EQUITY

Where it becomes apparent that claims of creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 581 (Pon. 1988).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM R. 95, 120 (App. 1989).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM R. 147, 156 (Kos. S. Ct. Tr. 1991).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Courts may consult foreign sources about equitable principles when there is no applicable Micronesian authority on point. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 n.3 (App. 1996).

The clean hands doctrine has been expressed in the language that he who has done inequity shall not have equity. A maxim which is closely related to, and which has been described as a corollary of, the clean hands maxim is where the wrong of the one party equals that of the other, the defendant is in the stronger position. On the other hand, one whose wrong is less than that of the other may be granted relief in some circumstances. Senda v. Semes, 8 FSM R. 484, 500 (Pon. 1998).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

One who would seek the benefit of equitable relief must himself demonstrate that he has done equity, or that he has clean hands. Obversely stated, he who has done inequity shall not have equity. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

When a defendant has unprofessionally refused to comply with the plaintiffs' discovery requests without any justification for doing so, in the limited context of discovery proceedings, its hands are unclean and it is in no position to make a case under rescission or other equitable principle. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A court exercising equity jurisdiction has plenary power to fashion an order in such a manner as to recognize and maintain the equities of the parties involved. The relief granted in equity is dictated by the equitable requirements of the situation at hand and must be adapted to the facts and circumstances of each particular case. More simply stated, the underlying

concept is the prevention of injustice, when a legal remedy may not be available to a party because of a technicality. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

The exercise of equity is justified for the court to order the return of a unique pocketknife to the plaintiff when that unique item is not available for purchase on Kosrae. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

If all the parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

"Equity" describes a specific set of legal principles used in countries that follow English common law. At one point in history, courts of law and courts of equity (also called courts of chancery) were separate systems with jurisdiction over different types of cases, having different procedures and offering different remedies. Over time, particularly in the United States, courts merged into a unified jurisdiction where an action at law and a suit in equity became less distinct. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

An equitable remedy: 1) cannot take cognizance of any case wherein the common law can give complete remedy; 2) cannot interpose in any case against the legislature's express letter and intention since if the legislature means to enact an injustice, however palpable, the court of equity is not the body with whom a correcting power is lodged; and 3) shall not interpose in any case which does not come within a general description and admit of redress by a general and practicable rule. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

An equitable remedy does not apply unless: 1) there is no adequate remedy at law; 2) it does not conflict with any statute; and 3) it rests on existing legal obligations (it does not create a new obligation or duty where none existed before) and follows legal precedent. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Equitable relief is not generally necessary for a court to resolve disputes relating to title because establishment of title is available by law. This is true for the Kosrae Land Court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

A complex record that takes time to assess, is not normally grounds to rely on equity. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

A court must make its findings and show it is relying on substantial evidence even if using equitable jurisdiction, because an order must be based on sufficient evidence. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The equitable doctrine of unjust enrichment, a theory applicable to implied contracts, operates in the absence of an enforceable contract and this principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one party should not be allowed to enrich himself at another's expense. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

Since the defenses of laches, estoppel, and waiver generally require certain factual determinations about a party's acts or omissions, when those facts have not been established, there is an insufficient factual basis on which to grant a movant summary judgment on these defenses. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

When the defendant built family residences on part of the land and has occupied them at least since sometime in the early 1990s, requiring such longtime occupants to change residence and rebuild elsewhere and take compensation for the houses is burdensome. Equity would not favor giving the plaintiff the choice of paying the defendant for his houses instead of the defendant paying for the land. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

Courts of equity are not bound to give any stereotyped form of relief. They readily and easily adapt themselves to the parties' situation and to the facts of the particular case, and may make such decrees as effectuate justice. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

When the parties had agreed to a land exchange and the defendant has built houses on the land he received but the plaintiff did not receive any land because the defendant did not have the land to exchange, instead of returning the land to the plaintiff and having the plaintiff pay the defendant the value of the houses the defendant built the most equitable remedy (and the easiest for the court to fashion) is monetary compensation to the plaintiff for the value of the land that he did not receive in an exchange agreement that provided that he was to receive in exchange land of an equal amount to the land transferred to the defendants. To effectuate justice, the defendants should pay the plaintiff the value of the land the defendants received. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

If both parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Unclean hands is an equitable defense that can be used against actions in equity, but not in actions at law. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 477 (Pon. 2020).

