[Cite as *PNC Bank, Natl. Assn. v. J & J Slyman, L.L.C.*, 2015-Ohio-2951.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101777

PNC BANK, NATIONAL ASSOCIATION

PLAINTIFF

vs.

J & J SLYMAN, L.L.C., ET AL.

DEFENDANTS-APPELLEES

[Appeal By Idella Palmer]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-11-761173 and CV-14-825591

BEFORE: E.T. Gallagher, P.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: July 23, 2015

ATTORNEY FOR APPELLANT

Nicole C. Longino
11811 Shaker Blvd, #420
Cleveland, Ohio 44120

ATTORNEYS FOR APPELLEES

Megan D. Stricker
Collins Roche Utley & Garner, L.L.C.
800 Westpoint Parkway, Suite 1100
Cleveland, Ohio 44145

Gary C. Safir
Collins Roche Utley & Garner, L.L.C.
655 Metro Place South, Suite 200
Dublin, Ohio 43017

EILEEN T. GALLAGHER, P.J.:

{¶1} Plaintiff-appellant, Idella Palmer ("Palmer"),[1] appeals the trial court's judgment dismissing her complaint against defendants-appellees, J & J Slyman, L.L.C., c/o David J. Slyman, statutory agent; Jack Cornachio, C.P.M., in his capacity as president and CEO of Midwest Realty Advisors, L.L.C.; Jack Cornachio, C.P.M., in his capacity as receiver for the real property of J & J Slyman, L.L.C. at Garfield Mall a.k.a. Garfield Commons; and Garfield Mall a.k.a. Garfield Commons (collectively "appellees"). Palmer raises two assignments of error for review:

> 1. The trial court erred as a matter of law when it granted appellees' motion to dismiss pursuant to Civ.R. 12(B)(6) stating that appellant's claims were barred by the applicable statute of limitations when appellant clearly timely filed her cause of action in the trial court within the two-year statute of limitations period.
>
> 2. The trial court erred as a matter of law when it failed to recognize that appellant's amended complaint, filed after receiving leave of court, "related back" to the date of appellant's original complaint filing when appellees' capacities were corrected and correctly named and identified on appellant's amended complaint.

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[1] Although Idella Palmer is the plaintiff-appellant in this appeal, PNC Bank, National Association is named as the plaintiff below because Palmer's personal injury complaint was consolidated with the foreclosure proceedings in CV-11-761173, *PNC Bank, Natl. Assn. v. J & J Slyman, L.L.C., et al.*

{¶2} After careful review of the record and relevant case law, we affirm the trial court's judgment.

I. Factual and Procedural History

{¶3} This is a personal injury matter that arose when Palmer allegedly fell after stepping into a pothole outside the premises located at 12678 Rockside Road in Garfield Heights, Ohio (hereinafter referred to as the "subject property") on April 19, 2012.

{¶4} On April 18, 2014, one day before the applicable two-year statute of limitations for her claims expired, Palmer filed a complaint ("original complaint") in Cuyahoga C.P. No. CV-14-825591 against Jack Cornachio, C.P.M., individually and in his capacity as president and CEO of Great Lakes Realty, Inc., Great Lakes Realty Inc., and Garfield Shopping Center.

{¶5} The original complaint identified Cornachio and Great Lakes Realty Inc., as owners of the subject property and asserted three claims (1) bodily injury resulting from negligence; (2) bodily injury resulting from negligence per se; and (3) negligent infliction of emotional distress.

{¶6} After being served with the original complaint, Cornachio contacted Palmer's attorney and informed her that he was not the owner of the subject property. Rather, Cornachio was serving as a court-appointed receiver following a judgment entry and decree of foreclosure against the true owner of the subject property, J & J Slyman, L.L.C. and in favor of PNC Bank, National Association in Cuyahoga C.P. No. CV-11-761173.

Thereafter, Palmer's attorney received a copy of the trial court's August 4, 2011 order appointing Cornachio as receiver. Relevant to this case, the order contained a provision that imposed a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained. Specifically, the provision stated, in relevant part:

> No legal action * * * shall be taken or continued against the Receiver, the Premises, the business operation conducted on the Premises, and other assets of Defendant J & J, or any part thereof without leave of this Court first having being obtained.

