

Fact Pattern:

Two days before the running of the statute of limitations, Paula, a New York resident, sought counsel from Attorney Albert, a licensed Nevada attorney. Paula told Albert that she was injured when she was entering Charlie's Casino in Las Vegas, Nevada. Paula stated that an electromagnetic plate fell off the door and struck her on the head. On request, Paula gave Albert a release for Paula's medical records.

The next day, Albert filed a Complaint in Nevada state court, alleging negligence, gross negligence, and products liability. Albert named "Charlie's Casino, and Does 1 through 5 as defendants. The Does were alleged to be the installer, manufacturer, and distributors of the electromagnetic plate.

Albert had a copy of the Complaint served on Charlie's Casino's resident agent. Diane, Charlie's Casino's attorney, moved the court to dismiss for insufficiency of process. The trial judge denied the motion. Diane then filed a general answer denying the allegations of the Complaint.

During discovery, Charlie's Casino produced documents showing that Acme Lock installed the electromagnetic plate, Best manufactured the plate, and CMA distributed the plate.

Albert filed a Motion for leave of the Court to substitute "Acme Lock, Best, and CMA in place of Does 1 through 3. The Court granted the Motion to Substitute.

After service on its corporate President, Acme Lock moved for dismissal for violation of the statute of limitations. The Motion was denied 32 days after Acme Lock had been served.

At the deposition of Paula's treating physician, records were produced including Paula's statement that she was struck in the head by her son's nerf baseball bat. There was no mention of Charlie's Casino.

Albert immediately offered to voluntarily dismiss Charlie's Casino and all the other parties; however, Charlie's Casino brought a Motion to Dismiss seeking sanctions against both Albert and Paula. The Court granted the motion to dismiss and awarded attorney's fees and costs against both Albert and Paula.

Questions:

Were the rulings of the courts and actions of the attorneys correct under the Rules of Civil Procedure? (Assume that Nevada has adopted the Federal Rules of Civil Procedure without deviation)

Example Answer:

1. Motion to Dismiss for Insufficiency of Process

The trial court should have granted the Motion to Dismiss that Charlie's Casino's attorney filed because service of process was insufficient. Pursuant to FRCP 4(c), the Complaint must be served with a Summons. Here, Albert only served a copy of the Complaint upon Charlie's Casino's resident agent.

2. Motion for Leave to Amend the Complaint

The trial court should have denied Paula's motion to Amend. Unlike some state's rules of civil procedure, the Federal Rules of Civil Procedure do not contain a "Doe" rule.

3. Motion to Dismiss for Violation of the Statute of Limitations

As discussed above because the Federal Rules of Civil Procedure do not contain a "Doe" rule, Acme Lock should have been identified at the original filing of the Complaint. Otherwise, their addition would be considered adding a new party. FRCP 15(c) generally allows amendments to pleadings to relate back to the commencement of the action.

4. Motion to Dismiss Seeking Sanctions

Paula knew that the cause of her injury was not due to any negligence on the part of Charlie's Casino. Consequently, the imposition of sanctions of Paula was proper. Attorneys, subject to sanctions under Rule 11 are required to make reasonable inquiry into the validity of their factual or legal statements. Although Albert was under severe time constraints in that he only had two days to get the Complaint filed, it is possible that a trial court would find that Albert did not act diligently and make reasonable inquiries regarding Paula's treating physicians.