– Estoppel

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine may apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Etpison v. Perman, 1 FSM R. 405, 417 (Pon. 1984).

The doctrine of equitable estoppel does not apply when a party claiming to have been misled was aware of the facts which he insists the other party should have told him or when the first party could reasonably have been expected to learn those facts. Etpison v. Perman, 1 FSM R. 405, 417 (Pon. 1984).

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Equitable estoppel should be applied to governments in the Federated States of Micronesia where this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. KCCA v. Tuuth, 5 FSM R. 118, 120 (Pon. 1991).

A party may sometimes be precluded by his act or conduct from asserting a right which he otherwise would have had. When a party has failed to assert its rights over a long period of time, and another party has relied on this non-assertion, the first party may be estopped from asserting those rights now. NIH Corp. v. FSM, 5 FSM R. 411, 414 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. NIH Corp. v. FSM, 5 FSM R. 411, 415 (Pon. 1992).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM R. 152, 157-58 (App. 1995).

The affirmative defense of estoppel requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment. There can be no estoppel where there is no loss, injury, damage, detriment, or prejudice to the party claiming it. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65-66 (Chk. 1997).

Defendants are not likely to prevail on counterclaims of promissory estoppel when it does not appear that they relied on the plaintiff's promise to their detriment. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997).

One of the necessary elements of equitable estoppel is that the party to be estopped must have had knowledge, actual or constructive, of the real facts. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

When estoppel serves as the basis for a plaintiff to file a breach of contract claim and that contract claim has been time barred, the plaintiff's estoppel claim is also barred. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Where no contract exists, the court may use its inherent equity power to fashion a remedy under equitable doctrines. The doctrine of promissory estoppel allows enforcement of promises that induce reliance. The doctrine of promissory estoppel, also referred to as detrimental reliance, is summarized as: A promise which the promisor should reasonably expect to induce action on the part of the promisee, and which does induce such action, is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

When the plaintiff relied upon the defendant's promise to let him use the land to build his

house, and the defendant should have reasonably expected the plaintiff to take action on this promise, such as obtaining financing through a loan, leasing equipment, and purchasing materials and labor to build his house, and when the plaintiff did in fact rely upon the promise and took action to secure financing through a loan, the doctrine of promissory estoppel is applicable and the promise is enforceable. Justice requires the enforcement of the promise and the plaintiff is entitled to recover the amount expended in reliance of his promise, based upon the doctrine of promissory estoppel. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Evidence that, sometime before defendant's marriage, the plaintiff did have some limited intimate contact on one occasion with the woman who later became the defendant's wife, does not serve as a defense to the plaintiff's claim of unjust enrichment and to recover restitution for the defendant's stopping construction of the plaintiff's house. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A defendant would be estopped from raising an illegality of contract as a defense to a negligence claim when as the other party to the allegedly illegal contract he had the benefit of it. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Estoppel in pais is defined as the doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. But a plaintiff is not equitably estopped from challenging the Office of Economic Affairs's authority to conduct a trochus harvest because any past acquiescence to the Office's authority does not alter the Office's powers and duties vested in it by Pohnpei state law when, as a matter of law, the Office's activities with regard to the trochus harvest were illegal. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

Estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

A plaintiff's effort to induce a driver to claim that he was not intoxicated at the time of the accident, makes it unlikely that the plaintiff will be successful in any attempt to rely upon

equitable doctrines in the litigation, especially when it cannot be said that no genuine issue of material fact exists, and that on the basis of estoppel the plaintiff is entitled to judgment as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

Detrimental reliance is subsumed within estoppel. A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191-92 (Pon. 2006).

