in the legal theory upon which the action is brought.[7]

As the court pointed out, the rationale for the rule is fair notice. Because the original complaint already provided "fair notice of the factual underpinning" of both claims, the new legal theory properly related back.[8]

New Defendant

As a general matter, an amendment to a complaint to add a new party will not relate back to the original.[9] There are exceptions, however. For example, the addition of a new defendant will relate back in the instance of an earlier "misnomer" regarding the defendant's identity[10] or where "the new party is sufficiently related to an original party."[11]

The First District recently addressed an interesting twist on this concept.[12] The case involved claims related to a construction project. The plaintiffs sued the contractor; the contractor filed a third-party complaint against the subcontractor; and the plaintiffs, after the expiration of the limitations period, then sought to assert a direct action against the subcontractor. The issue on appeal was whether the direct action against the third-party defendant related back to the filing of the original complaint against the original defendant. The court held that it did not.[13]

In deciding the case, the First District considered but rejected the approach previously taken by the Fifth District under similar procedural circumstances. The Fifth District had addressed the issue in 1984 as one of first impression, and ultimately sided with the minority view adopted in other jurisdictions, holding that the amendment relates back because it "merely adjusts the status of an existing party."[14] The logic of that view is that the filing of the third-party complaint automatically informs the third-party defendant that the plaintiff may ultimately bring a direct action, thereby eliminating any prejudice caused by the otherwise untimely filing.[15]

The First District, however, sided with the majority view, holding that the third-party defendant could just as easily have concluded that the plaintiffs' decision not to file a direct action was an intentional one, thereby creating unfair surprise when the plaintiffs did finally attempt to bring a direct action asserting different claims than those asserted in the third-party action.[16] The opinion discusses the majority and minority views at length and certifies an express and direct conflict with the Fifth District's opinion in *Gatins*.

Matt Triggs is the head of the litigation department of Proskauer Rose LLP in Boca Raton. Jonathan Galler is a senior associate in the department. Both concentrate their practices in commercial and probate litigation. Neither have ever travelled back in time.

---

[1] *See Back to the Future* (1985, 1955 and, well, 1985 again).
[2] *Williams v. Avery Dev. Co.-Boca Raton*, 910 So. 2d 851, 853 (Fla. 4th DCA 2005).
[3] *Lopez-Loarca v. Cosme*, 76 So. 3d 5, 10 (Fla. 4th DCA 2011).
[4] *Sch. Bd. of Broward Cnty. v. Surette*, 394 So. 2d 147, 154 (Fla. 4th DCA 1981).
[5] *Fabbiano v. Demings*, 91 So. 3d 893, 895 (Fla. 5th DCA 2012).
[6] *Id.* (quoting *Associated Television & Commc ns, Inc. v. Dutch Village Mobile Homes of Melbourne, Ltd.*, 347 So. 2d 746 (Fla. 4th DCA 1977)).
[7] *Id.* at 895.
[8] *Id.*
[9] *Williams*, 910 So. 2d at 853.
[10] *Kozich v. Shahady*, 702 So. 2d 1289, 1291 (Fla. 4th DCA 1997).
[11] *Schwartz v. Wilt Chamberlain's of Boca Raton, Ltd.*, 725 So. 2d 451, 453 (Fla. 4th DCA 1999).
[12] *Graney v. Caduceus Props., LLC*, 91 So. 3d 220 (Fla. 1st DCA 2012).
[13] *Id.* at 227.
[14] *Gatins v. Sebastian Inlet Tax Dist.*, 453 So. 2d 871, 875 (Fla. 5th DCA 1984).
[15] *Id.* at 875.
[16] *Graney*, 91 So. 3d at 228. The court noted that two other Districts the Third and Fourth have cited Gatins without expressly adopting the reasoning or applying its holding to similar facts. The Fourth District case to which it referred, McKee v. Fort Lauderdale Produce Co., Inc., 503 So. 2d 412 (Fla. 4th DCA 1987), is silent as to its underlying facts, but the two-sentence opinion seems to adopt the Gatins holding, with the caveat that the concurring opinion suggests that Gatins was not applicable to the facts at hand.