

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001002-MR

THE BANK JOSEPHINE, NKA
CITIZENS NATIONAL BANK

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, SPECIAL JUDGE
ACTION NO. 97-CI-00817

EARL M. MCGUIRE

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

DYCHE, JUDGE: The Bank Josephine fired Earl M. McGuire as its president. He filed this action to recover benefits he claimed were due him under his contract with the bank. The trial court granted him a summary judgment, awarding him money damages of \$350,947.00, including pre-judgment interest. The bank appeals; as we find that there is no genuine issue of material fact, and

that the trial court made a correct legal interpretation of the contract between the parties, we affirm.

McGuire entered into a contract with the bank to serve as its Chief Executive Officer on September 24, 1987; the term was for one year, and he was to be paid \$88,900.00 per year. On August 25, 1988, the bank's board of directors approved a new contract with McGuire, increasing his compensation to \$100,000.00 per year. He worked for approximately one month under the new contract when control of the bank passed to new owners, who terminated his employment without cause.

On September 30, 1997, almost nine years following his termination from the bank's employment, McGuire brought this action seeking money damages under the contract. Following routine discovery, both parties filed motions for summary judgment. Ky. R. Civ. Pro. (CR) 56. The trial court denied the bank's motion, granted McGuire's, and scheduled a hearing on his damages. The parties produced evidence on the issue, the trial court granted the judgment above referred to, and this appeal followed.

The bank's initial and overarching complaint in this appeal is that McGuire's complaint was barred from enforcement by the doctrine of laches. It claims that it and its successors were unduly prejudiced by McGuire's "unreasonable" delay of almost nine years in filing this action, despite the fact that

the action was filed well within the fifteen-year limitations period contained in Ky. Rev. Stat. (KRS) 413.090.

While both laches and statutes of limitations may afford defendants repose, laches is not a substitute for a statute of limitations and the rules applicable to statutes of limitations do not necessarily apply to laches. For example, laches has traditionally been applied only to equitable claims, although increasingly it is applied to other claims; statutes of limitation are traditionally applied only to legal actions, although they likewise increasingly are applied to other claims.

As an equitable doctrine, laches differs from the statute of limitations in that it offers courts more flexibility, eschewing mechanical rules. Laches is principally a question of the inequity of permitting a claim to be enforced - an inequity founded on some change in the conditions or relations of the property or the parties involved. Laches thus is premised on prejudice, not solely delay. Statutes of limitation, on the other hand, are premised on delay, not prejudice, but while laches is unlike a statute of limitations, which is based merely on time, laches has been called an equitable time limit on a party's right to bring suit.

In contrast to a statute of limitations that provides a time period within which the suit must be instituted, laches asks whether the plaintiff in asserting his or her rights was guilty of unreasonable delay that prejudiced the defendants. Laches is not applied as an absolute rule, as is the case with a statute of limitations, but its applicability is determined in each case in light of its particular circumstances. Unlike the defense of limitation of action, the defense of laches is evaluated on a case by case basis because it invokes an

inexcusable delay, without necessary reference to duration, in asserting an equitable claim. Fairness will bar application of laches where the result would be unjust; laches does not operate harshly, as may a statute of limitation. Statutes of limitation, further, may work great practical injustice - the doctrine of laches, never.

27A Am. Jur. 2d *Equity* §148 (1996) (footnotes omitted).

The present action is for the construction and interpretation of a written contract; it is an action at law, seeking money damages, and not equitable relief. We believe that the defense of laches is inappropriate and/or unavailable herein.

Even if it were, the bank has shown no prejudice from the delay by McGuire in bringing this action. It complains loud and long about its successors/purchasers being harmed by their ignorance of the potential cause of action possessed by McGuire, but demonstrates no actual damage.

Laches is not appropriate in this case as a defense to the maintenance of the cause of action; the action was commenced within the statute of limitations. It is, however, germane to the issue of damages, as we will explain later.

The bank's next argument is that it was error for the trial court to have granted a summary judgment for McGuire when there were genuine issues of material fact as to the "validity and enforceability" of the 1988 contract. We are never informed

as to what those issues are, other than "whether the 1988 Agreement was intended to act as a novation of the 1987 Agreement." This issue involves not factual matters, but legal interpretations of the undisputed facts.

Those undisputed facts show this: the bank and McGuire entered into an employment contract for the period September 24, 1987 - September 23, 1988, providing for a salary of \$88,900.00 per year; on August 25, 1988, and effective that date, the bank approved a contract for McGuire's continued employment for one year at the rate of \$100,000.00 per year; McGuire worked under the new contract for one month, and was paid the higher rate for that month; the new contract included provisions for McGuire's termination of his employment in the event of a change of control of the bank, and for the bank to terminate McGuire for cause, or without cause; if McGuire were to exercise his option under the "change of ownership" provision, he had to give notice to the bank; the new contract provided that if McGuire were to be terminated without cause, he would be paid fifty percent of the total amount of his contract, or one hundred percent if not paid within ten days; the bank terminated McGuire's employment, and failed to make the specified payment.

The trial court interpreted the contract to require the bank to pay McGuire the full one hundred percent amount,

since it did not pay the fifty percent within ten days of his termination without cause. It further interpreted the notice provision to apply to McGuire's action in case of change of ownership, and not to the termination of McGuire's employment, stating that it would be "absurd" for McGuire to be required to notify the bank of the bank's own actions.

The interpretation of a contract is a legal issue for the court to decide. First Commonwealth Bank of Prestonsburg v. West, 55 S.W.3d 829 (Ky.App. 2000). The Bank argues that there were issues of fact. There were none. Nor do we find error in the trial court's interpretation of the contract. It would be absurd for McGuire to have to notify the bank of the bank's own action in terminating his employment.

The bank finally argues that it was an abuse of discretion for the trial court to award McGuire pre-judgment interest on the amount due him under the contract. We agree. This is where McGuire's nine-year delay works to the prejudice of the bank. The award of pre-judgment interest is a matter of equity; laches must bar McGuire's profiting from his own delay. Nucor Corporation v. General Electric Co., 812 S.W.2d 136, 143 (Ky. 1991). While laches might not act to bar him from receiving the contractual liquidated damages to which he is entitled, he should not be allowed to enhance his award by his own failure to assert his demand. McGuire should receive pre-

judgment interest only from the date of filing this action.

Although the damages are liquidated, equity and fairness demand this limitation on pre-judgment interest.

The judgment of the Floyd Circuit Court is affirmed in part, reversed in part, and remanded for the entry of a judgment in accordance with this opinion.

ALL CONCUR.

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