

Herman PALACIOS and Santiago
Tudela
vs.

**TRUST TERRITORY OF THE
PACIFIC ISLANDS**

Appellate Action No. 85-9017
Civil Action No. 79-204A
District Court NMI
Appellate Division

Decided November 14, 1986

1. Laches - Appellate Review

A trial court's decision on the issue of laches is deemed to be a finding of fact which cannot be disturbed unless it is shown to be clearly erroneous so as to amount to an abuse of discretion.

2. Laches - Elements

The burden is ordinarily on the defendant to establish laches by showing both a lack of diligence by the party against whom the defense is asserted and prejudice to the defending party.

3. Laches - Burden of Proof

Where a party sleeps on his rights for a period of time greater than the applicable statute of limitations there is a presumption of laches and the burden of proof shifts to the party bringing the suit to prove the absence of laches by rebutting the presumption of undue delay and resulting prejudice to the opposing party.

4. Appeal and Error - Standard of Review - Findings of Fact

Where appellants failed to make any reference in the trial court record establishing that the trial court's factual finding was clearly erroneous, appellants failed to show reversible error.

5. Laches - Defenses

Ignorance of legal rights does not excuse the failure to act with reasonable dispatch.

6. Appeal and Error - Issues Not Presented Below

Where issue was not raised in the court below, it need not be addressed on appeal.

7. Laches - Constitutional Claims

The doctrine of laches is applicable to complaints based on constitutional claims.

8. Laches - Particular Cases

Where plaintiffs failed to file their action until eight years after the applicable statute of limitations had run, and thirty-five years after the actual taking of the real property in issue, and the trial court had uncontradicted evidence of actual prejudice to the opposing party due to the unexplained delay in filing the suit in a more timely manner, the trial court's finding that laches barred the suit would not be disturbed on appeal.

9. Laches - Purpose

The doctrine of laches operates to aid the vigilant and not those who slumber on their rights.

1 Second, whether the trial court's finding that appellants are not
2 the owners of Lot 007 B 06 is clearly erroneous? Third, whether
3 or not the trial court abused its discretion in striking a
4 portion of the testimony of appellants' expert witness on
5 valuation?

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7 STATEMENT OF FACTS AND PROCEEDINGS BELOW

8 On November 2, 1979, Francisca I. Palacios brought an action
9 to recover compensation for the value of certain real property
10 taken by the United States military authority in 1944 from her
11 father, Juan R. Tudela, deceased. According to the first amended
12 complaint, Francisca I. Palacios and Santiago C. Tudela, the
13 heirs of Juan Tudela, allegedly own one-half undivided interest
14 in the property.

15 The first amended complaint identifies the real property at
16 issue as "Lots Numbered 007 B 03, 0007 B 04 and 007 B 05, all as
17 are shown in Cadastral Plat 007 B 00." (Lot 007, B 06 is not
18 alleged in the first amended complaint). The first amended
19 complaint alleges that from 1944 to date, defendants and their
20 predecessors in interest have maintained roads, water and power
21 lines, as well as various sundry buildings and other structures
22 on said property. Palacios sought to eject defendants from said
23 property and also sought monetary damages against Commonwealth of
24 the Northern Mariana Islands, Marianas Public Land Corporation,
25 and the Trust Territory of the Pacific Islands. (Her brother
26 Santiago Tudela was also initially named as a defendant, but
27 subsequently was realigned himself as a plaintiff).

28 In its answer to the complaint, Trust Territory of the

1 Pacific Islands ("Trust Territory") generally and specifically
2 denied the allegations, and asserted the affirmative defenses of
3 laches and the statute of limitations.

4 The trial court granted Trust Territory's motion for summary
5 judgment on the ground that the statute of limitations barred
6 Palacio's claim. On appeal, the appellate panel affirmed the
7 decision as to the Northern Mariana Islands and Marianas Public
8 Land Corporation, but reversed the judgment as to Trust Territory
9 because the principles of equity barred a defense based on
10 statute of limitations where the Trust Territory, as the Trustee,
11 enjoyed a fiduciary relationship with the plaintiff. The
12 appellate panel remanded the action to the trial court with
13 instructions to conduct further proceedings to determine whether
14 the doctrine of laches operated to bar Palacio's claim.

