

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM J. HINDELANG,

Plaintiff/Counter-Defendant-
Appellant,

and

MQVP, INC.,

Plaintiff,

v

PAUL J. HINDELANG,

Defendant-Appellee,

and

RESULTS SYSTEMS CORPORATION,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

April 26, 2011

No. 295722

Oakland Circuit Court

LC No. 2005-069127-CK

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

In this appeal by leave granted,¹ plaintiff William Hindelang (plaintiff) challenges the trial court's order granting defendants' motion for summary disposition pursuant to MCR

¹ Plaintiff originally filed an appeal as of right. After defendants moved to dismiss the appeal for lack of jurisdiction, this Court treated the claim of appeal as an application for leave to appeal and granted it. *Hindelang v Hindelang*, unpublished order of the Court of Appeals, entered May 6, 2010 (Docket No. 295722).

2.116(C)(10) with respect to plaintiff's claim for unpaid commissions.² The trial court ruled that plaintiff's "claim for commissions is barred by waiver, laches, and estoppel." We affirm on the basis of laches and estoppel.

Plaintiff filed this action against his former employer, defendant Results Systems Corporation, and its chief executive officer, defendant Paul Hindelang (Paul), who is also plaintiff's brother. Results Systems provides management consulting services. Plaintiff began working for Results Systems in 1992, left for a period, and then returned in 1995. At that time, he worked in a role as both an account manager and a consultant. In 1998, plaintiff signed a written employment agreement with Results Systems. Plaintiff's employment with Results Systems ended in July 2002.

Plaintiff MQVP, Inc. is a company owned by plaintiff. It formerly did business with Results Systems under the name Global Validators, Inc. Near the time plaintiff left his employment with Results Systems in 2002, a dispute arose between Results Systems and Global Validators concerning the former's right to payment from the latter for services performed by Results Systems on behalf of Global Validators. In September 2002, the parties executed a settlement agreement in which they agreed to submit their dispute to arbitration. One of the issues in the arbitration proceeding involved the reasonableness of the rates charged by Results Systems to Global Validators. In July 2003, the arbitrator issued a decision awarding Results Systems \$1,188,766 against Global Validators.

In September 2005, plaintiff filed this action, alleging in pertinent part that Results Systems was liable for unpaid commissions earned over a period of years, but which did not become due until plaintiff's employment ended in 2002. Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff was precluded from pursuing his claim for commissions because they were related to the prior fee dispute between Results Systems and Global Validators, and plaintiff did not raise the issue of his alleged entitlement to commissions either before or at the time the prior fee dispute was arbitrated. The trial court agreed and ruled that plaintiff's claim for commissions was barred by waiver, laches, and estoppel.

We review a trial court's summary disposition decision de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula*, 212 Mich App at 48.

² Although other claims and counterclaims were filed by the parties, only plaintiff's claim for commissions is at issue in this appeal.

We hold that the trial court did not err in finding that plaintiff's claim for commissions was barred by laches and that plaintiff was equitably estopped from pursuing the claim. Accordingly, it is unnecessary to determine whether the trial court erred in relying on the concept of "waiver" as an additional basis for granting summary disposition.

In *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 503-504; 608 NW2d 105 (2000), this Court explained:

Laches is an affirmative defense that depends principally on the requisite of intervening circumstances that would render inequitable any grant of relief to the dilatory plaintiff. *In re Crawford Estate*, 115 Mich App 19, 25-26; 320 NW2d 276 (1982). The doctrine is concerned with unreasonable delay, *Michigan Ed Employees Mut Ins Co v Morris*, 460 Mich 180, 200; 596 NW2d 142 (1999), and the defendant must prove a lack of due diligence on the part of the plaintiff resulted in some prejudice to the defendant. *Gallagher v Keefe*, 232 Mich App 363, 369-370; 591 NW2d 297 (1998).

It is the effect of a delay, not just the passage of time, that is necessary for laches to apply. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 578; 485 NW2d 129 (1992). The doctrine can apply in cases where the plaintiff fails to do something that should have been done under the circumstances or fails to claim or enforce a right at the proper time. *Attorney General v PowerPick Player's Club of Mich, LLC*, 287 Mich App 13, 51; 783 NW2d 515 (2010). Laches is available only where a party shows that it would be inequitable to grant the other party the relief it requests. *Oakland Hills Dev Corp v Lueders Drainage Dist*, 212 Mich App 284, 296; 537 NW2d 258 (1995). "The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant." *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998). The defendant bears the burden of proving any resultant prejudice from the delay. *PowerPick Player's Club*, 287 Mich App at 51.

