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SJC-13054

SHAW'S SUPERMARKETS, INC. vs. MARGARITA MELENDEZ.

Suffolk. April 5, 2021. - September 3, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt,
& Georges, JJ.

Limitations, Statute of. Negligence, Limitation of liability.
Practice, Civil, Motion to dismiss, Statute of limitations.

Civil action commenced in the Supreme Judicial Court for the county of Suffolk on December 11, 2020.

The case was reported by Kafker, J.

Kristyn Dery Kaupas for the plaintiff.

Michael V. Caplette for the defendant.

Brendan G. Carney, Thomas R. Murphy, Kevin J. Powers, & J. Michael Conley, for Massachusetts Academy of Trial Attorneys, amicus curiae, submitted a brief.

GAZIANO, J. Margarita Melendez, the plaintiff in the underlying District Court case, commenced legal action against the defendant, a grocery store chain, after being injured inside one of its stores in a collision with a grocery cart, allegedly as a result of the negligence of one of the defendant's

employees. The complaint was filed after the expiration of the applicable period of limitation, based on the three-year statute of limitations for tort actions set forth in G. L. c. 260, § 2A, but in light of this court's order that "[a]ll civil statutes of limitations were tolled . . . from March 17, 2020, though June 30, 2020," due to the exigencies of the COVID-19 pandemic. See Supreme Judicial Court, Third Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, No. OE-144 (June 24, 2020). The defendant moved to dismiss, on the ground that the tolling order applied only to those civil statutes of limitations that expired between March 17, 2020, and June 30, 2020, and, thus, that the plaintiff's cause of action, which it argued accrued on September 3, 2017, was time barred at the time she filed her complaint on September 24, 2020. A District Court judge denied the defendant's motion based on the plain language of the order, which tolled all civil statutes of limitations regardless of their expiration.¹

1. Background. We review the denial of a motion to dismiss under Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), for failure to state a claim de novo, accepting as true all well-pleaded facts alleged in the complaint, and drawing all

¹ We acknowledge the amicus brief submitted by the Massachusetts Academy of Trial Attorneys.

reasonable inferences in the plaintiff's favor. See Rafferty v. Merck & Co., 479 Mass. 141, 147 (2018); Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011).

The complaint alleges that the plaintiff was injured on September 3, 2017, while shopping at a grocery store operated by the defendant Shaw's Supermarkets, Inc. (Shaw's), in Sturbridge. A Shaw's employee pushed a cart out from a back room into the consumer area of the store, colliding with the plaintiff and knocking her to the floor. She suffered multiple injuries as a result of the fall, including a concussion and injuries to her neck, back, left wrist, and right knee. The plaintiff filed a complaint for negligence in the District Court on September 24, 2020.

Shaw's subsequently filed a motion to dismiss on the ground that the plaintiff failed to file the complaint within the three-year period prescribed by the statute of limitations, G. L. c. 260, § 2A ("actions of tort . . . shall be commenced only within three years next after the cause of action accrues." Relying upon our multiple orders concerning the exigent circumstances created by the COVID-19 pandemic, a District Court judge denied the motion to dismiss.

2. Orders concerning court operations during COVID-19 pandemic. "The power, authority, and jurisdiction of this court . . . rest on at least the following grounds, among

others: (a) the inherent common law and constitutional powers of this court, as the highest constitutional court of the Commonwealth, to protect and preserve the integrity of the judicial system and to supervise the administration of justice; (b) the supervisory powers confirmed to this court by G. L. c. 211, § 3, as amended; (c) the power of this court to maintain and impose discipline with respect to the conduct of all members of the bar, either as lawyers engaged in practice or as judicial officers; and (d) the power of this court to establish and enforce rules of court for the orderly conduct (1) of officers and judges of the courts and (2) of judicial business and administration. We need not now decide what other common law, equity, or inherent judicial powers and jurisdiction may exist." (Footnote omitted.) Matter of DeSaulnier, 360 Mass. 757, 758-759 (1971). See Opinion of the Justices, 372 Mass. 883, 889 (1977); Keenan, petitioner, 310 Mass. 166, 181-182 (1941); Russell v. Howe, 12 Gray 147, 152-153 (1858); art. 29 of the Massachusetts Declaration of Rights.

