STATE OF MICHIGAN

COURT OF APPEALS

LUNA PIER TRUCK DEPOT, LLC, and DA ENTERPRISES, LLC,

Plaintiffs-Appellants,

v

PRIME FINANCIAL, INC.,

Defendant/Third-Party Plaintiff/Counterdefendant-Appellee,

and

ROBERT KATTULA, MARIA KATTULA, K & B CAPITAL, LLC, MARIA C. KATTULA CHILDREN'S TRUST, and MARIA C. KATTULA LIVING TRUST,

Third-Party Defendants/Counter-plaintiffs/Third-Party Plaintiffs-Appellants,

and

AARON JADE, PRIME-CALVERT, LLC, CALVERT PROPERTIES, LLC, WASTE PATH SANITARY LANDFILL, LLC, and CALVERT MACHINERY, LLC,

Third-Party Defendants-Appellees.

UNPUBLISHED
June 24, 2021

No. 353859
Monroe Circuit Court
LC No. 08-026006-CK

Before: K. F. KELLY, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

In this business dispute, appellants appeal as of right the trial court's order that denied a motion to reinstate the case and dismissed this action in its entirety under the doctrine of laches. We affirm.

I. BACKGROUND

This matter involves several related federal bankruptcy actions in both this state and Kentucky.[1] Plaintiffs-appellants Luna Pier Truck Depot, LLC ("LP Truck Depot"), and DA Enterprises, LLC ("DA Enterprises"), and third-party defendants/counterplaintiffs/third-party plaintiffs-appellants Robert Kattula ("Robert"), Maria Kattula ("Maria"), K & B Capital, LLC ("K&B"), Maria C. Kattula Children's Trust, and Maria C. Kattula Living Trust (collectively, "appellants"), appeal as of right the trial court's order that denied appellant K&B's motion to reinstate the case and dismissed this action in its entirety, under the doctrine of laches, in favor of defendant/third-party plaintiff/counterdefendant-appellee Prime Financial, Inc. ("Prime Financial") and third-party defendants-appellees Aaron Jade, Prime Calvert, LLC ("Prime Calvert"), Calvert Properties, LLC ("Calvert Properties"), Waste Path Sanitary Landfill, LLC ("Waste Path"), and Calvert Machinery, LLC ("Calvert Machinery") (collectively, "Prime" and the other appellees will be referred to as "appellees" when appropriate).

This lawsuit arises from a dispute between the parties concerning financing on a parcel of developed commercial real estate—a truck stop—situated along I-75 in Monroe County (the "Luna Pier Property"). Because the issues raised in this appeal involve laches and due process—not the substantive merits of the parties' underlying claims, counterclaims, and third-party claims—most of the complex factual background is not relevant here.

Before this lawsuit was filed, some of the parties—including appellee Prime and appellants Robert, Maria, and K&B—were involved in somewhat-related Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Eastern District of Michigan, which began in 2003 and resulted in a Chapter 11 plan to which Prime agreed. The debtor in those proceedings, TAJ Graphics Enterprises, LLC ("TAJ Graphics"), was organized in Michigan, managed or controlled by Robert, and its members have been members of Robert's immediate family—Maria and their children and/or trusts controlled by Maria. Under the 2004 Chapter 11 plan, Prime had an allowed claim in the scheduled amount of $1.2 million, which TAJ Graphics was obligated to pay in full by October 12, 2009. Prime was given a lien against all real estate owned by TAJ Graphics. The 2004 plan also called for K&B—another entity owned and controlled by Robert and his family—to purchase TAJ Graphics's real estate in amounts sufficient to permit it to fulfill its obligations to Prime under the 2004 plan. As of April 19, 2019, however, TAJ Graphics had largely failed to

[1] See, e.g., *In re TAJ Graphics Enterprises, LLC*, 600 BR 1 (Bankr ED Mich, 2019); *TAJ Graphics Enterprises, LLC v B Sills*, unpublished opinion and order of the United States Bankruptcy Court for the Western District of Kentucky, issued June 30, 2009 (Case No. 5:07-CV-00143-R); *Kattula v Jade*, unpublished memorandum opinion of the United States Bankruptcy Court for the Western District of Kentucky, issued June 8, 2007 (Case No. 5:07-CV-52).

fulfill its obligations under the 2004 Chapter 11 plan, leading the bankruptcy court to hold that Prime retained an allowed claim against TAJ Graphics in that proceeding of approximately $1.356 million.

