

CLASS ACTION BLOG

Blake v. JP Morgan: Third Circuit Explains and Applies American Pipe, Crown Cork, and China Agritech

AUTHOR: ANTHONY MARTIN

CONTRIBUTOR: NATALIE KUSSART

Tolling issues, particularly the equitable tolling of statutes of limitations, are issues frequently encountered by the courts. Equitable tolling in class action cases was recognized by the Supreme Court of the United States in *American Pipe & Constr. Co. v. Utah*, 414 US 538 (1974). In that case, the court recognized equitable tolling of the statute of limitations to allow members of the failed class action case to “timely intervene as individual plaintiffs in the still pending action.” That holding was extended 9 years later in *Crown, Cork & Seal Co. v. Parker* 462 US 345 (1983). In *Crown Cork*, the *American Pipe* tolling rule was applied to allow putative class members to file their own individual suits rather than intervene, after the court denied the class certification motion. More recently, the Supreme Court denied equitable tolling for persons trying to pursue “a class action anew beyond the time allowed by the applicable statute of limitations” rather than intervening in the “existing suit or promptly filing an individual action,” in *China Agritech, Inc. v. Resh*, 138 S.Ct. 1800, 201 L.Ed.2d 123 (2018).

In the *Blake* case, the Third Circuit had to decide whether the district court judge had properly applied the Real Estate Settlement and Procedures Act (RESPA) statute of limitations when he dismissed a RESPA “kick back” case because it was untimely filed. The court first noted that Blake and his co-plaintiff had closed their mortgages in 2005 and 2006, but they delayed filing suit until 2013. Even so, however, they had unquestionably been class members in earlier filed RESPA cases claiming the same or similar violations. The Third Circuit agreed with them that the “separate-accrual rule” applied. For that reason, each time they made a mortgage payment for which an alleged kickback was paid, the statute of limitations was extended. Although they could not recover for the earlier, time-barred actions, they could pursue an attempted recovery for the latest wrong in the chain as long as they filed suit within the RESPA statute of limitations for that violation.

The problem for Blake and his co-plaintiff was that they did not file within that statute of limitations. Because, they had been class members of earlier class actions which were timely filed, the question was whether that factor rendered timely their otherwise time-barred filing. If they came within the *American Pipe* equitable tolling rule, they would be allowed to pursue their RESPA claims as a class action. Unfortunately for them, the Third Circuit ruled that they were attempting to pursue the very type of class action which *China Agritech* prohibited. The Third Circuit explained that *American Pipe/Crown Cork* equitable tolling was allowed in order to “avoid duplicative lawsuits” and was “fair to both sides.” Although such equitable tolling was appropriate for individual class members to pursue their individual claims, *China Agritech* held that such equitable tolling does not apply to new class actions. The Third Circuit read *China Agritech* as giving three reasons for denying such equitable tolling. The first is because “tolling new class actions would breed duplicative lawsuits instead of reducing them.” In addition, the equitable tolling of “new class actions would be inequitable” because the new class claimant had “slept on [his] rights.” Finally, recognizing such an “equitable” tolling rule “would encourage repetitive claims.” Although Blake and his co-plaintiff tried to distinguish *China Agritech*, the Third Circuit rejected their attempt saying that their explanation tried to make “a distinction without a difference.”

Although equitable tolling is alive and well for individual class members who timely assert their individual rights, both *China Agritech* and *Blake* made clear that the *American Pipe* equitable tolling rule does not apply to new class action cases. If new class actions are not timely filed, they will be time-barred.