{¶7} Based on this newly discovered information, Palmer filed an amended complaint on May 2, 2014 in CV-14-825591, raising the same allegations, but naming appellees as defendants. Subsequently, Palmer voluntarily dismissed the parties named in her original complaint. On May 8, 2014, Palmer filed a motion for leave of court to file her amended complaint in CV-11-761173. On May 14, 2014, the trial court in CV-11-761173 granted Palmer's motion for leave.

{¶8} On June 4, 2014, appellees filed a motion to consolidate case numbers CV-14-825591 and CV-11-761173. On June 23, 2014, the trial court granted appellees' motion and consolidated the cases under case number CV-11-761173.

{¶9} On June 6, 2014, appellees filed a motion to dismiss Palmer's amended complaint pursuant to Civ.R. 12(B)(6). Appellees argued Palmer's claims were barred because (1) she failed to obtain leave of court prior to the lapse of the applicable two-year statute of limitations period, and (2) her claims cannot "relate back" to her original

complaint because "Civ.R 15(C) may not be employed to add new party defendants by amendment."

{¶10} On July 8, 2014, the trial court granted appellees' motion, stating "[p]laintiff's claims are hereby dismissed as being barred by the applicable statute of limitations."

II. Law and Analysis

{¶11} In her first assignment of error, Palmer argues the trial court erred by granting appellees' motion to dismiss pursuant to Civ.R. 12(B)(6). In her second assignment of error, Palmer argues the trial court failed to recognize that her May 2, 2014 amended complaint "related back" to the filing of her original complaint on April 18, 2014, for the purposes of complying with the applicable two-year statute of limitations period. Because appellant's first and second assignments of error are interrelated, we consider them together.

A. Standard of Review

{¶12} A motion to dismiss a complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R. 12(B)(6), tests the sufficiency of a complaint. In order for a trial court to dismiss a complaint under Civ.R. 12(B)(6), it must appear beyond a doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought. *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975); *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, 872 N.E.2d 254, ¶ 14. The allegations of

the complaint must be taken as true, and those allegations and any reasonable inferences drawn from them must be construed in the nonmoving party's favor. *Id.* Appellate review of a trial court's decision to dismiss a complaint pursuant to Civ.R. 12(B)(6) is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

B. Statute of Limitations and Civ.R. 15(C)

{¶13} The statute of limitations is an affirmative defense and is generally not properly raised in a Civ.R. 12(B)(6) motion to dismiss. *Lisboa v. Tramer*, 8th Dist. Cuyahoga No. 97526, 2012-Ohio-1549, ¶ 13, quoting *Ryan v. Ambrosio*, 8th Dist. Cuyahoga No. 91036, 2008-Ohio-6646, ¶ 20. However, the Ohio Supreme Court has held that a court may dismiss a complaint pursuant to Civ.R. 12(B)(6) for failing to comply with the applicable statute of limitations where the complaint, on its face, conclusively indicates that the action is time barred. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 11; *Mills v. Whitehouse Trucking Co.*, 40 Ohio St.2d 55, 58, 320 N.E.2d 668 (1974).

{¶14} In the case at hand, the parties stipulate that the applicable statute of limitations period for each of Palmer's claims is two years. *See* R.C. 2305.10. Palmer filed her original complaint on April 18, 2014, one day before the expiration of the two-year statute of limitations period. Palmer then filed her amended complaint, which named appellees as defendants, on May 2, 2014. Although Palmer acknowledges that her amended complaint was filed approximately two weeks after the statute of limitations

period had lapsed, she argues her claims are not barred because they "relate back" to the date she filed her original complaint pursuant to Civ.R. 15(C), which was timely filed.

