

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

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|--|---|-------------------|
| OSCAR PALMER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL ACTION FILE |
| v. |) | NO. 21EV000592D |
| |) | |
| MERCEDES-BENZ, USA, LLC, GO! PRODUCTIONS |) | |
| LLC, AND CUE 2 CUE LLC, |) | |
| |) | |
| Defendants. |) | |

ORDER DENYING DEFENDANT CUE 2 CUTE LLC's MOTION TO DISMISS

This case is before the Court on Defendant Cue 2 Cue LLC's Motion to Dismiss (Motion) arguing that Plaintiff failed to file within the relevant statute of limitations. Plaintiff Oscar Palmer filed a Response arguing that the complaint was timely filed as a result of the judicial emergency. Having reviewed and considered Cue 2 Cue LLC's Motion, all pleadings, evidence of record, and applicable case law, this Court denies the motion, finding as follows:

BACKGROUND AND PROCEDURAL POSTURE

This suit arises from injuries Palmer allegedly sustained on February 4, 2019 at Mercedes-Benz USA, LLC (Mercedes) at One Mercedes-Benz Drive, Sandy Springs, Fulton County, Georgia 30328, when he tripped and fell on cables. Compl. ¶¶ 1-5. Originally, Palmer brought his claims against Mercedes and John Doe. Mercedes answered on March 3, 2021. On March 29, 2021, the Court entered a Consent Order to Substitute Party Defendant substituting Go! Productions, LLC for John Doe; Go! filed its Answer on May 4, 2021.

On April 20, 2021, the Court entered a Consent Order Granting the Addition and Substitution of Defendant Cue 2 Cue LLC (C2C) as an Additional Party Defendant, ordering the substitution of C2C for John Doe and that Palmer serve C2C in accordance with Georgia law.

Palmer filed an Affidavit of Service on C2C May 10, 2021 averring service on C2C on May 6, 2021; C2C filed its Answer on June 2, 2021.

C2C argues Palmer's claim against it is time-barred by the two-year statute of limitations pursuant to O.C.G.A. § 9-3-33: Palmer's accident was February 4, 2021 and he did not file his Amended Complaint against C2C until April 30, 2021, 85 days after the two-year statute of limitations expired. Palmer responds that the Supreme Court of Georgia's March 14, 2020 Declaration of Statewide Judicial Emergency tolled the statute of limitations by 122 days; thus, his claim is timely.

ANALYSIS

On March 14, 2020, the Chief Justice of the Supreme Court of Georgia entered an Order Declaring Statewide Judicial Emergency pursuant to O.C.G.A. § 38-3-60 *et seq.* (Original Order):

[The undersigned hereby suspends, tolls, extends, and otherwise grants relief from any deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters, including, but not limited to any: (1) statute of limitation ...

Id.¹ Ultimately, the Statewide Judicial Emergency was extended fifteen (15) times and terminated entirely on June 30, 2021;² however, effective July 14, 2020, the Fourth Order Extending Declaration of Statewide Judicial Emergency (Fourth Order)³ reimposed “all deadlines and other time schedules and filing requirements (referred to collectively herein as “deadlines”) that are imposed **on litigants** by statutes” Sec. II(A) (emphasis in original). The Fourth Order explicitly

¹ <https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf> (last accessed December 6, 2021).

² Fifteenth Order Extending Declaration of Statewide Judicial Emergency, https://www.gasupreme.us/wp-content/uploads/2021/06/15th-SJEO_as-issued.pdf (last accessed December 6, 2021).

³ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf> (last accessed December 6, 2021).

held: “The 122 days between March 14 and July 14, 2020, or any portion of that period in which a statute of limitation would have run, shall be excluded from the calculation of that statute of limitation.” Id. Sec. II(A)(10); Mobuary v. State, 312 Ga. 337, 862 S.E.2d 553, 555 (2021) (“Pursuant to the Chief Justice's July 10, 2020 Fourth Order Extending Declaration of Statewide Judicial Emergency such deadlines were reimposed effective July 14, 2020.”) Importantly, “[t]he 122-day tolling provision has been included in all subsequent extensions of the emergency order.” First Merit Credit Servs. v. Fairway Aviation, LLC, 359 Ga. App. 829, 835, 860 S.E.2d 126 (2021).

Palmer’s alleged accident occurred on February 4, 2019. His statute of limitations continued to run through the time of the Statewide Judicial Emergency, however, the Statewide Judicial Emergency tolled his statute of limitations for 122 days. Therefore, Palmer had 122 days after February 4, 2021 – by June 6, 2021 – in which to file his complaint against C2C. Palmer filed his Amended Complaint against C2C on April 30, 2021. Accordingly, and for other good cause shown,

IT IS HEREBY ORDERED that Defendant Cue 2 Cue LLC’s Motion to Dismiss Plaintiff’s First Amended Complaint is **DENIED**.

This 10th day of January, 2022.



Susan E. Edlein
Chief Judge, State Court of Fulton County