

Title

Statutes of limitations applicable to breach-of-trust actions tweak traditional laches doctrine, not the other way around

Text

For the beneficiary to be prevented by “laches” from holding the trustee liable for a breach of trust, the beneficiary must have so delayed in bringing an action against the trustee that it would be inequitable to permit the beneficiary to hold the trustee liable. As a matter of public policy, suits should be brought with reasonable promptness. With the passage of time, it becomes difficult to ascertain the truth. The enforcement of a constructive trust also may be barred by laches. Laches generally will not bar a beneficiary while under a legal incapacity, such as minority or incompetence, or bar the holder of an outstanding contingent equitable remainder interest until the intervening interest has expired.

A cause of action against a trustee for breaches of the duty of loyalty (or any type of breach for that matter) would not be barred by laches until a reasonable time after all beneficiaries, both current beneficiaries and remaindermen, had become fully aware of the breach and its legal implications and failed to take appropriate action. The Restatement (Third) of Trusts is generally in accord. In one state, a remainderman has a reasonable time after his interest vests *in possession* to bring suit against the trustee for a breach of trust. *See Eldridge v. Eldridge*, 398 S.C. 113, 728 S.E.2d 24 (2012). This would be the case even if he had become aware of the breach prior to the time of such vesting.

To start the running of an applicable statute of limitations, there must be subjective awareness *on the part of the beneficiary* of the relevant facts and law pertaining to the breach of trust. It is fair to say that the “discovery-rule” exception to the mechanical application of limitations statutes is generally applicable when it comes to determining the timeliness of the bringing of a breach-of-trust action. The rule is particularly suited to the person to whom a fiduciary duty is owed who is either unable to inquire into the fiduciary’s actions or unaware of the need to do so. How a beneficiary ultimately became “aware of” or “discovered” a breach of trust, whether via information supplied by the trustee or via information supplied by a third party or from first-hand knowledge/actual notice, however, should be irrelevant when it comes to determining *when* sufficient awareness of the facts and law material to the breach had been achieved. *See Berry v. Berry*, 65 Tex. Sup. Ct. J 997, ---S.W.3d--- (2022), 2022 WL 1510330. Statutes of limitations applicable to actions by beneficiaries against trustees for breaches of trust should be looked upon as little more than partial codifications of equity’s laches doctrine. Essentially all that has been codified is the period beginning immediately after breach awareness is achieved in which an aggrieved beneficiary may bring a breach-of-trust action. In Texas the statutory period is four years. Apart from the UTC’s repose feature, the UTC would limit the period to one year.

Black-letter laches doctrine is the subject of §8.15.70 of *Loring and Rounds: A Trustee’s Handbook* (2022), which section is reproduced in its entirety in the appendix below. The handbook is available for purchase at: <https://law-store.wolterskluwer.com/s/product/loring-rounds-a-trustees-handbook-2022e-misb/01t4R00000OVWE4QAP>.

Appendix

§8.15.70 *Laches, Doctrine of* [from *Loring and Rounds: A Trustee’s Handbook* (2022), available for purchase at: <https://law-store.wolterskluwer.com/s/product/loring-rounds-a-trustees-handbook-2022e-misb/01t4R00000OVWE4QAP>].

Delay defeats equities, or, equity aids the vigilant and not the indolent:
vigilantibus, non dormientibus, jura subveniunt.¹²⁰⁸

Laches is a delay that is sufficient to prevent a party from obtaining an equitable remedy, a remedy to which the party but for the delay would otherwise be entitled.¹²⁰⁹ In order to be fair to both sides, a court of equity is loath to entertain stale demands brought forth by those who have slept on their rights.¹²¹⁰ “Delay will accordingly be fatal to a claim for equitable relief if there is evidence of an agreement by the claimant to abandon or release his right, or if it has resulted in the destruction or loss of evidence by which the claim might have been rebutted, or if the claim is to a business (for the claimant should not be allowed to wait and see if it prospers), or if the claimant has so acted as to induce the defendant to alter his position on the reasonable faith that the claim has been released or abandoned.”¹²¹¹ In order to abandon an equitable claim, such as a claim by a trust beneficiary against the trustee for breach of trust, one or one's authorized surrogate must be of full age and legal capacity and have “full knowledge” of the claim.¹²¹² In equity's eyes, lack of notice, legal disability, or undue influence can be a “satisfactory explanation” for why a party has delayed in seeking enforcement of the claim.¹²¹³ In equity, even ignorance of the law, *i.e.*, of one's legal or equitable rights, can be a “satisfactory explanation.”¹²¹⁴

It is classic laches doctrine that a competent trust beneficiary would have a reasonable time after receiving actual notice of the trustee's breach of fiduciary duty to bring an equitable action against the trustee to remedy the breach.¹²¹⁵ By actual notice we mean that the trustee must openly “repudiate” the trust, a concept that is discussed in §7.1.3 of this handbook.

