

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: March 1, 2016)

V. GEORGE MITOLA and
CAROL A. MITOLA

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v.

C.A. No. PC 2015-1646

PROVIDENCE PUBLIC BUILDINGS
AUTHORITY

DECISION

TAFT-CARTER, J. Before this Court for decision is Petitioner V. George Mitola’s (Petitioner) Petition to Compel Purchase in Fee, pursuant to G.L. 1956 § 45-50-13(a)(5).

I

Facts and Travel

The history of this case dates back to 2005 when the Providence Public Buildings Authority (PPBA) sought the acquisition of the development rights of property owned by V. George Mitola and Carol A. Mitola.¹ The property is identified as Lot 1 on Parcel 38 of the maps of the Tax Assessor of Scituate, Rhode Island (the Property). The residential address is 21 Country View Lane, North Scituate, Rhode Island. See (Decision PC 2006-4391.) Pursuant to § 45-50-13(a)(6), the PPBA retained an appraiser to determine the fair market value of the development rights of the Property. (PC 2006-4391). By letter dated May 19, 2006, the Mitolas were notified of the appointment of an appraiser. See (Letter, PC 2006-4391). In that letter, the

¹ See Providence Public Buildings Authority v. V. George Mitola and Carol A. Mitola, PC 2006-4391 (R.I. Super. July 31, 2009); In re: Providence Public Buildings Authority Condemnation Under Rhode Island General Laws Section 45-50-13(a)(1) of the Development Rights in Lot 1 on Plat 38 of the Maps of the Tax Assessor of the Town of Scituate, Rhode Island, MP 2012-1293 (R.I. Super. 2012).

Mitolas were also requested to obtain an appraisal. The appraisal was completed by the PPBA and a Miscellaneous Petition was filed in the Superior Court on August 21, 2006 requesting that the Court compel the Mitolas to appoint an appraiser to complete the appraisal process set forth in § 45-50-13(a)(6). The Mitolas answered the complaint and pled a counterclaim alleging constitutional violations. This matter was heard on summary judgment and an Order entered denying the Mitolas' request for declaratory relief.

The PPBA filed a Petition requesting that the Court determine the sum of money that would satisfy the claims of all persons interested in the development rights and to issue an order allowing the PPBA to deposit the sum in the Registry of the Superior Court. (MP 2012-1293). On March 9, 2012, this Court determined that the sum of \$775,000 was sufficient to satisfy all claims of persons interested in the development rights of the land. The funds were deposited into the Registry of the Court on March 9, 2012.

Thereafter, the PPBA filed a Petition to Reduce the Deposit from \$775,000 to \$485,000, and it was granted. The Court concluded that \$485,000 was sufficient to satisfy all claims to the development rights. The Order contained the following statement: "Any person claiming an interest in the development rights in the land set forth above shall have three (3) months after receipt of personal service of this order to file a petition for an assessment of damages, in accordance with the provisions of R.I.G.L. 1956 § 45-50-13(e), as amended."

The Petitioner filed a Motion to Vacate and/or Modify Order of October 25, 2012 arguing that he did not receive notice of the motion to reduce the deposit. Affidavits were filed in support of the Motion. PPBA then filed a Motion for Summary Judgment.

The Petitioner objected to the Motion for Summary Judgment. The essence of the objection was failure to receive notice. On May 15, 2014, this Court issued an order relating to

the PPBA's Motion for Summary Judgment and the Petitioner's Motion to Vacate and/or Modify the Court's prior Order of November 1, 2012. A consent order was entered granting the Petitioner, among other things, the right to file a petition to assess damages within forty-five days after service.

On or about April 22, 2015, the Petitioner filed a petition for an assessment of damages in this Court. In the petition, the Petitioner claimed, *inter alia*, that he was not offered just compensation for the interest PPBA acquired in the Property. (Pet'r's Pet. for Assessment of Damages, PC 2015-1646, Apr. 22, 2015). PPBA responded. This Court entered a scheduling order on October 15, 2015. A trial date was set for December 7, 2015. (Pre-trial Order, PC 2015-1646, Oct. 15, 2015). On December 7, 2015, Petitioner filed the instant Petition to Compel Purchase in Fee pursuant to § 45-50-13(a)(5), seeking to have the PPBA acquire a fee simple interest in the Property. PPBA objects.

