Laches: Elements Of The Defense And Practical Considerations

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A. Elements of the Defense

1. Laches is an equitable defense to delayed claims.

   a. *California. See generally In re Marriage of Fogarty & Rasbeary*, 93 Cal.Rptr.2d 653, 657 (Cal.App. 2000). "Laches is an equitable defense to the enforcement of stale claims."

   b. *Connecticut. See generally Cifaldi v. Cifaldi*, 983 A.2d 293, 334 (Conn.App. 2009). Laches is an equitable defense.

   c. *Delaware. Envo, Inc. v. Walters*, Civil Action No. 4156-VCP, 2009 WL 5173807, at *8 (Del.Ch. Dec. 30, 2009) (quoting *Reid v. Spazio*, 970 A.2d 176, 182 (Del. 2009)). "Laches is an equitable defense that stems from the maxim 'equity aids the vigilant, not those who slumber on their rights.'"

   d. *Florida. Baskin v. Griffith*, 127 So.2d 467, 471 (Fla.Dist.App. 1961). Courts of equity apply the doctrine of laches (hereafter "laches") and not statutes of limitation. "Laches is principally a question of the inequity of permitting a claim to be enforced by equitable remedies in the face of a change in the conditions or relations of the parties occasioned by a delay that works a disadvantage to him against whom equitable relief is sought."

e. *Georgia*

i. *Cagle v. Cagle*, 586 S.E.2d 665, 666 (Ga. 2003). The trial court granted summary judgment, and the Georgia Supreme Court affirmed on grounds that the claim was barred by the equitable doctrine of laches.

ii. *Black & White Constr. Co. v. Bolden Contractors, Inc.*, 371 S.E.2d 421, 424 (Ga.App. 1988). "[T]he doctrine of laches is purely equitable and is not applicable to claims at law."

iii. *See generally Boyd v. Robinson*, 683 S.E.2d 862, 865 (Ga. Ct. App. 2009). Defendants in a lawsuit stemming from a car accident could not avail themselves of laches because "the equitable doctrine of laches does not apply to legal actions."

f. *Illinois*. *Carlson v. Carlson*, 98 N.E.2d 779, 782 (Ill. 1951). Laches is an equitable doctrine created by the courts to promote justice.

g. *Indiana*. *Bender v. Bender*, 844 N.E.2d 170, 184 (Ind.App. 2006). In a case involving a personal representative of an estate engaged in self-dealing, the appellate court concluded that the probate court did not abuse its discretion when determining there was no unreasonable delay. The court indicated that the doctrine of laches is equitable.

h. *Michigan*. *Tray v. Whitney*, 192 N.W.2d 628, 630 (Mich.App. 1971). Laches is an equitable defense.

i. *North Carolina*. *Stratton v. Royal Bank of Canada*, No. 07 CVS 15079, 2010 WL 445605, at *4 (N.C.Super. Feb. 5, 2010) (quoting *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-349 (1994)). "Laches is an equitable doctrine 'designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'"

j. *Ohio*

i. *Smith v. Smith*, 156 N.E.2d 113, 447, 456 (Ohio 1959). The court notes "that laches is exclusively an equitable doctrine, and that most of the law relating to that subject has been made in separate 'courts of equity,' or, under our modern system wherein no distinction is made between 'equity' and 'law' courts, such law has been made by the consideration in such courts of traditional 'equity' cases."

ii. *Bank One Trust Co., N.A. v. LaCour*, 721 N.E.2d 491, 496 (Ohio App. 1999). Laches is an equitable doctrine.

k. *Pennsylvania*

i. *In re Estate of Aiello*, 993 A.2d 283, 287-88 (Pa. 2010). "[L]aches is an equitable doctrine which bars relief when the complaining party is guilty of want of due diligence in failing to promptly institute the action to the prejudice of another." Because the executor engaged in continuous breaches of his fiduciary duty, however, the court refused to apply laches, indicating that "[a] party seeking equitable relief must come before the court with clean hands."

ii. *In re Estate of Devine*, 910 A.2d 699, 702 (Pa.Super. 2006).

iii. *Kern v. Kern*, 892 A.2d 1, 9 (Pa. Super. Ct. 2005). "The doctrine of laches is an equitable bar to the prosecution of stale claims."

l. *Texas. Wayne v. A.V.A. Vending, Inc.*, 52 S.W.3d 412, 415 (Tex.App. 2001). Laches is an equitable remedy, however, the application of laches "is usually limited to cases arising out of equity or actions at law that are essentially equitable in character." Laches was not applicable in this case because it involved a breach of contract claim, which asserts legal rights.

m. *Virginia. Stiles v. Stiles*, 632 S.E.2d 607, 610 (Va.App. 2006). "Whether to apply laches to an equitable claim is a matter left to the discretion of the trial court."

(1) *See generally Klackner v. Willis*, 1987 WL 488775, at *3 (Va.Cir. Jan. 20, 1988). "Laches is an equitable principle defined as inexcusable delay in the enforcement of one's rights, to the prejudice of the other party[,]"and "[i]t prevents the prosecution of stale claims in courts of equity, in much the same fashion as statutes of limitation apply to legal claims and demands."

n. *Wisconsin. In re Estate of Sfasciotti*, No. 2009AP1201, 2010 WL 2086338, at *16 (Wis.App. May 26, 2010). "Laches is an equitable doctrine, distinct from a statute of limitations, whereby a party may lose its right to assert a claim by not making it promptly." A claim asserted by an estate seeking to recover estate assets from past promissory notes is an action at law regarding which laches does not bar recovery.

2. While laches is related to other equitable defenses, such as waiver and estoppel, its critical element requires a showing of prejudice. *See generally Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 955 (9th Cir. 2001). "Courts have recognized two chief forms of prejudice in the laches context—evidentiary and expectations-based. Evidentiary prejudice includes such things as lost, stale, or degraded evidence, or witnesses whose memories have faded or who have died. A defendant may also demonstrate prejudice by showing that it took actions or suffered consequences that it would not have, had the plaintiff brought suit properly." (Citations omitted.)

a. Prejudice may result from a party's change of position.

i. *California. Welch v. St. George*, No. B189271, 2007 WL 1559823, at *10-11 (Cal.App. May 31, 2007). Seventeen years after the court interpreted a section of a partnership agreement, one of the partners challenged the way profits were distributed. The trial court granted defendants' motion to dismiss, in part by applying laches. The 17-year delay was determined to be an unreasonable delay. The change in business partners, through death and selling of shares, altered the defendants' position, placing them in a prejudiced position.