Appellants LP Truck Depot and DA Enterprises filed this action against Prime more than a decade ago. In their August 2008 complaint, LP Truck Depot and DA Enterprises asserted several distinct claims against Prime—including, among others, common-law and statutory slander of title, breach of the restructure agreement, tortious interference with an advantageous business relationship, and quiet title—and they sought several forms of legal and equitable relief, including declaratory relief, injunctive relief, and legal damages.

Prime reacted by filing a single pleading including both its answer to the complaint and its affirmative defenses. Prime did not assert laches as an affirmative defense at that time, but it reserved the right to assert additional affirmative or special defenses as they became known. Prime also filed a third-party complaint against appellants Robert, Maria, K&B, Maria C. Kattula Children's Trust, and Maria C. Kattula Living Trust, asserting a variety of different claims against them.

After answering Prime's third-party complaint, Robert, Maria, K&B, Maria C. Kattula Children's Trust, and Maria C. Kattula Living Trust filed several counterclaims against Prime, along with a third-party complaint against appellees Aaron Jade (Prime's alleged owner) and various business entities then allegedly owned or controlled by Prime, including appellants Prime Calvert, Calvert Properties, Waste Path, and Calvert Machinery. Appellants Robert, Maria, K&B, Maria C. Kattula Children's Trust, and Maria C. Kattula Living Trust asserted counterclaims and third-party claims against the various appellees for breach of contract, fraud, an accounting, usury, promissory estoppel, breach of fiduciary duty, and tortious interference with a business relationship. Those appellants also sought various forms of relief, including declaratory relief, the appointment of a receiver, legal damages, and whatever equitable relief the trial court deemed just.

In January 2009, Prime filed its answer to the countercomplaint and affirmative defenses. Among others, Prime asserted the doctrine of laches as an affirmative defense. Prime reserved the right to later amend its affirmative defenses to include additional defenses that might become known later.

In the meantime, several of the parties to this state lawsuit—including Robert, Maria, K&B, and Prime—were also parties to involuntary, jointly administered Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Western District of Kentucky (the "Kentucky bankruptcy proceedings"). In May and July 2009, the Kentucky bankruptcy court entered two different orders directing the seizure of various assets owned by either the "Contemnors," Robert and Maria, or the "defendant," K&B—including the assets at issue in this case—and the bankruptcy court also ordered the stay of certain counterclaims and third-party claims asserted by Robert and Maria in this case. Thus, on September 11, 2009, the trial court in this state action entered the order staying this action "pending the further Order of the Bankruptcy Court, the United States District Court or the Sixth Circuit Court of Appeals affecting the scope and/or enforceability of the Bankruptcy Court's Order."

Robert, Maria, and K&B appealed the Kentucky bankruptcy court's pertinent orders in the United States District Court for the Western District of Kentucky, which, in February 2010, issued a memorandum opinion and order reversing and remanding for further proceedings in the bankruptcy court. Thereafter, in December 2010, the Kentucky bankruptcy proceedings were dismissed on motion of the bankruptcy trustee. Nevertheless, none of the parties to this lawsuit moved initially to lift the trial court's September 11, 2009 order staying this case.

It was not until March 2020—more than 10 years after the trial court entered its order staying this action—that appellant K&B filed a motion to lift the stay and reinstate this case. K&B argued that the impetus for its motion was an April 19, 2019 opinion issued by the Michigan bankruptcy court in the TAJ Graphics proceedings, which had purportedly "clarifie[d] relations between the two main litigants herein, K&B Capital and Prime Financial, and provide[d] a basis for a dispositive motion by K&B" in this case.

Appellees filed objections, arguing that K&B's motion to lift the stay and reinstate this case was an attempt by appellant Robert to "yet again . . . shuffle claims among his shell entities and continue his longstanding tradition of advancing frivolous litigation." Furthermore, appellees argued that the trial court should apply the equitable doctrine of laches as a bar to reinstatement of this case and dismiss the action on that basis, given the approximately 10-year delay between the dismissal of the Kentucky bankruptcy proceedings and K&B's motion to reinstate this case.

Although appellants filed no written response to appellees' objections, at the ensuing motion hearing, appellants' counsel argued that the trial court should not apply the equitable doctrine of laches to bar this action; that it had been reasonable for appellants to await the April 19, 2019 bankruptcy opinion before moving to reinstate this case because several issues in the TAJ Graphics case overlapped with issues in the instant case; and that appellants had not slept on their rights in this case, as demonstrated by the fact that several of them had been actively litigating the related TAJ Graphics case against Prime in federal bankruptcy court during the pendency of the 10-year stay in this case. On questioning by the trial court, however, appellants' counsel admitted that he "could have taken some action to lift the stay in 2010," and that he failed to do so because reinstating this case "didn't matter" to his clients until they received the April 19, 2019 bankruptcy decision, which they viewed as an advantage in this case.