II

Analysis

A municipality may acquire land through eminent domain by establishing a building authority pursuant to § 45-50-2. The statute states: “[t]here is created in each city and town a body corporate and politic known as the municipal public buildings authority of the municipality, which is an instrumentality and agency of the city or town, but has a distinct legal existence from the city or town.” Sec. 45-50-2. Once established,

“(a) The authority has the right to acquire any land, or any interest in it, including development rights, by the exercise of the power of eminent domain

(1)(i) The power of eminent domain shall be exercised only within the boundaries of the city or town whose council established the authority, except that any authority in existence on the effective date of this chapter shall have the power to acquire, by exercise of

eminent domain, only the development rights, except as stated in subsection (a)(5), in the land described in the tax assessor's plats for the towns of Foster, Scituate, Johnston, and Glocester, as of February 14, 1989, for the purpose of protecting the water supply[.]" Sec. 45-50-13.

If an authority initiates proceedings to procure development rights in the land, the fee owner may notify the Court of his/her request that the authority take the fee simple interest in the property.

See § 45-50-13(a)(5). Section 45-50-13(a)(5) governs. In relevant part, the statute reads:

"(5) In the event the authority has initiated condemnation proceedings for development rights, the original affected owner may notify the authority and the superior court of his or her request that the authority take a fee simple interest in the land. Upon notification, the authority has the power to acquire the land in fee simple by the exercise of the power of eminent domain and shall exercise power to acquire a fee simple interest in the land." Sec. 45-50-13(a)(5) (emphasis added).

The issue presented to this Court is whether notification by the affected land owner to the authority and the Superior Court to acquire the land in fee is subject to a time limitation. The Court will first look to the statute.

Our Supreme Court has consistently stated that "[w]hen the statutory language is clear and unambiguous, [the court] give[s] the words their plain and ordinary meaning." Hough v. McKiernan, 108 A.3d 1030, 1035 (R.I. 2015) (quoting Nat'l Refrigeration, Inc. v. Capital Props., Inc., 88 A.3d 1150, 1156 (R.I. 2014)). Moreover, the "interpretation of an ambiguous statute 'is grounded in policy considerations and [the court] will not apply a statute in a manner that will defeat its underlying purpose.'" Id. (quoting Town of Burrillville v. Pascoag Apartment Assocs., LLC, 950 A.2d 435, 446 (R.I. 2008)). "It is an equally fundamental maxim of statutory construction that statutory language should not be viewed in isolation." In re Brown, 903 A.2d 147, 149 (R.I. 2006); see, e.g., Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 60 (2004) ("Statutory construction is a holistic endeavor") (internal citation omitted). Further, "[w]hen

construing a statute, [the] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” Mendes v. Factor, 41 A.3d 994, 1002 (R.I. 2012) (internal citations omitted). Therefore, “[the court] must ‘determin[e] and effectuat[e] that legislative intent and attribut[e] to the enactment the most consistent meaning.’” Id. (quoting Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011)). “Finally, under no circumstances will [the court] construe a statute to reach an absurd result.” Mendes, 41 A.3d at 1002 (internal citations omitted). Thus, if a mechanical application of a statutory definition “produces an absurd result or defeats legislative intent, [a] court will look beyond mere semantics and give effect to the purpose of the act.” State v. Delaurier, 488 A.2d 688, 694 (R.I. 1985).

When interpreting statutes granting municipal agents authority to acquire property through eminent domain, the statute will “be strictly construed against the condemnor.” See 3 Nichols, Eminent Domain (3d Ed.) s 9.2(1), p. 9-15; see also Laurel, Inc. v. Comm’r of Transp., 428 A.2d 789, 798, 180 Conn. 11, 31 (Conn. 1980). “Moreover, because eminent domain interferes with the fundamental right of private ownership of real property, any statute which allows a condemnor to take a person’s property must be strictly construed, giving the statute its plain interpretation, but favoring the person’s fundamental rights.” McCabe Petroleum Corp. v. Easement and Right-of-Way Across Tp. 12 North, Range 23 East, 87 P.3d 479, 483, 320 Mont. 384, 391 (Mont. 2004).

