

**MARIA P. ROYSE, for herself and as representative of the heirs  
of Joaquin F. Palacios, deceased, Plaintiff-Appellant**

**v.**

**TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Defendant-Appellee**

**Civil Appeal No. 217**

**Appellate Division of the High Court**

**Northern Marianas District**

**January 20, 1981**

Appeal from trial court judgment for the Trust Territory Government, in action seeking specific performance of land exchange agreement. The Appellate Division of the High Court, per curiam, held that the trustee relationship between citizen and Trust Territory did not prevent the operation of the statute of limitations as a bar to the action, which was filed eighteen years after the cause of action accrued, and in any event the doctrine of laches would also bar the action.

**1. Trusts—Statute of Limitations**

Where a strict formal trustee-cestui que trust relationship exists, the statute of limitations may not be a defense.

**2. Trusts—Statute of Limitations**

The rule that the statute of limitations does not run against an express trust is inapplicable to trusts created by implication or operation of law.

**3. Laches—Particular Cases**

Where a Micronesian citizen waited until approximately eleven years after the death of his father, and approximately eighteen years after the transfer of land, before bringing suit against the Trust Territory Government for specific performance of a land exchange agreement between his father and the Government, even assuming the statute of limitations did not apply, the doctrine of laches would bar the action.

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Before BURNETT, *Chief Justice*, and NAKAMURA,  
*Associate Justice*

PER CURIAM

On or about July 31, 1954, appellee, Trust Territory Government, entered into a land exchange agreement with the father of the appellant, one Joaquin Palacios. In consideration for Palacios' land, appellee agreed to convey to him public land located elsewhere. In 1956, Palacios did in fact convey his land to appellee and was in return granted certain public lands. There is some question about the amount of land received by Palacios, however it is not an issue in this immediate case. Palacios subsequently died in 1963, and not until 1974 was this action brought against appellee seeking specific performance. The Trial Court found in favor of the appellee, and held:

Therefore, the Court is satisfied that the Trusteeship Agreement does not preclude enactment of a statute of limitations or the application of such a statute against the inhabitants of Micronesia. Such statutes have long been recognized by the Courts of the Trust Territory. *Santos v. Trust Territory*, 1 T.T.R. 463 (Tr. Div. 1958); *Kanser v. Pitor*, 2 T.T.R. 481 (Tr. Div. 1963).

This appeal appears to have been an honest and well guided attempt by appellant's counsel to circumvent the rule enunciated in *Crisostimo, et al. v. Trust Territory, et al.*, 7 T.T.R. 34, 48 (Tr. Div. 1974; Affirmed, App. Div. 1976).

The period of a statute of limitations is usually applied to the passage of time, plus other elements for a bar of laches. There are two Trust Territory statutes available. A suit against a trustee for his alleged wrongful exchange of the land would have been barred in two years by 6 TTC § 304, or for a suit for the rescission of the exchange sought by these plaintiffs, action is barred after six years by 6 TTC § 305 . . . .

Appellant, in his efforts to circumvent the *Crisostimo* rule, raises the primary issue:

Whether the trial court erred as a matter of law in ruling that the six year statute of limitations bars Plaintiff's cause of action when there is a trustee beneficiary relationship between the defendant and the plaintiff by virtue of the trustee agreement which therefore precludes the defendant from asserting the statute of limitations defense. *Appellant's Brief*, page 3.

Appellant argues in some detail that a strict fiduciary relationship arose under the trustee agreement established in the Trust Territory of the Pacific Islands. (See Appellant's Brief, page 4, et seq.) Appellant argues that because of this trustee relationship and the strict fiduciary tie between the parties, the statute of limitations did not commence to run until the agreement had been repudiated by appellee trustee. (See Appellant's Brief, page 6.)

[1] It is true that where a strict formal trustee-cestui que trust relationship exists, the statute of limitations may not be a defense.