15 After remand, Herman Palacios was substituted in for
16 Francisco Palacios, and Santiago Tudela realigned his interest as
17 a plaintiff in this action. The subsequent trial before the
18 Honorable Robert A. Hefner, Chief Judge, presiding, was held on
19 July 11 and 12, 1985. At the trial, testimony as to
20 ownership to the real property in dispute², boundary lines of
21 the claims and Tudela's signature on a document agreeing to bound-
22 aries established by a 1970 survey were all submitted. Appell-
23 ants called Manual Salban, a real estate appraiser, who testified
24 as to the real property's valuation. After completion of his
25 testimony, the trial court granted appellee's motion to strike
26 certain portions as irrelevant. No testimony was submitted by
27 appellants throughout the trial concerning why the lawsuit was

28 ² At the retrial, appellants' ownership of Lot 007 B 06 was
seemingly raised for the first time.

1 not filed in a more timely manner.

2 The trial court subsequently issued a memorandum opinion
3 finding that appellants' claims were barred by laches. Although
4 the trial court found no liability on the part of the appellee,
5 the trial court made further specific findings concerning the
6 real property in dispute. Primarily, the trial court found
7 that Tudela does not own Lot 007 B 06; that only Lot 007
8 B 04 had been taken from Tudela; and that damages, if any, would
9 compute to \$362.40 plus interest from the date of the taking.

10 DISCUSSION

11 I) Laches.

12 [1] A trial court's decision on the issue of laches is deemed to
13 be a finding of fact which cannot be disturbed unless it is shown
14 to be clearly erroneous so as to amount to an abuse of dis-
15 cretion. Lingenfelter v. Keystone Consol. Industries, Inc., 691
16 F.2d 339 (7th Cir. 1982); American Home Products Corp. v.
17 Lockwood Mfg. Co., 483 F.2d 1220 (6th Cir.), cert denied, 94
18 S.Ct. 917 (1973).

19 [2,3] Since laches is an affirmative defense, the burden of proof
20 is ordinarily on the defendant to establish both a lack of
21 diligence by the party against whom the defense is asserted and
22 prejudice to the defending party. See Costello v. United States,
23 365 U.S. 265, 282 (1961); Lingenfelter v. Keystone Consol.
24 Industries, Inc., supra, 691 F.2d at 340. However, where a party
25 sleeps on his rights for a period of time greater than the
26 applicable statute of limitations, there is a presumption of
27 laches and the burden of proof shifts to the party bringing the
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1 suit to prove the absence of laches by rebutting the presumption
2 of undue delay and resulting prejudice to the opposing party.
3 University of Pittsburgh v. Champion Products, Inc., 686 F.2d
4 1040, 1045 (3d Cir.), cert denied, 459 U.S. 1087 (1983);
5 Randall v. Mayor & City Council of Baltimore, 512 F.Supp. 150,
6 152 (D.Md. 1981); see e.g. Tandy Corp. v. Malone & Hyde, Inc.,
7 769 F.2d 362, 365 (6th Cir. 1985).

8 Both parties agree from their previous pleadings which are
9 part of the record on appeal that the controlling statute of
10 limitations pursuant to 6 T.T.C. §302(1)(b) is a twenty year
11 limitations period. Pursuant to 6 T.T.C. §310, this
12 limitations period is said to accrue from May 28, 1951. As the
13 twenty-year limitations period expired on May 28, 1971 in the
14 present action, appellants therefore have the initial burden to
15 show the absence of laches or to rebut a presumption of undue
16 delay and prejudice to the appellees.

17 Appellants proffer numerous reasons attacking the trial
18 court's findings of laches, but as discussed below, none are
19 persuasive. First, appellants state that "the length of time
20 between the commission of the breach of trust and bringing of the
21 suit has not been established," but this statement is incon-
22 sistent with their position throughout the litigation that
23 appellee took their property without compensation in 1944. Due
24 to the posture of their claims, any breach of trust would ipso
25 facto have to occur in 1944.