Here, PPBA commenced condemnation proceedings by filing a Miscellaneous Petition on May 19, 2006. Pursuant to the statute, the obligation of the affected property owner to notify the authority is at the point that the condemnation proceedings for development rights are initiated. See § 45-50-13(a)(5) (stating “[i]n the event the authority has initiated condemnation proceedings for development rights . . . the authority . . . shall exercise power to acquire a fee

simple interest in the land”) (emphasis added). In this matter, the PPBA initiated the proceedings on May 19, 2006. The Legislature intended to impose upon the PPBA a duty to acquire a fee simple interest in the Property, upon notification, after the proceedings are “initiated.” This intended purpose stems from the plain meaning of the term “initiated,” which means “started” or “begun.” See Black’s Law Dictionary (9th ed. 2009); see also Podborski v. William H. Haskell Mfg. Co., 109 R.I. 1, 8, 279 A.2d 914, 918 (1971) (stating “if the language [of the statute] is plain and unambiguous, and expresses a single definite and sensible meaning, that meaning is conclusively presumed to be the Legislature’s intended meaning and the statute must be interpreted literally”). By using the term “initiated” and including the prefatory language of “[i]n the event,” the Legislature seemingly intended to limit the obligation to situations where the authority has begun condemnation proceedings.

Here, the proceedings were effectuated and concluded on March 9, 2012, when the PPBA argued the development rights to the Property. The PPBA deposited the funds for the developmental rights in the registry of the court. Our Supreme Court has determined that “title passes for purposes of the establishment of a taking upon payment of compensation by the condemnor.” See Gorham v. Public Bldg. Auth. of City of Providence, 612 A.2d 708, 713 (R.I. 1992) (citing Kirby Forest Indus., Inc. v. United States, 467 U.S. 1, 11, 104 S.Ct. 2187, 2195 (1984)). The registry of the court is a receptacle for payments. See id. at 711 (finding, in an eminent domain proceeding, that the City’s deposit of \$2,637,500 into the court registry constituted payment). Therefore, title for purposes of the developmental rights passed on March 9, 2012.

Petitioner submits that this Court should interpret § 45-50-13(a)(5) to create an ongoing, mandatory obligation in the authority to acquire the land in fee simple throughout the course of

three (3) lawsuits. Ostensibly, the statute does not contain a time limit, and this Court cannot read into the plain words of the statute a legislative intent that is not expressed by the words therein. See Chambers v. Ormiston, 935 A.2d 956, 966 (R.I. 2007) (“[i]t is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might have written”) (internal citations omitted). However, to interpret the statute as imposing an ongoing duty with no sight of termination is against the “most consistent meaning” of the statute and creates an “absurd result.” See Mendes, 41 A.3d at 1002; see also Berman v. Sitrin, 991 A.2d 1038, 1043 (R.I. 2010) (stating “[o]ur obligation is to ascertain the legislative intent behind the enactment and give effect to that intent . . . [w]e are also mindful, however, that ‘under no circumstances will this Court construe a statute to reach an absurd result’”) (internal citation omitted). Because a “mechanical application of a statutory definition produces an absurd result,” this Court will “look beyond mere semantics and give effect to the purpose of the act.” See Delaurier, 488 A.2d at 694.