Equitable estoppel is (and should be) applied to governments in the FSM when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. But a party asserting equitable estoppel against the government must prove more than is required when it is asserted against a private entity. The government may not be estopped on the same terms as any other litigant. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

Another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. "Affirmative misconduct" has never been clearly defined by any court. This much, however, is clear. The misconduct complained of must be "affirmative," which indicates more than mere negligence is required. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

"Detrimental reliance" requires, at the very least, that a party has changed its position for the worse as a consequence of the government's purported misconduct. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

When the defendant affirmatively signed a Letter of Commitment that it would issue the plaintiff a permit to purchase the first 60 metric tons of shell from the Pohnpei reefs during each annual trochus harvest and made other promises or representations that there would be a trochus harvest and the plaintiff reasonably relied upon these representations that there would be a trochus harvest and, until it finally stopped business in 1998, kept employees on so that it would be ready to go back into the trochus button business, the defendant is liable. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

The doctrine of detrimental reliance is summarized as a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee, and which does induce such action or forbearance is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. In other words, when a person justifiably and reasonably relies on a promise, then the promise will be enforced if it is the only way to avoid injustice. Siba v. Noah, 15 FSM R. 189, 195-96 (Kos. S. Ct. Tr. 2007).

When the plaintiff performed his part of the agreement by providing goods and cash to the a

defendant believing the boundary of his land would be extended and he timely filed a subdivision request with the Land Commission and completed building a house on the land, in expectation of receiving title; when the defendant accepted the goods and cash and another defendant received title to the land from that defendant and others, including the portion the plaintiff was to receive; and when the other defendant accepted title to both parcels, but knew that the plaintiff was entitled to a portion of the land and had requested the subdivision, applying the doctrine of unjust enrichment, the other defendant has been unjustly enriched at the plaintiff's expense. To end the other defendant's unjust enrichment, the remedy is to issue title to the plaintiff for the portion of the land he was to receive in 1987 and leave title to the remaining land with the other defendant. An application of the doctrine of detrimental reliance affords the same remedy. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

Under the doctrine of equitable estoppel, or estoppel in pais, a person may sometimes be precluded by his act or conduct or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine applies only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. The equitable estoppel doctrine should be applied to Federated States of Micronesia governments when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. FSM v. Katzutoku Maru, 15 FSM R. 400, 403-04 (Pon. 2007).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it or when the party claiming to have been misled was aware of the facts which he now insists the other party should have told him, or could reasonably have been expected to learn the facts. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

Detrimental reliance is subsumed within estoppel. A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are sometimes referred to collectively as "detrimental reliance." Detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

When there is no evidence before the court that, if it were not for the employer's maintaining life insurance for the employees, the employee would have either quit his job and taken a job with a different employer that provided life insurance benefits or that he would have purchased his own life insurance policy from another source, the employee's widow cannot recover on a promissory estoppel or detrimental reliance theory since she cannot show that the employee relied on the employer's alleged promise to provide life insurance and her mere assertion, first made in her closing argument, that had they known they might have found another policy is insufficient to prove reliance. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

Collateral estoppel prevents the land claimants from disputing, in this appeal, the existence of a *kewosr* transfer because collateral estoppel bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one, and the court's 1997 decision between the same parties precludes the claimants from arguing that no *kewosr* transfer occurred or that the land could not have been transferred by *kewosr*. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed, and to claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. But a party asserting equitable estoppel against a government must prove more than is required when it is asserted against a private entity because the government may not be estopped on the same terms as any other litigant since another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When Actouka relied on Chuuk's promises that the premium payments would be forthcoming and advanced the premium to keep the policy in force and it was reasonable for Actouka to rely on Chuuk's promise (especially in 1996) because Chuuk had always paid late in previous years (1988-95) and Chuuk should have expected that Actouka would keep the policy in force based on past performance and course of dealing; when enforcement of the promise would avoid the injustice that Actouka had to advance payment to keep the policy in force for the other governments operating FSM-owned ships and when Chuuk's affirmative misconduct was its misleading communications to Actouka that the premium money was available and that Actouka would be paid soon, equitable estoppel and detrimental reliance may apply. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

The running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations – for instance, a defendant would be estopped from raising a statute of limitations defense when, by his wrongful conduct, he induced the plaintiff not to sue until the statute of limitations had run out. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk.

