IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE DAN E. MARTENS and MOSELEY MARTENS, LLP,

Petitioners,

v.

SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Respondent,

BANK OF SAIPAN,

Real Party In Interest.

SUPREME COURT APPEAL NO. CV-06-0003-OA
SUPERIOR COURT CIVIL CASE NO. 04-0088C

FOR PUBLICATION

OPINION

Cite as: *Bank of Saipan v. Martens*, 2007 MP 5

Submitted on December 6, 2006
Saipan, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; and JOHN A. MANGLONA, *Associate Justice*

Per Curiam:

¶ 1 Petitioners request the Court to issue a writ of mandamus directing the trial court to vacate its orders on the motion to dismiss and motion for reconsideration, and to dismiss the claims against them with prejudice for lack of personal jurisdiction. While there is no statutory time limit for seeking a writ of mandamus, we find that petitioners' motion was untimely and without adequate cause for the delay. We therefore DENY the petition for a writ of mandamus.

I.

¶ 2 This case is yet another in a long line of cases that involve the Bank of Saipan (the "Bank") and its near collapse. The underlying suit is the Bank's attempt to recoup funds that were lost due to alleged fraud during the acquisition of two credit card processing companies located in Abilene, Texas.

¶ 3 Petitioners Dan E. Martens and Moseley Martens, LLP (collectively "the Martens"), who are from Dallas, Texas, originally moved the trial court to dismiss the complaint for lack of personal jurisdiction. The trial court granted the motion, and held that the Bank had not alleged sufficient contacts between the Commonwealth and the Martens for personal jurisdiction. The trial court, however, held the motion in abeyance so that the Bank could conduct further discovery in an attempt to convince the court of sufficient contacts.

¶ 4 On November 7, 2005, the trial court reversed its decision and denied the Martens' motion to dismiss the lawsuit, finding the Martens had sufficient contacts with

the CNMI to warrant personal jurisdiction. The Martens moved for reconsideration, which the trial court denied on October 18, 2006. On December 6, 2006, almost fifty days later, the Martens filed the petition for a writ of mandamus.

II.

¶ 5 We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, and 1 CMC § 3102(b).

III.

¶ 6 When deciding whether to issue a writ of mandamus, we look to the five factors laid out in *Tenorio v. Superior Ct.*, 1 N.M.I. 1, 11 (1989).[1] Here, however, we must address the threshold procedural question of timeliness. We begin our analysis with Com. R. App. P. 21 ("the Rules"), which spells out the requirements for writs. Since neither Rule 21 nor any other Commonwealth rule or statute addresses the time in which a party may file a petition, we turn to the common law for guidance as provided in 7 CMC § 3401. *See, e.g., Mundo v. Superior Ct.*, 4 N.M.I. 392, 396 (1996); *Ada v. Sadhwani's, Inc.*, 3 N.M.I. 303, 308 (1992). It is generally recognized in jurisdictions that lack a rule or statute regarding the timeliness of petitions for writs of mandamus that the equitable doctrine of laches governs. *See, e.g., In re Eastern Cherokees*, 220 U.S. 83, 87–9 (1911); *see also Oregon v. Peekema*, 328 Or. 342, 346 (1999) ("The time period within which a party must file a petition for mandamus relief is governed by laches, not statute.") (citation omitted); *Carlile v. Frost*, 326 Or. 607, 620 (1998) ("This court has long recognized that the concept of laches applies to writs of mandamus: '[l]aches is a

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[1] *See, e.g., Commonwealth v. Pua*, 2006 MP 19 ¶ 19; *Kevin Int'l Corp. v. Superior Ct.*, 2006 MP 3 ¶ 14; *Commonwealth v. Superior Ct. (Ada)*, 2004 MP 14 ¶7; *Paulis v. Superior Ct.*, 2004 MP 10 ¶ 22.

bar to mandamus, and a petitioner desiring to avail himself of the benefits of such a writ must act promptly.'") (citation omitted).

¶ 7 Laches is defined as "the neglect or delay in bringing suit to remedy an alleged wrong, which taken together with lapse of time and other circumstances, causes prejudice to the adverse party and operates as an equitable bar." *Rios v. Marianas Public Land Corp.*, 3 N.M.I. 512, 523-24 (1993) (citing *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1029-30 (Fed. Cir. 1992)). Here, as the party asserting laches, respondent must show that petitioner "delayed filing suit for an unreasonable and inexcusable length of time from the time the [petitioner] knew or reasonably should have known of its claim against [respondent]," and must also show that "the delay operated to the prejudice or injury of the [respondent]." *Rios*, 3 N.M.I. at 524.

¶ 8 The burden of proving laches always rests with the party claiming its existence. *Id.* at 524 n.16. Generally, there is a presumption of laches where the time for doing an act has run. *Id.* at 524. To rebut the presumption, petitioner must present evidence showing that its delay was reasonable or that the defendant did not suffer prejudice or both. *Id.* Here, the Martens argue that the delay was reasonable and that no prejudice occurred. We disagree.