ii. *Connecticut. See Episcopal Church in the Diocese of Conn. v. Gauss*, No. CVX06084020456S, 2010 WL 1497141, at *11 (Conn.Super. Mar. 15, 2010). Laches applies when a right is not asserted in conjunction with a lapse of time that causes prejudice to the adverse party. The mere lapse of time does not constitute laches.

iii. *Florida. Baskin v. Griffith*, 127 So.2d 467, 472-73 (Fla.Dist.App. 1961). A doctor created a trust for the heirs of a fellow doctor that contained a one-sixth share in specified property. Seventeen years after the property was sold, the trust beneficiaries brought suit seeking their share of the sale proceeds. The appellate court held that the Chancery Court inappropriately granted a summary

decree for the plaintiff because there was a genuine question of material fact as to whether the defendant's position was sufficiently altered by disbursement of funds that had occurred during the delay.

iv. *Massachusetts*. *March v. March*, No. 03-P-1428, 2004 WL 2452705, at *3 (Mass.App. Nov. 2, 2004). A father held property in trust for his sons but made multiple conveyances over the years. In a suit by one son, the appellate court held that the date plaintiff became aware of the breach of trust was an unresolved material question of fact, precluding judgment as to both the statute of limitations and laches. The defendant's elderly status and failing health did not demonstrate a material change in his position required to raise laches.

(1) *Porotto v. Fiduciary Trust Co.*, 321 Mass. 638, 644 (1947). The court held that despite there being a 94-year delay in bringing suit, the application of laches requires more than mere delay.

v. *Michigan*. *Tray v. Whitney*, 192 N.W.2d 628, 631 (Mich.App. 1971). Plaintiff challenged a conveyance of his share of property that took place when he was a minor. The appellate court stated that "[l]aches is not the mere passage of time, but is rather the passage of time combined with a change in condition which would make it inequitable to enforce a claim against the defendant." The defendant only set out the defense without specifying any change in position.

vi. *North Carolina*. *See generally Williams v. Blue Cross Blue Shield*, 581 S.E.2d 415, 424 (N.C. 2003). The court held that laches applies "[i]n equity, where lapse of time has resulted in some change in the condition of the property or in the relations of the parties which would make it unjust to permit the prosecution of the claim."

vii. *New York*. *See generally Skrodelis v. Norbergs*, 707 N.Y.S.2d 197, 198 (N.Y.App.Div. 2000). The court held that laches "bars the enforcement of a right where there has been an unreasonable and inexcusable delay that results in prejudice to a party[,]" and "[p]rejudice may be established by a showing of injury, *change of position*, loss of evidence, or some other disadvantage resulting from the delay."

(1) *See generally Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 816 (2003), *cert. denied*, 540 U.S. 1017. "[A] mere lapse of time, without a showing of prejudice, will not sustain a defense of laches."

viii. *Ohio*. *Bank One Trust Co., N.A. v. LaCour*, 721 N.E.2d 491, 496 (Ohio App. 1999). A trustee sought recovery of erroneously distributed funds. The court denied defendant's assertion of laches, concluding that the four-year delay did "not appear to have materially affected appellant's position with respect to the overpayment, other than extending the period...of his interest-free use of the money mistakenly paid to him." In other words, the delay did not harm the defendant but financially benefited him.

ix. *Pennsylvania*. *In re Estate of Aiello*, 993 A.2d 283 (Pa. 2010). Because a widow was uneducated, her brother-in-law was named executor of her husband's will. Twenty-three years after her husband's death, the widow sued the executor. The appellate court held that to raise the defense of laches, the respondent must prove that he or she was prejudiced by the petitioner's delay in asserting his or her claim. Faded memories did not result in a detrimental change in position.

x. *Texas*. *Wayne v. A.V.A. Vending, Inc.*, 52 S.W.3d 412, 415 (Tex.App. 2001). An element of laches is that defendant's position must have detrimentally changed due to plaintiff's delay. The defendant argued that plaintiff's delay created a detrimental effect by forcing the defendant to change counsel and causing defendant to lose witnesses critical to its defense. The court rejected both arguments because neither alleged effect was caused by the delay.

b. Prejudice to a party's ability to defend claims may sustain a laches defense.

i. *California. Welch v. St. George*, No. B189271, 2007 WL 1559823, at *11 (Cal.App. May 31, 2007). The court found that during a 17-year delay defendant and the limited partners "have come to rely upon the method of accounting that the partnership has implemented throughout [said] time period" and that forcing the defendant to alter the accounting practices would be prejudicial to the defendant and the partnership.

ii. *Florida*. *Baskin v. Griffith*, 127 So.2d 467, 471 (Fla.Dist.App. 1961) (citing *Van Meter v. Kelsey*, 91 So.2d 327 (Fla. 1956)). The passage of time is not enough to bar a claim based on laches. "The Supreme Court of Florida has held that an element of the defense of laches is injury or prejudice to the defendant in the event relief is accorded to the plaintiff or in the event the suit is held not to be barred."

iii. *Georgia. Cagle v. Cagle*, 586 S.E.2d 665, 666-67 (Ga. 2003). Thomas bought land in 1965 and in 1977 and allowed his brother to live on the land. After the brother's death, the administratrix sought a constructive trust on Thomas's land. The Supreme Court of Georgia found that during plaintiff's 36-year delay in bringing suit, the defendant became prejudiced by the death of essential witnesses and the loss of key evidence. As a result of the prejudice, the court applied the doctrine of laches.

(1) *Stone v. Williams*, 458 S.E.2d 343, 344 (Ga. 1995). Mr. Williams owned five lots of land and allowed his sister to live on the property. When he died, his sister brought suit seeking a resulting trust. The court held that to prevail on laches, defendant must demonstrate prejudice. The defendant was prejudiced by the plaintiff's 35-year delay because the death of the key witness made it impossible to ascertain the truth.

iv. *Illinois*. *Carlson v. Carlson*, 98 N.E.2d 779, 783 (Ill. 1951). An ex-wife sought creation of a resulting trust. In its alternative holding, the court held the action barred by laches based on the ex-wife's 33-year delay. The court indicated that laches requires an injury caused by the opposite party's delay. The delay resulted in the death of a material witness.

v. *Massachusetts. March v. March*, No. 03-P-1428, 2004 WL 2452705, at *3 (Mass.App. Nov. 2, 2004). A father held property in trust for sons but made multiple conveyances over the years. In a suit by one son, the appellate court held that the date on which plaintiff became aware of the breach of trust was an unresolved material question of fact precluding judgment on the statute of limitations and laches. "Mere delay, even for 'many years,' does not constitute laches."