2012).

An estoppel and waiver affirmative defense requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment, but there can be no estoppel when there is no prejudice to the party claiming it. Tarauo v. Arsenal, 18 FSM R. 270, 273-74 (Chk. 2012).

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had, and this equitable doctrine will apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

A party seeking to invoke the equitable estoppel doctrine must prove that 1) another party made representations or statements; 2) the party reasonably relied upon the representations; and 3) the party will be harmed if estoppel is not allowed. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

One essential element of equitable estoppel so far as the party to be estopped is concerned, is that he should have intended, or at least expected, that his conduct on which it is sought to predicate the estoppel should be acted upon by the other party or by other persons. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The burden of proof is on the party alleging and relying on estoppel. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Equitable estoppel is based on fraudulent conduct or fraudulent result. One must knowingly take a position with intention that it be acted upon, and reliance thereon by another to his prejudice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The application of the doctrine of equitable estoppel generally requires an express representation made by the party estopped and relied upon by another party who changes his position to his detriment. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Since estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation, a defendant cannot prevail on this defense when it behaved improperly by cashing checks made out to the plaintiff without the plaintiff's express authorization and when it did not reasonably rely on any statement by the plaintiff. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Equitable estoppel has been defined simply as the familiar principle that where one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss, must sustain it. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

When the defendants must show detrimental reliance on the plaintiffs' waiver of exclusive possession of a town lot in order to establish the affirmative defense of equitable estoppel, the

defendants' argument that burying a family member on the property in 2002 constituted detrimental reliance must fail because burying the family member on the property did not change the defendants' position to their detriment, and they fail to demonstrate that they buried him in reliance on the waiver from the plaintiffs. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

To claim promissory estoppel a party must prove that: 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3) and 4) are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A plaintiff's claim under a promissory estoppel and detrimental reliance cause of action is supported when the plaintiff has timely paid the insurance premiums since 1996; when her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage; when she expected that, as an insured, that the insurer's agents would provide her with accurate and reliable information about the policies, which would include when a dependent is no longer covered and what steps to take when coverage has ceased; when the insurer did not fulfill these expectations, to the detriment of her and her dependents; and when, if the insurer had properly advised her, she would have had the opportunity to take out a separate cancer policy for her daughter and her daughter would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359-60 (Pon. 2014).

A claim that since the property is part of the late patriarch's estate and the state probate proceeding is still pending, the real property still belongs to this decedent, is belied by the fact that the decedent died on August 23, 1997, yet this did not prevent the defendants from pledging the property as collateral for a December 22, 1997 loan, or prevent, after the corporation's formation on October 20, 2004, the administratrix of this decedent's estate and the corporation's chairperson/president from notifying the bank on November 2, 2004, of the corporation's ownership of the subject real estate and businesses. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103-04 (Chk. 2015).

A corporation, by having accepted the benefit of the contract, may be estopped to deny an officer's authority to act on its behalf. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are usually referred to collectively as "detrimental reliance," and detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. A finding of detrimental reliance does not depend upon finding any agreement or consideration. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

When the supposed "promise" might better be characterized as a careless misrepresentation, the plaintiff has failed to prove one of promissory estoppel's four elements. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Estoppel constitutes a doctrine which may be only be invoked by parties who themselves have acted properly concerning the subject matter of the litigation, and is a doctrine by which a person may be precluded by his act or conduct or silence, when it is his duty to speak. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 510 (App. 2016).