{¶15} Civ.R. 15(C) provides:

> (C) Relation Back of Amendments. Whenever 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 relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by an amendment, (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

{¶16} The primary purpose of Civ.R. 15(C) is to preserve actions that, through mistaken identity or misnomer, have been filed against the wrong person. *Littleton v. Good Samaritan Hosp. & Health Ctr.*, 39 Ohio St.3d 86, 101, 529 N.E.2d 449 (1988). In *Bykova v. Szucs*, 8th Dist. Cuyahoga No. 87629, 2006-Ohio-6424, we noted that historical case law and "[a] review of Civ.R. 15(C) suggests that it is limited to an amended pleading changing the party against whom a claim is asserted." *Id.* at ¶ 4. Accordingly, Civ.R. 15(C) does not allow for the adding of a new party to an original action under the relation back doctrine after the statute of limitations has expired. *Id.* "When a new party is added, a new cause of action is created and will not relate back to the date of filing the original action for statute of limitations purposes." *Id.*

{¶17} Within her brief, Palmer raises persuasive arguments relating to the application of Civ.R. 15(C) and her position that the amended complaint did not add new

parties to the original action, as maintained by appellees, but properly "changed the parties against whom her claims are asserted" due to mistaken identity. Nevertheless, we are unable to ignore Palmer's failure to obtain leave of court, as ordered in CV-11-761173, prior to filing her original complaint.

{¶18} A receivership is an equitable remedy by which a court appoints a disinterested third party for the purpose of conserving the property and assets that are the subject of diverse claims. *See Heartland Bank v. LNG Res., LLC*, 10th Dist. Franklin No. 08AP-410, 2008-Ohio-6226, ¶ 4. Thus, the receivership court has a valid interest in both the value of the claims themselves and the costs of defending any suit as a drain on receivership assets. *See SEC v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir.1985). To this extent, the receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained. *Barton v. Barbour*, 104 U.S. 126, 128, 26 L.Ed. 672 (1881). Moreover, a district court may impose a litigation stay on a non-party to a receivership as part of its inherent power as a court of equity to fashion effective relief. *U. S. v. JHW Greentree Capital, L.P.*, D.Conn. No. 3:12-CV-00116, 2014 U.S. Dist. LEXIS 79277, *9 (June 11, 2014), citing *S.E.C. v. Byers*, 609 F.3d 87, 91 (2d Cir.2010).

{¶19} In furtherance of these principles, the trial court's August 4, 2011 order required leave of court before a legal action could be filed against "the Receiver, the Premises, the business operation conducted on the Premises, and other assets of Defendant J & J, or any part thereof."

{¶20} Generally, where leave is required to file a pleading, and a party files its pleading without the requisite leave, a trial court may treat it as a legal nullity. *See generally Matthews v. Rader*, 11th Dist. Lake No. 2003-L-092, 2005-Ohio-3271; *Internatl. Bhd. of Elec. Workers, Local Union No. 8 v. Kingfish Elec., L.L.C.*, 6th Dist. Williams No. WM-11-006, 2012-Ohio-2363. By definition, a nullity is treated as if it never occurred and, therefore, cannot be corrected. *See Alliance Group v. Rosenfield*, 115 Ohio App.3d 380, 388, 685 N.E.2d 570 (1st Dist.1996); *see also Lingo v. State*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 70 (Pfeifer, J., dissenting) ("By definition a nullity is something that never happened."). Thus, the remedial functions of Civ.R. 15(C) and R.C. 2305.19 do not apply to this case. The only way to correct a defect in the filing of the original complaint is the filing of an entirely new complaint. *Alliance* at 388. In other words, if a complaint is a nullity, then the action is never legally commenced by that complaint. *Id.* Applying the foregoing to the case at hand, we must treat Palmer's original complaint as if it never existed. Thus, we are left only with Palmer's amended complaint in CV-11-761173, which was filed after the two-year statute of limitations period had expired.

{¶21} We recognize, as noted by the dissent, that the United States Court of Appeals for the Sixth Circuit stated in *Liberte Capital Group, L.L.C. v. Capwill*, 462 F.3d 543 (6th Cir.2006), that nonparties to the underlying litigation may be bound by a blanket stay that requires leave of court before litigation can be pursued against the receiver or the entities under his or her control, "so long as the nonparties have notice of the injunction."

Id. at 551–552. However, we find this statement in *Capwill* to be unpersuasive. Significantly, the factual scenario and legal questions raised in *Capwill* did not involve the issue of notice to a nonparty. Thus, the court's statement regarding notice had no bearing on its decision. Moreover, disregarding a blanket stay for non-parties who lack notice would preclude courts from enforcing their own unambiguous orders and would conflict with the equitable intent of a receivership and the goal of preserving the interests of creditors, such as PNC Bank, National Association, and the assets under the receiver's control. Nevertheless, even if this court were to construe *Capwill* as set forth in the dissent, we find under the totality of the circumstances of this case, that Palmer could or should have been placed on notice of the receivership stay prior to the expiration of the statute of limitations period had she more diligently utilized available resources to discover the identity of the true property owner.