It is firmly established that so long as there has been no denial or repudiation of the trust, the possession of the trustee of an express and continuing trust is presumed to be that of the cestui que trust, and the statute of limitations does not run between them. 76 Am. Jur. 2d Trusts Sec. 587. Citing *Benedict v. New York*, 250 U.S. 321, 39 S. Ct. 476.

[2] However, the rule appears to be in effect only where there is a strict formal trust relationship and does not apply where there is a trust created by operation of law.

The rules stated in the proceedings section, that the statute of limitations does not run against express trust, in most jurisdictions is not applicable to trusts created by implication or operation of law. 76 Am. Jur. 2d Trusts Sec. 588. Citing *Speidel v. Henrici*, 120 U.S. 377, 7 S. Ct. 610.

The *Crisostimo* case discussed fully the rights of a party to bring an action against the Trust Territory under such circumstances, and in addition to holding the "statute of limitations" to exist in such case, also raised the issue of "laches." Laches would certainly apply not only as it did

in *Crisostimo*, but in the present case. *Crisostimo* held in part:

Laches is discussed in 30 C.J.S. Equity Sec. 112, et seq., and is defined:

'Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done.'

The text writer adds:

'A stale demand or claim is one which is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matter in controversy and do justice between the parties.'

Laches gives rise to the presumption a stale claim has been abandoned or satisfied. The passage of time as well as the use of the property received in the exchange by the heirs gives rise to the presumption of satisfaction and bars rescission.

It is said in the Restatement of Restitution, Sec. 64: 'An unreasonable delay in manifesting an avoidance of a transaction after the acquisition of knowledge of the facts terminates the power of rescission for fraud or mistake, and the consequent right to restitution.' Comment (a) of Sec. 64, adds:

'A transaction which is avoidable because of fraud or mistake remains effective unless it is avoided by the person entitled to avoid it . . . . The power to avoid may be exercised at any time until suit is barred by the statute of limitation, change of position by the transferee or laches.'

In *O'Keffe v. Beksens* (Kan.) 85 P. 555, an ejectment action brought by heirs attached an administrator's deed on the ground it was void. The court said in application of laches:

'The state itself, as a matter of public policy, is interested in the repose and stability of land titles, in the development and improvement of landed property which doubtful tenures prohibit, and in the repression of vexatious and speculative litigation . . . . When such time has elapsed, no matter what the irregularities may be, for all purposes of the law the proceedings are valid, and ejectment against the purchaser will not lie.'

Appropriate to the present situation is the statement of the Arizona Court in *Durazo v. Durazo*, 173 P. 350, holding the delay for the period of the statute of limitations barred rescission on

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the grounds of duress and that the suit therefor was barred by laches 'thereby permitting the matters arising out of troubled family matters to rest in peaceful slumber.' *Crisostimo*, supra, at pp. 46, 47.

To carry *Crisostimo* further, it would seem that even if in fact a formal strict trustee-cestui que trust relationship existed between Micronesian citizens and the United States Government, laches would bar them from such an action.

Laches has been defined as:

Laches is or is based on delay. *Black's Law Dictionary*, Revised 4th Edition.

And is a delay that works or results in disadvantage, injury, injustice, detriment or prejudice. *Marsh v. Marsh*, 49 N.Y.S.2d 759, *Anderson v. Wyoming Development Company*, 154 P.2d 318, 60 WY 417.

Laches further has been held against the beneficiary of a resulting trust upon the grounds that allowing the beneficiary to bring a suit after a long period of time or because of a change of circumstances would be inequitable.

The beneficiary of a resulting trust, like the beneficiary of an express trust, cannot hold the trustee liable for a breach of trust if he fails to sue the trustee for the breach of trust for so long a time and under such circumstances that it would be inequitable to permit him to hold the trustee liable. American Law Institute, A Restatement of the Law Trusts Sec. 409.

[3] The action of the appellant in waiting until 1974, approximately eleven years after the death of the father and approximately eighteen years after the transfer of land, would not be proper. If appellant's contention were correct, appellant could wait for time unlimited to file this action. Equity will not permit this. We cannot permit this.

Therefore, the judgment of the Trial Court is AFFIRMED.