The court's superintendence powers over all of the courts in the Commonwealth include the authority to issue "such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of

the administration of such courts, and the securing of their proper and efficient administration." G. L. c. 211, § 3.²

Pursuant to our superintendence and rulemaking authority, this court has issued a variety of orders since March 2020 regarding court operations in the Commonwealth during the COVID-19 pandemic. These orders have sought to safeguard the health and safety of the public, as well as court personnel, while recognizing the importance to all litigants and, indeed, to all residents of the Commonwealth of an efficient and functioning judiciary during this unprecedented period.

Among other measures, our third updated order, referencing our second updated order, stated:

² General Laws c. 211, § 3, provides:

"The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

"In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration"

"All civil statutes of limitations were tolled . . . from March 17, 2020, through June 30, 2020, and will not be tolled any further unless there is a new surge in COVID-19 cases in the Commonwealth and the [Supreme Judicial Court] determines that a new or extended period of tolling is needed. . . . The new date for the expiration of a statute of limitation is calculated as follows: determine how many days remained as of March 17, 2020, until the statute of limitation would have expired, and that same number of days will remain as of July 1, 2020 in civil cases For example, if fourteen (14) days remained as of March 17 before the statute of limitation would have expired in a civil case, then fourteen (14) days will continue to remain as of July 1, before the statute of limitation expires (i.e., July 15)."

Our more recent fourth, fifth, and sixth updated orders did not concern tolling periods for civil actions.

After the District Court judge denied its motion to dismiss, Shaw's filed an emergency petition for relief in the county court pursuant to G. L. c. 211, § 3. Shaw's argued that our orders tolled only those civil statutes of limitations that had been set to expire between March 17, 2020, and June 30, 2020, and thus were inapplicable to the plaintiff's claim, for which, under G. L. c. 260, § 2A, the statute of limitations would have expired on September 3, 2020. The single justice reserved and reported the emergency petition to the full court.

3. Discussion. In interpreting rules and orders adopted by this court, we rely upon basic principles of statutory construction. Thus, we begin with the plain language of the order. See, e.g., Bar Counsel v. Farber, 464 Mass. 784, 791 (2013) (interpreting S.J.C. Rule 4:01, § 9, as appearing in 425

Mass. 1312 [1997], regarding bar discipline based on "plain language" of rule). See also Matter of Lupo, 447 Mass. 345, 357 (2006). If the language is clear and unambiguous, we "must give effect to its plain and ordinary meaning and . . . need not look beyond the words." Doherty v. Civil Serv. Comm'n, 486 Mass. 487, 491 (2020), quoting Milford v. Boyd, 434 Mass. 754, 756 (2001). While language is ambiguous when it "reasonably can be construed in multiple ways," Casseus v. Eastern Bus Co., 478 Mass. 786, 797 (2018), citing Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 818 (2006), "ambiguity is not created simply because a controversy exists between parties, each favoring an interpretation contrary to the other," Lumbermens Mut. Cas. Co. v. Offices Unlimited, Inc., 419 Mass. 462, 466 (1995).

Here, we conclude that the phrase "all civil statutes of limitations" is clear and unambiguous. As indicated by the use of the word "all," the plain meaning of these words encompasses each and every civil statute of limitations, not just those where the statutory period of limitation expired between March 17, 2020, and June 30, 2020. Where a word is not defined in a statute, we give the word its usual and accepted meaning, so long as those meanings are consistent with the statutory purpose. Seideman v. Newton, 452 Mass. 472, 477-478 (2008), and cases cited. In common usage, "all" means "the whole of"; "the greatest possible"; "every"; and "any." Webster's New Universal

Unabridged Dictionary 54 (2003). We adopted this broad tolling order cognizant of the challenges that the COVID-19 pandemic has engendered not only for the judiciary and court staff, but also for attorneys and litigants considering the initiation of legal action. In light of ongoing State and local restrictions imposed to combat the spread of COVID-19, and the effect of such restrictions on the ability of attorneys and litigants to prepare civil claims, we decline Shaw's request that we narrow our order.³ "All" means all.

