

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES P. COLVILLE and VIRGINIA A.  
COLVILLE,

UNPUBLISHED  
June 18, 2002

Plaintiffs/Counter-Defendants-  
Appellants,

v

No. 223249  
Gladwin Circuit Court  
LC No. 96-012708-CZ

FLOYD McCOLLISTER, JAMES POLLACK,  
DURWOOD MAST, ARTHUR J. FISHER,  
STEVEN BRUBAKER, JR., KENNETH  
BUCKLE, LINDA BIRGEL, DONALD R.  
BIRGEL, and TODD BENNETT,

Defendants-Appellees,

and

SCOTTISH HILLS CLUB CONDOMINIUM  
ASSOCIATION and SCOTTISH HILLS CLUB,  
INC.,

Defendants-Appellees.

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Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Plaintiffs appeal by right from a judgment for defendants entered after a bench trial. We affirm.

Defendant Scottish Hills Club, Inc. [SHCI], owned 900 acres of land surrounding a lake near Gladwin, Michigan. SHCI shareholders, who included plaintiffs and the other individual defendants, were entitled to use the land and the lake, and each share entitled its owner to lease one building site on the property. In 1993, the board of SHCI proposed converting the corporation to a condominium association to solve problems members were having obtaining building permits. At the SHCI annual meeting in 1993, the members voted to go through with the conversion. Plaintiffs later filed a lawsuit for equitable relief, essentially alleging that those

defendants who were officers of SHCI breached their fiduciary duties and rigged the process of conversion to the Scottish Hills Condominium Association to ensure that they and their friends would get more and better lots than other members. The trial court ruled that plaintiffs had no cause of action.

We review equitable actions de novo, although we review the factual findings of the trial court for clear error. See *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

The trial court ruled that plaintiff's action to set aside the corporate restructuring was barred by laches. Laches is a judicially-imposed principle applied when the passage of time combined with a change in condition would make it inequitable to enforce a claim against a defendant. *Kuhn v Secretary of State*, 228 Mich App 319, 334; 579 NW2d 101 (1998). It is an exercise of the power of equity to withhold relief otherwise warranted if it would be unfair and unjust to grant that relief. *Id.* To determine whether a plaintiff's claim should be barred by laches, courts must focus on the prejudice caused by the delay. *Id.* If neither party's situation has materially changed and a party's delay has not put the other in a worse position, laches is not available. *Id.* Laches may, however, be applied if there is an "unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in prejudice to a party." *Public Health Dept v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996).

Here, the suit was filed in February 1996, over two years after the principal actions challenged by plaintiffs. Before plaintiff filed suit, the condominium master deed was recorded and all the shareholders except plaintiffs exchanged their share certificates for condominium deeds. Plaintiffs offered no reasonable explanation for their delay in filing the suit. There were thus both an unexplained delay in commencing the action and a substantial change in the status of the Scottish Hills property, which had gone from one large parcel of corporate property with a few individually-leased building sites to property deeded to condominium owners and administered by a condominium association. Accordingly, the trial court's ruling was proper.

Plaintiffs argue that defendants are not entitled to the benefit of the laches defense because they came to the lawsuit with unclean hands. Equity is not available to a party who comes to court with unclean hands, i.e., one who has acted with inequity or bad faith in the matter for which relief is sought. *Rzadkowolski v Pefley*, 237 Mich App 405, 408 n 1; 603 NW2d 646 (1999). However, although the trial court found that the procedures followed "left a number of things to be desired," it also found that there was no evidence of a conspiracy among the officers or board of directors. We agree that there are no facts on the record establishing bad faith or an attempt to defraud shareholders by the officers or directors. Thus, without any evidence of unclean hands on the part of defendants, the trial court's holding that plaintiffs' claims were barred by laches was not error.

We conclude that plaintiffs' entire cause of action was barred by the trial court's finding with regard to laches, because all plaintiff's claims sought equitable relief in the form of changing aspects of the condominium association. We additionally note, however, that

plaintiffs' claims regarding alleged breaches of fiduciary duty<sup>1</sup> were also barred by the applicable statute of limitations contained in MCL 450.1541a(4).

Affirmed.

/s/ Hilda R. Gage  
/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter

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<sup>1</sup> This includes plaintiffs' claim that defendants Birgel improperly acquired three additional lots; by making this allegation, plaintiffs were in essence alleging a breach of fiduciary duty. See generally *Camden v Kaufman*, 240 Mich App 389, 397; 613 NW2d 335 (2000) (a claim of a breach of fiduciary duty encompasses a situation in which a director has allegedly acted in his own interest to the detriment of other shareholders).