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Trials & TRIBULATIONS

Supreme Court finds surprising controversy in interpreting the tolling provision of 28 USC § 1367(d)

Naturally, one might think that a Supreme Court decision involving the tolling of statutes of limitations would be dull. Yet, in *Artis v. District of Columbia*, 583 U.S. ____ (2018), a 5-4 decision authored by Justice Ginsberg (Decision), the interpretation of the tolling provision in 28 U.S.C. §1367(d) is described by Justice Gorsuch, in a critical dissent, as an example of “[t]he Court [clearing] away a fence that once marked a basic boundary between federal and state power.” See Dissent at p. 18. Justice Gorsuch further argues that the Decision, which turns on the seemingly benign meaning of the word “toll,” is a representation of the Court having “wandered so far from the idea of a federal government of limited powers that we’ve begun to lose sight of what it looked like in the first place.” *Id.* If Justice Gorsuch’s rhetoric is not enough to grab your attention, the practical implications of the Court’s determination (to both plaintiffs and defendants) are certainly worth a closer look.

Artis arose out of an employment discrimination lawsuit filed in the U.S. District Court for the District of Columbia pursuant to Title VII of the Civil Rights Act of 1964. See Decision at p. 2. In addition to her Title VII claim, Stephanie Artis alleged three claims under D.C. law. *Id.* Artis filed her lawsuit in federal court just 13 months after her claims accrued, with roughly 2 years left on the statutes of limitations for her D.C. law claims. *Id.* at p. 5. Two and a half years later, the District Court granted the defendant’s motion for summary judgment on Artis’s Title VII



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claim, and declined to exercise supplemental jurisdiction over her D.C. law claims pursuant to 28 U.S.C. 1367(c)(3). *Id.*

Artis wanted to pursue her D.C. law claims. However, by the time her case had concluded in federal court, more than three years had passed since her D.C. law claims accrued. Neverthe-

less, 28 U.S.C. 1367(d) provides the following protection:

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Artis refiled her D.C. law claims in D.C. Superior Court 59 days after the District Court’s dismissal of her Title VII claim. Decision at p. 5. The defendant successfully moved to dismiss her lawsuit as untimely, having been filed more than 30 days after it was dismissed in federal court pursuant to 28 U.S.C. 1367(d). *Id.* The D.C. Court of Appeals affirmed. *Id.* at p. 6. Both Courts — and some other State Supreme Courts — interpreted 28

U.S.C. 1367(d) as providing a “grace-period” of 30 additional days to refile state law claims. Artis argued that the meaning of the word “tolled” in the statute meant to “stop the clock” on the state law (in her case D.C. law) statute of limitations. Accordingly, Artis contended that she had the remaining 23 months on the D.C. law statute of limitations plus 30 days to refile her D.C. law claims. Some State Supreme Courts have agreed with Artis’s position. The U.S. Supreme Court granted certiorari to settle the division among State Supreme Courts. *Id.* at p. 7.

Ultimately, the Court agreed with Artis. In the Decision, the Court recognized that the term “toll” could have one of two meanings: (1) to “stop the clock” on the statute of limitations, or (2) “to remove or take away an effect” of the statute of limitations if it has expired. *Id.* at pp. 7-8, 11-13. The Court determined that “toll” in 28 U.S.C. 1367(d) meant to stop the clock. The majority of the Court disagreed with defendant, the dissenting Justices, as well as 24 states, the National Conference of State Legislatures, and the Counsel of State Governments, all of whom argued that 28 U.S.C. 1367(d) simply removed the effect of the expiration of a statute of limitations and provided 30 additional days to refile a claim in state court.

A key takeaway for plaintiffs is that the “breathing room” for refileing state law claims dismissed in federal court on supplemental jurisdiction grounds in some instances is significant. Take Justice Gor-

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such's example of a breach of contract claim, filed early into its 6-year statute of limitations, which is dismissed by a federal court on supplemental jurisdiction grounds after the parties litigated in federal court for 6 years. The plaintiff in that case will now have the remaining time on the 6 year statute of limitations (plus 30 days) to refile his case in state court — which will be more than a decade after the claim accrued. Dissent at p. 17.

The Court dismissed Justice Gorsuch's

reasoning as “entirely imaginative,” and argued that his dissenting opinion “conjures up absurdities.” Decision at notes 6, 12. Yet, one need not look past the particular facts of the *Artis* case to realize that the Decision gives plaintiffs a significant advantage. Arguably, and in Justice Gorsuch's opinion, the Decision also undercuts state law statutes of limitations as well as state laws providing grace periods for plaintiffs to refile dismissed claims in state court. In New York, CPLR 205 is an example, and it provides a 6-month grace period.

In sum, the Court's interpretation of 28 U.S.C. 1367(d) is extraordinarily plaintiff-friendly. Defense counsel should heed Justice Gorsuch's warnings and, at the very least, advocate forcefully for the District Court to dismiss pendant state law claims on the merits, particularly where long periods of time remain on state law statutes of limitations.

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