After considering the issue, the trial court denied K&B's motion to lift the stay and reinstate this case, instead holding that the doctrine of laches barred this action and dismissing the case on that basis. In support, the trial court reasoned, in part:

> If we were talkin' about a year, two years, three years, five years, it would be less difficult. But at this point in time, we're talking now about ten years. The stay was placed in this case because of a bankruptcy action pending in Kentucky. Those cases were all dismissed in 2010. Plaintiff [sic] could have brought the matter . . . to lift the stay at that point in time but it wasn't in their best interest. And frankly, even though it's not being said, I think the 2019 case, which did not involve all these parties but it did involve some of them, now gives the Plaintiff [sic] a basis, or—or more of an advantage than they had back then.
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> * * *

> I am making a finding of fact that ten years is too long. That a lot could've been going on in those ten years, the stay could've been lifted, could've come in and advised the Court this is where we're at, we need some more time, we need some discovery, can we do this, . . . there's a lot that could be done. Nothing was done at all. For that reason I'm denying the motion to reinstate the case and I am dismissing this matter.

This appeal followed.

II. ANALYSIS

A. LACHES

On appeal, appellants first argue that the trial court erred or abused its discretion, in several respects, by denying K&B's motion to lift an order staying this action and reinstate this case and instead dismissing the action under the doctrine of laches. We perceive no error warranting reversal.

"Equitable issues are reviewed de novo, including equitable defenses such as laches." *Stock Bldg Supply, LLC v Crosswinds Communities, Inc*, 317 Mich App 189, 199; 893 NW2d 165 (2016). "We review for clear error the findings of fact supporting the trial court's equitable decision." *Twp of Yankee Springs v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016) (cleaned up).

As this Court observed in *Attorney General v PowerPick Club of Michigan, LLC*, 287 Mich App 13, 51; 783 NW2d 515 (2010):

> Laches is an affirmative defense based primarily on circumstances that render it inequitable to grant relief to a dilatory plaintiff. The doctrine of laches is triggered by the plaintiff's failure to do something that should have been done under the circumstances or failure to claim or enforce a right at the proper time. The doctrine of laches is founded upon long inaction to assert a right, attended by such intermediate change of conditions as renders it inequitable to enforce the right. But it has long been held that the mere lapse of time will not, in itself, constitute laches. The defense, to be raised properly, must be accompanied by a finding that the delay caused some prejudice to the party asserting laches and that it would be inequitable to ignore the prejudice so created. The defendant bears the burden of proving this resultant prejudice. [Cleaned up.]

1. APPLICATION OF LACHES TO A POSTCOMMENCEMENT DELAY

Appellants first argue that laches only applies to delays in "bringing" or "commencing" suit, and thus the trial court erred by applying the doctrine to appellants' delay in moving to reinstate this case. In other words, appellants argue that laches cannot properly be applied to a delay that occurs after an action has already been commenced. This argument is unpersuasive.

In support of their argument, appellants selectively quote caselaw indicating that laches applies to delays in "commencing" or "bringing" an action. See, e.g., *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 28-29; 896 NW2d 39 (2016) (quoting caselaw to the effect that laches applies to "inexcusable delay in *bringing* suit" or "unexcused or unexplained delay in *commencing* an action") (cleaned up). That same decision, however, recognizes that laches may also be "triggered by the plaintiff's failure to do *something that should have been done under the circumstances or failure to claim or enforce a right at the proper time*." *Id*. (cleaned up). See also *Pub Health Dep't v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996) ("The doctrine of laches is a tool of equity that may remedy the general inconvenience resulting from delay *in the assertion of a legal right* which it is practicable to assert.") (Emphasis added).

Appellants' argument ignores the fundamentally flexible, case-specific nature of laches and—more broadly—equitable doctrines in general. "It is the historic function of equity to give such relief as justice and good conscience require," *Levant v Kowal*, 350 Mich 232, 241; 86 NW2d 336 (1957), and courts employing equitable powers have "broad and flexible jurisdiction" to do so, *Tkachik v Mandeville*, 487 Mich 38, 59; 790 NW2d 260 (2010) (cleaned up). "Equitable remedies are flexible. Those facts which may move the conscience . . . in one situation may or may not produce a remedy when combined with other facts." *Kent v Bell*, 374 Mich 646, 652; 132 NW2d 601 (1965). Hence, in "determining whether a party is guilty of laches, each case must be determined on its own particular facts." *Sedger v Kinnco, Inc*, 177 Mich App 69, 73; 441 NW2d 5 (1988), citing *Edgewood Park Ass'n v Pernar*, 350 Mich 204, 209; 86 NW2d 269 (1957).

