

## MODERN MYTHS

**MYTH #1: The disease of alcoholism is caused by drinking alcohol.**

**MYTH #2: Alcoholism is caused by stress.**

**MYTH #3: Alcoholism is the symptom of an underlying psychological disorder.**

**MYTH #4: Alcoholics must drink to excess on a daily basis.**

**MYTH #5: Alcoholism is cured by not drinking.**

### **Alcoholism is:**

a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with drug/alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.

There is no cure for alcoholism; however, with proper treatment the disease can be placed in remission.

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COURTNEY KELLER, Plaintiff, vs. SEARS, ROEBUCK AND CO., Defendant, Franklin County Branch, Civil Action - Law No. A.D. 1996 - 354

*Defendant did not show cause to allow late joinder of additional defendant*

1. Joinder of additional defendant more than 60 days after service of initial pleading may be allowed by the court upon cause shown.
2. Burden to show sufficient cause to allow late joinder of additional defendant is on defendant.
3. Where the facts giving rise to liability against the additional defendant would not have been discovered until depositions were taken, there is cause to join an additional defendant after the 60 days period. But where the defendant was on notice that two people, including the proposed additional defendant, were injured by the same dryer in a short period of time, defendant had notice of the need for factual investigation and should not have waited 8 months to hold depositions.
4. Defendant, who originally severed one case into federal court and then took 10 unexplained months to file a petition for joinder, cannot argue that late joinder should be permitted in the interest of expedience.

*John N. Keller, Esquire, counsel for Courtney Keller*  
*Walter Fredrick Wall, Esquire, counsel for Defendant Sears*  
*Philip s. Cosentiono, Esquire, counsel for Lucinda Freeman*

### **OPINION AND ORDER**

Walker, P.J., September 30, 1997:

#### **Factual Background**

Plaintiff Lucinda Freeman (Franklin County Civil Action No. A.D. 1996 - 353) purchased a dryer from Defendant Sears, Roebuck and Co., hereafter "Sears." Sears installed the dryer in Ms. Freeman's residence. Plaintiff Courtney Keller (Franklin County Civil Action No. A.D. 1996 - 354) was living with Lucinda Freeman at this time.

On or about March 20, 1996, both Ms. Freeman and Mr. Keller were injured by an electrical shock when they touched the dryer purchased from and installed by Sears.

On August 28, 1996, the separate complaints of Lucinda Freeman and Courtney Keller were served on Defendant Sears. For reasons unknown to this court and not given in their oral argument or written

letter, Sears chose to remove Lucinda Freeman's case to federal court.

Both complaints allege that the individual plaintiffs sustained injury from an electrical shock from the same newly installed Sears' dryer. It is this court's opinion that Sears surely had notice of the need for a factual investigation and depositions of both parties on August 28, 1996.

Plaintiff Keller took depositions of three witnesses on December 11, 1996. Defendant Sears did not depose Mr. Keller and Ms. Freeman until April 29, 1997, eight months after the complaint was served on Sears.

On July 8, 1997, ten months after the complaint was served and seventy days after the depositions, Sears filed a petition for leave to join Ms. Freeman as an additional defendant.

Plaintiff Keller and proposed additional Defendant Freeman object to what they consider an untimely attempt to join an additional defendant. The matter was argued before the court and counsel provided the court with letters defining their respective position and authority for those positions.

### Discussion

This court must decide whether to allow Sears to file a late joinder complaint against additional Defendant Freeman. The applicable rule of procedure is Pa.R.C.P. 2253, which provides as follows:

#### Time for Filing Praeceptum or Complaint

Except as provided by Rule 1041.1(e), neither praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by a complaint, shall be filed by the original defendant or an additional defendant later than sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof unless such filing is allowed by the court upon cause shown.

Pa.R.C.P. 2253.

The complaints were filed on August 28, 1996 and the petition for leave to join an additional defendant was filed on July 8, 1997. Since the joinder was filed over ten months after the complaint it is incumbent on the defendant to show cause why the court should allow late joinder.

[1] The applicable rule of procedure provides as follows:

Neither praecipe for a writ to join an additional defendant nor a complaint if joinder is commenced by a complaint, shall be filed by the original defendant or an additional defendant *later than sixty (60) days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof unless such filing is allowed by the court upon cause shown.*

Pa.R.C.P. 2253 (Emphasis added). Because the joinder complaint against the additional defendant was filed more than 60 days after service of the complaint in this case, it was incumbent upon defendant/appellant to show 'cause' why late joinder should be permitted. See *Exton Development v. Sun Oil Co. of Pa.*, 363 Pa.Super. 17, 525 A.2d 402 (1987).