Initially, we reject plaintiff's argument that laches cannot apply because he filed a legal action that is subject to a statute of limitations, as opposed to filing an action for equitable relief. While laches ordinarily will not apply where there is an applicable statute of limitations, laches may still bar a legal claim where the statute of limitations has not yet expired. *Tenneco, Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 456-457; 761 NW2d 846 (2008).

In this case, plaintiff was asserting a right to commissions related to the business he secured for Results Systems with plaintiff's own company, Global Validators. The relationship between Results Systems and Global Validators led to the parties' involvement in a fee dispute that was ultimately submitted to arbitration. A principal issue in the arbitration proceeding was the reasonableness of the rates that Results Systems charged to Global Validators. Any liability by Results Systems to plaintiff for unpaid commissions would have been relevant to the reasonableness of the fees it charged to Global Validators. But because plaintiff never asserted any claim for unpaid commissions either before or at the time of the arbitration proceeding, the effect of any such claim on the parties' fee dispute was not considered.

Plaintiff asserts that he could not have pursued a claim for commissions at the arbitration proceeding because the arbitrator refused to allow evidence regarding the compensation paid to Results System's employees. However, the arbitrator disallowed that evidence because it was not relevant to the issues identified by the parties in their settlement agreement. Had plaintiff raised the issue of his entitlement to commissions then, defendants could have insisted that the parameters of arbitration include the effect of any commissions as relevant to the underlying fee dispute.

Under these circumstances, defendants were prejudiced by plaintiff's failure to timely assert his right to commissions. Because the arbitration proceeding has concluded, defendants have lost the ability to have plaintiff's claim for commissions evaluated in the context of the prior fee dispute, and in particular the opportunity to defend the reasonableness of Results Systems's charges to Global Validators in light of any commissions to which plaintiff might be entitled. Accordingly, we agree with the trial court that laches bars plaintiff's claim.

The trial court also relied on the doctrine of equitable estoppel to conclude that plaintiff was estopped from asserting a claim for commissions where he failed to raise the issue at or before the earlier arbitration.

Equitable estoppel

may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts. [*Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999).]

For equitable estoppel to apply, "[t]he other party must not only have justifiably relied on this belief, but also must be prejudiced if the first party is permitted to deny the facts upon which the second party relied." *Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535; 464 NW2d 713 (1990). Equitable estoppel can apply to prevent a party from enforcing a provision in a contract. *City of Grosse Pointe Park v Mich Muni Liability & Prop Pool*, 473 Mich 188, 203-204; 702 NW2d 106 (2005). But "[s]ilence or inaction alone is insufficient to invoke estoppel absent a legal or equitable duty to disclose." *Tenneco*, 281 Mich App at 446.

For estoppel by silence, the party standing by and concealing its rights must have, by its conduct, shown such gross negligence as to have encouraged or influenced the opposite party, who was wholly ignorant of its adversary's claim, to act to the latter's disadvantage. An essential element of estoppel is that a party knowingly permitted the opposite party to act to its own disadvantage. [*South Macomb Disposal Auth v Mich Muni Risk Mgt Auth*, 207 Mich App 475, 477; 526 NW2d 3 (1994).]

In this case, there is no dispute that throughout the arbitration process, plaintiff never asserted any claim that he was entitled to commissions for securing contracts with Global Validators for Results Systems. The parties resolved their dispute over the fees owed by Global Validators to Results Systems during the arbitration, an aspect of which involved an assessment

of the reasonableness of the rates charged by Results Systems to Global Validators. Had plaintiff raised the commission issue at that time, its effect on the fee dispute could have been addressed. By remaining silent, plaintiff allowed defendants to act to their disadvantage by not raising the issue in the arbitration proceeding in defense of the reasonableness of Results Systems's fees to Global Validators. Under these circumstances, the trial court did not err in finding that plaintiff's silence was sufficient to invoke the doctrine of equitable estoppel.

Affirmed.

/s/ Deborah A. Servitto

/s/ Joel P. Hoekstra

/s/ Donald S. Owens