Consistent with such principles, our Supreme Court has—on several occasions—applied laches as a bar against unseasonable motions or other requests for relief made *after* the commencement of a case. See, e.g., *Jackson v Fitzgerald*, 341 Mich 55, 60-61; 67 NW2d 471 (1954); *Globe Indemnity Co v Richer*, 264 Mich 224, 226-227; 249 NW 833 (1933); *Mooradian v Brown*, 220 Mich 12, 14; 189 NW 857 (1922). In light of such authorities—particularly *Globe*, 264 Mich at 226-227, which explicitly applied the doctrine of laches to bar a motion to reinstate a case—we reject appellants' claim of error.

2. PREJUDICE

Appellants next argue that the trial court erred by applying the doctrine of laches without finding that appellees had carried their burden of demonstrating the requisite prejudice. We are unpersuaded that the trial court committed any error warranting reversal in this respect.

It is true that laches, "to be raised properly, must be accompanied by a finding that the delay caused some prejudice to the party asserting laches and that it would be inequitable to ignore the prejudice so created." *PowerPick*, 287 Mich App at 51 (cleaned up). Moreover, in *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 108; 704 NW2d 92 (2005), this Court refused to consider a laches issue on the merits without such factual findings by the trial court.

In this case, although the trial court stated relatively few factual findings, it did indicate that the April 19, 2019 bankruptcy decision had seemingly afforded the moving party, K&B,[2] "more of an advantage than" it had had "back then." On that basis, the trial court stated sufficient findings concerning the prejudice prong of laches to permit meaningful appellate review here.

In any event, even if we were to reach the opposite conclusion, we would nevertheless conclude that remand to the trial court is unnecessary under the facts presented here. "[T]his Court will not reverse when a circuit court reaches a correct result for a wrong reason." *Kuznar v Raksha Corp*, 272 Mich App 130, 137; 724 NW2d 493 (2006). In addition, under MCR 2.613(A), "an error or defect in anything done . . . by the court . . . is not ground for . . . vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." An error warrants reversal under MCR 2.613(A) if it was outcome-determinative. *Ellison v Dep't of State*, 320 Mich App 169, 179; 906 NW2d 221 (2017).

Here, the trial court's disputed ruling concerned appellants' motion to reinstate this case. Under MCR 2.517(A)(4), "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule," and appellants cite no court rule that requires a trial court to state factual findings when such a ruling is premised on the equitable doctrine of laches. Because trial courts are presumed to know and apply the applicable law, they are generally presumed to have done so in the absence of evidence to the contrary. See, e.g., *People v Sherman-Huffman*, 466 Mich 39, 42-43; 642 NW2d 339 (2002). Thus, in this case, if the record plainly supports a finding of prejudice supporting the application of laches, this Court can affirm on that basis.

The record before us does, in fact, support such a finding of prejudice. In their brief on appeal, appellants admit that they made a "strategic" decision to await an "advantageous" decision in federal bankruptcy court before moving to reinstate this case. In other words, appellants implicitly admit that their delay was intended to—and did—afford them a material strategic advantage in this litigation that they would have lacked had they moved to reinstate the case earlier. On that basis alone, the requisite prejudice to apply laches is established here. See *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982); *Walker v Schultz*, 175 Mich 280, 293; 141 NW 543 (1913) ("Where the situation of neither party has changed materially, and the delay of one has not put the other in a worse condition, the defense of laches cannot as a rule be recognized."). In this case, appellants admit that the April 19, 2019 bankruptcy decision *did* materially alter the circumstances in their favor, thereby placing appellees in a worse position.

Also, appellants do not dispute appellees' assertion that, during appellants' decade-long delay, appellees had possession and ownership of the Luna Pier Property, along with all of the associated costs for property taxes and maintenance. In other cases involving disputes over real property, this Court has held that when the party asserting laches has expended money on the realty as a result of the other party's unreasonable delay in asserting its rights, sufficient prejudice to apply laches exists. See, e.g., *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482,

[2] It appears that the trial court inadvertently referred to third-party defendant/counterplaintiff/third-party plaintiff-appellant K&B as "the plaintiff" in this finding.

494; 608 NW2d 531 (2000); *In re Crawford's Estate*, 115 Mich App 19, 28; 320 NW2d 276 (1982). Thus, we reject appellants' claim of error.

3. WAIVER

Appellants next argue that, because laches is an affirmative defense, the trial court erred by failing to recognize that appellees had waived that defense by failing to assert it at the outset of this case. This argument is unpersuasive.