{¶22} Finally, we note that the trial court's reliance on the August 4, 2011 order did not improperly convert the Civ.R. 12(B)(6) motion into a motion for summary judgment under Civ.R. 56. The Ohio Supreme Court has held, "[i]t is axiomatic that a trial court may take judicial notice of its own docket." *Indus. Risk Insurers v. Lorenz Equip. Co.*, 69 Ohio St.3d 576, 580, 635 N.E.2d 14 (1994). In the context of a Civ.R. 12(B)(6) motion, which must be judged only considering the face of the complaint, a court may take judicial notice of the court proceedings in the immediate case. *See Mansour v. Croushore*, 194 Ohio App.3d 819, 2011-Ohio-3342, 958 N.E.2d 580, ¶ 18 (12th Dist.); *see also Anetomang v. OKI Sys. Ltd.*, 10th Dist. Franklin No. 10AP-1182,

2012-Ohio-822. Consequently, it was proper for the trial court to rely upon its docket in the immediate case in the context of a Civ.R. 12(B)(6) motion to determine whether Palmer filed a valid action prior to the expiration of the statute of limitations period.

{¶23} Construing the allegations in favor of the nonmoving party, which we must do under Civ.R. 12(B), we find the complaint conclusively shows that Palmer's claims are time barred. Therefore, the trial court did not err in granting the appellees' Civ.R. 12(B)(6) motion and dismissing the complaint with prejudice.

{¶24} Palmer's first and second assignments of error are overruled.

III. Conclusion

{¶25} The trial court did not err in granting appellees' motion to dismiss Palmer's personal injury complaint pursuant to Civ.R. 12(B)(6). Palmer failed to obtain leave of court prior to the filing her original complaint against appellees. Accordingly, her original complaint is a nullity and the only complaint before the trial court was filed after the applicable two-year statute of limitations period had expired.

{¶26} The judgment of the trial court is affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., CONCURS;
MELODY J. STEWART, J., CONCURS IN JUDGMENT ONLY IN PART, AND DISSENTS IN PART

MELODY J. STEWART, J., CONCURRING IN JUDGMENT ONLY IN PART; DISSENTING IN PART:

{¶27} I agree with the majority that J & J Slyman, L.L.C. and Garfield Mall Shopping Center, a.k.a. Garfield Commons, were properly dismissed. However, I dissent from the majority's conclusion that the statute of limitations bars Palmer's lawsuit in toto. I find that Palmer correctly changed, through amendment under Civ.R. 15(C), Jack Cornachio in his individual capacity and in his capacity as president and CEO of Great Lakes Realty, Inc., to Jack Cornachio, C.P.M. in his capacity as receiver for the real property of J & J Slyman, L.L.C. and in his capacity as president and CEO of Midwest Realty Advisors, L.L.C.

The Original Complaint as a Nullity

{¶28} Palmer filed her lawsuit in conformity with the statutory requirements for filing a personal injury complaint. Although the trial court had issued a court order that required leave of court before filing a lawsuit against the receiver for J & J Slyman, L.L.C., the business, and its business assets, Palmer was unaware of the trial court's order. I can find no Ohio authority that allows a court order to nullify a properly filed

complaint when the plaintiff was not on notice of a court's order. *Accord Liberte Capital Group, L.L.C. v. Capwill*, 462 F.3d 543, 551–552 (6th Cir.2006) (explaining that a receivership court may issue a stay on litigation against the named receiver and the entities under his control unless leave of that court is first obtained, "*so long as the non-parties have notice of the injunction*").