[2] In *NPW Medical Center v. L.S. Design Group, P.C.*, 353 Pa.Super. 341, 509 A.2d 1306 (1986), Judge Montemuro cogently explained:

It is clear that the burden of demonstrating sufficient cause to allow the unseasonable joinder of an additional defendant rests with the defendant. Although Rule 2253 neither specifies what constitutes sufficient cause nor delineates the factors to be taken into consideration, our Supreme Court has stated that, in this regard:

The court . . . should be guided by the objective sought to be achieved by use of the additional defendant procedure in conjunction with the purpose for which a 60-day limitation was placed on its unrestricted use. In a capsule, these rules are an attempt to provide a means to simplify and expedite the disposition of matters involving numerous parties . . . without subjecting the original plaintiff to unreasonable delay in the prosecution of his portion of the litigation.

*Zakian v. Liljestrand*, 438 Pa. 249, 256, 264 A.2d 638, 641 (1970). The court has required that a defendant seeking late joinder must establish some reasonable justification for its delay.

*Glabbatz v. Terminal Freight Handling*, 386 Pa.Super 447, 451, 563 A.2d 151 (1989).

The defendant argues that it had no knowledge of, nor any reason to know of a cause of action against Ms. Freeman until it took her deposition on April 29, 1997. The defendant was aware on August 28, 1996 of two separate complaints about the same Sears' dryer. The defendant chose to remove Ms. Freeman's case to federal court. The plaintiff took deposition testimony of these witnesses on December 11, 1996.

Defendant offers no reason for splitting the cases between federal court and state court and no reason for not scheduling the depositions until eight months after the complaint was filed. The court can decipher no "cause" for allowing defendant to bypass the sixty-day rule provided for in Pa.R.C.P. 225.3. Therefore, the court is going to deny joinder of an additional defendant.

The case of *Lamoree v. Penn Central Transportation Co.*, 238 Pa.Super. 380, 357 A.2d 595 (1976) involves a situation where defendant scheduled the deposition within three months of complaint being filed. The depositions were continued twice. The court in *Lamoree* found that facts giving rise to liability against an additional defendant wouldn't have been discovered until depositions were taken. However, in the case before the court, the defendant was aware of two people being injured by the same dryer within a short period of time, and didn't schedule depositions for eight months. The factual difference between this case and *Lamoree* are such that this court does not find *Lamoree* to be controlling.

Finally, defendant argues that additional defendant, Mrs. Freeman, is not prejudiced. Defendant's reliance on lack of prejudice is misplaced. In *N.P.W. Medical Center*, Judge Montemuro also explained:

First, it is certainly true that *Zakian v. Liljestrand*, *supra*, states that, in determining whether sufficient cause has been shown, the court must consider that one

of the purposes of Rule 2253 is to prevent the plaintiff from suffering prejudice regarding the prosecution of its portion of the litigation due to the defendant's delay. However, the rule is clearly premised on a more general purpose as well, i.e., to ensure the expeditious resolution of multi-party lawsuits. As stated in *Zakian v. Liljestrand*, 'these rules are an attempt to provide a means to simplify and expedite the disposition of matters involving numerous parties.' *Id.* 438 Pa. At 256, 264 A.2d at 641 (emphasis added). The purpose would not be furthered by allowing defendants seeking joinder of an additional defendant to procrastinate and respond to the court at their convenience. 'Before the defendant can ask the court to help him secure a just, speedy and inexpensive determination of the suit by permitting late joinder, he must have acted expeditiously himself.' *Id.* 438 Pa. At 258, 264 A.2d at 642-43. It cannot be denied that, in the instant case appellant did not act expeditiously.

*Glabbatz v. Terminal Freight Handling Co.*, 386 Pa.Super 447, 452, 563 A.2d 151 (1989).

It is ironic that defendant who originally severed one case into federal court and took ten unexplained months to file a petition for joinder, is now asking for a "just, speedy, and inexpensive determination of the suit by permitting late joinder."

The defendant having failed to show cause for not complying with the provision of Pa.R.C.P. 2253, this court is now denying its request to join an additional defendant.

#### ORDER OF COURT

September 30, 1997, the defendant having failed to show cause for not complying with the provision of Pa.R.C.P. 2253, this court is now denying its request to join an additional defendant.