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# Admiralty-Laches-Expiration of Analogous State Statute of Limitations as Ground For Dismissal

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# RECENT DECISIONS

ADMIRALTY—LACHES—EXPIRATION OF ANALOGOUS STATE STATUTE OF LIMITATIONS AS GROUND FOR DISMISSAL—Plaintiff,[1] a seaman on the S.S. *Ioannis*, was injured when the *Ioannis* and the S.S. *Stony Point* collided. By the time plaintiff filed his action, the three-year state statute of limitations for personal injuries caused by negligence[2] had expired. The District Court for the Southern District of New York dismissed the complaint on the ground that the expiration of the state statute of limitations caused the plaintiff's action to be barred by laches. On appeal, *held*, vacated and remanded. Expiration of the analogous[3] state statute of limitations does not give rise to a presumption that the plaintiff's delay in bringing suit prejudiced the defendant. *Larios v. Victory Carriers, Inc.*, 316 F.2d 63 (2d Cir. 1963).

American admiralty law has been governed by the equitable doctrine of laches,[4] the elements of which are inexcusable delay in bringing suit and resultant prejudice to the defendant.[5] The absence of definitive rules for adjudicating this issue, however, caused courts to look to state statutes of limitations in deciding whether the defendant was barred by laches.[6] Taking state statutes as a determinative guide, the federal courts generally asserted that expiration of the analogous state statute of limitations created a *presumption* that the plaintiff's delay was both inexcusable and prejudicial.[7] Consequently, before a plaintiff was permitted to assert his claim, he first had to rebut the presumption of prejudice.[8] In discussing the propriety of this approach in *Gardner v. Panama R.R.*[9] and *Czaplicki v. The Hoegh Silvercloud*,[10] the Supreme Court ruled that state statutes were neither immaterial nor conclusive.[11] These ambiguous decisions did

1 The term plaintiff, rather than libellant, is used because suit was brought on the "law side" of the court. See GILMORE & BLACK, ADMIRALTY § 1-12 (1957).

2 N.Y. CIV. PRAC. LAW § 214(5).

3 The "analogous state statute of limitations" is the limitations statute which would apply if the action were not a maritime claim.

4 Czaplicki v. The Hoegh Silvercloud, 351 U.S. 525 (1956); The Key City, 81 U.S. 653 (1871). See generally Comment, 9 DE PAUL L. REV. 210 (1960).

5 Kane v. Union of Soviet Socialist Republics, 189 F.2d 303, 305 (3d Cir. 1961); Loverich v. Warner Co., 118 F.2d 690, 693 (3d Cir.), *cert. denied*, 313 U.S. 577 (1941).

6 Although state statutes were at one time applied directly, McGrath v. Panama R.R., 298 Fed. 303 (5th Cir. 1924), the Supreme Court has held that maritime law determines all substantive issues of maritime claims, Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942). Judicial recognition of the substantive character of rules relating to limitations, Guaranty Trust Co. v. York, 326 U.S. 99 (1945), thus required use of the doctrine of laches.

7 Redman v. United Fruit Co., 185 F.2d 553 (2d Cir. 1950); Redman v. United States, 176 F.2d 713, 715 (2d Cir. 1949); Slepski v. Dravo Corp., 104 F. Supp. 89 (W.D. Pa. 1951); Loraine v. Coastwise Lines, Inc., 86 F. Supp. 336, 338 (N.D. Cal. 1949).

8 See GILMORE & BLACK, *op. cit. supra* note 1, § 9-81 and citations therein.

9 342 U.S. 29 (1951).

10 351 U.S. 525 (1956).

11 The *Gardner* and *Czaplicki* cases held that state statutes are not to be mechanically or conclusively applied. While recognizing the relevance of the statutes, however, the Court did not establish workable rules for applying them.

little to clarify the law, and subsequent to them the lower courts again promulgated the presumption of prejudice doctrine.[12] For example, in 1958 the Court of Appeals for the Second Circuit, in *Oroz v. American President Lines, Ltd.*,[13] explicitly stated that prejudice was to be presumed if the statute had expired, and that no prejudice was to be presumed if it had not expired.[14]

The return to the presumption of prejudice rule, exemplified by *Oroz*, was not expressly precluded by the Supreme Court decisions, but it did vitiate the apparent intent of the Court. In *Gardner*, the Supreme Court instructed the courts to look to the equities of the parties in resolving the issue of laches.[15] Compliance with the presumption of prejudice rule, however, prohibits examination of the equities unless the plaintiff first sustains the burden of overcoming the strong presumption.[16] Thus a plaintiff who would otherwise prevail on the basis of the equities might be peremptorily defeated by the presumption.

In the principal case the court rejected the presumption of prejudice rule, perhaps in belated response to the actual intent of the Supreme Court. In doing so, however, it ignored the repugnant language of its former decision in *Oroz*. The court quoted language in *Oroz* which it interpreted as less than strict approval of the doctrine.[17] The language cited, however, was taken out of context. Read in conjunction with the surrounding text, the phrase exemplifies unequivocal approval of the presumption of prejudice.[18] The rejection by the court in the principal

12 McMahon v. Pan Am. World Airways, Inc., 297 F.2d 268 (5th Cir. 1962); Vega v. The Malula, 291 F.2d 415 (5th Cir. 1961); Wilson v. Northwest Marine Iron Works, 212 F.2d 510 (9th Cir. 1954); Morales v. Moore-McCormack Lines, Inc., 208 F.2d 218 (5th Cir. 1953); Barca v. Matson Nav. Co., 211 F. Supp. 840, 843 (E.D. La. 1962); Antolos v. Ministère de la Marine Marchande, 214 F. Supp. 296 (S.D.N.Y. 1962); Smigiel v. Compagnie de Transports Océaniques, 185 F. Supp. 328 (E.D. Pa. 1960); Murphy v. International Freighting Corp., 182 F. Supp. 636, 640 (D. Mass. 1960).