When, during a span of four plus years, the judgment debtors never even hinted that subject-matter jurisdiction was an unsettling issue and acquiesced to the trial court's rulings and implied a recognition of the judgment, the venerable legal concept of equitable estoppel applies since the judgment creditor relied on that conduct or more appropriately, lack thereof. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Intentional misrepresentation, negligent misrepresentation, and promissory estoppel all contain elements of detrimental reliance. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 n.11 (Pon. 2017).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 179 (Pon. 2017).

Since no estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it, and since the employee cannot show that his employer's alleged promise to him in 2008 was made with the intention that he take out a substantial home construction loan some three years later, (or some other action of a similar nature), his promissory estoppel claim must fail. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 179 (Pon. 2017).

If an importer, correctly reporting the types, quantities, and values of the dutiable goods,

were to prove that it was affirmatively misled by customs officials to understate the amount of duty due, it may have an equitable estoppel claim against the government. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 (Chk. 2018).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The doctrines of laches and estoppel are closely allied. Laches is a form of equitable estoppel based on an unreasonable delay by a party in asserting a right. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

While laches focuses on the reasonableness of the plaintiff's delay in suit, equitable estoppel focuses on what the defendant reasonably has been led to believe from the plaintiff's conduct. While laches requires the passage of an unreasonable period of time in filing suit, estoppel does not. While estoppel requires reliance, laches generally does not. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

When there was no evidence, particularly undisputed evidence, that the plaintiffs' conduct led the defendants to reasonably believe or to rely on that conduct, summary judgment on an estoppel defense was inappropriate because a determination of estoppel generally involves questions of fact. Alik v. Heirs of Alik, 21 FSM R. 606, 622-23 (App. 2018).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Because an action on a judgment is an action at law, the equitable defense of laches is not available as a matter of law. The same is true for an estoppel defense. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

A helicopter owner will be estopped from asserting that the U.S. lacked jurisdiction or authority over the helicopter that it had registered with the U.S., and from asserting that it did not have to comply with the U.S.'s applicable regulations or U.S. aviation law. It should not now be able to assert that the U.S. has no jurisdiction over its helicopter when it registered that helicopter with the U.S. and maintained its U.S. registration thereafter and derived whatever benefits that the U.S. registration afforded. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

While it is true that parties cannot confer or divest a court of jurisdiction by stipulation or by assumption, a helicopter buyer who had to register that helicopter somewhere (some country) and chose to register it in the U.S., will be estopped from denying the U.S.'s regulatory authority over its helicopter. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

Equitable estoppel (and unclean hands) is based on the other party's alleged misrepresentation or misconduct, this ground for relief can only be sought through Rule 60(b)(3), and that rule, as noted above, has a one-year absolute time limit, and that time limit expired four and a half months before the defendant filed his motion. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594-95 (Kos. 2020).

– Laches

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Laches is a tool courts use to limit a party's rights when they have not been timely asserted, such that it is unfair for the court to now redress them. The period of time may be less than the statutory limitations period and each case must be judged on a case by case basis for fundamental fairness. Palik v. Kosrae, 5 FSM R. 147, 155 (Kos. S. Ct. Tr. 1991).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM R. 335, 337-38 (Pon. 1992).

The elements of the equitable defense of laches include, at a minimum, inexcusable delay or lack of diligence by the plaintiff in bringing suit, and injury to the defendant from the plaintiff's inaction. For the delay to have been inexcusable, the plaintiff has to have known or had notice of the defendant's conduct giving rise to the cause of action and had an opportunity to bring suit. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 185-86 (Pon. 1993).

The equitable defense of laches is not available to a defendant who has not shown inexcusable delay by the plaintiff in bringing suit and injury to the defendant as a result. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 186 (Pon. 1993).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of defendant's conduct giving rise to plaintiff's cause of action, and had prior opportunity to bring suit. Nahnken of Nett v. United States (III), 6 FSM R. 508, 522 (Pon. 1994).

