

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 98577-4

SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 52688-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WALLACE R. JOHNSON, as Trustee of the 1994 WALLACE
RAY JOHNSON and JOAN ANNETTE JOHNSON
REVOCABLE LIVING TRUST,

Appellant,

v.

BERNARD McAULEY and LINDA McAULEY,
husband and wife,

Respondents.

RESPONSE TO APPELLANT'S PETITION FOR REVIEW

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of Younglove & Coker, P.L.L.C.
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A. IDENTITY OF RESPONDENTS

The Respondents, Bernhard and Linda McAuley (hereinafter “the McAuleys”) are the owners of adjacent property to Appellant, Wallace R. Johnson (hereinafter “Johnson”) located in Thurston County, Washington. Mr. and Mrs. McAuley oppose Johnson’s Petition for Review.

B. COURT OF APPEALS DECISION

The Washington State Court of Appeals, Division II upheld the granting of the McAuleys’ Motion for Summary Judgment dismissing Johnson’s claims under the doctrine of laches by unpublished ruling dated April 21, 2020.

C. ISSUES PRESENTED FOR REVIEW

Respondent agrees with the issue as presented by Appellant in their Petition for Review.

D. STATEMENT OF THE CASE

The McAuleys purchased the property that is the subject of Johnson’s claims in October 1994. Shortly after purchase, the McAuleys began constructing a residence and a barn and moved into the residence in 1995. The McAuleys then resided in their residence for the next 20 years.

Johnson purchased an adjacent property to the McAuleys in or about 1995. In 2007 Johnson built a residence on the property and moved into the residence in December that same year.

Johnson then served as President of a Homeowner's Association, of which both the McAuleys' and Johnson's properties were a part of from 2008 to 2012. Johnson filed the subject lawsuit against the McAuleys and the HOA on August 12, 2016.¹ Summary Judgment dismissal of Johnson's claims against the McAuleys was entered on January 19, 2018.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) states in relevant part:

A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Johnson argues that this case involves a conflict with a decision of the Supreme Court under RAP 13.4(b)(1).

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¹ Clerk's Papers 1-9.

1. THE COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH SUPREME COURT DECISIONS OR OTHER COURTS OF APPEAL.

Johnson's only argument is that the decision of the Court of Appeals is contrary to *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972). In his petition, Johnson strains to find a conflict where none exists. Johnson also fails to cite to more recent case law that sets forth the general elements of laches. In *Automotive United Trades Org v. State*, 175 Wn.2d 537, 542, 286 P.3d 377 (2012), the Supreme Court set forth the general elements of laches: "(1) inexcusable delay and (2) prejudice to the other party from such delay." (quoting *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 241, 88 P.3d 375 (2004)). Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them. *Buell*, 80 Wn.2d at 522. Laches is "a creature of equity." *Rutter v. Rutter's Estate*, 59 Wn.2d 781, 785, 370 P.2d 862 (1962). "Determining whether injury cognizable under the doctrine of laches occurs depends on assessing the inherent equities of a particular case." *Brost v. L.A.N.D., Inc.*, 37 Wn. App. 372, 376, 680 P.2d 453 (1984).

Johnson's petition ignores the sound reasoning and assessment of the inherent equities of this particular case exercised by the majority of the Court of Appeals panel. In the case at hand, the Court of Appeals

exercised its legal and equitable powers in denying Johnson's appeal. It correctly determined injury to the McAuleys by balancing the inherent equities in this particular case. The decision reached by the Court of Appeals is consistent with both *Automotive United Trades Org.* and *Buell*.

F. CONCLUSION

The Petition for Review does not identify any conflict with Supreme Court decisions. As such, it should be denied.

RESPECTFULLY SUBMITTED this 5th day of June, 2020.



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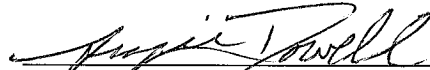
Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the state of Washington that on June 5, 2020, I filed the Response to Appellant's Petition for Review with the Washington State Supreme Court via the Appellate Court E-filing System at *Supreme@courts.wa.gov*. I will transmit a true and correct copy to the following:

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DATED this 5th day of June, 2020, at Olympia, Washington.


Angie Dowell, Paralegal

YOUNGLOVE & COKER

June 05, 2020 - 11:13 AM

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