



Supreme Judicial Court Clarifies That “All” Statutes of Limitations Were Tolloed By Its COVID-19 Tolling Orders

By Patricia B. Gary

September 2021

In a case of first impression, the Supreme Judicial Court (“SJC”) clarified in *Shaw’s Supermarkets, Inc. v. Melendez*¹, that its Third Updated COVID-19 Order, dated June 24, 2020, is a tolling order that applies broadly to all statutes of limitations – and does not just apply to those civil statutes of limitations that were set to expire between March 17, 2020 and June 30, 2020.

In *Shaw’s*, the plaintiff was injured on September 3, 2017 while shopping at a grocery store operated by Shaw’s Supermarkets, Inc. (“Shaw’s”) in Sturbridge, when she was knocked to the ground in a collision with a grocery cart². She filed a lawsuit against Shaw’s after the three-year statute of limitations for tort actions under M.G.L. c. 260, §2A had expired, but in reliance upon the SJC’s tolling order that “[a]ll civil statutes of limitations were tolled . . . from March 17, 2020, through June 30, 2020³,” due to the exigencies of the COVID-19 pandemic⁴.

The supermarket moved to dismiss the lawsuit on the ground that the SJC’s tolling order applied only to those civil statutes of limitations (“SOL”) that expired between March 17, 2020 and June 30, 2020. Shaw’s argued that the SOL began to run when the plaintiff’s claim accrued on September 3, 2017, and expired three years later on September 3, 2020, thus the complaint was time-barred when filed on September 24, 2020⁵.

A District Court judge denied the motion to dismiss, and the SJC affirmed⁶. The SJC explained that the plain language of its tolling order, which used the phrase “all civil statutes of limitations” was clear and unambiguous, and meant that the tolling order “encompasses each and every civil statute of limitations, not just those where the statutory period of limitations expired between March 17, 2020 and June 30, 2020.”⁷

In addition, the SJC noted that its

third updated order provides guidance for how to calculate the new date for the expiration of a statute of limitation:

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.⁸

Lawyers and their clients should take note of *Shaw’s Supermarkets, Inc. v. Melendez* when calculating statute of limitation periods because the SJC’s tolling order may affect statute of limitations cases for many years to come.

It is also important to note that the SJC’s COVID-19 tolling orders apply only to statutes of limitations, and do not apply to statutes of repose. The SJC has clarified many times that statutes of repose and statutes of limitations are different kinds of limitations on actions, and that unlike statutes of limitations,⁹

¹2021 WL 4005920, SJC No. 13054 (2021)

²*Id.* at *1

³See 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).

⁴*Shaw’s*, 2021 WL 4005920 at *1

⁵*Id.* at *2

⁶After the District Court judge denied Shaw’s motion to dismiss, Shaw’s filed an emergency motion for relief in the county court pursuant to G.L. c. 211, §3. The Single Justice reserved and reported the emergency petition to the full court. *Id.*

⁷*Id.* at *3.

⁸*Id.* at *2.

⁹See, e.g., *Bridgwood v. A.J. Wood Constr., Inc.*, 480 Mass. 349, 353 (2018); *Nett v. Bellucci*, 437 Mass. 630, 635 (2002); *Tindol v. Boston Hous. Auth.*, 396 Mass. 515, 517-518 (1986).

statutes of repose cannot be tolled
for any reason.



Patricia B. Gary is Of Counsel to the firm where she focuses her practice on the defense of professional liability actions against architects and engineers. She regularly handles complex commercial disputes for individuals and businesses across a broad range of industries.