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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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Dwayne Lavan Harris

v.

Dubai Truck Lines, Inc.

**Appeal from Jefferson Circuit Court
(CV-20-902537)**

SELLERS, Justice.

Dwayne Lavan Harris appeals from an order of the Jefferson Circuit Court dismissing his counterclaim against Dubai Truck Lines, Inc., pursuant to Rule 12(b)(6), Ala. R. Civ. P. We reverse and remand.

Facts

On February 18, 2018, three vehicles were involved in an accident in Jefferson County: a vehicle owned by Dubai and driven by Jose Martinez, one of Dubai's employees; a vehicle driven by Harris; and a vehicle driven by Annika Schaefer. Schaefer's vehicle was insured by State Farm Mutual Automobile Insurance Company. On February 28, 2019, Schaefer and State Farm, as subrogee of Schaefer (hereinafter referred to collectively as "the State Farm plaintiffs") sued Dubai and Martinez. According to Dubai, it was not served with the complaint until June 2020, after the expiration of the applicable two-year statute-of-limitations period.

On August 7, 2020, Dubai filed an answer denying all liability for the accident and adding Harris as a third-party defendant pursuant to Rule 14, Ala. R. Civ. P. Dubai specifically impleaded Harris to allege that Harris's negligence was the proximate cause of the accident. On November 13, 2020, Harris filed a counterclaim against Dubai, alleging that Martinez, Dubai's employee, had been negligent and/or wanton in causing the accident, that Harris had suffered injuries as a result of the

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accident, and that Dubai was vicariously liable for those injuries under the doctrine of respondeat superior.¹

On January 6, 2021, Dubai filed a motion to dismiss the counterclaim pursuant to Rule 12(b)(6), Ala. R. Civ. P., alleging that Harris had failed to state a claim upon which relief could be granted because, it asserted, Harris's counterclaim was barred by the applicable two-year statute of limitations. Harris filed a response in opposition to the motion to dismiss, arguing that, because his counterclaim was compulsory, it was not subject to the statute-of-limitations defense. Dubai then filed a reply stating generally that it had impleaded Harris "under a theory of contribution and/or indemnity" and that its claim for contribution and/or indemnity "sound[ed] in contract." Following a hearing, the circuit court entered an order granting Dubai's motion to dismiss. In that same order, the circuit court dismissed Dubai's third-

¹Harris asserts that, following the accident, he hired an attorney to sue Dubai for the injuries he allegedly suffered as a result of the accident. However, he states that, in July 2020, after the applicable limitations period had expired, he learned that his attorney had died without having filed a complaint; thus, Harris says, the filing of the third-party complaint revived his right to assert a claim against Dubai.

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party complaint with prejudice, without stating a reason for doing so. Thereafter, the State Farm plaintiffs and Dubai entered into a joint stipulation of dismissal; based on that stipulation, the circuit court entered an order dismissing the action with prejudice. This appeal followed.

Standard of Review

This Court reviews a dismissal under Rule 12(b)(6), Ala. R. Civ. P., de novo. Hendrix v. United Healthcare Ins. Co. of the River Valley, [Ms. 1190107, Sept. 18, 2020] ___ So. 3d ___ (Ala. 2020). A dismissal for failure to state a claim upon which relief can be granted is warranted only when the allegations of the complaint or, in this case, the counterclaim, viewed most strongly in favor of the pleader, demonstrate that the pleader can prove no set of facts that would entitle the pleader to relief. Mikkelsen v. Salama, 619 So. 2d 1382 (Ala. 1993).

Discussion

On appeal, Harris argues that the circuit court erred in dismissing his counterclaim because, he says, the counterclaim is compulsory in nature and, thus, not subject to the statute-of-limitations defense raised

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by Dubai in its motion to dismiss. We agree. A counterclaim is compulsory if, among other things not relevant to this appeal, it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Rule 13(a), Ala. R. Civ. P.; see also Committee Comments on 1973 Adoption of Rule 13 ("A counterclaim is compulsory if there is any logical relation of any sort between the original claim and the counterclaim."). In this case, the counterclaim is unquestionably compulsory because the same operative facts, i.e., the circumstances of the February 2018 accident, serve as the basis of both the third-party complaint and the counterclaim. Under Alabama law, "[c]ompulsory counterclaims for money damages are not subject to statutes of limitations [defenses]." Romar Dev. Co. v. Gulf View Mgmt. Corp., 644 So. 2d 462, 473 (Ala. 1994). Thus, to the extent that the circuit court dismissed the counterclaim based on statute-of-limitations grounds, it erred in doing so.

In its appellate brief, Dubai contends that it is irrelevant whether the counterclaim is compulsory because, it says, its third-party complaint was a legally impermissible attempt under Alabama law to seek indemnity or contribution from Harris, a joint tortfeasor. If in the third-party complaint

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Dubai, as an alleged tortfeasor, sought only to obtain contribution or indemnity from Harris, then the circuit court did not err in granting the motion to dismiss because, under those circumstances, Dubai could prove no set of facts in support of a claim that would entitle it to relief.