The purpose of § 45-50-13 is to give an affected landowner, upon petition to the Court, the opportunity to have his or her land taken by the PPBA in fee simple in the event condemnation proceedings have been initiated. See § 45-50-13(a)(5) (“the original affected owner may notify the authority”). This opportunity was not intended to last indefinitely, as the statute was designed to award fair compensation for land taken for public use, not impose an everlasting obligation at state expense. See Ocean Rd. Partners v. State, 670 A.2d 246, 253 (R.I. 1996) (stating “statutory-condemnation procedure was designed to award fair compensation for land taken for public use but was not intended to provide unjust enrichment to a condemnee at the expense of the state”). Petitioner had every opportunity to file the notification beginning in 2006 when the Petitioner was notified of the initiation of condemnation proceedings. From the

“initiation of condemnation proceedings” in 2006 through the acquisition of development rights, the Petitioner had multiple opportunities to file the notification. He failed, however, to do so until the eve of trial. See Pet. for Assessment of Damages, filed Apr. 22, 2015; Pre-trial Order, Oct. 15, 2015 (setting trial date for Dec. 7, 2015); Pet. to Compel Purchase in Fee, filed Dec. 7, 2015. Over the course of a decade, the Petitioner had the ability to access the Court to file the notification. To interpret the statute to allow such an unlimited time frame to file the notification is against the “most consistent meaning” of the statute and creates an “absurd result.” See Mendes, 41 A.3d at 1002.

The “most consistent meaning” of § 45-50-13 can be gleaned by reading the statutory provisions in relation to one another. See State v. Oliveira, 882 A.2d 1097, 1110 (R.I. 2005) (finding that courts should examine statutes in their entirety, and “glean the intent and purpose of the Legislature from a consideration of the entire statute, keeping in mind [the] nature, object, language and arrangement of the provisions to be construed”) (emphasis added) (internal citation and quotations omitted). Reading the provisions of § 45-50-13, based on their arrangement, reflects the order in which the various steps of a condemnation procedure should occur. First, there is an initiation of condemnation proceedings by an authority, and within that right there exists the ability of the affected owner to notify the authority to take the fee simple interest in the land See § 45-50-13(5). Next, each party conducts appraisals. See § 45-50-13(6)(i). Thereafter, the authority is required to submit an offer based upon the fair market value of the property or rights in the property. See § 45-50-13(6)(ii). The authority submits to the Superior Court a statement of the sum of money estimated by the authority to be just compensation for the land taken. See § 45-50-13(b). The Court determines an amount sufficient to satisfy the claims of all persons interested in the land, and the authority deposits that amount into the Court

Registry. See § 45-50-13(c). Finally, interest in the land vests in the authority. Id. Based on this arrangement, it seems logical that notification to the authority to acquire the land in fee simple must be made, at a minimum, prior to a final determination of the fair market value of the development rights of the property. See § 45-50-13(6)(i) (stating “[p]rior to the authority’s taking the actions [of an offer based on fair market value, depositing a sum of money in the Superior Court, vestment of title,] fair market value of the property or development rights are determined. . .”). Reading § 45-50-13, based on its sequence, assures that the statute has meaning most consistent with its policy or purpose and leads to the conclusion that the notification should have been filed before the conclusion of the issues in MP 2012-1293. See Benjamin v. Daneker, 73 R.I. 117, 53 A.2d 758 (1947) (stating “legislative enactment [should be given] what appears to be its plain and ordinary meaning [consistent with its policy or obvious purpose] and not a forced and unusual construction”).

Interpreting the statute to contain limitation for the filing of the notification is consistent with similar interpretations made by our Supreme Court. See Reitsma v. Pascoag Reservoir & Dam, LLC, 774 A.2d 826 (R.I. 2001). In Reitsma, our Supreme Court stated, “the premise that no statute of limitations bars the constitutional right of every property owner to obtain just compensation for the government’s taking of the owner’s property . . . garners no support from the relevant cases of the United States Supreme Court on this subject.” Id. at 838 (citing Soriano v. United States, 352 U.S. 270, 271, 77 S.Ct. 269, 270 (1957) (applying six-year statute of limitations in inverse condemnation suit). In Reitsma, where there was no statute of limitations for inverse condemnation actions, our Supreme Court applied the state’s statutory period for adverse possession. Id. The Court reasoned that even where a landowner has a claim against the state, the claim will lapse if the landowner fails to assert it in a timely manner. Id. at 837 (“even

assuming [there were viable claims] . . . such claims long ago would have lapsed because of the owners' failure to initiate a timely action asserting such claims"). Here, as in Reitsma, there is no time limitation for a petition under § 45-50-13(5). However, even assuming that this Court were to apply the statutory period for adverse possession, Petitioner's ability to file a petition pursuant to § 45-50-13(5) would have expired in 2012, six years after he was notified of the initiation of condemnation proceedings. See Resp't's Limited Obj. to Pet'r's Pet. to Compel Purchase in Fee, at 1.