26 Second, appellants allege that appellee failed to
27 establish whether appellants knew or had reason to know of the
28 breach of trust. This contention, however, is contrary to the

1 trial court's factual finding that "plaintiffs and their
2 predecessors knew of the breach of any trust or fiduciary
3 relationship in 1944 and ever since." Appellants fail to
4 substantiate this blanket statement with any reference to the
5 record. Due to the nature of the taking, it appears
6 inconceivable that appellants would not have been aware that
7 appellee effectively took the real property in dispute by
8 building a military road through the property.

9 [4.5] Third, appellants assert that they were under an incapacity
10 since: 1) there was no mechanism for enforcement of a trust
11 until 1974; 2) there was no effective legal counsel available,
12 and 3) they did not understand the American system because the
13 land hearings were in English rather than the native Chammaro
14 language. The main flaw in this argument is that appellants
15 failed to establish the existence of incapacity in the court
16 below and the trial court made a specific finding to this effect.
17 Without any reference in the record to establish that the trial
18 court was clearly erroneous, appellants fail to meet their burden
19 on this issue. Moreover, it has been established that the
20 ignorance of legal rights does not excuse the failure to act with
21 reasonable dispatch. Giddens v. Isbrandsten, 355 F.2d 125, 128
22 (4th Cir. 1966); Randall v. Mayor & City Council of Baltimore,
23 512 F.Supp. 150, 154 (D.Md. 1981).

24 [6] This failure to proffer any explanation substantiating
25 appellants' arguments applies also to their argument that the
26 beneficiaries interests "should have been presently enjoyable,
27 but clearly wasn't." As the trial court correctly found, the
28 interest of the landowners to the real property in issue is

1 presently enjoyable and not a future interest. Moreover, the
2 trial court further found that appellants failed to proffer any
3 reason or produce any evidence at trial for the long delay in
4 bringing suit. Although appellants assert on appeal that there
5 was no mechanism for filing a suit prior to 1974, this issue
6 apparently was not raised in the court below, and thus need not
7 be addressed on appeal.

8 [7] Appellants also argue that application of the doctrine of
9 laches is improper since compensation is mandated by the Con-
10 stitution of the United States, the Constitution of the Northern
11 Mariana Islands and the Bill of Rights of the Trust Territory,
12 and thus this action is not an equitable proceeding. However,
13 the doctrine of laches has been held to be applicable to com-
14 plaints based on constitutional claims. Environmental Defense
15 Fund v. Alexandere, 614 F.2d 474, 480 (5th Cir.), cert. denied,
16 449 U.S. 919 (1980). Therefore, even if constitutional allega-
17 tions had been included in the first amended complaint, this
18 claim must also fail.

19 Lastly, appellants contend that appellees have suffered no
20 prejudice by the delay. This contention, however, is contrary to
21 the evidence submitted to the trial court. Even appellants admit
22 that appellees have constructed and maintained a road on the
23 premises, and in their first amended complaint admit that water
24 and power lines, in addition to various sundry buildings and
25 other structures, were maintained by appellees on the property in
26 question. In making the determination of prejudice, the trial
27 court had before it the affidavit of William R. Satterberg, Jr.,
28 the Assistant Attorney General, who stated that as the result of

1 the thirty-five year delay in instituting the claim, the Trust
2 Territory was prejudiced in that it was unable to secure wit-
3 nesses and evidence concerning the construction, routing and the
4 general nature of the highway as it was built in 1944. Satter-
5 berg's affidavit attested to the death of certain witnesses such
6 as Juan Tudela.

7 Appellants contest this hardship by alleging that the death
8 of Juan Tudela, in addition to the death of the originally named
9 plaintiff, Francisca T. Palacios, is irrelevant to this issue in
10 that they were not "vital" witnesses. However, this allegation
11 also appears to be raised for the first time on appeal.