An unreasonable delay is a delay that would make the granting of equitable relief unjust, that would unfairly prejudice the trustee.¹²¹⁶ Classic laches doctrine has no fixed time periods.¹²¹⁷ In many jurisdictions, however, there are now statutes of limitation in effect that do fix a time in which a competent beneficiary with actual notice of a breach of trust may bring an action against the trustee to compel the trustee to remedy

¹²⁰⁸Snell's Equity ¶5-16.

¹²⁰⁹Snell's Equity ¶5-19.

¹²¹⁰Snell's Equity ¶5-16 (England); Restatement (Third) of Trusts §98 cmt. b (U.S.).

¹²¹¹Snell's Equity ¶5-19.

¹²¹²Snell's Equity ¶5-19. *See also* §7.1.2 of this handbook (discussing what constitutes informed consent to a breach of trust).

¹²¹³Snell's Equity ¶5-19 (England); Restatement (Third) of Trusts §98 cmt. b(1) (excuses for delay) (U.S.).

¹²¹⁴Snell's Equity ¶5-19. *See also* §7.2.7 of this handbook (beneficiary consent, release, or ratification).

¹²¹⁵Restatement (Third) of Trusts §98 cmt. b.

¹²¹⁶*See, e.g.*, Lindsay Petroleum Co. v. Hurd [1874] L.R. 5 P.C. 221 at 239, 240 (Eng.), *per* Lord Selborne L.C. *See generally* Restatement (Third) of Trusts §98 cmt. b(2) (delay prejudicial to trustee); §7.2.10 of this handbook (limitation of action by beneficiary against trustee (laches and statutes of limitation)); §7.1.3 of this handbook (defense of failure of beneficiary to take timely action against trustee).

¹²¹⁷*See* Restatement (Third) of Trusts §98 cmt. b.

the breach.¹²¹⁸ These statutes tweak traditional laches doctrine; they do not do away with the applicability of its general principles, such as the actual-knowledge-of-legal-rights requirement.¹²¹⁹ Again, the laches doctrine itself is not a creature of statute.¹²²⁰ “The defense of laches sounds in equity and, therefore, the applicability of the defense ‘in a given case generally rests within the sound discretion of the trial justice.’”¹²²¹ An ancient invention of the English court of chancery,¹²²² laches doctrine is still honed and applied today in common law jurisdictions, both here and abroad.¹²²³ The doctrine’s modern-day practical applications are considered in §§3.6, 7.1.3, and 7.2.10 of this handbook.

It should be noted that the state attorney general is not bound by the doctrine of laches when it comes to the enforcement of charitable trusts.¹²²⁴ Neither is the court. “The mere fact that the trustees of a charitable trust have long applied the trust property to purposes other than those designated by the settlor does not preclude the court from directing that the trust be administered according to its terms.”¹²²⁵

¹²¹⁸*See generally* §7.2.10 of this handbook (limitation of action by beneficiary against trustee (laches and statutes of limitation) and §7.1.3 of this handbook (defense of failure of beneficiary to take timely action against trustee).

¹²¹⁹*See generally* Restatement (Third) of Restitution and Unjust Enrichment §70 cmt. f (discovery rule).

¹²²⁰Restatement (Third) of Trusts §98 cmt. a.

¹²²¹*Branson v. Louttit*, 213 A.3d 417 (R.I. 2019) (quoting *Hazard v. E. Hills, Inc.*, 45 A.3d 1262, 1270 (R.I. 2012)).

¹²²²*See generally* Chapter 1 of this handbook (containing a list of all those who have occupied the office of Lord Chancellor from 1068 to the present).

¹²²³*See generally* Restatement (Third) of Trusts §98 cmt. a (“The doctrine of laches evolved in English and American jurisdictions during times in which statutes of limitations did not apply to equitable causes of action. The doctrine ordinarily remains applicable today along with modern statutes of limitations....”); §8.12 of this handbook (listing some of the more common equity maxims, including in the footnoting examples of their present-day applications). In litigation in a New York court over the ownership of a medieval prayer book containing within its pages the partially obliterated but recoverable text of the long-lost Codex C of Archimedes (287 B.C.–212 B.C.), the “greatest mathematician of antiquity,” the trial judge in her August 18, 1999 dismissal noted that had New York law rather than the French law of adverse possession applied, the case would still have been dismissed as the claimant would have been found guilty of laches. Reviel Netz & William Noel, *The Archimedes Codex* 135–136 (2007).

¹²²⁴*See* Restatement (Third) of Trusts §98 cmt. a(2) (immunity of attorneys general).

¹²²⁵5 Scott & Ascher §37.3.10.