IV.

¶ 9 We cannot ignore Rule 4(a), which requires civil parties to file a notice of appeal "within 30 days after the date of entry of judgment or order appealed from." Com. R. App. P. 4(a); *see also Peekema*, 328 Or. at 346 (citing *Redden v. Van Hoomisen*, 281 Or. 647, 649 (1978)). In *Redden*, the court explained that, "it may be said, in a general way, that [a petition for a writ of mandamus] must be brought within the period fixed for the

right which is the subject of the writ." *Id.* (quoting *Nelson v. Baker*, 112 Or. 79, 94-5 (1924)). The *Redden* court further explained that "[a]ll the reasons which induced the legislature to limit the time to 30 days for the filing of an appeal in such a circumstance would be equally applicable to [an] application for writ of mandamus." 281 Or. at 650. While we refuse to create such a clear-cut rule for writs, we find the argument persuasive.

¶ 10 This analogy finds support in Commonwealth jurisprudence. In *Commonwealth v. Pua*, 2006 MP 19 ¶ 14, we stated that "[t]he main purpose of the rules for filing a notice of appeal and a petition for mandamus—to apprise the Court and interested parties of the intent to raise certain issues in the Supreme Court and give the opportunity to be heard—are the same."

¶ 11 Furthermore, the same policy considerations that prompt for a thirty (30) day period for filing a notice of appeal apply equally, if not more so, to a petition for writ of mandamus. Litigants and courts must, after a certain time after entry of an order or judgment, move forward with certainty — *i.e.*, without the constant possibility of re-litigating a particular controversy short of appeal from final judgment. This certainty provides for the efficient administration of justice. A petition for writ of mandamus directed against an order of a court should be reserved for extraordinary and drastic situations. If a party believes such a situation exists, the party should be required to promptly notify the court and other parties of such a situation so it may be addressed quickly and not left to possibly undermine the legitimacy or efficiency of later proceedings.

¶ 12 In accordance with this analysis, Rule 4(a), which requires civil parties to file notice of appeal "within 30 days after the date of entry of judgment or order appealed

from," should form the basis of a presumption of timeliness. Com. R. App. P. 4(a). This leaves open the possibility that the presumption may be overcome by the particular circumstances of the case, but will effectively shift the burden to petitioner when the request is filed more than thirty (30) days after the trial court's judgment or order.

¶ 13 Allowing the Martens' petition to move forward, despite its untimely nature, would not only undermine the important policies of certainty and judicial economy, amounting to per se prejudice for the purposes of laches, but would also specifically prejudice the Bank. The Bank, which has twice defeated the Martens' efforts to escape the jurisdiction of the Commonwealth's courts, should not be denied its reasonable expectation of a timely adjudication of its claims. After thirty (30) days ran from entry of the trial court's order, the Bank is entitled to feel secure in devising its litigation strategy, and should not be required to operate under the specter of petitions for writs of mandamus and their attendant delay of the proceedings. Therefore, we find that prejudice will occur if the writ is granted.

¶ 14 The Martens argue that there is no inflexible rule regarding the promptness in which a mandamus remedy is sought and courts decline to create any such bright line rule. *See In re Beaty*, 306 F.3d 914, 927 (9th Cir. 2002). The question in each case is whether under all the circumstances the remedy was pursued with reasonable dispatch. *See McDaniel v. U.S. Dist. Ct.*, 127 F.3d 886, 890 n.1 (9th Cir. 1997) (citing *United States v. Olds*, 426 F.2d 562 (3d Cir. 1970)). We do not believe that our holding is at odds with this standard. As discussed, we are not creating a bright line rule. Rather, we hold that a petition for a writ of mandamus that is not filed within thirty (30) days is presumed to have not been filed with reasonable dispatch. We leave open the possibility

that other factors, not present here, may overcome this presumption.

¶ 15 Additionally, the Martens claim that a justification exists for the delay in filing the Writ. They cite to *Rios*, 3 N.M.I. at 524 n.17, where we state that involvement in other litigation, suffering from poverty or illness, or wartime conditions may be suitable claims for justification. In support of their claim, the Martens cite other litigation in which their counsel is currently involved. This interpretation of the dicta is misguided, however, since it relates to the condition of their counsel.

V.

¶ 16 A Writ of Mandamus is an extraordinary writ, reserved for the most dire of instances when no other relief is available. As such, a petition should be filed within days, not weeks, of the order in question. The Martens have failed to overcome the presumption of untimeliness, and we, therefore, DENY their Petition for a Writ of Mandamus.[2]

¶ 17 SO ORDERED this 14th day of March, 2007.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN
Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO
Associate Justice

/s/ John A. Manglona
JOHN A. MANGLONA
Associate Justice

[2] Because we find that petitioners' motion for the writ was untimely, we need not address the *Tenorio* factors here. *Tenorio,* 1 N.M.I. at 11.