³ Prior to commencing legal action, attorneys determining whether to initiate civil legal action, specifically in tort claims, are encouraged to conduct an in-depth client interview, gather all medical records, collect narrative reports from key physicians and health care providers, identify and interview witnesses, inspect the incident site and involved instrumentalities, and photograph the incident site, instrumentalities, and the plaintiff's injuries, among other things. See G.D. Lee, *Preparation of a Plaintiff's Case*, Tort Law Manual §§ 21.1 et seq. (Mass. Cont. Legal Educ. 3d ed. 2017 & Supp. 2019). Many of the restrictions imposed in light of the COVID-19 pandemic, specifically those limiting individual mobility, business activity, and in-person meetings, substantially impair these activities.

In adopting its own civil tolling order due to the pandemic, the Court of Appeals of Maryland invoked these same concerns:

"The impact of the restrictions required to respond to the COVID-19 pandemic has had a widespread detrimental impact upon the administration of justice, impeding the ability of parties and potential litigants to meet with counsel, conduct research, gather evidence, and prepare complaints, pleadings, and responses, with the impact falling hardest upon those who are impoverished [T]he detrimental impact of the COVID-19 pandemic is so widespread as to have

We note that, elsewhere in our COVID-19 orders, where this court sought exclusively to extend legal terms or deadlines that expired within a specific period, we did so explicitly. For example, in contrast to the provision tolling civil statutes of limitations, our third updated order specified that "all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired at any time from March 17, 2020, through June 30, 2020, were tolled by Prior [Supreme Judicial Court] Orders from March 17, 2020, through June 30, 2020" (emphasis added). We placed no such limit upon the tolling of civil statutes of limitations. The example cited in the third updated order, for which the statute of limitations was to expire between March 17, 2020, and June 30, 2020, is just that, an example, and does not limit the plain and ordinary language of the extent of the order. Similarly, the period of time from March 17, 2020, through June 30, 2020, was excluded from speedy trial calculations in criminal cases under Mass. R. Crim. P. 36 (b) (2), 378 Mass. 909 (1979). See Commonwealth v.

created a general and pervasive practical inability for certain deadlines to be met"

Second Revised Administrative Order on the Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters (June 3, 2020) (Second Revised Administrative Order).

Lougee, 485 Mass. 70, 77-80 (2020). See also Commonwealth vs. Lucien, Mass. Appeals Ct., No. 2020-J-0547 (Dec. 29, 2020) ("Accordingly, the time period from March 13, 2020 until now must also be excluded from the [G. L. c. 276, § 58A,] calculation").

The tolling orders adopted by the courts of our sister States in light of the COVID-19 pandemic reflect the balancing of similar concerns. Some of their policies -- whether the result of executive decision-making, legislative action, or judicial order -- explicitly toll only those statutes of limitations set to expire within a particular period,⁴ while approximately twice as many others apply, as here, more broadly.⁵

⁴ Delaware, New Hampshire, North Carolina, Ohio, Tennessee, Texas, Vermont, and West Virginia have adopted such policies. See Delaware Supreme Court, Administrative Order No. 3 (Mar. 22, 2020); New Hampshire Supreme Court, Renewed and Amended Order Suspending In-Person Court Proceedings Related to New Hampshire Circuit Court and Restricting Public Access to Courthouses (Mar. 27, 2020); Order of the Chief Justice of the Supreme Court of North Carolina (May 21, 2020); Ohio House Bill No. 197 (effective Mar. 27 2020); Tennessee Supreme Court, In re: COVID-19 Pandemic, No. ADM2020-00428 (Mar. 13, 2020); Texas Supreme Court, Twelfth Emergency Order Regarding the COVID-19 State of Disaster, Misc. Docket No. 20-9059 (Apr. 27, 2020); Vermont Senate Bill No. 114 (effective Apr. 28, 2021); West Virginia Supreme Court of Appeals, Administrative Order, Re: Judicial Emergency Declared (Mar. 22, 2020).