In Alabama, third-party practice is governed by Rule 14, Ala. R. Civ. P., which is entirely procedural in nature; the rule permits a defendant, as a third-party plaintiff, to cause a summons and complaint to be served "upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Rule 14(a). Because Rule 14 is merely procedural, it does not authorize a third-party plaintiff to assert a claim that would otherwise be impermissible if it was asserted in a separate, independent action. Rule 14, then, cannot be used to assert a cause of action that would otherwise be prohibited. It is well settled that Alabama law does not permit contribution among joint tortfeasors and that, subject to limited exceptions, joint tortfeasors are not entitled to indemnity from one another. Ex parte Stenum Hosp., 81 So. 3d 314 (Ala. 2011); see also Sherman Concrete Pipe Mach., Inc. v. Gadsden Concrete & Metal Pipe Co.,

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335 So. 2d 125, 127 (Ala. 1976) ("Contribution ... distributes the loss equally among all tortfeasors; indemnity seeks to transfer the entire loss of one tortfeasor to another who, in equity and justice[,] should bear it."). Rule 14 is simply not available to assert claims for indemnity and/or contribution from a joint tortfeasor.

Accordingly, we must consider the specific allegations of the third-party complaint and whether those allegations impermissibly stated a claim for either contribution or indemnity from a joint tortfeasor. Dubai's third-party complaint asserted, in pertinent part:

"[6]. On February 11, 2018, on Interstate-59 in Jefferson County, Alabama, Birmingham Division, Harris negligently caused or allowed the motor vehicle being driven by him, or the motor vehicle under his control, to collide with [the] motor vehicle owned by Dubai, eventually colliding with the vehicle occupied by State Farm's insured.

"7. Pursuant to Ala. R. Civ. P. 14, Dubai asserts that Harris is or may be [liable] to Dubai for all or part of State Farm's claim against Dubai and/or its driver, Jose R. Martinez.

"....

"9. As a proximate consequence of Harris'[s] negligence, State Farm's insured was caused to suffer injuries and damages as set forth in State Farm's Complaint.

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"WHEREFORE, Dubai demands judgment against Harris [who] is or may be liable to Dubai for all or part of State Farm's claim against Dubai and/or its driver, Jose R. Martinez, in an amount as determined by a ... jury."

Contrary to Dubai's argument, its third-party complaint did not state a cause of action for either indemnity or contribution. Regarding contribution, there were no allegations of joint liability between Dubai and Harris. The third-party complaint did not allege that Martinez, Dubai's employee, had participated in causing the accident or that Dubai was vicariously liable for the acts of Martinez and, therefore, was jointly and severally liable with Harris for the amount of damages claimed by the State Farm plaintiffs. Rather, in its answer to the complaint, Dubai denied any and all allegations of wrongdoing in connection with the accident, and, in its third-party complaint, Dubai alleged that Harris had caused the accident by negligently allowing his vehicle to collide with Dubai's vehicle and, eventually, with the vehicle occupied by Schaefer, State Farm's insured. The third-party complaint also did not set forth any factual allegations designating any basis for a right to indemnity. Although, in its reply to Harris's response to its motion to dismiss, Dubai

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stated that its claim for indemnity sounded in contract, there is simply no allegation of a right to indemnity, flowing from a contract or otherwise, in the third-party complaint itself. Accordingly, there was nothing in Dubai's third-party complaint indicating that it was seeking contribution or indemnity from Harris. And, because Harris's counterclaim was compulsory, it was not subject to a statute-of-limitations defense. Thus, there was no basis for the circuit court to dismiss Harris's counterclaim pursuant to Rule 12(b)(6).

Conclusion

The order of the circuit court granting Dubai's motion to dismiss the counterclaim filed by Harris is reversed, and the cause is remanded to that court for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Bolin and Stewart, JJ., concur.

Parker, C.J., concurs in part and concurs in the result.

Wise, J., concurs in the result.

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PARKER, Chief Justice (concurring in part and concurring in the result).

I agree that Dwayne Lavan Harris's counterclaim against Dubai Truck Lines, Inc. ("Dubai"), was not barred by the statute of limitations. However, to the extent that the main opinion implies that the viability of Harris's counterclaim also depended on Dubai's third-party complaint having stated a valid cause of action, I disagree. As explained in the main opinion, Harris's counterclaim was compulsory. And "dismissal of a plaintiff's action will not preclude the defendant from proceeding with an existing compulsory counterclaim." Vincent v. F. Hood Craddock Mem'l Clinic, 482 So. 2d 270, 273 (Ala. 1985); see 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 96 (2015) ("If an independent jurisdictional basis exists for the counterclaim, ... the court may determine the merits of the counterclaim despite dismissal of the primary claim ..."); 80 C.J.S. Set-off and Counterclaim § 18 (2010) ("[I]f there is an independent jurisdictional basis for a counterclaim ..., it is sustainable without regard to what happens to the original complaint."); cf. Rule 13(i), Ala. R. Civ. P. ("If the court orders separate trials ..., judgment on a counterclaim ... may be rendered ..., even if the claims of the opposing party have been dismissed

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...."); Smith v. Cowart, 68 So. 3d 802, 806 (Ala. 2011) (stating that defendants' counterclaims remained pending after plaintiffs' claims were dismissed). Therefore, the viability of Harris's counterclaim did not depend on the validity of Dubai's claim.