Appellants are correct that laches is an affirmative defense. See *Lothian*, 414 Mich at 168; *Twp of Yankee Springs*, 264 Mich App at 611. Appellants are also correct that a party may waive the affirmative defense of laches by failing to raise it timely. See *Rowry v Univ of Mich*, 441 Mich 1, 12; 490 NW2d 305 (1992).

Here, appellees raised their laches defense in response to appellants' motion to lift the automatic stay and reinstate the case. As a matter of simple logic, because that laches defense concerned a postcommencement delay that occurred while the case was stayed as a result of the Kentucky bankruptcy proceedings, it would not have been possible for appellees to have asserted the defense—at the outset of the case—in their initial affirmative defenses. That is, a party cannot assert an affirmative defense that relates to *future* conduct—i.e., conduct that has not yet occurred. Indeed, defendants should refrain from the practice of inundating plaintiffs "with a laundry list of every conceivable affirmative defense from the outset, irrespective of whether there is reason to believe any of the defenses might ultimately be supportable." *Glasker-Davis v Auvenshine*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 345238); slip op at 5. Under the circumstances presented here, we conclude that appellees were not required to assert their laches defense in their initial pleadings or affirmative defenses; rather, they raised the issue timely by motion when it actually arose—i.e., after appellants moved to reinstate the case. See *Rowry*, 441 Mich at 12 ("In failing to raise laches in its responsive pleadings *or by motion*, the defendant has waived this affirmative defense.") (Emphasis added).

4. LACHES DISMISSAL AS A "SANCTION"

Appellants next argue that the trial court both erred and abused its discretion by choosing the "drastic sanction" of dismissal. In support, appellants argue that the dismissal in question constituted an involuntary dismissal governed by MCR 2.504(B)(1) and that the trial court erred by failing to consider all of the available sanctions, on the record, before ordering dismissal. This argument is unpersuasive because dismissals under the doctrine of laches are not governed by MCR 2.504(B)(1).

To begin, appellants cite no authority for their novel contention that a dismissal on grounds of laches is a form of "sanction," rather than an equitable remedy, and we are aware of no such authority. Similarly, appellants cite no authority for their equally novel argument that MCR 2.504(B)(1) applies to dismissals founded on the equitable doctrine of laches, nor are we aware of any published authority in that regard. On the contrary, by its own terms, MCR 2.504(B)(1) applies when "a party fails to comply with these rules or a court order," and the rule contains no mention of laches or any related concepts. Because laches is a common-law doctrine, see *Tkachik*, 487 Mich at 59 n 13, and our Supreme Court lacks any authority "to enact court rules that establish,

abrogate, or modify the substantive law," *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148 (1999), MCR 2.504(B)(1)—a procedural provision governing involuntary dismissals—cannot abrogate or modify existing caselaw concerning laches.

It has long been settled that dismissal is the appropriate remedy when a claim is barred by laches. See, e.g., *Seguin v Madison*, 328 Mich 600, 606; 44 NW2d 150 (1950). Thus, we are unpersuaded that the trial court erred by failing to treat the dismissal in this matter as a "sanction" imposed under MCR 2.504(B)(1), and we reject appellants' claim of error in that regard.

B. PROCEDURAL DUE PROCESS

Finally, appellants argue that the trial court failed to provide them with the constitutionally necessary procedural protections before dismissing this case on grounds of laches. "Generally, an issue is not properly preserved if it is not raised before, and addressed and decided by, the trial court." *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005). Notably, contrary to MCR 7.212(C)(7), appellants' argument of this issue does not include "[p]age references to the transcript, the pleadings, or other document or paper filed with the trial court . . . to show whether the issue was preserved for appeal by appropriate objection or by other means." Our review of the record indicates that appellants never raised any due-process argument in the trial court. As a general rule, a failure to raise an issue in the trial court waives review of that issue on appeal, *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 193; 920 NW2d 148 (2018), and this Court need not review issues raised for the first time on appeal, *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). Because plaintiff did not raise this issue in the trial court, we decline to reach the issue.

With that said, we note that, appellants were clearly on notice about the nature of these proceedings in general, and they were also provided notice—by appellees' objections to the motion to reinstate this case—that the doctrine of laches was being asserted against them. Before ruling on the matter, the trial court afforded the parties a hearing and entertained oral argument concerning the laches issue. In other words, the trial court afforded appellants an opportunity to be heard in a meaningful time and manner.

Affirmed. Appellees, having prevailed in full, may tax costs under MCR 7.219(F).

/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro
/s/ Brock A. Swartzle