
Countering Statutes of Limitations with Equitable Estoppel

Statutes of limitations may be “somewhat harsh and seemingly unjust,”[1] but even a concededly expired limitations period is not always the end of a cause of action, because the doctrine of equitable estoppel exists to provide plaintiffs a safe haven in certain instances when the ordinary limitations analysis would produce a manifestly unjust result. New York’s statute of limitations regime generally reflects a public policy favoring the “objectives of finality, certainty and predictability.”[2] The New York Court of Appeals has explained that “[s]tatutes of limitation not only save litigants from defending stale claims, but also express a societal interest or public policy of giving repose to human affairs,” which is why the court has “repeatedly rejected accrual dates which cannot be ascertained with any degree of certainty, in favor of a bright line approach.”[3] As a result, there are only a few situations in which a New York plaintiff can avail itself of the discovery rule to delay the accrual of a cause of action until the time when the plaintiff could reasonably have uncovered the facts giving rise to that cause of action.[4] This has the advantage of making statute-of-limitations analysis fairly simple in the ordinary case. However, it increases the likelihood that New York lawyers will be approached by clients with serious problems but, seemingly, no viable cause of action, because the wrong was not discovered until the limitations period had already run out. However, New York does offer parties in that position a way to avail themselves of discovery-rule-like protections — the doctrine of equitable estoppel.

[New York] courts have long had the power, both at law and equity, to bar the assertion of the affirmative defense of the Statute of Limitations where it is the defendant’s affirmative wrongdoing — a carefully concealed crime here — which produced the long delay between the accrual of the cause of action and the institution of the legal proceeding.[5]



David B. Newman, Esq.

David B. Newman is a member of the litigation department at Sills Cummis & Gross PC, resident in the firm’s New York office. He is a commercial litigator with trial experience throughout the United States, in state and federal courts and before administrative tribunals.



Matthew L. Lippert, Esq.

Matthew L. Lippert is of counsel to the Sills Cummis & Gross litigation department, resident in the firm’s Newark, New Jersey, office.

To be sure, equitable estoppel is an “extraordinary remedy” with elements much more difficult to establish than an argument under the discovery rule.[6] Unless the defendant is the plaintiff’s fiduciary, equitable estoppel bars a defendant from invoking the statute of limitations as a defense when the “plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action.”[7] The plaintiff’s reliance upon the defendant’s misrepresentation must have been reasonable,[8] and the plaintiff must have acted diligently to learn the facts giving rise to the action.[9] In the case of a fiduciary defendant, the defendant’s silence can provide a basis for estoppel if the defendant breached a fiduciary duty to the plaintiff by not informing him or her of the facts giving rise to the cause of action.[10]

It is important to remember that because the defendant’s misconduct must cause the delay between accrual of the cause of action and the filing of suit, the conduct allegedly giving rise to the estoppel cannot be the same conduct that serves as the basis for the cause of action itself. As the Court of Appeals has phrased it, there must be “subsequent and specific actions by defendants” that “somehow kept [the plaintiffs] from timely bringing suit.”[11]

This point was illustrated in *Wells Fargo Bank NA v. JPMorgan Chase Bank NA*.^[12] There, plaintiff Wells Fargo was the trustee of a trust holding a commercial mortgage loan. Defendant JPMorgan Chase Bank sold the loan to the trust, subject to representations and warranties, some of which Wells Fargo contended were false when made. For example, Wells Fargo alleged that the representation that the loan had been underwritten in accordance with JPMorgan Chase’s underwriting standards was false. Wells Fargo sued for breach of the contractual warranty, and JPMorgan Chase invoked New York’s six-year statute of limitations for contract claims in its defense.

JPMorgan Chase argued, and the court agreed, that the warranty was breached, if at all, when the contract was made in 2002, and that the lawsuit commenced in 2012 was untimely.^[13] Wells Fargo then argued that JPMorgan Chase was estopped from asserting the statute of limitations, but the court disagreed. It ruled that Wells Fargo could not rely upon any omissions by JPMorgan Chase to create an estoppel, because “the doctrine requires that the opposing party acted to render the plaintiff unaware that the cause of action existed.”^[14] The court also ruled that Wells Fargo had not made out a claim for estoppel based on JPMorgan’s alleged misrepresentations about the loan, “because those alleged inaccuracies are precisely what gave rise to this lawsuit in the first place.”^[15] If the same act could serve as both the actionable wrong and the basis for estoppel, the court explained, “this ‘extraordinary’ remedy would become quite ordinary indeed in contractual misrepresentation cases, which virtually by definition involve plaintiffs who have been misled.”

