Limitations on Limitations: Recent Cases Illustrate the Benefits and Pitfalls in Contractually Shortening the Statute of Limitations

Statutes of limitations are the primary way to impose deadlines for filing lawsuits. As the name implies, statutes of limitations are governed by statutes. For instance, California Code of Civil Procedure Section 337 provides that a lawsuit for the breach of a written contract generally must be filed within four years of the date the contract was breached.

However, statutes of limitations are not the only devices for limiting the time to file a lawsuit. Parties to a contract may agree to set their own deadlines for filing claims. These deadlines are designed to motivate parties to pursue their claims diligently and help to prevent the loss of evidence and provide certainty to all contracting parties. Because of the great benefits contractual limitations may provide and because California courts will only enforce these limitations under certain conditions, contracting parties should be cognizant of how to meet these conditions.

A Shortened Limitations Period Must Be Reasonable
First, the deadlines imposed by the contractual agreement must be reasonable. In the recent case of Baxter v. Genworth North America Corp. (2017) 16 Cal. App. 5th 713, the California Court of Appeal invalidated an arbitration agreement in an employment contract after finding it was unreasonable. The agreement required an employee to bring a discrimination claim against her employer within one year, unlike the customary three years set by statute. Likewise, in Moreno v. Sanchez (2003) 106 Cal. App. 4th 170, the court found a limitations period in a contract between two home buyers and a home inspector unreasonable. Key to these cases was that the plaintiffs (an employee
and home buyers) were relatively unsophisticated and not represented by counsel when they signed the contracts.

In stark contrast, courts generally consider contractual limitations to be reasonable if they were signed by sophisticated parties who had counsel advising them. For instance, in another recent case, *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal. App. 5th 56, the writers and producers of the television show *Home Improvement* sued Walt Disney Pictures, with whom they had a profit participation agreement. The agreement required objections to Disney’s quarterly participation statements to be made within 24 months after the statements were sent and lawsuits to be filed within six months of any objections. After noting that the parties were sophisticated, represented by counsel for the contract, and had equal bargaining power, the appellate court found the contractual limitation reasonable.

**Can Contractual Limitations Periods Be Waived?**

Pursuant to Cal. Civil Code sec. 1698(d), written contracts may be modified by waiver or estoppel. Parties waive their rights either by intentionally relinquishing them or by acting in a manner that induces the other party to reasonably believe that such rights have been relinquished. Parties may waive contractual rights by their words or conduct and such waivers may be express or implied.

In the *Wind Dancer* case, a clause in the parties’ contract provided that contract modifications must be in writing and signed by both parties. The California Court of Appeal found that despite this clause, the plaintiffs could argue that the defendant had waived enforcement of the contractual limitation provision by orally agreeing to toll the limitations period until the completion of audits.

**Can a Party Be Estopped from Asserting the Contractual Limitation Period?**

Once again the answer is yes. Under the doctrine of estoppel, a defendant may be prohibited from asserting a contractual limitation period if its acts or omissions caused the plaintiff to refrain from filing a timely lawsuit. The plaintiff is not required to demonstrate the defendant acted in bad faith or with the intent to mislead. However, the plaintiff’s reliance on the defendant’s conduct must be reasonable.

In *Wind Dancer*, the plaintiffs contended that because defendant Disney had not asserted that the plaintiffs’ previous claims were time-barred in the past, it was estopped from doing so for the claims at issue. The plaintiffs also asserted that Disney delayed audits of their participation statements, so the plaintiffs were not able to object to those statements within the contractual limitations period. The court determined that evidence such as oral tolling agreements, Disney’s prior failure to enforce the limitations agreement, and its delays in the audit process provided triable issues of material fact as to whether Disney was estopped from asserting the contractual limitation period.

**Conclusion**

Contractually agreed upon deadlines for filing lawsuits can provide welcome certainty to contracting parties and limit a party’s potential liability. These benefits can be achieved when the contractual limitations
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periods are reasonable; in general, the parties should be sophisticated and represented by counsel. To make sure that the bargained-for benefits are obtained after the contract is signed, a party must be careful not to waive its rights or act in a way to induce the other party to refrain from timely filing suit. Atkinson, Andelson, Loya, Ruud & Romo can assist you in preparing an agreement that meets the legal requirements for enforceability.

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