{¶29} While the majority cites *Matthews v. Rader*, 11th Dist. Lake No. 2003-L-092, 2005-Ohio-3271, and *Internatl. Bhd. of Elec. Workers, Local Union No. 8 v. Kingfish Elec., L.L.C.*, 6th Dist. Williams No. WM-11-006, 2012-Ohio-2363, for the proposition that Palmer's original complaint was a nullity because it was filed without leave of court, those cases are from other districts and concern violations of statutory requirements necessitating leave of court before filing a specific pleading. *See Matthews* (upholding trial court's entry of default judgment where defendant failed to seek leave of court before filing an answer outside the statutory time frame contained in Civ.R. 6(B)); *see also Kingfish* (regarding as a nullity plaintiff's second amended complaint when it was filed without leave of court because Civ.R. 15(A) made it clear to the pleader that leave was required). The distinguishing characteristic between Palmer's case and those cases is that the parties in *Matthews* and *Kingfish* were on notice, through relevant civil procedure statutes, that they had to seek leave of court before filing their pleadings.

{¶30} In relying on the above cases to find that Palmer's complaint was a nullity and therefore could not be amended, the majority ignores decisions from this district that

suggest the opposite. For instance, this court has held that a pleading filed in derogation of a court order forbidding new pleadings during an arbitration period, still has legal effect. *Newton v. Jones*, 13 Ohio App.3d 449, 451, 469 N.E.2d 962 (8th Dist.1984) (stating explicitly that "[w]hile the pleading filed during the pendency of the arbitration could not affect that special process, *the pleading was not a nullity*"). (Emphasis added.) Furthermore, our court has stated, in situations similar to *Matthews*, that a trial court may not simply ignore an untimely filed answer and enter a default judgment — even when the answer is filed without leave of court — when "that answer is in good form and substance * * * [and] stands as part of the record." *McGrath v. Bassett*, 196 Ohio App.3d 561, 2011-Ohio-5666, 964 N.E.2d 485, ¶ 14, citing *Suki v. Blume*, 9 Ohio App.3d 289, 290, 459 N.E.2d 1311 (1983); *see also McCabe v. Tom*, 35 Ohio App. 73 (6th Dist.1929). Rather, "the proper practice under the circumstances calls for a motion to strike the pleading from the files." *Id.*; *see also McCabe*.

{¶31} The defendants in this case never moved the court to strike the complaint as being filed in derogation of a court order. Not only did the court not strike the complaint, but the court granted Palmer leave to amend it. The court's grant of leave to amend evidences the fact that it did not consider the original filing a nullity.[2] Therefore,

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[2] Nor could it have, because Palmer had no notice of the court order. *See Capwill*, 462 F.3d 543 (6th Cir.2006) at 551–552. Contrary to what the majority states, this analysis neither disregards the court's order for "a blanket stay for non-parties who lack notice" nor precludes the court from enforcing its "own unambiguous orders." The court was perfectly capable of enforcing its orders. It simply chose not to do so. It instead granted Palmer leave to amend her complaint instead of striking it as being in derogation of the court's order. Therefore, if there was any disregard

the original complaint, was filed before being time barred by the statute of limitations and was properly before the court.

Amendment under Civ.R. 15(C)

{¶32} Further, Palmer properly changed Cornachio's capacity in the amended the complaint.

{¶33} Under Civ.R. 15(C), a plaintiff may amend her complaint to change parties after the statute of limitations has run, as long as the party(s) being brought in by amendment 1) has received notice of the institution of the action, 2) will not be prejudiced in maintaining his defense on the merits, and 3) knew or should have known that, but for a mistake in the identity of the party, the action would have been brought against him.

{¶34} While Cornachio was served with notice in his individual capacity and in his capacity as president and CEO of Great Lakes Realty, and Great Lakes Realty, Inc. was also served, the record reflects that service was not perfected on Garfield Mall Shopping Center. Thus, there is no evidence that Garfield Mall Shopping Center a.k.a. Garfield Commons ever received notice of the original suit. Nor is there any evidence that J & J Slyman, L.L.C. was on notice of the suit prior to the filing of the amended complaint. J & J Slyman, L.L.C. was not a party to the original filing, and while a valid argument might arise that J & J Slyman would have notice of the lawsuit as the owner of Garfield Mall Shopping Center, notice cannot be imputed because Garfield Mall Shopping Center was never served with the original compliant.

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of court's order, it was disregarded by the court itself.