vi. *Michigan. Olitkowski v. St. Casimir's Savings & Loan Ass'n*, 4 N.W.2d 664, 668 (Mich. 1942). In a suit seeking creation of a constructive trust against the defendant bank and an attorney, the court indicated that the delay in bringing suit was caused by the attorney's actions. The court held that

the "mere lapse of time, without showing prejudice, will not constitute laches." Because the delay was largely the defendant's fault, it was not prejudiced by the delay.

vii. *North Carolina. Stratton v. Royal Bank of Canada*, No. 07 CVS 15079, 2010 WL 445605, at *4-5 (N.C.Super. Feb. 5, 2010). Plaintiff brought suit seeking profits and stock she was entitled to through her mother's estate. Laches requires a showing that a defendant was prejudiced by the delay. Defendants were prejudiced by the delay here because the passage of time resulted in written records becoming unavailable and the loss of key witness testimony due to death and loss of memory.

viii. *New York. In re Linker*, 803 N.Y.S.2d 534, 537-38 (N.Y.App.Div. 2005). In a suit seeking a formal accounting, the court found that plaintiff had initially contacted a lawyer about commencing litigation 12 years before litigation actually commenced. In the interim, the settlor died, trust documents were given to the executor, the co-trustee lost control of trust documents, and certain financial records were no longer available, all of which prejudiced the defendant's ability to defend the suit in question.

(1) *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 816 (2003). A "mere lapse of time, without a showing of prejudice, will not sustain a defense of laches."

(2) *Matter of Estate of Barabash*, 286 N.E.2d 268, 271 (N.Y. 1972). Decedent died intestate, and estate's funds were distributed to a nephew. Eighteen years later, decedent's family from the Soviet Union sought a compulsory accounting. The court held that prejudice was an essential element of laches, which the defendant could not demonstrate because spending the funds in question was not prejudicial.

(3) *See generally Skrodelis v. Norbergs*, 707 N.Y.S.2d 197, 198 (N.Y.App.Div. 2000). The doctrine of laches "bars the enforcement of a right where there has been an unreasonable and inexcusable delay that results in prejudice to a party[,]" and "[p]rejudice may be established by a showing of injury, *change of position*, loss of evidence, or some other disadvantage resulting from the delay."

ix. *Ohio. Valenti v. Farinacci*, No. 65739, 1994 WL 422270, at *3 (Ohio App. 1994). Plaintiff brought suit against an estate for a share of a business that had filed bankruptcy in 1963. The court concluded that laches applied because decedent's estate was prejudiced by the delay due to the death of the key witness, which made it impossible to know the amount for which the estate was liable.

x. *Pennsylvania. Kern v. Kern*, 892 A.2d 1, 10 (Pa. Super. Ct. 2005). The court applied laches, stating "[i]t is well-settled law that the doctrine of laches is applicable peculiarly where the difficulty of doing justice arises through the death of the principal participants in the transactions complained of, or of the witnesses or witnesses to the transactions, or by reason of the original transactions having become so obscured by time as to render the ascertainment of the exact facts impossible." No living witnesses to this transaction remained as both parties were deceased.

xi. *Texas. See generally Wayne v. A.V.A. Vending, Inc.*, 52 S.W.3d 412, 415 (Tex.App. 2001). Defendant contended that plaintiff's delay resulted in having to change counsel and losing witnesses critical to the defense. The court rejected these arguments because the delay did not cause either change, but rather the change in counsel resulted from the attorney's health issues. The loss of necessary

evidence resulted from defendant's failure to take steps to preserve the evidence, such as not taking depositions or getting sworn affidavits.

xii. *Virginia. See generally Stiles v. Stiles*, 632 S.E.2d 607, 610 (Va.App. 2006). In holding that a wife's motion to modify child support was not barred by laches, the court concluded that, because no evidence was lost, the father was not prejudiced by the delay.

(1) *See generally Bazzle v. Bazzle* 561 S.E. 2d 50, 56 (Va.App. 2002). A husband brought a claim to recover alleged overpayments of spousal support for a 17-year period. The court applied laches to bar his claim asserting that the "[w]ife relied on and accepted the payments as proper" and that "requir[ing] her to pay back thousands of dollars after appellee's inaction would be both prejudicial and inequitable."

c. Prejudice may also be shown through a plaintiff's tardy opportunism, for example, challenging a transaction after enjoying its benefits.

i. *California. See generally Magic Kitchen LLC v. Good Things Int'l Ltd.*, 63 Cal.Rptr.3d 713, 726 (Cal. App. 2007). Delay is impermissible when the purpose of the delay is to benefit the plaintiff to the detriment of the defendant, for example, when the plaintiff delays bringing suit as a way of taking advantage of the defendant's labor.

ii. *Florida. See generally Board of Comm'rs of State Insts. v. Tallahassee Bank & Trust Co.*, 108 So.2d 74, 84 (Fla.Dist.App. 1959). For a party to be precluded from asserting a claim under laches, one element "is that his adversary must have suffered some injury or *the party asserting a right must have gained an unconscionable advantage as the result of the passage of time*." (Emphasis added.)

iii. *Georgia. See generally Swanson v. Swanson*, 501 S.E.2d 491, 493-94 (Ga. 1998). "Whether laches should apply depends on a consideration of the particular circumstances, including the length of the delay in the claimant's assertion of rights, the sufficiency of the excuse for the delay, the loss of evidence on disputed matters, the opportunity for the claimant to have acted sooner, and *whether the claimant or the adverse party possessed the property during the delay*." (Emphasis added.)

iv. *Illinois. Carlson v. Carlson*, 98 N.E.2d 779, 783 (Ill. 1951). Based on inferences drawn from the evidence, it appeared that had the plaintiff been entitled to a resulting trust, she would have previously asserted said entitlement. She waited, however, until the only other witness was dead to better her chances of success.

v. *Missouri. See generally Shellabarger v. Shellabarger*, 317 S.W.3d 77,83 (Mo. Ct. App. 2010) (quoting *Nahn v. Soffer*, 824 S.W.2d 442, 445 (Mo.App. 1991)). "In determining whether the doctrine of laches applies in a particular case, an examination is made of 'the length of delay, *the reasons therefor*, how the delay affected the other party, and the overall fairness in permitting the assertion of the claim.'" (Emphasis added.)

vi. *New York. See generally Robinson v. Robles*, 906 N.Y.S.2d 844, 846-47, 850-51 (N.Y. City Ct. 2010). The court held that small claims courts should be allowed to consider the defense of laches. A landlord waited until a tenant was no longer a resident to bring suit for back payment in small claims court instead of seeking a summary proceeding to evict the tenant.

vii. *Texas. See generally Jim Rutherford Invs., Inc. v. Terramar Beach Cmty. Ass'n*, 25 S.W.3d 845, 852 (Tex. App. 2000). "When a party takes no steps to enforce its known rights until the other party has, in good faith, so changed its position that it cannot be restored to its former state, the delay becomes inequitable and may estop the assertion of the right."

