

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP299

Cir. Ct. No. 2005CV949

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

MARK PRAHL,

PLAINTIFF-APPELLANT,

V.

ACTION INSURANCE AGENCY, INC. AND DENNIS K. PRAHL,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Nettesheim, J.

¶1 PER CURIAM. Mark Prah1 appeals from a summary judgment in favor of Dennis Prah1 and Action Insurance Agency, Inc. The circuit court held that laches barred Mark's claims relating to the dissolution of Action. We agree with the circuit court that summary judgment was appropriate, and we affirm.

¶2 The following facts are undisputed. Dennis and another brother, Terry, incorporated Action in 1992, and Mark later joined Action. Each brother owned an interest in the agency, but no shares were ever issued. Terry left Action in 2000, and Mark resigned as an officer and director of Action on October 17, 2002. On October 21, 2002, Mark received a \$40,000 offer for his interest¹ in Action from Harris Financial Services, Inc. Mark did not accept this offer. Upon his departure from Action, Mark solicited certain of Action's customers for his new insurance agency.

¶3 In July 2003, Dennis filed Articles of Amendment for Action identifying himself as the sole shareholder of the corporation. In July 2004, Dennis filed Articles of Dissolution stating that Action's board of directors and shareholders had authorized dissolution on December 31, 2003. Mark did not learn of Action's dissolution until December 2004. Dennis first learned in January 2005 that Mark was asserting claims relating to Action.

¶4 In December 2005, Mark sued Dennis and Action claiming that his status as an Action shareholder permitted him to demand information relating to Action's dissolution and the disposition of Action's assets. Mark demanded an accounting and the return of corporate assets.

¶5 Dennis and Action sought summary judgment on the grounds that Mark was not a shareholder of Action and lacked standing to seek an accounting and a return of corporate assets, Dennis acted within his authority to dissolve Action, and Mark's claims were barred by estoppel, waiver and laches. Mark

¹ There is no evidence in the summary judgment record that Mark made Dennis aware of Harris Financial's offer.

opposed the summary judgment motion, arguing that material factual disputes precluded summary judgment and that the informality with which Action operated did not permit Dennis to avail himself of the statutes governing corporate dissolution to avoid Mark's claims. Mark argued that he filed suit within two years of learning that Action has been dissolved, and that the parties had engaged in settlement negotiations during the year before Mark filed suit.

¶6 The circuit court granted summary judgment to Dennis and Action based on laches. The court concluded that the undisputed facts established that Mark walked away from Action in 2002: Mark "cleaned out his desk, took the customers he wanted, and started doing business elsewhere." The court applied laches in light of the undisputed and unreasonable delay between Mark's 2002 departure from an entity in which he clearly had an ownership interest and his 2005 assertion of claims against Dennis and Action. Mark appeals.

¶7 We review decisions on summary judgment by applying the same methodology as the circuit court. *M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology has been recited often and we need not repeat it here except to observe that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 496-97.

¶8 On appeal, Mark argues that the circuit court misapplied the doctrine of laches.

Laches is an equitable defense to an action based on the plaintiff's unreasonable delay in bringing suit under circumstances in which such delay is prejudicial to the defendant. The successful assertion of laches requires that the defense prove that 1) the plaintiff unreasonably delayed in bringing the claim, 2) the defense lacked any knowledge that the plaintiff would assert the right on which the suit is

based, and 3) the defense is prejudiced by the delay.... Where the facts are undisputed and there is only one reasonable inference, the court may conclude as a matter of law that the elements are met. If the material facts or reasonable inferences are disputed, however, summary judgment will be improper.

Sawyer v. Midelfort, 227 Wis. 2d 124, 159, 595 N.W.2d 423 (1999) (citations omitted).

¶9 The summary judgment record establishes that Mark unreasonably delayed in commencing his action against Dennis and Action. We agree with the circuit court that Mark walked away from Action and, even in the face of a contemporaneous \$40,000 offer for his interest in Action, he did not assert any claim against Action or Dennis. Dennis, the remaining brother involved in Action, took steps in 2003 and 2004 to clarify the identity of Action's shareholders and to dissolve the corporation. Mark waited until January 2005, after dissolution and more than two years after he left the company, to assert claims relating to the company. Based on these undisputed facts, only one reasonable inference is possible. Mark unreasonably delayed in protecting whatever interest he claimed in Action, and Dennis and Action were prejudiced by the delay because corporate assets were disbursed long before Mark asserted his claims.²

¶10 Mark argues that the circuit court should not have applied laches because Dennis did not have clean hands. A party invoking equity must have clean hands, i.e., the party must not be guilty of substantial misconduct in regard to the

² Mark suggests in his reply brief that Dennis had knowledge of his claims against Action because Mark attempted to sell his interest in Action to Harris Financial "shortly after he departed Action." The undisputed fact is that Mark was approached by Harris Financial within four days of his departure from Action. This expression of interest was contemporaneous with Mark's departure and did not, by itself, serve as notice, more than two years later, that Mark was claiming an interest in Action.

matter in litigation. *Wisconsin Patients Compensation Fund v. St. Mary's Hosp.*, 209 Wis. 2d 17, 37, 561 N.W.2d 797 (Ct. App. 1997).

¶11 The summary judgment record does not support Mark's clean hands argument. Mark left Action; Dennis continued to operate Action without any expression of interest from Mark. Mark did not act to protect his interest in Action in the face of a third-party valuation of his interest in Action at the time he departed Action. The summary judgment record does not show a disputed issue of material fact relating to Dennis's conduct.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

