



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Suzanne Tyman v. Hintz Concrete, Inc., an Arizona Corporation; Haines Construction, Inc., an Alaska Corporation; Suzanne Tyman v. New Song United Methodist Church, a Non-profit Arizona Corporation.

Court of Appeals Number (1 CA-CV 05-0165 & 1-CA-CV 05-0352 (consolidated));
Supreme Court Number CV 06-0008-PR

PARTIES AND COUNSEL:

Petitioner: Suzanne Tyman, represented by F. Kenton Komadina, Robert E. Yen, and Caroline A. Pilch, of Yen Pilch Komadina & Flemming, PC, filed a petition for review. On September 12, 2006, those parties filed a "Notice of Association of Counsel" informing the Court that Neil Landeen of that firm associates as counsel for Tyman and will appear at oral argument on her behalf.

Respondent: New Song United Methodist Church, represented by Michael J. Frazelle, of Swenson, Storer, Andrews & Frazelle, PC, filed a response. Hintz Concrete, Inc., represented below by Robert H. Willis, of Skyeck & Sorensen, and Haines Construction, Inc., represented below by Steven W. Cheifetz, of Cheifetz Iannitelli Marcolini, PC, did not file a response.

FACTS:

On June 4, 2002, petitioner Tyman stepped off a sidewalk in Surprise, Arizona, to walk around some construction work, and a piece of yellow caution tape blew around her right ankle causing her to fall and sustain injuries. She filed a notice of claim with the City of Surprise that also asked for information about building permits that the City had issued to contractors in the area where she fell. The City responded to the notice of claim by denying that it had been involved in the construction work, and gave Tyman the names of two contractors who might have been. Those two contractors ultimately stated that they also had not been involved in the work.

On June 2, 2004, close to two years after her fall, Tyman filed a complaint in superior court against seven defendants claiming they were responsible for her injuries. Then on August 23, 2004, after further investigation, she filed an amended complaint naming the three respondents as defendants. None of the respondents had been named as a defendant in the original complaint, and none of the defendants named in the original complaint was named as a defendant in the amended complaint. The amended complaint was served on respondents New Song Church and Hintz Concrete on August 26, 2004, and on respondent Haines Construction on September 3, 2004.

The respondents moved for summary judgment, contending that the amended complaint was barred by the applicable two-year statute of limitations that had run on June 4, 2004. The respondents argued that Tyman's amended complaint was filed beyond the applicable statute of

limitations and did not relate back under Rule 15(c) of the Arizona Rules of Civil Procedure. In support of that motion, the respondents submitted affidavits from a corporate officer asserting that the entities had never received actual notice of the facts and events alleged by Tyman until served with the amended complaint. Tyman did not controvert those statements.

Tyman responded that the amended complaint related back to the original complaint which had been filed within the two-year period, because the amended complaint had been served within the 120-day period allowed for service of the original complaint.

The trial court granted the respondents' motions for summary judgment, finding that the relation back doctrine did not apply because "there was no 'mistake' established as to the [respondents] [] and notice of [Tyman's] claims had not been given to the[] [respondents] until after the expiration of the statute of limitations." Thereafter, the court entered judgments in the respondents' favor on the complaint.

Tyman appealed the judgments, and the Court of Appeals affirmed them in a memorandum decision, finding that Tyman failed to present any evidence that the new defendants knew or should have known within the time period specified in Rule 15(c) of the Arizona Rules of Civil Procedure, that she would have sued the new defendants but for a mistake. Tyman has petitioned this Court for review.

ISSUES:

When a plaintiff files a Complaint naming specific and fictitious defendants within the statute of limitations, then files an amended complaint and serves it on newly discovered defendants within the 120 day period allowed by Rule 4(i) of the Arizona Rules of Civil Procedure, does Rule 15(c) of those Rules require dismissal of the newly discovered defendants?

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.