

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

CASE NO. 05-2023-CA-012958-XXXX-XX

CRAIG K. DELIGDISH, M.D.,

Plaintiff,

v.

NORTH BREVARD COUNTY HOSPITAL

DISTRICT d/b/a Parrish Medical Center,

ZUMPARO PATRICIOS, P.A., a Florida

corporation, and LEON N. PATRICIOS,

an individual

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COUNTS III AND IV OF
PLAINTIFF'S SECOND AMENDED COMPLAINT WITH PREJUDICE**

THIS CAUSE having come before the Court on September 16, 2025, and September 25, 2025, on Defendants, Zumpano Patricios, P.A. (the "ZP Law") and Leon N. Patricios' ("Patricios"), *Motion to Dismiss Counts III and IV of Plaintiff's Second Amended Complaint with Prejudice*, dated July 21, 2025 (DE 51, the "Motion to Dismiss"); Plaintiff, Dr. CRAIG DELIGDISH ("Deligdish"), being represented by Adam M. Bird, Esq., and Defendants, Zumpano Patricios, P.A. (the "ZP Firm") and Leon N. Patricios ("Patricios"), being represented by Leon N. Patricios, Esq. After having heard counsels' oral arguments on *Defendants' Motion to Dismiss Counts III and IV of Plaintiff's Second Amended Complaint* ("SAC") (Dkt. 51), and having read the motion, briefs, and record, this Court orders that the motion is granted for the reasons set forth below.

BACKGROUND

1. Defendants ZP law and Patricios seek dismissal of Counts III and IV of Plaintiffs SAC, with prejudice, asserting that the statute of limitations has run on these causes of action.

2. Plaintiff initially filed this cause of action on January 24, 2023, with an Amended Complaint filed on May 25, 2023. Dr. Deligdish alleged that a letter, dated April 27, 2022, from PMC's CEO to the University of Central Florida School of Medicine ("UCF") and a letter, dated May 13, 2022, from one of PMC's lawyers, Mr. Patricios, also to UCF, defamed him and led to UCF terminating his faculty position.

3. Neither ZP Law nor Patricios were included as Defendants in these complaints.

4. PMC sought dismissal which was denied (Sept. 26, 2023).

5. On October 4th, 2023, PMC filed a *Motion to Stay Proceedings* indicating it would seek appellate review via a writ of certiorari.

6. On October 24, 2023, PMC filed its *Petition for Writ of Certiorari* challenging the Order not dismissing the case based upon sovereign immunity grounds.

7. On November 28, 2023, the trial court entered an order granting PMC's motion to stay all proceedings while the case was on appeal.

8. PMC's *writ of certiorari* asserted that PMC, as an entity of the State of Florida, enjoys absolute immunity against Dr. Deligdish's defamation claim arising out of the PMC CEO letter, dated April 27, 2022. The petition asserted this same immunity for PMC attorneys, Zumpano Patricios, P.A. ("ZP Law"), including Mr. Patricios, for the May 13, 2022, letter.

9. On December 20, 2024, the Fifth District Court of Appeals granted the *Writ* in part, ruling that PMC and the PMC CEO enjoyed absolute immunity for the CEO letter, being a government entity and an employee of that entity sending the letter within the course and scope of his employment. The Appellate Court also ruled that PMC's attorneys, as an outside law firm, were

not afforded Sovereign Immunity protection as employees of a government entity. Further, it could not be said that the trial court's Order departed from the essential requirements of the law as to the denial of sovereign immunity for PMC as to independent counsel's letter. Therefore, the *Writ* was GRANTED in part, the Order QUASHED in part, and the case REMANDED with instructions.

10. On January 14, 2025, the Fifth District Court of Appeal issued the Mandate confirming the Per Curiam Opinion.

11. Not surprisingly, on February 20, 2025, Deligdish filed a motion for leave to file a Second Amended Complaint, which was granted on June 25, 2025.