3. Laches may bar claims that are not barred by the applicable statute of limitations.

   a. If statute of limitations bars the claim, resort to laches is generally not necessary, but the limitations period may still be pertinent to a laches analysis.

      i. *Fourth Circuit. See generally Barnhart v. Western Md Ry. Co.*, 128 F.2d 709, 714-15 (4th Cir. 1942), *cert. denied,* 317 U.S. 671 (1942). Cause of action occurred in 1922, but the suit came in 1941. The relief sought was a mixture of legal and equitable remedies, so the court used a statute of limitations to dismiss the case. If the relief sought was entirely equitable, however, the statute of limitations would apply "by analogy," and "there is no reason why one proceeding should be barred and not the other."

      ii. *Ohio. Stevens v. National City Bank*, 544 N.E.2d 612, 620-21 (Ohio 1989). *See* above for factual summary. Discussing statutes versus equity, the court said, "the defense of laches is quite independent of a statute of limitations. 'Delay for a shorter period than the statutory limit, accompanied by other conditions, may be sufficient to destroy the beneficiary's remedy.'"

      iii. *But see Briden v. Clement*, 642 S.E.2d 318, 320 (Ga.App. 2007). Defendant alleged and provided testimonial evidence of laches. Had the court accepted the defendant's use of a laches defense, the evidence appeared persuasive to the court. The court noted, however, the difference between legal and equitable remedies and rejected the laches defense. The relief sought was a declaratory judgment (a legal remedy) against which equitable defenses cannot be pleaded.

   b. Unsurprisingly, laches is more likely to be successful as a defense the longer the period of time that has passed since the offending conduct.

      i. *California. Baxter v. King*, 274 P. 610, 610 (Cal.Dist.App. 1929). In an action to have a trust declared in real property and asking for an accounting as to rents and income derived from the property, the court determined that a 40-year delay without any attempt to explain the delay mandated judgment for the defendant under laches.

         (1) *Welch v. St. George*, No. B189271, 2007 WL 1559823, at *10-11 (Cal.App. May 31, 2007). "A finding of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." Defendant's motion to dismiss was granted and affirmed by the appellate court because the plaintiff waited 17 years to bring suit.

      ii. *Delaware. Envo, Inc. v. Walters*, Civil Action No. 4156-VCP, 2009 WL 5173807, at *8 (Del.Ch. Dec. 30, 2009). Party brought suit seeking payment and creation of a constructive trust for unpaid assets under an asset purchase agreement. The court did not dismiss the case because laches did not apply as the three-year delay was not sufficiently long. "[U]nder the equitable doctrine of laches, a court of equity accords great weight to the analogous statute of limitations."

iii. *Florida. Baskin v. Griffith*, 127 So.2d 467, 471-73 (Fla.Dist.App. 1961). Plaintiff delayed 15 years in bringing suit, a delay that exceeded the requisite statute of limitations by 10 years. The court concluded that the mere passage of time is not enough to bar a claim based on laches. The court indicated, however, that laches could apply if the defendants could prove they were prejudiced by the delay.

iv. *Georgia. Cagle v. Cagle*, 586 S.E.2d 665, 667 (Ga. 2003). The court affirmed the lower court's grant of summary judgment for the defendant under laches, indicating the 36 years plaintiff waited to file suit was an inordinate delay.

v. *Illinois. Carlson v. Carlson*, 98 N.E.2d 779, 782 (Ill. 1951). The court acknowledged it had "frequently declared that stale claims are not encouraged, and that a court of equity will refuse to aid where the party has slept upon his rights." The court's precedent had denied relief "where the delay ranged from twenty-three years to fifty years."

vi. *Massachusetts. March v. March*, No. 03-P-1428, 2004 WL 2452705, at *3 (Mass.App. Nov. 2, 2004). Although the appellate court reversed the application of laches on other grounds, the probate court held that laches applied when there was a 14-year delay.

(1) *Porotto v. Fiduciary Trust Co.*, 321 Mass. 638, 644 (1947). Despite a 94-year delay in bringing suit, the application of laches requires more than mere delay.

vii. *Missouri. See generally Shellabarger v. Shellabarger*, 317 S.W.3d 77,83 (Mo. Ct. App. 2010) (quoting *Nahn v. Soffer*, 824 S.W.2d 442, 445 (Mo.App. 1991)). "In determining whether the doctrine of laches applies in a particular case, an examination is made of "*the length of delay*, the reasons therefor, how the delay affected the other party, and the overall fairness in permitting the assertion of the claim.'" (Emphasis added.)

viii. *North Carolina. Stratton v. Royal Bank of Canada*, No. 07 CVS 15079, 2010 WL 445605, at *5 (N.C.Super. Feb. 5, 2010). Testator and beneficiary under will did not pursue rights as a shareholder until 2006 despite the undisputed fact that testator was not considered a shareholder when two banks merged in 1962. The 43-year delay permitted laches to apply.

ix. *Pennsylvania. Kern v. Kern*, 892 A.2d 1, 9 (Pa. Super. Ct. 2005). In granting defendant's motion for summary judgment, the court concluded that laches applied and that "a delay of approximately 10 years existed between the time the cause of action arose and the time [plaintiff] filed suit[,]" which demonstrated the requisite delay required for the application of laches.

x. *Virginia. Rowe v. Big Sandy Coal Corp.*, 87 S.E.2d 763, 768 (Va. 1955). It was an unreasonable delay for a plaintiff, without excuse, to delay three years before asserting a claim to land, especially when the delay resulted in the loss of material evidence prejudicing the other parties.