Similarly, in Zeilstra v. Barrington Zoning Bd. of Review, 417 A.2d 303 (R.I. 1980), our Supreme Court interpreted § 45-24-16, which permitted landowner appeals to the respective city or town's zoning board of review. The statute did not provide a time limit for filing appeals but stated that appeals shall be taken "within a reasonable time as provided by the rules of the board." Id. at 307-08. The Supreme Court determined that because neither the statute nor the Barrington Board of Review had set a time limit for filing appeals, the determination of the "timeliness of . . . appeal" must depend upon the particular facts of the case. Id. (internal citations omitted.) The Court stated that "[a] reasonable time for the appeal . . . began to run when [the landowner] became chargeable with knowledge of the decision from which he [or she] sought to appeal." Id. The Court found that based on the facts of the case, a one month time frame—the landowner became aware of the appealable issue in July of 1976 and took action in August of 1976—was reasonable. Here, Petitioner knew of these proceedings for approximately ten years. This ten years is well beyond the six-year statute of limitations applied in Reitsma and the "reasonable" one month time frame applied in Zeilstra. Both Reitsma and Zeilstra establish the necessity for setting a "reasonable time-frame" for bringing a claim where the applicable statute is silent as to timeliness and lead to the conclusion that ten years is unreasonable.

Including a reasonable limitations period for property actions is a well-established principle recognized in other states as well. See In the Matter of the Application of Cooper, Mayor, 93 N.Y. 507, 511 (N.Y. App. 1883). In Cooper, after the initiation of a condemnation proceeding, a landowner participated in securing an appraisal of his property. Id. After the appraisal, he questioned the proceedings, claiming that there had been a failure to comply with certain statutory provisions. Id. The court held that if his claims “had any merit and he intended to rely upon them, it was his clear right and duty to bring them forward at the first opportunity.” Id. at 511-12. The court noted that the landowner participated in the appraisal and valuation of his property and therefore intelligently and efficiently dealt with the matter and consented to the order. The court determined the landowner was estopped from bringing his claim, stating “a party may waive a statutory and even a constitutional provision made for his benefit, and that having once done so he cannot afterward ask for its protection.” Id. at 512; see also Pennichuck Corp. v. City of Nashua, 152 N.H. 729, 735-36, 886 A.2d 1014, 1021 (N.H. 2005) (stating “[h]ere, we presume the legislature intended not to include a time limitation for filing a condemnation petition . . . where the legislature has provided a time limitation for what constitutes a reasonable time in a substantively analogous situation, such a time limitation ‘will prove a fair guideline as to what constitutes a reasonable time’”) (emphasis added).

Again, in Root v. Providence Water Supply Bd., 850 A.2d 94 (R.I. 2004), our Supreme Court faced a “substantively analogous situation.” In Root, the City’s public building authority, which exercised its eminent domain power to take certain private property and then conveyed that property to the water supply board to use for conservation purposes, was liable for any damages that the easement owners incurred because of the taking. Id. at 100. Our Supreme Court found that the easement owners possessed an adequate legal remedy against the public

building authority; however, it was the owners' duty to pursue their remedy within the one-year time limitation set forth in the governing statute, § 45-50-13(e). Id. at 102. The Court held that the owners' failure to pursue their remedy within the one-year time limitation barred them from recovery. Id. Although not square with the within matter, Root addresses a "substantially analogous situation," and therefore, the one-year time limitation "prove[s] a fair guideline as to what constitutes a reasonable time." See Pennichuck, 152 N.H. at 735-36, 886 A.2d at 1021; see also Whitehouse v. Town of Sherborn, 11 Mass. App. Ct. 668, 671, 419 N.E. 2d 293, 295-96 (1981) (stating "[t]he establishment of a reasonable limitations period for actions arising out of takings of land . . . is a matter entrusted to the discretion of the Legislature . . . these statutes place the initiative on the landowner, once he receives notice of the taking, to press his challenge to the validity of the taking or his claim for damages").