⁵ California, Connecticut, Georgia, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Oklahoma, Oregon, and Virginia have adopted this approach. See Judicial Council of California, Rule 9 of the Emergency Rules Related to COVID-19 (amended effective May 29, 2020); Connecticut Executive Order No. 7G (Mar. 19, 2020);

In some instances, the orders explicitly incorporated the language that Shaw's asserts was the intent of the orders at issue here, expressly limiting the tolling period to matters where the statutes of limitations or repose would expire within those dates, whereas in others the language expressly excluded the tolled period of time from any subsequent calculations of time. Compare Delaware Supreme Court, Administrative Order No. 6, Extension of Judicial Emergency (May 14, 2020) ("Statutes of limitations and statutes of repose that would otherwise expire during the period between March 23, 2020 and June 13, 2020 are extended through July 1, 2020. Deadlines, statutes of

Georgia Supreme Court, Second Order Extending Declaration of Statewide Judicial Emergency (May 11, 2020); Indiana Supreme Court, Case No. 20S-CB-123, Order Extending Trial Courts' Emergency Tolling Authority and Setting Expiration of Other Emergency Orders (May 29, 2020); Iowa Supreme Court, Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (Mar. 17, 2020); Kansas Supreme Court, Administrative Order No. 2020-PR-047 (May 1, 2020); Louisiana Executive Department, Proclamation No. JBE 2020-30 (Mar. 16, 2020); Maryland Court of Appeals, Second Revised Administrative Order, supra; Michigan Supreme Court, Administrative Order No. 2020-3 (Mar. 23, 2020); Minnesota House Bill, H.F. No. 4556 (effective Apr. 16, 2020); Nevada Executive Department, Declaration of Emergency Directive No. 009 (Revised) (Apr. 1, 2020); New Jersey Supreme Court, Order (Mar. 17, 2020); New York Governor, Executive Order No. 202.8 (Mar. 20, 2020); Oklahoma Supreme Court and Court of Criminal Appeals, SCAD No. 2020-36, Third Emergency Joint Order Regarding the COVID-19 State of Disaster (Apr. 29, 2020); Oregon House Bill No. 4212 (effective June 30, 2020); Virginia Supreme Court, In re: Order Declaring a Judicial Emergency in Response to COVID-19 Emergency (Mar. 16, 2020). The District of Columbia has done similarly. See Superior Court of the District of Columbia, Order (amended Mar. 19, 2020).

limitations, and statutes of repose that are not set to expire between March 23, 2020 and June 13, 2020 are not extended or tolled by this order"), with New Jersey Supreme Court, COVID-19 -- Fourth Omnibus Order on Court Operations and Legal Practice (June 11, 2020) ("in the computation of time periods under the Rules of Court and under any statute of limitations for matters in all trial divisions of the Superior Court, the period from March 16, 2020 through May 10, 2020 will not be included in calculating those trial court filing deadlines"). The absence of such explicit language in this court's orders on how tolling limitations are to be implemented, however, does not suggest to us that we should read into the orders the limitation that Shaw's proposes, which was not included in the plain language.

Moreover, all of these orders are relatively new, and we are aware of no court in another jurisdiction that has been presented with the issue now before us. We recognize that, in certain jurisdictions, the language of the order evinces a lack of ambiguity with respect to the applicable tolling provisions that is absent from this court's second and third updated orders. Nonetheless, we see no reason to impose such limits upon our broader and more widely applicable order.

Moreover, at least some of Shaw's reasoning may be attributable to a misconception of the reference to the "statutes of limitation" in the second and third updated orders.

A statute of limitations does not refer to the date on which the cause of action expires, but, rather, to the period during which a legal proceeding may be initiated. See McGuinness v. Cotter, 412 Mass. 617, 621 (1992), quoting Klein v. Catalano, 386 Mass. 701, 702 (1982) ("A statute of limitations is a procedural measure which 'normally governs the time within which legal proceedings must be commenced after the cause of action accrues"). Hence, a synonymous term is "limitations period." See Black's Law Dictionary 1069 (11th ed. 2019). In ordering "[a]ll civil statutes of limitations . . . tolled . . . from March 17, 2020, through June 30, 2020," we thus did not refer only to those causes of action for which the date of statutory expiration fell within that time period. Rather, we included all causes of action for which the relevant limitations period ran for some period between, or through, those dates. To construe this phrase as having any other meaning also would be substantively contrary to the plain and ordinary meaning of the term "toll," which means "to stop the running of." Black's Law Dictionary, supra at 1716. See Webster's New Universal Unabridged Dictionary 1992 (2003) (defining "toll" as "to suspend or interrupt"). See also Walsh v. Ogorzalek, 372 Mass. 271, 271-272 (1977) (providing for "suspension or 'tolling'" of statute of limitations in certain circumstances, such as where defendant in suit lives outside Commonwealth).

Order denying motion to
dismiss affirmed.