(1) *See generally Bazzle v. Bazzle* 561 S.E.2d 50, 56 (Va.App. 2002). The court barred a husband's claim to recover alleged overpayments of spousal support based on laches because plaintiff had delayed bringing the claim for a 17-year period.

c. *But see:*

i. *Connecticut. Episcopal Church in the Diocese of Conn. v. Gauss*, No. CVX06084020456S, 2010 WL 1497141, at *11 (Conn.Super Mar. 15, 2010). A local diocese sued a parish for breach of trust. Laches did not apply because there was no inexcusable delay in plaintiffs' assertion of their rights. Although adjudicating the implied trust claim required looking at the relationship between the parties over the past 130 years, the litigation commenced within six months after the implied trust was allegedly breached.

ii. *Michigan. Tray v. Whitney*, 192 N.W.2d 628, 631 (Mich.App. 1971). "It is well established that the doctrine of laches consists of more than the mere passage of time." The court concluded that although at minimum plaintiff delayed bringing his claim for seven years, the defendant could not show any change in condition as a result of the delay, which precluded the application of laches.

(1) *Olitkowski v. St. Casimir's Savings & Loan Ass'n*, 4 N.W.2d 664, 668, 670 (Mich. 1942). "The delay in moving may always be explained, and, if satisfactorily accounted for, relief will be granted, notwithstanding the lapse of time." The delay was caused by defendant's intentional delay despite plaintiff's repeated efforts to address the issue.

iii. *Ohio. Valenti v. Farinacci*, No. 65739, 1994 WL 422270, at *3 (Ohio App. 1994). In determining that plaintiff delayed in asserting his rights, the court did not look at the amount of time that passed but rather at the fact that plaintiff failed to assert his rights during two prior proceedings, one of which was a formal bankruptcy proceeding.

d. A defendant is also more likely to prevail early in the litigation—such as on a motion to dismiss—the longer the time that has lapsed from the allegedly offending conduct.

i. *California. Welch v. St. George*, No. B189271, 2007 WL 1559823, at *10 (Cal.App. May 31, 2007). The appellate court affirmed dismissal of a suit alleging breach of fiduciary duty and breach of contract and seeking accounting and creation of a constructive trust, holding that substantial evidence supported the application of laches when plaintiff waited 17 years before filing a cause of action.

ii. *Florida. See generally Volpicella v. Volpicella*, 136 So.2d 231, 232 (Fla.Dist.App. 1962). "[T]he rule that laches must be incorporated in the answer rather than in a motion to dismiss is subject to exception if the complaint shows laches on its face." Dismissal was inappropriate, however, because the complaint only demonstrated a two-year delay in filing suit to set aside a divorce decree, which "alone [was] not sufficient to justify the imposition of laches."

iii. *Illinois. See generally Senese v. Climatemp, Inc.*, 582 N.E.2d 1180, 1190-91 (Ill.App. 1991). "The defense of laches can be raised by a motion to dismiss if (1) an unreasonable delay appears on the face of the pleading, (2) no sufficient excuse for the delay appears or is pleaded, and (3) the motion specifically points out the defect." In this case, the appellate court concluded that plaintiff's 30-year delay was unreasonable and that the complaint was barred by laches. But the court held that the plaintiff should be allowed to amend the allegations to explain the delay.

(1) *See generally Wooded Shores Prop. Owners Ass'n, Inc. v. Mathews*, 345 N.E.2d 186, 189-90 (Ill. App. 1976). The appellate court affirmed dismissal based on laches when there was a 26-year

delay between plaintiff's incorporation and when suit was filed, asserting ownership rights to property.

iv. *Missouri*. *See generally Shellabarger v. Shellabarger*, 317 S.W.3d 77,83 (Mo. Ct. App. 2010) (quoting *Nahn v. Soffer*, 824 S.W.2d 442, 445 (Mo.App. 1991)). "In determining whether the doctrine of laches applies in a particular case, an examination is made of '*the length of delay*, the reasons therefor, how the delay affected the other party, and the overall fairness in permitting the assertion of the claim.'" (Emphasis added.)

v. *South Carolina*. *See generally Terry v. Lee*, 445 S.E.2d 435, 438 (S.C. 1994). The Supreme Court of South Carolina affirmed dismissal under laches, concluding that at a minimum plaintiff waited 10 years to pursue a claim under a 27-year-old divorce decree and that such delay was unreasonable.

e. *But see Bashton v. Ritko*, 517 N.E.2d 707, 710 (Ill.App. 1987). Although the lower court granted defendant's motion to dismiss, the appellate court reversed, indicating that despite a seven-and-a-half-year delay in filing suit, the application of laches is a factual question, which in this case required evidentiary development.

B. Practical Guidance

1. Plaintiffs who put defendants on notice of potential claims are more likely to avoid laches defenses.

   a. *First Circuit*. *See generally Murphy v. Timberlane Reg'l Sch. Dist.*, 973 F.2d 13, 16-17 (1st Cir. 1992). "Although the Murphys could have requested a due process hearing in late 1981 when they first felt that the education being provided…was inappropriate, *they chose instead to negotiate with the school in an attempt to secure an appropriate program for Kevin*." Thus a party who negotiates on its own behalf to resolve the situation without the aid of the courts has not engaged in an unreasonable delay. (Emphasis added.)

   b. *Second Circuit*. *See generally King v. Innovation Books*, 976 F.2d 824, 832-33 (2d Cir. 1992). "[W]e would not be willing to say that King unreasonably delayed in initiating this suit, *in light of his conduct and the history of the parties prior to commencement of the suit*….King objected to the possessory credit…as soon as he learned of the film....He continued to voice his objections to what seemed planned by appellants and attempted to become fully informed and resolve the matter." He also never "encourage[d] or acquiesce[d]" to the defendant's conduct. (Emphasis added.)

   c. *Seventh Circuit*. *See generally Leonard v. United Airlines, Inc.*, 972 F.2d 155, 158 (7th Cir. 1992). "Attempts to resolve a dispute without resorting to a court do not constitute unreasonable delay." *See also* 27A Am.Jur.2d *Equity* §132 (2008) (approving proactive actions to resolve a situation by plaintiffs and noting "[c]ourts look favorably upon a plaintiff who promptly and/or repeatedly protests the alleged wrong on learning thereof, and who thereafter does not acquiesce to the alleged wrong").

   d. *District of New Jersey*. *See generally AT&T Co. v. F/V Shinnecock*, Civ. No. 89-5387, 1991 WL 143458 at *1-3 (D.N.J. July 16, 1991). AT&T sued a fishing company after the company's vessel damaged AT&T's cable. The incident occurred in 1985, but AT&T filed suit in 1989. From 1986 to 1989, AT&T sent letters to defendant regarding its intent to file suit. The court found no prejudice against defendant, since AT&T kept the defendant informed of its intent in the letters during its delay.

e. *California. See generally Ogier v. Pacific Oil & Gas Dev. Corp.*, 282 P.2d 574, 581 (Cal.Dist.App. 1955). After discovering defendant's fraud, plaintiff engaged in negotiations with defendant. When negotiations failed, plaintiff sued. In rejecting laches, the court decided, "Where a party protests promptly on discovering that he has been defrauded…and enters into negotiations for a…settlement which fail, a complaint filed within a reasonable time…is not barred…."