12 [8] Various circuits have recognized that the length of the
13 delay is a relevant factor in determining the actual prejudice to
14 the parties. One court has even stated that once the analogous
15 statutory period has expired, the courts may infer prejudice from
16 that fact alone. Randall v. Mayor & City Council of Baltimore,
17 supra, 512 F.Supp. at 152. Another court has applied a sliding
18 scale standard with respect to prejudice depending on the length
19 of delay: "[i]f only a short period of time has elapsed since the
20 accrual of the claim, the magnitude of prejudice require[d]
21 before the suit should be barred is great, whereas if the delay
22 is lengthy, prejudice is more likely to have occurred and less
23 proof of prejudice will be required." Goodman v. McDonnell
24 Douglas Corp., 606 F.2d 800, 807 (8th Cir.), cert. denied, 444
25 U.S. 913 (1983).

26 Courts have sustained a trial court's determination of
27 laches where the length of delay in bringing a suit is consider-
28 ably less than the period presented here. In Lingenfelter, the

1 court affirmed a finding of laches where plaintiff delayed six
2 years in filing suit and defendant claimed prejudice due
3 to the fading of its potential witnesses' memories and the
4 expenditure of monies during the delay. Lingenfelter v. Keystone
5 Consol. Industries, Inc., supra, 691 F.2d at 342. In Cotton, the
6 court held that a ten year delay in filing a habeus corpus
7 petition was unreasonable where the government's affidavit
8 established that files had not been retained, court reporter's
9 notes had been destroyed, and that witnesses did not have a
10 sufficient recollection of the events. Cotton v. Mabry, 674 F.2d
11 701, 705 (8th Cir.), cert. denied, 459 U.S. 1015 (1982).
12 In Dresser, a five year delay in filing a Title VII claim was
13 held to be an unreasonable delay where defendant submitted
14 affidavits pertaining to unavailability of witnesses, changed
15 personnel and loss of pertinent records. EEOC v. Dresser
16 Industries, Inc., 668 F.2d 1199, 1203-1204 (11th Cir. 1982).

17 In the case at bench, appellants failed to file their action
18 until eight years after the applicable statute of limitations had
19 run, and thirty-five years after the actual taking of the real
20 property in issue. The trial court had uncontradicted evidence
21 of actual prejudice to the appellees due the the unexplained
22 delay in filing the suit in a more timely manner. Under these
23 circumstances, the trial court's decision should not be dis-
24 turbed.

25 [9] Furthermore, the trial court's decision is wholly consistent
26 with the policy underlying the doctrine of laches. By barring
27 relief to those who delay the assertion of their legal claims for
28 an unreasonable period, several aims are served. Plaintiffs are

1 encouraged to file their suits while the courts are in the best
2 position to resolve the disputes because as the claims become
3 increasingly stale, pertinent evidence becomes lost, defendants
4 invest capital and labor into their claimed property, plaintiffs
5 gain the unfair advantage of hindsight, while defendants suffer
6 the disadvantage of an uncertain future outcome. N.A.A.C.P. v.
7 N.A.A.C.P. Legal Defense & Education Fund, Inc., 753 F.3d 131
8 (D.C.Cir.), cert denied, 105 U.S. 3489 (1985). The doctrine of
9 laches therefore operates to aid the vigilant and not those who
10 slumber on their rights.

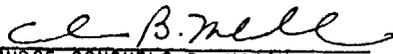
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12 II. Ownership of Lot 007 B 06 and the Testimony of Appellants'
13 Appraiser.

14 Appellants also contest the trial court's finding that Lot
15 007 B 06 had been previously conveyed to a Japanese firm and did
16 not belong to either appellant. However, as appellants have
17 failed to designate any of the exhibits admitted into evidence at
18 trial for the record on appeal, these exhibits which include the
19 maps of the disputed boundaries of the individual lots, are not
20 before the court, and thus this issue cannot be addressed.
21 Even assuming the exhibits were before the court, the evidence
22 would not effect the court's conclusion on the dispositive issue
23 of laches. In the same vein, appellants' argument regarding the
24 testimony of appellants' appraiser will also not effect the
25 court's conclusion, and will likewise not be discussed herein.

26
27 CONCLUSION

28 As discussed in Section I, the trial court's finding that

1 appellants' claim was barred by laches was not clearly erroneous
2 but was amply supported by the record. Accordingly, the trial
3 court's decision is hereby affirmed.
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JUDGE CONSUELO B. MARSHALL


JUDGE ALFRED LAURETA


JUDGE CRISTOBAL C. DUENAS