12. On July 21, 2025, the ZP Firm and Patricios filed their Motion to Dismiss seeking to dismiss the claims against them with prejudice.

13. In the SAC, Counts III and IV are causes of action entitled "Defamation *Per Se*" against ZP Law and Patricios, respectively.

14. The Defendants contend that Counts III and IV of the SAC should be dismissed with prejudice based upon the expiration of the statute of limitations. The statute of limitations for a defamation claim is two (2) years. See Fla. Stat. § 95.11(5)(h) (provides a two-year statute of limitations for defamation claims). Therefore, the statute lapsed on May 13, 2024, well before the filing of the motion to amend on February 20, 2025.

15. The parties primarily argued on the applicability of the Relation Back doctrine (discussed below) and whether equitable tolling should apply.

16. To support equitable tolling, Plaintiff strongly asserts that the Court's stay Order prevented amendment until receipt of the mandate, a period of thirteen months and seventeen days. The Motion to Amend was promptly filed within a month after the stay was lifted. Excluding this time results in a timely filing.

17. Plaintiff also asserted that the mandate from the Appellate Court directs him to add these Defendants as parties. This argument is unavailing.

APPLICABLE LAW

18. The parties do not dispute that Dr. Deligdish filed his motion for leave to amend beyond the two-year statute of limitations for defamation claims. They also agree this is one of the relatively rare instances where a court can consider factual issues at the motion to dismiss stage. “A party can raise a statute of limitations defense in a motion to dismiss if that defense appears on the face of the complaint.” *Nationstar Mortg., LLC v. Sunderman*, 201 So. 3d 139, 140 (Fla. 3d DCA 2015); see also Fla. R. Civ. P. 1.110(d).

RELATION BACK DOCTRINE

19. The “relation back” doctrine is found in Florida Rule of Civil Procedure 1.190(c), which reads, “[w]hen 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.”

20. As Plaintiff noted, it is well settled that the relation back rule is to be liberally construed. *Fabbiano v. Demings*, 91 So. 3d 893, 894 (Fla. 5th DCA 2012). *Fabbiano* is a typical relation back situation, where a plaintiff has brought suit under a negligence theory and wishes to use the same facts and parties to allege an intentional tort theory.

21. In that context, the test is whether the original pleading gives fair notice of the general fact situation out of which the claim or defense arises. *Kalmanowitz v. Amerada Hess Corp.*, 125 So. 3d 836, 840 (Fla. 4th DCA 2013). The new count for negligent supervision and retention related back to the original claims and should not have been dismissed. *Id.* At 840. A new count for negligent hiring was appropriately dismissed.

22. The other typical relation back case involves suit against a ‘misnamed’ party. This technically is the addition of a new party, but the addition of a party will relate back where the new and former parties have an ‘identity of interest’ which does not prejudice the opponent.” Both sides cited cases elucidating the application of this legal standard. See *Francese v. Tamarac Hosp. Corp.*, 504 So. 2d 546 (Fla. 4th DCA 1987) (amendment allowed where the plaintiff first named “University Community Hospital” at a specific address and later named “Tamarac Hospital Corporation d/b/a University Community Hospital” at the same address). *Schwartz ex rel. Schwartz v. Wilt Chamberlain’s of Boca Raton, Ltd.*, 725 So. 2d 451, 454 (Fla. 4th DCA 1999) (amendment allowed where plaintiff filed suit on behalf of minor son against “Wilt’s Inc.” and amendment was against “Wilt’s of Boca Raton”).

23. The identity of interest analysis is also easily applied when the new defendant is the actual parent company of the original defendant (See *Darden v. Beverly Health & Rehabilitation*, 763 So. 2d 542, 542-43 (Fla. 5th DCA 2000), or is the alter-ego of original defendant (See *Williams v. Avery Dev. Co. – Boca Raton*, 910 So. 2d 851, 853 (Fla. 4th DCA 2005), or the original defendant was bought out by the newly named defendant. (See *Arnwine v. Huntington Nat’l Bank, N.A.*, 818 So. 2d 621, 624 (Fla. 2d DCA 2002).

