

Suit As An Effective Settlement Strategy

by Thomas von Thury, Esq.

Most lawyers know that the objective of a lawsuit is settlement, not a trial. After all, one can never absolutely sure what a judge or jury will do. By the time that most clients seek a lawyer's assistance with respect to a dispute, at least many who come to me, they have already expended considerable time trying to resolve the matter themselves. In those situations my recommendation is almost always to promptly initiate a lawsuit. That is not because I am "sue happy," but because filing a complaint with a court has two very important consequences: One, it stops the clock on any statute of limitation or laches defense. Two, it forces the other party to respond in a timely manner and you cannot settle a dispute unless there is dialogue.

Regarding One: All claims must be presented to a court within certain prescribed time limits or the claimant is barred from asserting them ever again. Writing letters and making telephone calls, regardless of whether they are responded to or not, is not effective to stop the time limit from running (called tolling the statute). For example, in California, the time within which suit must be brought to enforce on a written contract is four years from discovery of the breach and for claims based on negligence it is three years.¹⁾ In addition, a concept known as "laches" precludes a person from obtaining equitable relief such as rescission of a contract or a restraining order if they delayed seeking the court's assistance.²⁾

Furthermore, evidence can become lost and witnesses unavailable over time and in my experience that seems to benefit the wrongdoer more often than the good guy. It is also important to know that not all evidence is admissible in court.³⁾ Even a deposition transcript is not admissible in California state courts to establish the truth of the statements contained in the transcript unless the deposition witness is also present at trial. If not, then it is hearsay.⁴⁾

As for Two, once a defendant has been "served" with the Summons and Complaint, they have 30 days to respond in a state court action and twenty-one if it is a federal court case.⁵⁾ Thereafter, time limits require responding to "discovery" and pre-trial motions within fairly short time periods and, perhaps most importantly, participating in settlement discussions or ADR. Failure to abide by any of these requirements can have serious consequences.⁶⁾

All cases filed in California state court having a stated value of \$50,000.00 or less must be referred to some form of Alternate Dispute Resolution process like mediation or arbitration and the federal courts have similar rules.⁷⁾ Cases with a value over \$50,000.00, Probate Court, and certain other types of claims are exempt from this requirement, but even then most judges will still require that the parties participate in some form of settlement conference before they hold an actual trial. Those settlement conferences, whether they are with a court-appointed mediator or another format, are often very effective. They force each side to take a serious look at their position, listen to the opinion of an impartial third party, and participate in good faith negotiations.

So, filing a lawsuit is an effective means to settle a dispute, which should not be delayed once the parties have reached an impasse in their own discussions.

1) See Code of Civil Procedure §§337 & 338.

2) See California Supreme Court decision in Johnson v. City of Loma Linda (2000) 24 Cal. 4th 61 at 77 ("The doctrine of laches bars a cause of action when the plaintiff unreasonably delays in asserting or diligently pursuing the cause and the plaintiff has acquiesced in the act about which the plaintiff complains, or the delay has prejudiced the defendant.")

3) See California Evidence Code §§350 et seq.

4) See California Evidence Code §§1200 & 1235.

5) See Code of Civil Procedure §412.20 and Rule 12 of the Federal Rules of Civil Procedure.

6) See Code of Civil Procedure §2023.010.

7) See Code of Civil Procedure §1141.10 et seq.; The Alternative Dispute Resolution Act of 1998 (28 U.S.C. §§ 651-58) requires each U.S. District Court to develop an ADR process.

Disclaimer: The foregoing is provided as a courtesy for information purposes only.
It is not intended as legal advice in any particular situation.

Copyright, Thomas von Thury, Esq., 2013