Moreover, and equally applicable here, is the equitable defense of laches. Laches is "an equitable defense that precludes a lawsuit by a plaintiff who has negligently sat on his or her rights to the detriment of a defendant." O'Reilly v. Town of Glocester, 621 A.2d 697, 702 (R.I. 1993) (citing Fitzgerald v. O'Connell, 120 R.I. 240, 245, 386 A.2d 1384, 1387 (1978)). A "stale claim" to be barred by laches is one that is asserted after an "unexplained delay of such great length as to render it difficult or impossible for [a] court to ascertain the truth of the matters in controversy and do justice between the parties . . . or as to create . . . a presumption that [the claim] has been abandoned or satisfied." Lombardi v. Lombardi, 90 R.I. 205, 209, 156 A.2d 911, 913 (1959).

In terms of legal significance, laches "is not mere delay, but delay that works a disadvantage to another." Chase v. Chase, 20 R.I. 202, 203-04, 37 A. 804, 805 (1897). Because it is equitable in nature, the applicability of the defense of laches in a given case generally rests

within the sound discretion of the trial justice. See id. When confronted with a defense of laches, a trial justice “must apply a two-part test: ‘[f]irst, there must be negligence on the part of the plaintiff that leads to a delay in the prosecution of the case.’” Clearly there was delay sufficient to constitute negligence in the failure to file the notification herein. “Second, this delay must prejudice the defendant.” Hazard v. East Hills, Inc., 45 A.3d 1262, 1270 (R.I. 2012). “There is no hard and fast rule for determining what constitutes sufficient prejudice to invoke the doctrine of laches.” Id. at 1271. (citing Fitzgerald, 120 R.I. at 249, 386 A.2d at 1389). What constitutes prejudice “must depend upon the circumstances of each particular case.” Id. In Gaglione v. Cardì, 120 R.I. 534, 388 A.2d 361 (1978), our Supreme Court found that a dramatic rise in the value of a piece of property, coupled with an unexplained delay in bringing suit, made the case a proper one for invoking the doctrine of laches. Id. at 365. Another example of prejudice that has supported the defense of laches is the use of money to construct improvements on property. See Fitzgerald, 120 R.I. at 248, 386 A.2d at 1388 (finding the loss of evidence, change of title, death of a key witness, or the use of money to construct improvements on property to support the defense of laches). Thus, where an “unexplained and inexcusable delay has the effect of visiting prejudice on the other party[,]” the defense of laches may be successfully invoked. See Gaglione, 120 R.I. at 540, 388 A.2d at 364.

The defense of laches is equally appropriate here. Petitioner filed the instant Petition to Compel Purchase in Fee on December 7, 2015—almost three years and nine months since the date that the PPBA had acquired development rights in the Property. Petitioner’s eleventh-hour Petition is not a “mere delay” but an inexcusable delay that is to the detriment of the PPBA. See Rodriques v. Santos, 466 A.2d 306, 311 (R.I. 1983) (declaring that “time lapse alone does not

constitute laches,” but that laches may be invoked when there is an unexplained and inexcusable delay that caused the other party prejudice).

The Petitioner explained that the delay in filing the notification was due to an attempt to enhance the value of his Property. This argument is unavailing. See Hazard, 45 A.3d at 1271 (“it [is] incumbent upon the plaintiff to come forth with a fair explanation of the reason for the delay”). The fact that Petitioner did not fully comprehend the effect of the taking, until three years after the taking, is no reason for delay. Id.; see also Chase, 20 R.I. at 203–04, 37 A. at 805 (“when a court sees negligence on one side and an injury therefrom on the other it is a ground for denial of relief”).

