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Civil Procedure--Fela--Statute of Limitations Suspended by Defendant's Misrepresentation

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Recent Decisions

CIVIL PROCEDURE — FELA — STATUTE OF LIMITATIONS SUSPENDED BY DEFENDANT'S MISREPRESENTATION

Plaintiff filed suit against his employer in May 1957, as a result of an industrial disease allegedly contracted while he was employed by defendant in 1952.[1] The action was brought under the Federal Employer's Liability Act[2] (FELA), which provides that "no action shall be maintained under this Act unless commenced within three years from the time the cause of action accrued."[3] Defendant entered a motion to dismiss on the ground that the statutory time in which to bring the action had passed and that plaintiff had thereby lost his cause of action.

Plaintiff contended that he had been induced to delay bringing suit by defendant's agents who misrepresented the time within which he could sue. The agents allegedly told him he had seven years rather than three. Plaintiff contended that defendant should be estopped from pleading the statute of limitations.

Defendant maintained that the alleged misrepresentations were not grounds for estoppel. He further contended that these misrepresentations were as to a matter of law and that plaintiff was thus not entitled to rely upon them.[4]

The district court, while admitting that plaintiff's contentions were persuasive, was unwilling to depart from the established rule in the Second Circuit; *viz.,* that fraud or misrepresentation by defendant could not suspend the statute of limitations contained in the FELA.[5] The motion to dismiss was allowed.[6] The court of appeals affirmed per curiam, saying that they would ". . . not attempt to retrace (their) footsteps now, but may well await resolution of the conflict by the Supreme Court."[7] The Supreme Court granted certiorari and unanimously reversed the decision of the lower courts.[8]

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1. Glus v. Brooklyn E. Dist. Terminal, 359 U.S. 231 (1959), *reversing* 253 F.2d 957 (2d Cir. 1958), *affirming* 154 F. Supp. 863 (S.D.N.Y. 1957).

2. 35 Stat. 65 (1908), 45 U.S.C. §§ 51-60 (1952).

3. 35 Stat. 65 (1908), 45 U.S.C. § 56 (1952).

4. The Supreme Court refused to rule as a matter of law that plaintiff could not rely on representations as to opinions of law. Without amplification the Court said that special circumstances may enable one to rely upon such representations. Whether such circumstances were present in this case was a matter for the trial court. 359 U.S. 231, 235 (1959).

5. Sgambati v. United States, 172 F.2d 297 (2d Cir.), *cert. denied,* 337 U.S. 938 (1949); Osbourne v. United States, 164 F.2d 767 (2d Cir. 1947) (dictum).

6. Glus v. Brooklyn E. Dist. Terminal, 154 F. Supp. 863 (S.D.N.Y. 1957).

7. Glus v. Brooklyn E. Dist. Terminal, 253 F.2d 957, 958 (2d Cir. 1958). The conflict mentioned here is between the indicated Second Circuit rule and cases to the contrary such as Toran v. New York, N.H., & H.R.R., 108 F. Supp. 564 (D. Mass. 1952).

8. 359 U.S. 231 (1959).

The problem of whether the equitable doctrine of estoppel is applicable as a bar to the defense of the statute of limtations has long involved a rather technical distinction. When a general statute of limitations has been enacted to restrict a common-law cause of action, the limitation is said to be upon the liability and therefore, can be suspended in proper instances. The defendant may be estopped from pleading such a remedial limitation when he has caused the delay by fraudulent concealment or misrepresentation.[9] However, a different result has been reached when the statute of limitations has been created in conjunction with the statutory establishment of a new cause of action. This type of limitation has been considered to be substantive and, consequently, has been said to limit the right as well as the liability. The courts have generally held that the substantive limitation must be strictly applied.[10] Filing within the period prescribed by the statute is considered to be a condition precedent to the cause of action. When a case is brought after that period has passed, the condition has not been met and the cause of action fails.[11] In effect, the courts have allowed the defendant to thwart an otherwise valid claim by delaying tactics because the plaintiff is unfortunate enough to find his remedy in a statute containing a substantive statute of limitations.[12]

While a majority of courts have maintained the distinction between substantive and remedial statutes of limitations,[13] several cracks have appeared in the wall of protection which the courts have thrown up around the substantive type. For example, in *Osbourne v. United States,*[14] the court allowed the suspension of such a limitation when plaintiff had been a prisoner of war, stating that both his rights and remedies had been suspended thereby. It is interesting to note, however, that the dictum in that case supported the general rule that fraud will not toll substantive statutes of limitations.

In FELA cases, strict compliance with the time limitation for bringing the action has generally been required.[15] However, in these cases also,

9. Schroder v. Young, 161 U.S. 334 (1895).

10. United States *ex rel.* Nitkey v. Dawes, 151 F.2d 639 (7th Cir. 1945), *cert. denied,* 327 U.S. 788 (1946); Pollen v. Ford Instrument Co., 108 F.2d 762 (2d Cir. 1940); Bell v. Wabash Ry., 58 F.2d 569 (8th Cir. 1932).

11. Adams v. Albany, 80 F. Supp. 876 (S.D. Cal. 1948); Thompson v. Taylor, 62 F. Supp. 930 (S.D. Fla. 1945).

12. At least one court has felt that plaintiff is not completely without a remedy. It has been suggested that he can sue for damages for the loss of his cause of action because of defendant's fraud. Desmaris v. People's Gaslight Co., 79 N.H. 195, 107 Atl. 491 (1919) (dictum).

13. Annot., 24 A.L.R.2d 1420 (1952); Annot., 15 A.L.R.2d 500 (1951).

14. 164 F.2d 767 (2d Cir. 1947). This case was brought under the Suits in Admiralty Act, 41 Stat. 526 (1932); 46 U.S.C. § 745 (1958), which contains a substantive statute of limitations.

15. Damiano v. Pennsylvania R.R., 161 F.2d 534 (3d Cir.), *cert. denied,* 232 U.S. 762 (1947); Bell v. Wabash Ry., 58 F.2d 569 (8th Cir. 1932).