Where the plaintiff did know or should have known of defendants' claims for at least a decade, defendants should not have to be hauled into court to relitigate issues decided over ten years before because it is prejudicial to the defendants who had a reasonable right to assume that the TT High Court appellate decision had closed the matter in 1982. Nahnken of Nett v. United States (III), 6 FSM R. 508, 523 (Pon. 1994).

Although the doctrine of laches cannot be asserted against government land, where suit is prosecuted in the name of a government by a private individual laches may apply as a bar. Nahnken of Nett v. United States (III), 6 FSM R. 508, 523 (Pon. 1994).

The doctrine of adverse possession is unrelated to the defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 n.8 (Pon. 1995).

The two elements to a laches defense are inexcusable delay or lack of diligence by a

plaintiff in bringing suit, and injury or prejudice to the defendant from the plaintiff's delay. Inexcusable delay exists when plaintiff knew or had notice of the defendant's conduct which gave rise to plaintiff's cause of action, had an opportunity to bring suit, but failed to do so. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 (Pon. 1995).

The determination whether a plaintiff's delay in bringing suit is sufficient to justify the application of laches is made on a case by case basis. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 178 (Pon. 1995).

Where plaintiff inexcusably waited fifteen years after accrual of cause of action and prejudiced the state by allowing it to make substantial costly improvements the doctrine of laches will bar plaintiff's claims. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 178 (Pon. 1995).

The doctrine of laches may not be used as a defense against the government in an action brought by the government, but may be used as a defense by the government against a suit brought by a private party. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 179 (Pon. 1995).

A party whose conduct regarding the subject of the litigation is unconscionable, or its actions constitute deceit, fraud, or misrepresentation has unclean hands and thus may not invoke the equitable defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 180 (Pon. 1995).

The equitable defense of laches and the statute of limitations are neither synonymous nor mutually exclusive. Unlike statutes of limitation, which forever bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet expired. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 181 (Pon. 1995).

Laches and the statute of limitations are two different defenses. The statue of limitations defense has only one element – the passage of a specific statutory amount of time while the equitable defense of laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Laches is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the exercise of a sound discretion by the trial court. But whether, in view of the established facts, relief is to be denied–that is, whether it would be inequitable or unjust to the defendant to enforce the complainant's right–is a question of law. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

In order for a plaintiff to be charged with inexcusable delay or lack of diligence the plaintiff must have had knowledge of the facts that gave rise to his claim. Ordinarily, actual knowledge

on the part of the complainant is necessary in order to charge him with laches. However, knowledge may in some circumstances be imputed to him by reason of opportunity to acquire knowledge, or where it appears he could have informed himself of the facts by the exercise of reasonable diligence, or where the circumstances were such as to put a man of ordinary prudence on inquiry. Ordinary prudence depends on the particular circumstances of the case. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

A plaintiff inexcusably delays in bringing suit when he was aware of or should have been aware of, the state's control and use of the land that had not been given over to his control and for which he had received no payment for at least fifteen years during which he could have brought suit against the state or its predecessor in interest. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

Delay alone does not constitute laches. Even lengthy delay does not eliminate the prejudice prong of the laches test, but the longer the delay the less need there is to show, or search for, specific prejudice, and the greater the shift to the plaintiff of the task of demonstrating lack of prejudice. The test of laches is prejudice to the other party. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Generally, a party who has failed to act properly – a party who has "unclean hands" – cannot invoke an equitable doctrine such as laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Where public lands are involved laches cannot be used as a defense against the government, but the government may use laches as a defense against another who seeks to claim public lands. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Laches is a plaintiff's inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos.

S. Ct. Tr. 1998).

Generally, the laches defense is meant to prevent injustice as to a person against whom one seeks to assert rights where the one asserting the rights has slept on those rights. Thus, laches at a minimum comprehends an inexcusable delay in bringing suit, and prejudice to the defendant as a result. Senda v. Semes, 8 FSM R. 484, 501 (Pon. 1998).

