

Doctrine of Laches means you are "Out of Time"

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AT CITY COUNCIL MEETING

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BY: J. Maiden

In a continuation of our "rosetta stone" of "legalese" to English, Stacey C. Maiden, Esq., of our Estate Planning and Elder Law Department, talks about a recent case that gives life to the dusty doctrine of "laches". Aren't latches what you use to close a door? Not if you are a lawyer - to us "laches" means "too bad, you are out of time", as in, "that door is now locked".

Defendants often raise the "doctrine of laches" as an affirmative defense in answers, but it is seldom applied by the Court. What exactly is laches? **The doctrine of laches is based on the maxim that "equity aids the vigilant and not those who slumber on their rights."** (Black's Law Dictionary). The outcome is that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party. **Elements of laches include knowledge of a claim, unreasonable delay, neglect, which taken together hurt the opponent.**

A New Jersey Court recently put the doctrine of laches to use in dismissing claims made by a surviving spouse in an estate matter. In the unpublished case *Buie v. Estate of Buie*, Chancery Div., Probate Part (Essex Cty.) (Koprowski, J.S.C.), the decedent died testate, leaving his property in Newark to be divided among his six children equally. One week after his death, the plaintiff, his wife, who received non-probate assets of \$95,000, left the house in question and returned to South Carolina with co-plaintiff, her son with the decedent.

14 years later [*and yes, that is a long time later*], the plaintiff/surviving spouse filed an action demanding her intestate share under N.J.S.A. 3B:5-3 as an omitted spouse under 3B:5-15 or an elective share of her husband's estate under 3B:8-1. **The court held that the omitted spouse claim was barred by the doctrine of laches since there has been a substantial delay in bringing the action, the plaintiff was the cause of the delay, and defendants have been prejudiced as a result of the delay.**

The court also held that plaintiff's claim under the Elective Share statute was time-barred and that no good cause existed to extend the time to file. Under New Jersey statute, plaintiffs must file claims for elective share within 6 months of the appointment of a personal representative. (N.J.S.A. §3B:8-12):

What is the take-away from this? **If you have a legal claim, you have to act on it in a timely manner.** While some claims may have to be brought in a specific period because of a statute-of-limitations (like the Elective Share in the example above), all claims must be made in a reasonable time frame from when you knew about the claim. It is very difficult to have to tell a client while they may have the best case in the world, they aren't able to get relief because they didn't act quickly enough. **Luckily, the Doctrine of Laches is entirely avoidable if you get legal advice from an attorney at the time that you have a legal question.**

Deirdre R. Wheatley-Liss is a shareholder of the Law Firm of Fein, Such, Kahn & Shepard, P.C., with offices in Parsippany and Toms River, New Jersey. She concentrates her practice in the areas of Elder Law, Estate Planning and Administration, Business Planning and Tax Law. Deirdre's individual clients range from their 20's to their 80's and beyond, while her business clients range from start-ups with exciting new ideas to 100+ year old business ventures. Clients seek Deirdre's advice and assistance with a variety of planning issues relating to identifying and meeting their personal, family and business goals, whether in a planning or crises situation.

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b) Employee's Response and the Skelly Conference

- i. If the employee requests a conference to respond orally to the charges, the conference must be scheduled at least 7 calendar days after the date of the notice. The conference will be an informal meeting with the department director, at which the employee has an opportunity to rebut the charges against him or her and present any mitigating circumstances. The department director will consider the employee's presentation before any final disciplinary action.
- ii. The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his or her written response to be delivered by the date and time specified on the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

c) Final Notice of Discipline

Within 5 calendar days of receipt of the employee's timely written response or within 5 calendar days of the informal conference, the department director will (1) dismiss the notice of intent and take no disciplinary action against the employee, (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the department director will prepare and provide the employee with a notice that contains the following:

- i. The level of discipline, if any, to be imposed and the effective date of the discipline;
- ii. The specific charges upon which the discipline is based;
- iii. A summary of the facts upon which the charges are based;
- iv. A copy of all written materials, reports, or documents upon which the discipline is based; and
- v. A statement of the nature of the employee's right to appeal.

6. Evidentiary Appeal to the Council**a) Request for Appeal Hearing**

A regular for-cause employee may appeal from a final notice of discipline in the form of suspension, demotion, reduction in pay, or termination by delivering a written answer to the charges and a request for appeal to the City Manager or designee, who will forward the appeal to the Council. The written answer and request for appeal must be received no later than 10 calendar days from the date of the department director's decision. The employee should indicate whether he/she is requesting closed or open hearing.