f. *Delaware. See generally Reid v. Spazio*, 970 A.2d 176, 184 (Del. 2009). Plaintiff's complaint in Court A was dismissed, appealed, and redismissed over several years. When plaintiff refiled in Court B, the court held that "[a]s a result of the [previous] litigation, Appellees (defendants) have been on notice for years that Reid (plaintiff) intended to pursue his rights vigorously." Laches did not apply.

i. *See also Whittington v. Dragon Group, LLC*, 2010 WL 692584, at *6 (Del.Ch. Feb. 15, 2010). The court listed similar cases in which plaintiffs, in one form or another, persistently reminded defendants of their intent to take action.

g. *Florida. See generally Gevertz v. Gevertz,* 566 So.2d 541, 542-44 (Fla.Dist.App. 1990). In finding for the plaintiff-parents, the court ruled, "[t]o apply the doctrine of laches, the party asserting the defense must show that she had no knowledge that the plaintiff would assert the right on which the suit was based." Finding that the defendant had sufficient knowledge that plaintiffs would bring suit, the defense was rejected.

h. *Illinois. See generally Wencordic Enters., Inc. v. Berenson*, 511 N.E.2d 907, 911-12 (Ill.App. 1987) (citing *In re Marriage of Cuberly*, 481 N.E.2d 830, 832 (Ill. App. Ct. 1985)). Illinois courts have acknowledged that one element of a laches defense is proof that defendant lacked knowledge or notice that complainant would assert the rights on which he is basing his suit. In this case, the court found that the defendant was on notice of the plaintiff's intention to recover and that "[h]e cannot now claim lack of knowledge or notice…."

i. *New York. See generally Cohen v. Krantz*, 643 N.Y.S.2d 612, 614 (N.Y.App.Div. 1996). In a dispute over a fence, defendants alleged plaintiffs were guilty of laches, insofar as they had waited for seven years to file suit. One element of laches is "lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief." The plaintiffs had informed the defendants of their intent to file a claim, and the court rejected the laches defense.

j. *Ohio. Stevens v. National City Bank*, 544 N.E.2d 612, 620-22 (Ohio 1989). Plaintiff sued for misuse of trust assets. In upholding the defendant's laches defense, the court found that the plaintiff had, from 1958 (when the actionable events occurred) to 1977 (when the plaintiff filed suit), never complained to National City Bank about the misuse of trust assets. Because National City Bank was never on notice that plaintiff had a grievance, its defense of laches was viable.

k. *Texas. See generally Wilson v. Meredith*, 268 S.W.2d 511, 517-18 (Tex.Civ.App. 1954). Plaintiffs sought to dispute title to a 160-acre tract of land 60 years after the conveyance in question. Among the elements of laches, the court listed "[l]ack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit" as a requirement. The defendants did not know of the pending suit, and the laches defense succeeded.

l. *But see Hovey v. Geraigery*, No. 05-P-83, 2006 WL 300616, at *1-3 (Mass.App. Feb. 8, 2006). A son who was written out of a will that entitled him to a share in his parent's property sent three letters over 10 years threatening legal action. Laches prevented the son from asserting a claim. The son's attorney had advised him to file a claim, and the son chose to ignore the attorney's advice. Though the son threatened legal activity, "a threat of legal action is not equivalent to legal action."

2. Complaints that are more likely to withstand a motion to dismiss based on laches plead exceptions to its application.

a. *In General*

i. *Federal Circuit. LaForge & Budd Constr. Co. v. U.S.*, 48 Fed.Cl. 566, 571 (Fed.Cl. 2001). When a plaintiff is arguing that his delay was not unreasonable, "[t]he court must 'consider and weigh any justification offered by the plaintiff for its delay'" (citing *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1033 (Fed.Cir. 1992) (en banc)).

ii. *California. Golden Gate Water Ski Club v. County of Contra Costa*, 80 Cal.Rptr.3d 876, 890 (Cal.App. 2008). The defense of laches is not available when it would nullify an important public policy (that is, preserving open space) adopted for the benefit of the public.

b. Plaintiffs are more likely to avoid a laches defense when they can plead a legal disability or other circumstances demonstrating why they should not otherwise have been expected to enforce their rights judicially.

i. *Federal Circuit. A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1033 (Fed.Cir. 1992). This case has been referred to as the "seminal case" for applying the laches doctrine to patent cases. The court listed, among other items, "poverty and illness under limited circumstances" as a sufficient excuse against laches. This case has been widely discussed and occasionally contradicted but not overruled.

ii. *Western District of Michigan. See generally Bassali v. Johnson Controls, Inc.*, No. 1:08-cv-29, 2010 WL 1923979 at *5-7 (W.D.Mich., May 12, 2010). The court discussed the doctrine generally, noting there have been cases in which "poverty and illness[,] in limited circumstances…have been recognized" as worthy excuses for the purposes of laches analysis.

iii. *California. Bono v. Clark*, 128 Cal.Rptr.2d 31, 37 (Cal.App., 2002). A widow brought an action against the executor of her husband's estate over a property dispute. As part of her defense of laches, she argued that a financial "disability"—poverty—serves as justification for failure to bring a timely suit. The court pointed out that "a party's inability to afford counsel [does not] necessarily justif[y] delay."

iv. *Florida. Watkins v. Watkins*, 166 So. 577, 578-79 (Fla. 1936). "[I]t is aptly said: 'If an estoppel can arise against an infant, all the elements of an estoppel must concur. The conduct of the infant must have been fraudulent, and believed in, relied on, and acted upon by the other party.' These elements could certainly not have been attributed to this infant, nor is laches imputable to an infant."