The doctrine of laches or stale demand is whereby the owner after the lapse of time is deprived of his interests because he has not exercised proper diligence in protecting his rights in court. Hartman v. Chuuk, 9 FSM R. 28, 33 (Chk. S. Ct. App. 1999).

Laches involves two factors, 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

A defendant who has had the benefit of the goods which he received without paying for them is precluded from relying on the doctrine of laches as a defense to a suit for payment. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

Both res judicata and laches are affirmative defenses and must be asserted in responsive pleading. If affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The doctrine of laches applies to the actual filing of a claim rather than to any inaction that might arise following the initiation of a legal proceeding. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

Since laches is an equitable defense, it is only available to a defendant when a plaintiff seeks some form of equitable relief. It is not a valid defense to an action brought solely at law. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. The equitable defense of laches has two elements: the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

In determining whether to apply laches, the resulting prejudice to the defendant is explored first. There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Generally, a party who has failed to act properly a party who has "unclean hands" cannot invoke

an equitable doctrine such as laches. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

Laches and the statute of limitations are two different defenses. The statute of limitations defense has only one element, which is the passage of a specific statutorily set amount of time. The equitable defense of laches has two elements. One element is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the other element is the resulting prejudice to the defendant. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Unlike statutes of limitation, which bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

There was no abuse of discretion by the trial court in finding that the state had not satisfied the laches requirement of showing prejudice due to the passage of time before the plaintiff brought his action when any resulting prejudice due to a witness's death was not significant as other pertinent records and witnesses still existed and because there was no resulting prejudice to the state in light of its joint stipulation of facts and documents. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

The equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands." Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Laches and failure to mitigate damages are not grounds on which to grant summary judgment when a sufficient factual basis to support either ground has not yet been developed.

Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

When a party has not shown why the delay was inexcusable or how it was prejudiced by the delay, its assertions of laches and estoppel are without merit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of the defendant's conduct giving rise to the plaintiff's cause of action, and had prior opportunity to bring suit. The doctrine of laches or stale demand applies to deprive an owner of his interests after the lapse of time because he has not exercised proper diligence in protecting his rights in court. It is an affirmative defense that is raised at the time an answer is filed by a defendant or else is usually considered waived. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

The question of prejudice to the other party is usually treated as a question of law and reviewed de novo on appeal. The longer the delay, the less need there is to show specific prejudice and the greater the shift to the other party to demonstrate the lack of prejudice. When a party developed the property and treated it as their own for over 50 years, the passing of witnesses and the loss of their testimony is prejudicial to them. The prejudice is economic as well, from the loss of their efforts in maintaining and developing the property during this time. With a delay of 50 years, the burden shifts to the other party to demonstrate lack of prejudice. The criteria of prejudice is met. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299-300 (Kos. S. Ct. Tr. 2007).

The length of the delay is a factor in laches, too. The twenty-year statute of limitations establishes one clear limit to the time allowed for bringing a claim, but laches is a separate analysis. Both address the concern that after the passage of a length of time, a person loses the opportunity to assert their rights. When over 50 years have passed, if this is not enough time to allow someone to assert a claim of ownership to land, it is difficult to set forth what length of time is sufficient. The Land Court did not abuse its discretion when it treated the claim of ownership as stale after 50 years. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 300 (Kos. S. Ct. Tr. 2007).

Laches is another equitable doctrine that is applied to bar relitigation of cases. Laches requires the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the resulting prejudice to the defendant. Laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. But when the statute of limitations passed on a claim, the question of laches will not be addressed. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 2007).