Arguments about equitable estoppel often arise in the context of conversion claims, owing to conversion’s unusual accrual rules. In New York, the limitations period for conversion (or replevin) is always three years,^[16] but that three-year clock starts to tick against a good-faith possessor of a chattel only when the original owner makes a demand for return of the converted property, and the good-faith possessor refuses.^[17] However, an action against a bad-faith possessor, such as a thief, accrues immediately, without regard to demand.^[18] Conversion plaintiffs suing alleged thieves (who are unlikely to broadcast their possession and may be difficult to find) thus often need to invoke equitable estoppel. However, while the Court of Appeals has acknowledged that the immediate accrual of claims against thieves creates anomalies, and in the conversion context specifically pointed to the existence of “equitable principles to prevent a party that steals or breaches trust ... from benefiting from its wrong” when “legal principles governing accrual have appeared to cause anomalous or unfair results,”^[19] the fact that a party is a thief may not be enough to

create an estoppel. Some older cases seem to create a more plaintiff-friendly rule for claims against thieves,[20] but even after 2002, when the Court of Appeals recognized the “anomalous” results that the statute-of-limitations analysis can create in conversion cases,[21] it has repeatedly emphasized the need for a separate, subsequent act by the defendant, apart from the wrong giving rise to the cause of action, in order to invoke equitable estoppel.[22]

Because the question of whether a defendant’s conduct creates an estoppel can be intensely fact-dependent, courts are somewhat hesitant to resolve the issue on motions to dismiss or for summary judgment,[23] and this creates tactical opportunities for plaintiffs. Where there is either a fiduciary relationship or a colorable claim of a subsequent, separate misrepresentation to the plaintiff by the defendant, the doctrine of equitable estoppel can turn a lost cause into, if not necessarily a winning case, at least one that can survive a dispositive motion and which will thus possess settlement value. However, simply mouthing the words “equitable estoppel” will not prevent a dismissal on a motion where there is no clear identification of either a fiduciary relationship or a separate, subsequent misrepresentation.[24]

New York takes a strict approach to the application of its statutes of limitations. But in a suitably sympathetic set of circumstances, a facially time-barred claim may still be meritorious. Lawyers practicing in New York should remember, whether in the context of asserting or defending against a seemingly stale claim, that even New York’s statutes of limitations are not absolute, and that there is risk associated with otherwise-stale claims that came to light after what could plausibly be described as a misrepresentation by the defendant to the plaintiff.

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- [1] Ely-Cruikshank Co. v. Bank of Montreal, 81 N.Y.2d 399, 404 (1993).
- [2] ACE Sec. Corp. Home Equity Loan Trust, Series 2006-SL2 v. DB Structured Prods. Inc., 25 N.Y.3d 581, 593 (2015).
- [3] Id. at 593-94.
- [4] E.g., N.Y. CPLR §§ 213(8) (discovery rule available for claims of fraud); 214-c (discovery rule available for certain toxic torts).
- [5] General Stencils Inc. v. Chiappa, 18 N.Y.2d 125, 128-29 (1966).
- [6] Walker v. New York City Health & Hosps. Corp., 36 A.D.3d 509, 510 (1st Dep’t 2007).
- [7] Zumpano v. Quinn, 6 N.Y.3d 666, 674 (2006) (internal quotation marks and citation omitted).
- [8] Id.
- [9] Walker v. New York City Health & Hosps. Corp., 36 A.D.3d 509, 510 (1st Dep’t 2007).
- [10] Zumpano v. Quinn, 6 N.Y.3d 666, 675 (2006).
- [11] Id. at 674.
- [12] 2014 U.S. Dist. LEXIS 42453 (S.D.N.Y. March 27, 2014), aff’d 643 Fed. App’x 44 (2d Cir. 2016).
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- [13] The first part of the decision is centered on whether or not a contractual demand requirement operated as a substantive condition precedent, thereby delaying accrual of the cause of action. For a thorough discussion of contractual demand requirements and whether they affect the statute of limitations analysis under New York law, see *Deutsche Bank Nat'l Trust Co. v. Flagstar Capital Markets Corp.*, 143 A.D.3d 15 (1st Dep't 2016).
- [14] 2014 U.S. Dist. LEXIS 42453, at *13-*14 (internal quotation marks and citation omitted, emphasis in original).
- [15] 2014 U.S. Dist. LEXIS 42453, at *14.
- [16] N.Y. CPLR § 214(3).
- [17] *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 317 (1991).
- [18] *State v. Seventh Regiment Fund*, 98 N.Y.2d 249, 261 (2002).
- [19] *State v. Seventh Regiment Fund*, 98 N.Y.2d 249, 261 (2002).
- [20] E.g., *Kunstsammlungen Zu Weimar v. Elicofon*, 536 F. Supp. 829, 849 (E.D.N.Y. 1981) (“a thief who conceals his possession and thereby makes it impossible for the owner to institute suit within the limitations period may be estopped from asserting the statute of limitations as a defense”); see also *General Stencils Inc. v. Chiappa*, 18 N.Y.2d 125 (1966).
- [21] *State v. Seventh Regiment Fund*, 98 N.Y.2d 249, 261 (2002).
- [22] *Zumpano v. Quinn*, 6 N.Y.3d 666, 674 (2006); *Ross v. Louise Wise Servs. Inc.*, 8 N.Y.3d 478, 491-92 (2007).
- [23] E.g., *Golden Budha Corp. v. Canadian Land Co., N.V.*, 931 F.2d 196, 200 (2d Cir. 1991) (“it is questionable whether an equitable estoppel defense to a statute of limitations claim under circumstances such as those revealed here even can be resolved on a summary judgment motion”) (citing *Renda v. Frazer*, 75 A.D.2d 490, 496 (4th Dep't 1980)).
- [24] E.g., *Gonik v. Israel Discount Bank of N.Y.*, 80 A.D.3d 437, 438 (1st Dep't 2011) (granting motion to dismiss on statute-of-limitations grounds, despite invocation of equitable estoppel, where plaintiff acknowledged that she had no contact with defendant, negating the existence of a separate, subsequent misrepresentation by defendant to plaintiff).