49

b) Date and Time of the Appeal Hearing

The Council will set a date for an appeal hearing within a reasonable time after receipt of a timely written answer and request for appeal. An employee who, having filed a timely written answer and request for appeal, has been notified of the time and place of the appeal hearing and who fails to appear personally at the hearing, may be deemed to have abandoned his or her appeal. In such a case, the Council may dismiss the appeal.

c) Identification of Issues, Witnesses and Evidence

No later than 10 days prior to the appeal hearing, each party will provide the other and the Council a statement of the issues to be decided, a list of all witnesses to be called (except rebuttal witnesses), a brief summary of the subject matter of the testimony of each witness, and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The city will use numbers to identify its evidence; the employee shall use alphabet letters. Neither party will be permitted to call any witness during the hearing that has not been identified pursuant to this section, nor use any exhibit not provided pursuant to this section, unless that party can show that they could not have reasonably anticipated the need for the witness or exhibit. The Council will state at the beginning of the hearing the decision as to the precise issue(s) to be decided.

7. Conduction of the Appeal Hearing**a) Subpoenas**

The City Manager has authority to issue subpoenas in the name of the City prior to the commencement of the hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually testify unless the City agrees to a different arrangement.

b) Continuances

The Council may continue a scheduled hearing only upon good cause shown:

c) Record of Proceedings

██████████ continued in his memo to explain that on March 15, 2018 ██████████ attended a Kern County ██████████ meeting at Bakersfield Police Department, during which various executives contacted ██████████ regarding recent contacts they had with Mr. Hetge and/or Mr. Wahlstrom. Sheriff Donny Youngblood met with both council members during the previous week (who were seeking the same information about tactical training and policies for response to school shooting situations). Sheriff Youngblood told ██████████ he refused to discuss tactics, and Tehachapi PD would address such situations.

Terminated Police Employee Running for Council

PETE
GRAPH

During the interview with ██████████, ██████████^{HE} mentioned that a ██████████^{FORMER TERMINATED POLICE OFFICER,} ██████████ was likely going to run for City Council and likely had the support of Mr. Hetge. Since the interview, ██████████^{PETE} had filed for candidacy and was campaigning with the support of Mr. Hetge's radio program. As reported by TehachapiNews.com, on December 20, 2016, ██████████^{PETE} claimed to be ██████████^{WRONGFULLY TERMINATED} and accused ██████████^{THE CHIEF} former Chief Jeff Kermode and City Manager Garrett of knowing about criminal activity within the police department and doing nothing about it. ██████████^{HE} also claimed to be owed \$40,000 in back pay. ██████████^{THE CHIEF} speculated that if ██████████^{PETE} was to be elected, ██████████^{HE} Hetge and Wahlstrom would likely band together to replace the City Manager with someone who would then fire ██████████^{THE CHIEF}.

Regarding the Complaint by ██████████ (Allegation 5)

██████████ had received an email from Council member Hetge on ██████████, 2018, Mr. Hetge noting ██████████

Public Information Acts Request

Please provide all records, interviews, documents, correspondence, reports, emails, or any other information obtained from or contributed by City of Tehachapi Chief of Police Kent Kroeger and found in the Michael Hines MMJ Solutions, Inc. report dated November 6, 2018, regarding Pete Graff, Peter Graff, City Council Candidate Peter Graff, City Council Candidate Pete Graff, former Police Officer Peter Graff, former Police Officer Pete Graff, or any other names associated with former City of Tehachapi "Peter Graff".

Please email these documents: pgraffsr@gmail.com

Thank you

Peter Graff

6613332111

RECEIVED
APR 30 2018
City of Tehachapi



peter graff <pgraffsr@gmail.com>

Public Record Request Re: MMJ Solutions

1 message

Marianna Gutierrez <mgutierrez@tehachacityhall.com>

Mon, May 6, 2019 at 1:47 PM

To: peter graff <pgraffsr@gmail.com>

Cc: "tomschroeter@sbcglobal.net" <tomschroeter@sbcglobal.net>, Ashley Whitmore <awhitmore@tehachacityhall.com>, Greg Garrett <ggarrett@tehachacityhall.com>

Mr. Graff,

Regarding your attached request for records, the city has no records that were provided to or obtained by Mr. Hines from Chief Kroeger for the report by MMJ Solutions, Inc.

Thank you,

Marianna Gutierrez

Administrative Assistant I / Deputy City Clerk

City Of Tehachapi

Office: 661.822.2200 ext. 102

MGutierrez@Tehachacityhall.com

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