24. The general rule is that an amendment that adds a new party does not relate back to the original complaint. See *Troso v Florida Ins. Guar. Ass’n, Inc.*, 538 So. 2d 103 (Fla. 4th DCA 1989).

25. The addition of a new party does relate back “where the new and former parties have an identity of interest which does not prejudice the opponent.” *Kozich v Shahady*, 702 So. 2d 1289, 1291. *Kozich* set forth several factors for the “identity of interest” analysis comparing defendant corporations: 1) when the companies operate out of a single office; (2) share a single telephone line; (3) have overlapping officers and directors; (4) share consolidated financial

statements and registration statements; (5) share the same attorney, and (6) receive service of process through the same individual at the same location. *Kozich*, 702 So. 2d at 1291.

26. None of the *Kozich* factors are present. Further, Defendants ZP law and Patricios are not “in-house” counsel, they are independent counsel hired by PMC.

27. The Court finds that these Defendants are not sufficiently related to PMC to share an identity of interest, they would be prejudiced by this amendment; therefore, the relation back doctrine is not applicable.

EQUITABLE TOLLING

28. Application of the doctrine of equitable tolling is an extraordinary remedy that should be used sparingly. Not surprisingly, there is a dearth of cases applying the doctrine.

29. In 1988, the Florida Supreme Court applied the doctrine of equitable tolling to a *federal* administrative claim. *Machules v. Department of Administration*, 523 So. 2d 1132 (Fla. 1988). In 2001, the Florida Supreme Court in *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1076 (Fla. 2001), remarked that equitable tolling may “deflect the statute of limitations.”

30. Deligdish cites to *Seavor v. Dept. of Fin. Servs.*, 32 So.3d 722 (Fla. 5th DCA 2010) (citing *Machules v. Dept. of Admin.*, 523 So.2d 1132, 1134 (Fla. 1988)), where the Fifth District explained that “The doctrine of equitable tolling is generally applied when a party has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum.” *Id.* at 723.

31. Also highlighted by Deligdish is *Jerry Ulm Dodge, Inc. v. Chrysler Grp. LLC*, 78 So. 3d 20, 25 (Fla. 1st DCA 2011), wherein the state court applied equitable tolling due to a federal bankruptcy stay and holding that once the bankruptcy stay ended, the statute of limitations period began to run again. Amendment was allowed as long as the party filing the claims acted diligently upon the expiration of the stay. *Id.* at 25.

32. While Deligdish acted diligently in this case in seeking amendment, he has not 'in some extraordinary way been prevented from asserting his rights.' Deligdish had several options to seek the relief he now wishes to assert.

33. Deligdish clearly could have asked the trial court to relax its **own stay** so he could amend to add new parties so that the statute of limitations did not run. This is easily done and far different from asking a state court to ignore a federal bankruptcy stay.

34. The stay also did not prevent Deligdish from simply filing a separate defamation suit against these Defendants. Indeed, these parties have not been shy about filing suits.

35. The Court finds there is nothing extraordinary that prevented Deligdish from bringing these claims, he was not misled nor lulled into inaction, nor did he mistakenly file the claims in the wrong forum.

36. The Court finds the applicable law and the facts in this case do not support the application of the equitable tolling doctrine.

Therefore, it is ORDERED and ADJUDGED, that:

Defendants, Zumpano Patricios, P.A. and Leon N. Patricios,' *Motion to Dismiss Counts III and IV of Plaintiff's Second Amended Complaint with Prejudice*, dated July 21, 2025 (DE 51) is **GRANTED**.

Counts III and IV are **DISMISSED with prejudice**.

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida this 2nd day of April 2026.



GEORGE T. PAULK
CIRCUIT JUDGE

Copies to all parties: via the Florida Eportal