13 259 F.2d 636 (2d Cir. 1958), *cert. denied*, 359 U.S. 908 (1959).

14 "Although laches is the proper measure of limitation, it has been long settled doctrine that, in deciding whether maritime claims are barred by laches, courts of admiralty will use local limitations statutes as a rule-of-thumb as to the presence or absence of prejudice and inexcusable delay. *If the statute has run, prejudice by reason of inexcusable delay is presumed* in the absence of a showing to the contrary; if it has not run, the converse is inferred." *Id.* at 639. (Emphasis added.)

15 "Though the existence of laches is a question primarily addresssed to the discretion of the trial court, the matter should not be determined merely by a reference to and a mechanical application of the statute of limitations. *The equities of the parties must be considered as well.*" Gardner v. Panama R.R., 342 U.S. 29, 30-31 (1951). (Emphasis added.)

16 On the strength of the presumption, see GILMORE & BLACK, *op. cit. supra* note 1, § 9-80, at 631. "[I]t may be assumed that the appellate courts will not lightly find that the trial court has abused its discretion in dismissing a libel." *Ibid.*

17 Principal case at 66.

18 Evidence of this may be found in the frequent citation of *Oroz* as authority for applying the presumption of prejudice. Brief for Appellee, p. 9, principal case; Doherty v. Federal Stevedoring Co., 198 F. Supp. 191 (S.D.N.Y. 1961); Scott v. United Fruit Co., 195 F. Supp. 278 (S.D.N.Y. 1961); Murphy v. A/S Sobral, 187 F. Supp. 163 (S.D.N.Y 1960); Phillips v. The Hellenic, 179 F. Supp. 5, 7 (S.D.N.Y. 1959); Evans v. American

case of the presumption rule, along with the approval of the *Oroz* decision, as interpreted, places *Oroz* on an uncertain foundation. Although the court did not overrule *Oroz,* the latter's continued vitality as legal authority appears highly questionable.

In explaining the rule it adopted, the court in the principal case stated that the factors of inexcusable delay and prejudice to the defendant are not to be viewed independently.[19] A weak excuse may be sufficient if there has been no assertion of prejudice by the defendant. Conversely, only a strong excuse will suffice if the defendant has shown prejudice. As a matter of procedure, the plaintiff must first proffer evidence as to excuse for his delay. If the court deems this substantial, the defendant will be required to come forward with evidence as to prejudice, the ultimate burden of persuasion, however, being the plaintiff's.[20]

Under the presumption of prejudice rule, the doctrine of laches was applied differently in admiralty than in other areas of the law.[21] By rejecting the rule, the principal case has not only given full effect to the Supreme Court's intent, but has also made the adjudication of laches in admiralty similar to that in other fields. This accords with the traditional concept of laches, under which the equities of the parties, rather than hard and fast rules, guide the disposition of the case.[22] Despite the desirability of the court's apparent stand against the presumption of prejudice rule, however, certain troublesome statements in the principal case suggest that it has not been completely abandoned.

The court stated that expiration of the analogous state statute does not create a presumption of prejudice, "*save in the sense* that if the plaintiff proffers no pleading or presents no proof on the issue of laches, the defendant wins."[23] The court was not merely asserting the settled rule that failure to deny an allegation is an admission of its truth.[24] If that were the case, the phrase "save in the sense" would not be used. The use of this language indicates that there may be something left of the presumption of prejudice rule. Furthermore, instead of stating that the only relevant factors in determining the issue of laches are delay and prejudice, the principal case asserted that an *inference* is to be drawn from the expiration of the analogous period of limitations.[25] The court did not elucidate the weight to be given this inference, and failure to clarify this important point would appear to leave an avenue open for rejuvenation of the pre-

Export Lines, Inc., 175 F. Supp. 386 (S.D.N.Y. 1959); Baez-Geigel v. American Foreign S.S. Corp., 171 F. Supp. 359, 361 (S.D.N.Y. 1959).

19 Principal case at 67.

20 *Ibid.* On the burden of persuasion, see McCORMICK, EVIDENCE § 307 (1954).

21 For a discussion of the effect of statutes of limitations on the issue of laches in other areas, see Annot., 96 L. Ed. 37 (1952).

22 See 30 C.J.S. *Equity* § 115 (1942).

23 Principal case at 66. (Emphasis added.)

24 See CLARK, CODE PLEADING § 91, at 580 (2d ed. 1947).

25 Principal case at 66.

sumption rule under the guise of an inference. It is thus conceivable that the holding in the principal case may be undermined, and that the courts may ultimately be faced with ruling on the propriety of an inference of prejudice, just as they were formerly faced with the propriety of a presumption of prejudice.[26]

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[26] It must be remembered, however, that the principal case involved an injured seaman. In recent decades, the Supreme Court has expanded both substantive and procedural law to favor injured seamen. "The Supreme Court has now . . . practically guaranteed recovery in the damage action." GILMORE & BLACK, *op. cit. supra* note 1, § 6-5, at 253. For an interesting discussion of this development, see *id.* §§ 6-1 to 6-64. Thus, what appears to be bold doctrinal departure in the principal case may in fact be nothing more than the court's recognition of this trend. As a result, future application of the court's holding may be confined to injured seamen cases, whereas the "save in the sense" and "inference" language may allow the courts to continue to apply the presumption of prejudice doctrine *sub rosa* in other admiralty areas without overruling the principal case.