(1) *Brown v. Floyd*, 202 So.2d 215, 220 (Fla.Dist.App. 1967). "No normal child would even question or investigate the propriety or legality of his parents' action much less bring a suit

against them at any time…and take the chance of disrupting or destroying the cordial parent and child relationship which should ever remain inviolate." Plaintiff could prosecute her action 20 years after the cause of action.

v. *Georgia. Gay v. Radford*, 59 S.E.2d 915, 916 (Ga. 1950). Father died, leaving a young son. After reaching adulthood, the son brought suit. Against a defense of laches, the court ruled: "Nor can it be said that this suit is barred by laches…since the statute of limitations will not run against a minor…there having been no administrator or guardian appointed during his minority, and there having been no great delay in bringing this action after this minor reached his majority…."

vi. *Massachusetts. Jose v. Lyman*, 55 N.E.2d 433, 439 (Mass. 1944). Children's guardian assented to a course of action on children's behalf. As adults, the children filed suit regarding the same matter. The court held that the children were not estopped from asserting a claim despite the past involvement and representation by the guardian. "Laches is not to be imputed to a minor, and no exception is made of infants under guardianship."

vii. *Michigan*. *See generally Sizemore v. Raimi*, No. 240620, 2003 WL 22342729, at *1 (Mich.App. Oct. 14, 2003). Plaintiff was born in 1981, but he did not file suit for medical malpractice against the prenatal doctor until reaching the age of majority. The appellate court held, "Minors cannot be guilty of laches for the failure to act during their minority….Rather, laches applies to unreasonable delay in asserting one's rights after one attains the age of majority."

viii. *Montana. See generally In re Marriage of Hahn & Cladouhos*, 868 P.2d 599, 601-02 (Mont. 1994). Plaintiff waited 15 months before filing a motion to collect payments from an ex-husband. Plaintiff's justification for waiting was, "that their daughter Camille was having problems and that she thought the friction between the two parents was damaging their daughter; and that she did not want to damage their daughter further." The court found the plaintiff's justification for waiting sufficient.

ix. *Virginia. Murphy v. Holland,* 377 S.E.2d 363, 364-66 (Va. 1989). Until reaching 21, plaintiff was justifiably unaware he needed to bring a claim to inherit property. Against a defense of laches, the court ruled that laches did not begin to run at the time of decedent's death, when the decedent's son was seven, and that the earliest a laches analysis could begin was when decedent's son reached 18. Even after reaching majority, the son had "reasonable time" to bring his complaint.

x. *But see*

(1) *Northern Dist. of Ohio. Seghers v. Gardella*, 55 F.Supp. 914, 915 (N.D. Ohio 1944). The court found that plaintiff's heart condition that "might have been affected by the excitement of a trial" was not an adequate excuse for not commencing the action. The court stated "if due consideration for his health required a continuation of the case, the court could have postponed the trial and the rights of the parties would have remained as they were at the time of filing the complaint."

(2) *Tennessee. Brown v. Ogle*, 46 S.W.3d 721, 727-28 (Tenn.App. 2000). As part of a defense against application of laches, plaintiff claimed a "variety of serious health conditions, including removal of his prostate and removal of skin cancer" caused the delay in suit. The court

disagreed, citing the plaintiff's ability to take part in a 1982 divorce action (he gave a deposition and "vigorously participated" in this case through 1987).

c. Complaints pleading concealment or fraud are likely to withstand dismissal.

i. *Fifth Circuit. Russell v. Republic Prod. Co.*, 112 F.2d 663, 664-67 (5th Cir. 1940). Russell, an employee of Republic Oil, concealed his own purchases of oil-rich land in Texas from his employer after being instructed by his employer to refrain from purchasing land in search of gas, minerals, or oil. The Fifth Circuit held that, "as a fiduciary [Russell] was under a duty to make full disclosure," and that "[c]oncealment…weighs heavily against a claim of laches."

ii. *Fourth Circuit. See generally Walker Mfg. Co. v. Dickerson, Inc.*, 560 F.2d 1184, 1186-87 (4th Cir. 1977). Though it did not explicitly refer to laches (but instead equitable estoppel), the Fourth Circuit held, "The lapse of time, when properly pleaded, is a technical legal defense. Nevertheless, equity will deny the right to assert that defense when delay has been induced by acts, representations, or conduct, the repudiation of which would amount to a breach of good faith."

iii. *Second Circuit. See generally King v. Innovation Books*, 976 F.2d 824, 833 (2d Cir. 1992). Plaintiff sued to be credited in movie credits but could not know he had been left out until he saw the film. Appellants delayed King's viewing of the film. A letter written by the defendants read, "We don't want S King to see [the movie] before opening date." The court found that the unclean hands of the movie studio prevented a laches defense.

iv. *Southern District of New York. See generally Mason v. Jamie Music Publ'g Co.*, 658 F.Supp.2d 571, 588 (S.D.N.Y. 2009). Plaintiff was a minor at the time she composed a song, and defendants illegally failed to seek approval of the Orphan's Court before selling her rights to the composition. Citing an earlier decision from the same district, the court reiterated that the laches defense is not available to those with "unclean hands."

v. *Illinois. Highway Ins. Co. v. Korman*, 190 N.E.2d 124, 126-27, 130-31 (Ill.App. 1963). Defendant wrongfully appropriated premiums collected through his business. Plaintiff filed suit years after the fraud. The court held, "In any event, laches would be an inappropriate defense here because the complaint…states that plaintiff did not learn of defendant's unlawful activities until 1958 (in part, at least, because of defendant's concealment), and suit was started in 1959."

vi. *Massachusetts. Sullivan v. Moran*, 162 N.E.2d 801, 801-02 (Mass. 1959). Three children and three grandchildren of decedent filed a motion to revoke a decree granted in 1933 (20 years earlier), permitting a final account of the decedent's estate. Opposing counsel moved to dismiss based on laches. The court granted the motion to dismiss, citing "obvious laches," and noting that "[i]n a report of material facts…no allegation was made of fraud, undue influence, or manifest error."

vii. *Ohio. In re Chambers' Estate*, 36 N.E.2d 175, 181 (Ohio App. 1939). When an administrator made misleading statements in his accountings of the estate, and appellants did not learn of the false accounts for several years afterward, the appellants were not barred by laches from prosecuting their claim since they were entitled to rely on the administrator's statements without questioning them.

d. Laches may not apply to claims against fiduciaries in some circumstances.

i. *Florida. Halstead v. Florence Citrus Growers' Ass'n*, 139 So. 132, 136 (Fla. 1932). A client was engaged in a fee dispute with his attorney. This, being a fiduciary relationship, called for a modified laches doctrine. Laches is "applicable to controversies growing out of *ordinary contracts*…and not to those…where an allegation or charge of unfair dealing is made which, under the rules, immediately casts the burden upon the attorney to show fairness…."