A borrower's laches defense will fail when the borrower has had the use of a blast freezer securing the loan the whole time since 1998 without making any payment on the loan because

the equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands" regarding the litigation's subject matter. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

Laches is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, which results in prejudice to the defendant. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

When the defendant became an employer in Chuuk sometime during 2009 and when this suit, after some initial contact and some failed negotiations between the parties during 2010, was filed in December 2010, the court can conclude that, as a matter of law, this was not an inexcusable delay. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

Since laches is an equitable defense, it is available to a defendant only when a plaintiff seeks some form of equitable relief and is not a valid defense to an action brought solely at law, such as this suit for unpaid statutory health insurance premiums which is an action at law. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

The elements of a laches defense are the plaintiff's inexcusable delay or lack of diligence in bringing suit and resulting prejudice to the defendant. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the trial court's exercise of a sound discretion. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Since conversion is an action at law, laches is not a defense that can be used against a conversion claim. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Even if it were a permissible defense, laches cannot be applied when there was no inexcusable delay. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

In the Kosrae State Court, both res judicata and laches are affirmative defenses that must

be asserted in responsive pleadings, and, if affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

The equitable doctrine of laches is usually invoked only when the applicable statutory limitations period has not yet run, and not only depends upon considerations of fairness, justice, and equity, but also cannot be invoked when the party raising it has failed to act properly or is said to have "unclean hands." Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580-81 (App. 2018).

Laches is rarely subject to summary judgment, and can rarely be resolved without some preliminary evidentiary inquiry. Generally, when a defendant asserts the laches defense, a full hearing of testimony on both sides of the issue is required. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

An appellate court uses a two-part standard to review a laches defense since it is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is a factual determination which depends upon the circumstances, and calls for us to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

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Summary judgment (or dismissal) on a laches ground is particularly inappropriate when the plaintiffs' allegations, on their face, do not show that the plaintiffs neglected to or delayed in asserting their claims once they learned that another claimed to be the sole landowner and when there was no evidentiary inquiry in the trial court, although the case required one to prove the laches defense. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

The doctrines of laches and estoppel are closely allied. Laches is a form of equitable estoppel based on an unreasonable delay by a party in asserting a right. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

While laches focuses on the reasonableness of the plaintiff's delay in suit, equitable estoppel focuses on what the defendant reasonably has been led to believe from the plaintiff's conduct. While laches requires the passage of an unreasonable period of time in filing suit, estoppel does not. While estoppel requires reliance, laches generally does not. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is

applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

Laches is an important consideration in bankruptcy proceedings because the chief purpose of the bankruptcy laws is to secure a prompt and effectual administration of and settlement of the estate of all bankrupts within a limited period. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Because an action on a judgment is an action at law, the equitable defense of laches is not available as a matter of law. The same is true for an estoppel defense. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

– Waiver

When an individual claiming an interest in land has no prior knowledge of an impending transaction of other parties concerning that land, his failure to forewarn those parties of his claim cannot be interpreted as a knowing waiver of his rights. Etpison v. Perman, 1 FSM R. 405, 418 (Pon. 1984).

Express or implied waiver, to be effective, must be the knowing, intentional and voluntary relinquishment of a known legal right. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

Waiver is the relinquishment of a known right, either by action or words, which rests upon the equitable principle that one will not be permitted to act contrary to his former position when to do so results in detriment to another. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

For a party with "unclean hands," the equitable defense of waiver (as opposed to a contractual waiver) is insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The issue of waiver is a mixed question of law and fact for which an appellate court uses a de novo review for the law and the clearly erroneous standard for the facts. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Waiver is the intentional relinquishment of a known right. Ordinarily, the question of waiver is one of fact. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

A waiver must be voluntary, which implies knowledge of the right, claim, or thing waived and that the plaintiffs knew they were waiving that right. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

Waiver of a right or privilege is not presumed. Waivers of rights are inherently suspect, and will not be inferred from doubtful and ambiguous factors. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

When the documentary evidence in the pleadings does not show that there is no genuine issue about whether all of the plaintiffs voluntarily and intentionally relinquished their known right to registered title to the parcel, summary judgment that waiver barred the plaintiffs' claim was inappropriate. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).