The Petitioner had the ability to discover this enhancement between May 19, 2006, when the condemnation proceedings were initiated, and March 9, 2012, when the development rights were acquired by PPBA. Furthermore, Petitioner had the opportunity to conduct discovery from June 15, 2015, until October 15, 2015; at any point before October 15, 2015, Petitioner could have discovered the extent of his rights. Petitioner failed to diligently attend to his claim and cannot benefit from sitting on his rights. See Benner v. J.H. Lynch & Sons, Inc., 641 A.2d 332, 338 (R.I. 1994) (stating “[a] potential plaintiff is under an affirmative duty to investigate diligently a claim and is not allowed to use the discovery rule to postpone indefinitely the running of the statute of limitations); see also Mills v. Toselli, 819 A.2d 202, 205 (R.I. 2003) (stating “[t]he heart of the discovery rule is that the statute of limitations does not begin to run until the plaintiff discovers, or with reasonable diligence should have discovered, the wrongful conduct of the defendant”) (internal citation and quotation omitted).

If this Court were to allow the Petition, PPBA would suffer prejudice. The value of the Property would not be the same as it was ten years ago. PPBA would have to reappraise the

Property, account for interest, incur additional costs, and, most significantly, PPBA would have to alter the theory of their damages case on the eve of trial. See Davidian v. County of Nassau, 175 A.D.2d 908, 910, 573 N.Y.S.2d 525, 526 (1991) (stating “the proposed amendment would clearly result in undue prejudice to the defendants by inserting a new theory of recovery into the case on the eve of trial”); see also Harvey v. Sec. Servs., Inc., 148 Mich. App. 260, 266, 384 N.W.2d 414, 417 (1986) (finding prejudice where an amendment “substantially changes the theories involved that the defendant will have to defend against. It is a material change in the case; it is on the eve of trial”); Licciardi v. TIG Ins. Grp., 140 F.3d 357, 366 (1st Cir. 1998) (stating “[w]e think it is beyond dispute that an eleventh-hour change in a party’s theory of the case can be as harmful as the introduction of new expert testimony on the eve of trial, perhaps more harmful, from the standpoint of his adversary”) (internal citations omitted). Consequently, the defense of laches succeeds here where Petitioner’s inexcusable delay in filing this Petition prejudices PPBA.

Although the Legislature likely intended to strike a balance between the governmental power of eminent domain and the fundamental rights of private ownership of real property, it did not contemplate that the authority’s obligation would continue for an indefinite amount of time. Petitioner maintains that there is no limitation on the PPBA’s obligation and it is his statutory right to Petition that the land be taken in fee simple. Although the Petition is within Petitioner’s statutory right, it was incumbent on Petitioner to bring this claim as soon as possible, or come forth with a fair explanation for the delay. See Hazard, 45 A.3d at 1271. Petitioner failed to bring this claim within the nine years that he was on notice and has not provided this Court with a fair explanation for the delay. Bringing this claim now recommences the land evaluation process because acquisition of the Property in fee simple would require the PPBA to reassess the

value of the Property, summon appraisers to the Property, and calculate interest. See Peckham v. Barker, 8 R.I. 17 (1864) (finding that an unexplained delay of four years will be fatal where the rental value of the premises has been enhanced); see also Schroeder v. Schlueter, 85 Ill. App. 3d 574, 576, 407 N.E.2d 204, 206 (Ill. 1980) (stating “a marked appreciation or depreciation in the value of the property which is the object of controversy, such that the granting of relief would itself work an inequity, is evidence of injury or prejudice justifying the invocation of laches”). Besides the prejudice PPBA would suffer as a result of the expenditure, PPBA would certainly suffer undue prejudice because the Petition inserts a new theory into this case on the eve of trial.

III

Conclusion

Therefore, although the Legislature intended to create an obligation in the PPBA to exercise its power of eminent domain to acquire Petitioner’s Property in fee simple, it did not intend for the obligation to last indefinitely. The Petition to Compel Purchase in Fee is denied. Counsel should submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Mitola v. Providence Public Buildings Authority**

CASE NO: **PC 2015-1646**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **March 1, 2016**

JUSTICE/MAGISTRATE: **Taft-Carter, J.**

ATTORNEYS:

For Plaintiff: **Thomas E. Romano, Esq.**

For Defendant: **Thomas C. Angelone, Esq.**