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When Does the Five-Year Clock Stop Ticking?

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For years, litigants have attempted to navigate the uncharted waters of the "five-year rule," whose application and exceptions have been the subject of heated debate. This debate has been punctuated by the ultimate risk for the attorney who makes mistakes in the application of the five-year rule - the dismissal of his or her client's action for lack of prosecution.

The so-called five-year rule is set forth in California Code of Civil Procedure Section 583.310, which provides that "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." The key area of debate usually involves the statutory exceptions to the application of the rule, set forth in Code of Civil Procedure Section 583.360(a)-(b).

Fortunately, the recent state Supreme Court opinion in *Bruns v. E-Commerce Exchange Inc.*, has provided jurists and litigants with a greater understanding of the exceptions to the five-year rule. No. S172684, 2011 WL 677389 (Cal. Feb. 28, 2011).

In *Bruns*, the Court explored the issue of whether a "partial stay" can toll the running of the five-year rule. By a "partial stay," the Court was referring to the situation where there were stays imposed for discovery and other specific proceedings.

Prior to *Bruns*, many plaintiffs relied on the rather ambiguous language of *Holland v. Dave Altman's R.V. Center* to justify the tolling of the five-year rule, stating that "the term ["stay"] appears to have a commonly understood meaning as an indefinite postponement of an act or the operation of some consequence, pending the occurrence of a designated event." 222 Cal.App.3d 477, 482 (1990).

Fortunately, the recent state Supreme Court opinion in *Bruns v. E-Commerce Exchange Inc.*, has provided jurists and litigants with a greater understanding of the exceptions to the five-year rule.

The Court noted that such an extension of Holland was unwarranted because that case provided examples of the periods during which the case could not be brought to trial, such as the absence of a trial court jurisdiction to try a case or a court order barring trial. Holland did not address whether the actual prosecution of a case was stayed within the confines of Section 583.340, when only a specific proceeding in a case, other than trial, was stayed.

The Court in Bruns held that the prosecution of an action is considered stayed under Section 583.340(b) only when the stay encompasses "all proceedings in the action." The Court determined that when the five-year rule statute is read as a whole, the exception found under subdivision (b) contemplates and, in fact, necessitates the reading of "a bright-line, nondiscretionary rule" excluding only that time during which all proceedings in an action are stayed.

On its face, this part of Bruns would create a situation where a case might be effectively stalled by a partial stay, placing the plaintiff in the impossible situation of having the five-year rule clock continuing to tick while the case cannot effectively be prosecuted. However, the Court expressly recognized that the subdivision(b) consideration is not the end of the analysis.

Under Section 583.340(c), the Court recognized that if the time that elapses for "[b]ringing the action to trial, for any other reason, was impossible, impracticable, or futile" that time should be excluded from the limits set forth in the code. Essentially, this exception will be invoked if plaintiff can demonstrate that he or she was "handcuffed" from moving his or her case forward.

When analyzing the "handcuff" exception found under subdivision(c), the Court noted that because partial stays are not encompassed within subdivision(b), that if partial stays fit within the statutory construction at all, then they must be contemplated under subdivision(c).

The Bruns decision is critical because the Court shed clarity on what constitutes the level of impossibility, impracticability, or futility needed for purposes of invoking the "handcuff" exception. It noted that this determination will be made in light of every factual circumstance in a given case, including the parties' conduct and the nature of the proceedings. The Court underscored that a critical factor in determining whether the exception applies is whether the plaintiff exercised reasonable diligence in the prosecution of his or her case.

The Court was careful to add that when determining the application of subdivision(c) not every period of time where the plaintiff cannot exercise his or her power to bring the case to trial may be excluded from the five-year computation. As such, the Court noted that time consumed by the delay caused by the ordinary course of proceedings, such as disposition of demurrer, amendment of pleadings, and the normal time wasted waiting to get on the court's calendar are not within the contemplation of these exceptions. Significantly, the Court explained that "excessive and unreasonable difficulty or expense" given the factual circumstances of the case can demonstrate that it was impossible, impracticable, or futile to bring a case to trial.

Indeed, the Court determined that it is in the trial court's discretion to determine whether the exception under subdivision(c) applies, which will be upheld unless the plaintiff proves that there was an abuse in discretion.

In setting forth the framework for analyzing subdivision(c), the Court remanded the case back to the Court of Appeal because the appellate court did not consider whether it applied to those time periods in which a partial stay was in effect because it found those time periods to be subject to subdivision(b). The Court also ordered that the Court of Appeal consider whether the trial court abused its discretion in not excluding any or all of the time periods under subdivision(c), and to determine whether any such exclusions would make the total time elapsed for plaintiff less than five years.

While the Court's decision in *Bruns* provides plaintiffs with a solid mechanism to preserve their day in court, as California's budget crisis has forced the closure of dozens of courthouses across the state, it is crucial for attorneys to realize that extended delays caused by getting a hearing date on the court's docket could end up running against a client's ultimate best interests, not only imminently, but also in the long run. However, the tone and tenor of the Court's opinion should provide plaintiffs' attorneys with some assurance that rationality will remain in the mix to ensure that they are given their day in court.