{¶35} Although Palmer asserts that these entities were put on notice, are not prejudiced in defending the lawsuit, and knew that, but for mistaken identity, they would have been originally named in the suit — nowhere in her brief does she explain how they were put on notice or how they should have known that they were the intended parties to the suit. While Palmer seems to assume that Cornachio, as receiver, had an obligation to put these entities on notice, this assumption is incorrect. Court-appointed receivers are court officers who are controlled by the trial courts according to the mandate of R.C. 2735.04, Ohio's receivership statute. *Hummer v. Hummer*, 8th Dist. Cuyahoga No. 96132, 2011-Ohio-3767, ¶ 18. Although a receiver may be acting on behalf of the party and its assets, he is not an officer or agent of that party, rather he is an agent of the government. *United States v. Weitzel*, 246 U.S. 533, 541, 38 S.Ct. 381, 62 L.Ed. 872 (1918).

{¶36} As an officer of the court and not the parties, Cornachio cannot be considered a receiver of process for J & J Slyman, L.L.C., or Garfield Mall Shopping Center, and notice may not be imputed onto these parties simply because Cornachio may have received notice of a suit pending against him in his professional capacity. Indeed, Ohio courts have made clear that a plaintiff may not bring a corporation into court through service of summons upon its receiver, absent an order of the court requiring the receiver to defend the company's lawsuits.[3] *Wade v. Franklin*, 50 Ohio App. 174, 176,

[3] The trial court's order appointing Cornachio as receiver for J & J Slyman, L.L.C. and its assets, did not require Cornachio to defend the company's lawsuits.

197 N.E. 796 (6th Dist.1934); *accord C. & M. RR. Co. v. Orme*, 1 Ohio C.D. 285 (Ohio Cir. 1885) (now the 5th District). Accordingly, without more, Palmer's conclusory allegations that these entities had notice cannot support her contentions that she properly changed all parties through amendment under Civ.R. 15(C). *See State Farm Mut. Auto. Ins. Co. v. Sandhu Auto Mechanic, Inc.*, 8th Dist. Cuyahoga No. 51218, 1986 Ohio App. LEXIS 8741, *3 (Oct. 16, 1986) (noting that a court will not conduct a Civ.R. 15(C) analysis where neither the record nor the parties "disclose any evidence to indicate that the criteria set forth in [Civ.R.] 15(C) were complied with.").

{¶37} However, the record establishes that Cornachio's capacities were properly changed in the amended complaint under Civ.R. 15(C). The record shows that Cornachio was served individually and in his capacity as president and CEO for Great Lakes Reality, Inc. Therefore, he was on notice of the pending lawsuit within the statute of limitations and there is no evidence that indicates he would be prejudiced in maintaining his defense. Furthermore, Cornachio was or should have been on notice that the lawsuit named him in the wrong capacity, because the only form in which he is connected to the premises of Garfield Mall Shopping Center is in his capacity as receiver of J & J Slyman, L.L.C. and its assets, and that he is president and CEO of Midwest Realty Advisors, L.L.C., not Great Lakes Realty, Inc.

{¶38} While the defendants maintain that Palmer improperly "added" parties to the lawsuit when she changed Cornachio's capacity on the amended complaint to his capacity as receiver of J & J Slyman, L.L.C. and president and CEO of Midwest Realty Advisors,

L.L.C., a simple comparison of the two complaints shows that this is not true. In the amended complaint, rather than suing Cornachio in his capacity as president and CEO of Great Lakes Realty, Inc., Palmer changed Cornachio's capacity to president and CEO of Midwest Realty Advisors, L.L.C. The amended complaint also establishes that Palmer changed Cornachio's designation as a party in his individual capacity, to a party in his capacity as receiver for J & J Slyman, L.L.C. and its business assets. Consequently, this is not a scenario where Palmer added new parties to the amended complaint, while retaining the parties in the original complaint. Rather, Palmer changed the capacity of the parties in the original complaint to those in the amended complaint, which is precisely what Civ.R. 15(C) allows. *See Roche v. On Time Delivery Servs.*, 8th Dist. Cuyahoga No. 94036, 2010-Ohio-2358, ¶ 30.

{¶39} Therefore, I would reverse and remand the trial court's grant of appellees' Civ.R. 12(B)(6) motion to dismiss as to Jack Cornachio, in his capacity as receiver for J & J Slyman, L.L.C. and in his capacity as president and CEO of Midwest Realty Advisors, L.L.C.