3. While Federal Rule of Civil Procedure 8(c)(1) and state analogs require pleading laches as an affirmative defense, defendants should consider tactically whether evidence to demonstrate prejudice will be required and whether the defense should be raised in a motion to dismiss or motion for summary judgment. *See generally Green v. Board of Dental Exam'rs*, 55 Cal.Rptr.2d 140, 143 (Cal.App. 1996). California's Board of Dental Examiners suspended defendant's license. On appeal, defendant alleged laches. The court sent the case back for "further findings, and evidence if necessary, on whether laches ha[d] prejudiced petitioners." The court noted that "prejudice is never presumed" and that it "must be affirmatively demonstrated by the defendant…."

   a. Laches defense sustained on motion to dismiss.

      i. *California. See generally Russell v. Thomas*, 129 F.Supp. 605, 605-06 (S.D.Cal. 1955). Plaintiff alleged a wrongful discharge from the Naval Civil Service three years after termination. Defendant filed a motion to dismiss because it "appear[ed] from the face of the complaint that plaintiff is guilty of laches." The court held that, while laches must usually be pleaded as an affirmative defense, "where the elements of laches are apparent on the face of the complaint, it may be asserted on a motion to dismiss."

      ii. *Florida. First Union Nat'l Bank of Florida v. Hartle*, 579 So.2d 295, 296-97 (Fla.Dist.App. 1991) (citing *Kornaker v. Payor*, 565 So.2d 899, 899-900 (Fla.Dist.App. 1990)). Citing *Kornaker*, the court determined that a motion to dismiss alleging laches could not be granted with prejudice unless the defense could show "clear and positive evidence" on the face of the complaint. Because the complaint was filed within the statutory period of limitations, the evidence was evidently not "clear and positive" enough to warrant dismissal.

      iii. *Georgia. O'Quinn v. O'Quinn*, 229 S.E.2d 428, 428-29 (Ga. 1976). A disputed deed was executed in 1963, but suit was not brought until 1975. Georgia's Supreme Court held that defenses, such as laches, must be affirmatively raised by answer. The court, however, created an exception to its rule, stating, "where the facts as to such an issue are uncontradicted, it may be disposed of by summary judgment, motion to dismiss or motion for judgment on the pleadings."

      iv. *Illinois. Bobin v. Tauber*, 360 N.E.2d 368, 372-73 (Ill.App. 1976). Assignor brought suit in 1971, three years after he was given notice that the assignees were claiming the beneficial interest and just after a key witness died. In upholding a defense of laches, the court wrote, "The rule of laches is particularly applicable where the difficulty of doing entire justice arises through the death of one of the parties to the transaction in question."

      v. *But see:*

(1) *Florida. Diaz v. Bravo*, 603 So.2d 106, 107 (Fla.Dist.App. 1992). The court reversed the grant of a motion to dismiss for laches on grounds that laches is an affirmative defense and must instead be pleaded as part of an answer.

(2) *Pennsylvania. Commonwealth v. Lehigh Valley Coal Co*., 66 Dauph. 391, 397 (Pa.Com.Pl. 1954). "A complaint in equity will not be dismissed for laches where evidence is necessary to determine the question." On this logic, it would seem that any complaint that, on its face, fails to prove laches cannot be dismissed for laches.

b. Laches defense sustained in motion for summary judgment.

i. *Delaware*. *Steele v. Ratledge,* No. Civ.A. 16455, 2002 WL 31260990, at *3 (Del.Ch. Sept. 20, 2002). Defense alleged laches in a motion for summary judgment. The court explained, "If any material fact required to establish laches is disputed, summary judgment would be improper….[T]he undisputed material facts establish that the plaintiffs knew of their rights,…unreasonably delayed in bringing their claim, and that the defendants were prejudiced…."

ii. *Georgia. See generally Redfearn v. Huntcliff Homes Ass'n, Inc.*, 579 S.E.2d 37, 39 (Ga.App. 2003). The court granted summary judgment against defendants on the merits of the case. Despite passing judgment on the merits, it went on to hold "that factual issues existed as to the defense of laches and as to bad faith litigation expenses." It remanded those issues to the trial court for a jury trial. The jury was given the questions of undue delay and prejudice.

iii. *Massachusetts. Howe v. Fiduciary Trust Co.,* No. CIV.A. 97-2206, 2001 WL 497104, at *8 (Mass.Super. Apr. 19, 2001). This claim involved a breach of contract, designated by the court as a "claim at law." The parties filed cross-motions for summary judgment based in part on laches. On the laches claim, the court dismissed the motions for summary judgment, pointing out that an "equitable defenses cannot prevail against a claim at law for breach of contract."

iv. *Pennsylvania. Kern v. Kern,* 892 A.2d 1, 9-10 (Pa.Super. 2005). The court affirmed the grant of summary judgment, in part due to laches. The court wrote that "the doctrine of laches is applicable peculiarly where the difficulty of doing justice arises through the death of the principal participants in the transactions complained of, or of the witnesses…or by reason of the original transactions having become so obscured by time as to render the ascertainment of the exact facts impossible."

v. *Texas. Lyle v. Jane Guinn Revocable Trust,* No. 01-09-00081-CV, 2010 WL 1053060, at *11 (Tex. App. Mar. 11, 2010). On ruling on a motion for summary judgment, the court disposed of defendant's laches defense, finding that the defendant presented absolutely no evidence of an unreasonable delay or a prejudicial effect. The court also determined that laches is inappropriate when a statute of limitations is applicable to the controversy at hand.

4. The role of juries in determining a laches defense varies.

a. *Georgia*. *Troup v. Loden,* 469 S.E.2d 664, 666 (Ga. 1996). While discussing an equity defense, the court removed the question of laches from the province of the jury. "Because laches is a factual defense, the better practice is for 'the trial judge, sitting as a chancellor in equity, and without the intervention of a jury' to hold an evidentiary hearing and issue findings of fact rather than act on motions for summary judgment as a matter of law."

b. *Texas. See generally Dick's Last Resort of West End, Inc. v. Market/Ross Ltd.*, 273 S.W.3d 905, 916-17 (Tex. App. 2008). Plaintiff filed breach of contract claim two months after receiving notice that tenant would be violating the lease. Defendants argued that the trial judge should have instructed the jury on laches. The appellate court disagreed: "There was no fact issue to be determined by the jury regarding unreasonable delay by Market/Ross in asserting its rights under the lease."

i. *See, e.g., C.A. Dwyer 1962 Trust v. Taub*, No. 01-86-00826-CV, 1988 WL 2392, at *7 (Tex.App. Jan. 7, 1988). The court put the issue of laches to the jury. On appeal the court held that the jury's finding of unreasonable delay and prejudice against the defendant were adequately supported by evidence.

ii. *See also Johnston v. Houston Gen. Ins. Group*, 636 S.W.2d 278, 281 (Tex.App. 1982). The court required a defendant asserting laches to prove to a jury that the delay worked to the disadvantage of the defendants.