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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1490-21**

**MARGARET R. RICHARDSON,**

Plaintiff-Respondent,

v.

**ALYSE A. MILLER-MURDEN  
and MARK MILLER,**

Defendants-Appellants.

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Argued March 29, 2022 – Decided April 11, 2022

Before Judges Fisher, Currier, and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law  
Division, Union County, Docket No. L-2009-21.

Thomas W. Matthews argued the cause for appellant  
(Soriano, Henkel, Biehl & Matthews, attorneys;  
Thomas W. Matthews, of counsel and on the briefs).

Glenn L. Cavanagh argued the cause for respondent  
(Gold Albanese Barletti & Locasio, LLC, attorneys;  
James N. Barletti, on the brief).

PER CURIAM

In this interlocutory appeal, we consider the timeliness of plaintiff's complaint for personal injuries stemming from a motor vehicle accident on June 2, 2019. The trial court denied defendant's motion seeking dismissal of the complaint and granted plaintiff's motion seeking an order "declaring the complaint timely filed." Because plaintiff failed to file a complaint within two years of the accident, N.J.S.A. 2A:14-2, and failed to demonstrate substantial compliance with the statute of limitations allowing equitable tolling of her claim, we reverse.

Plaintiff's counsel sent a letter of representation to the carrier on August 23, 2019, and email communications on March 24, 2021, and May 14, 2021. The latter included a large demand package. But plaintiff did not file suit until June 9, 2021.

Plaintiff's counsel presents various reasons for the late filing,<sup>1</sup> primarily arguing he was in substantial compliance because liability was not at issue in the matter, he was negotiating the damages claim with the insurance carrier, and

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<sup>1</sup> Plaintiff's certification before this court contains additional reasons for the late filing not presented to the trial court. Rule 2:5-4(a) states the record on appeal "shall consist of all papers on file in the [trial] court." As plaintiff did not seek to expand the record on appeal, the court does not consider the additional facts before it which were not presented to the trial court.

the carrier failed to alert him the statute of limitations was about to run. Plaintiff's counsel also argues he was out of the country unexpectedly and could not file the complaint by the statute of limitations deadline. Finally, he states he was lulled by the carrier's settlement discussions into believing litigation would be unnecessary.

Defendant argues a notice of claim to an insurance carrier does not toll the statute of limitations, plaintiff took no steps to obtain an agreement tolling the statute of limitations despite his communications with the carrier, electronic filing does not impede an attorney who is out of the country from timely filing a complaint, and the pleading eventually filed was a template, two-page document requiring much less time to prepare than the large demand package plaintiff sent to the carrier on May 14, 2021, twenty-six days earlier.

The trial court found there was "substantial compliance" with the statute of limitations and the statute "may be properly set aside" because the carrier had notice of the claim and there was no prejudice to defendant as the filing occurred only a week after the statute of limitations had expired. In examining this record, we disagree. Plaintiff has not demonstrated substantial compliance with the statute of limitations. Notice of a claim or mere negotiations cannot serve

to toll a statute of limitations. Likewise, the carrier had no affirmative obligation to remind plaintiff the statute of limitations was about to expire.

Statutes of limitations are created by the legislature and serve the laudable goal that "eventual repose creates desirable security and stability in human affairs." Galligan v. Westfield Centre Serv., Inc., 82 N.J. 188, 191-92 (1980). Such statutes induce litigants to pursue claims diligently so that answering parties will have a fair opportunity to defend. Id. at 192.

Courts invoke the doctrine of substantial compliance to "avoid technical defeats of valid claims." Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 239-40 (1998)(citing Zamel v. Port of N.Y. Auth., 56 N.J. 1, 6 (1970)). The elements of substantial compliance are:

- (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute.

Cornblatt, 153 N.J. at 239. Our courts have generally been reluctant to extend the equitable doctrine beyond those cases where litigants have mistakenly filed a pleading in the wrong forum, a factor not present here.

Plaintiff's reliance on Negron v. Llarena, 156 N.J. 296 (1998), is misplaced. In Negron the Court concluded application of the doctrine of substantial compliance was appropriate because the complaint had been timely filed in federal court, the filing in state court took place shortly after the dismissal in federal court, and the defendant was not prejudiced because it had been actively defending the matter in federal court. Likewise, substantial compliance has been found to exist in other cases where a pleading has been timely filed in the wrong jurisdiction. See Galligan, 82 N.J. at 193-94 (complaint was timely filed incorrectly in federal court then dismissed for lack of jurisdiction); Estate of Vida ex rel. Kesciova v. City of Garfield, 330 N.J. Super. 225, 229-30 (App. Div. 2000) (involving a fictitious defendant and a motion to amend a timely filed complaint soon after the expiration of the statute of limitations); Mitzner v. West Ridgelawn Cemetery, Inc., 311 N.J. Super. 233, 239-40 (App. Div. 1998) (statute of limitations was tolled by the timely filing of a complaint in New York where the untimely New Jersey action was filed after the New York action had been dismissed for lack of personal jurisdiction but before the time to appeal from the order of dismissal has expired). In most cases where we have applied substantial compliance to equitably toll a statute of limitations, the goal has been to avoid technical defeat of a claim.

In Price v. N.J. Mfrs. Ins. Co., 182 N.J. 519, 527 (2005), the Court held equitable tolling may be available when an adversary "lulls" a plaintiff into a false sense a complaint is not necessary. However, there the plaintiff had complied with several, specific requests made by the insurance carrier over a three-and-a-half-year period, including submitting to a physical examination and providing a worker's compensation file.

Nothing in the record before us supports a finding of substantial compliance with the statute of limitations. Plaintiff has not demonstrated the parties were engaged in protracted settlement negotiations or the carrier had requested any specific examination or information from plaintiff. Plaintiff sent a large demand package to the carrier twenty-six days before the statute of limitations expired but made no mention of the statute or tolling it. There was no general compliance with the statute -- no phone call, email, or letter to the carrier notifying it counsel was out of the country and would not be able to timely file the complaint -- and no reasonable explanation why the action ultimately taken by counsel, having substitute counsel file the pleading in his absence, could not have been taken prior to the expiration of the deadline. Because there are insufficient facts supporting equitable tolling in this matter, we reverse.

Reversed and remanded for entry of an order dismissing the complaint.

We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION