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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

ROBERT M. ZAHNEN,
Plaintiff-Appellant,

v.

THOMAS I. LIMTIACO,
Defendant-Appellee.

OPINION

Cite as: 2008 Guam 5

Supreme Court Case No.: CVA07-004
Superior Court Case No.: CV0631-03

Appeal from the Superior Court of Guam
Argued and submitted on October 16, 2007
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice;[1] ROBERT J. TORRES, JR., Associate Justice;[2] RICHARD H. BENSON, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Plaintiff-Appellant Robert M. Zahnen ("Zahnen") appeals from a final judgment quieting title to a disputed parcel of land in favor of Defendant-Appellee Thomas I. Limtiaco ("Limtiaco"). Zahnen argues that because Limtiaco brought a creditor's claim against his parents' estate in a prior probate proceeding, and because Limtiaco's deceased wife was a respondent in that proceeding, the final decree of distribution awarding the disputed property to Zahnen and his sister is now res judicata with respect to Limtiaco's claim. Alternatively, Zahnen argues that because Limtiaco failed to record his deeds or otherwise assert his claim to title since at least 1982, he is barred by laches from now claiming title to the land. Because the probate court had no jurisdiction to quiet title to the property, and because laches does not apply, we reject Zahnen's arguments and affirm the Superior Court's award of the disputed property to Limtiaco.

I.

[2] This case involves a dispute over title to a section of Lot No. 7011-2-B-1 ("Lot 1") in Yigo, Guam. Lot 1 was first registered on September 5, 1958 under the Land Title Registration Law. *See* 21 GCA ch. 29 (2005). On June 20, 1966 Hugh H. Fawcett sold Lot 1 to John P. Zahnen ("Mr. Zahnen") and Magdalena Zahnen ("Mrs. Zahnen"). Mr. and Mrs. Zahnen ("the

[1] Chief Justice F. Philip Carbullido assumed the title of Associate Justice prior to the issuance of this Opinion.

[2] Associate Justice Robert J. Torres, Jr. assumed the title of Chief Justice prior to the issuance of this Opinion.

Zahnens") subsequently registered their deed with the Department of Land Management and received a certificate of title on March 20, 1969.

[3] Defendant-Appellee Thomas I. Limtiaco ("Limtiaco") and his wife Fidela F. Limtiaco ("Mrs. Limtiaco") owned a parcel of land adjacent to Lot 1. On June 15, 1974, the Zahnens granted a small portion of Lot 1 ("the disputed property") to Limtiaco and his wife ("the Limtiacos") through a warranty deed. The Zahnens then signed a deed of conveyance transferring the same disputed property to the Limtiacos on February 5, 1982. According to the lower court's findings of fact, the Limtiacos paid the Zahnens $2,500 for the disputed property and another $200 for gas and $500 for costs associated with recording the deeds. The court also found that Mr. Zahnen promised to record the deeds, but never did. At some point the Limtiacos built an extension to their house that occupied a portion of the disputed property.

[4] Mr. Zahnen died on June 8, 1996, and his wife, Mrs. Zahnen, died shortly after on February 21, 1997. A joint probate case was filed on March 7, 1997, and Lot 1 was included in the inventory of assets in both estates. Mrs. Limtiaco joined a group of eighteen respondents who opposed the petition for letters of administration and final distribution. She died in 1999, while the estate was still open in probate. At some point, Limtiaco filed a claim against the estate for approximately $6,000 in funeral expenses, which was paid in the final distribution. The existence of the 1982 deed conveying the disputed property to the Limtiacos was disclosed several times in the probate proceedings. Nevertheless, on September 5, 2002 the probate court distributed Lot 1 to Plaintiff-Appellant Zahnen and his sister Mary Ann Iriarte, the surviving children of Mr. Zahnen. According to the lower court's subsequent finding of facts, "[t]he proper ownership of the disputed portion of Lot [1] was not decided and litigated in the probate court." Appellant's Excerpts of Record ("ER"), Ex. D, pp. 4-5 (Findings of Fact & Concl. of L.,

Oct. 24, 2006). On December 9, 2003, Zahnen and his sister registered their administrator's deed with the Department of Land Management.

[5] On May 6, 2003, Zahnen filed a suit in an attempt to quiet title to Lot 1. On March 3, 2004, Zahnen filed a motion for summary judgment asserting that Limtiaco's claim to title in the disputed property is barred by res judicata (claim preclusion) and the doctrine of laches. The motion was denied on September 6, 2005 with respect to the issue of res judicata, and the case eventually proceeded to a bench trial on the issues of the authenticity of the deeds and the application of laches. At the conclusion of trial, the lower court found that title to the disputed property had been properly conveyed to the Limtiacos by the 1974 and 1982 deeds. The court also determined that the deeds were valid against Zahnen and his sister because they had notice of the deeds and inherited title to Lot 1 rather than paying valuable consideration for it. Finally, the lower court rejected the defense of laches.

[6] Judgment was entered against Zahnen on February 15, 2007. On March 13, 2007, Zahnen filed a timely Notice of Appeal.

II.

[7] This court has jurisdiction over this appeal from a final judgment pursuant to 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 110-185 (excluding Pub. L. 110-181) (2008)) and 7 GCA §§ 3107, 3108(a), 25101, 25102(a) (2005).

[8] "The conclusions of law made by a court following a bench trial are reviewed *de novo*." *Takagi & Assocs., Inc. v. Int'l Ins. Underwriters*, 2006 Guam 4 ¶ 10. Similarly, a *de novo* standard applies to review of a grant of summary judgment. *Paulino v. Biscoe*, 2000 Guam 13 ¶ 12. Findings of fact, on the other hand, are reviewed in a highly deferential manner and will only be set aside if clearly erroneous. *In re Application of Leon Guerrero*, 2005 Guam 1 ¶ 15.

"[T]he appropriate standard of review of a determination of whether laches applies in a particular case is abuse of discretion." *In re Beaty*, 306 F.3d 914, 921 (9th Cir. 2002).

III.

[9] In his appeal, Zahnen makes two arguments: (1) that the participation of the Limtiacos in the probate proceeding now bars them from asserting a claim in the quiet title proceeding by operation of res judicata; and (2) that the Limtiacos, by failing to register their deed or bring suit over the course of several decades, are now barred by the doctrine of laches from asserting their claim to title.[3] We address each of these arguments in turn.

A. Limtiaco's Claim to Title Is Not Barred by Claim Preclusion

[10] Res judicata, or claim preclusion,[4] as defined by this court is "the doctrine by which a 'judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.'" *In re Application of Leon Guerrero*, 2001 Guam 22 ¶ 20 (quoting *Trans Pac. Exp. Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 13). Claim preclusion prevents litigation of a claim that was not litigated in a previous suit, but could have been. *Gospel Missions of Am. v. City of Los Angeles*, 328 F.3d 548, 555 (9th Cir. 2003). To successfully invoke claim preclusion as a defense, one must show that the following elements are present: "'(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of

[3] Zahnen includes a claim in his Statement of the Case that the 1982 deed was improperly notarized and the 1974 deed was not notarized at all. Appellant's Brief, p. 9 (May 24, 2007). However, Zahnen never explains how the improper notarization or lack thereof is relevant to this case. Moreover, because Zahnen does not directly challenge the validity of the 1974 and 1982 deeds as against himself or his sister, we need not address that issue. *See Perez v. Gutierrez*, 2001 Guam 9 ¶ 23 (refusing to consider an allegation of fraud not brought up on appeal).

[4] "Res judicata" can refer generally to both "claim preclusion" and "issue preclusion." *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984). However, the United States Supreme Court has sometimes used the term "res judicata" in a narrower sense to refer only to "claim preclusion." *Id.* Thus, "[i]n order to avoid confusion resulting from the two uses of 'res judicata,'" we will use the terms "claim preclusion" and "issue preclusion" instead. *Id.* This approach has also been adopted by the Ninth Circuit. *See Robi v. Five Platters, Inc.*, 838 F.2d 318, 321 n.2 (9th Cir. 1988).

action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits.'" *Trans Pac. Exp. Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 16 (quoting *Caswell Realty v. Andrews Co.*, 496 S.E.2d 607, 610 (N.C. Ct. App. 1998)); *see also Leon Guerrero*, 2001 Guam 22 ¶ 24.[5]

[11] The parties agree that the third element has been met, as both Limtiaco and Zahnen were parties in the probate proceeding. The first and second elements, however, have not been met. A careful examination of our statutes and California case law reveals that a claim to property in probate is not identical to a claim to quiet title in a court of general jurisdiction. As we explain in more detail below, our Superior Court sitting as a court of probate lacks the jurisdiction to render a "final judgment on the merits" in regard to real property claims made by parties not in privity with the estate. *Trans Pac. Exp. Co.*, 2000 Guam 3 ¶ 16.

1. Statutory Embodiments of Claim Preclusion

[12] The parties cite to two statutory embodiments of claim preclusion. The first, 6 GCA § 4209, is a statute that applies generally to all types of final judgments or orders:

> **§ 4209. Effect of Judgment or Final Order.**
>
> The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:

[5] In *Leon Guerrero* we imprecisely paraphrased the *Oka Towers* test by stating that res judicata applies when "the issue decided in the prior suit is identical with the issue presented in the later suit." 2001 Guam 22 ¶ 24. Res judicata, as confined to its narrower definition of claim preclusion, may apply when the *claims or causes of action* are identical, not the issues or legal theories involved. For example, a party unsuccessfully asserting a defective deed in a quiet title action could not return to court after final judgment and attempt to assert adverse possession of the same property. Claim preclusion would bar the second suit even though it involves an entirely different legal theory. The underlying claim to title remains the same in both suits. The related doctrine of collateral estoppel or issue preclusion may apply when an identical issue is raised in a later proceeding concerning a *different* claim or cause of action. *See generally Kaspar Wire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 535-38 (5th Cir. 1978) (discussing the terminology surrounding the preclusive effects of prior litigation).

> 1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person;
>
> 2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

6 GCA § 4209 (2005). Zahnen argues that 6 GCA § 4209 makes probate and administration proceedings conclusive as to title against a party who had actual or constructive notice of the proceedings. We do not agree that 6 GCA § 4209 can be so expansively construed.

[13] Title 6 GCA § 4209(1) prevents relitigation of four types of judgments: (1) *in rem* judgments; (2) judgments concerning probate of a will; (3) judgments concerning administration of an estate; and (4) judgments involving a person's "personal, political, or legal condition." 6 GCA § 4209(1). A parallel list of "things" upon which the judgment or final order is conclusive corresponds to the four types of judgments mentioned, thus (1) *in rem* judgments are conclusive as to title; (2) probate judgments are conclusive as to the will; (3) judgments concerning administration of an estate are conclusive as to the administration; and (4) judgments involving a person's "personal, political, or legal condition" are conclusive as to that condition. 6 GCA § 4209(1).

[14] That probate judgments are conclusive as to the will corresponds to the well-established legal principal that a will cannot be reopened in probate once a final decree is made, even if erroneously interpreted. *In re Callnon's Estate*, 449 P.2d 186, 191 (Cal. 1969) (if not corrected

by appeal, erroneous decree of distribution is as conclusive as decree that contains no error). Similarly, orders or judgments involving the administration of a will are conclusive as to the administration. *See Giavocchini v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 103 P.2d 603, 604 (Cal. Dist. Ct. App. 1940) (citing to a California statute substantially identical to 6 GCA § 4209 to uphold an order settling a probate account); *see also* 15 GCA § 1405 (2005) (orders granting letters of administration are conclusive). It does not follow from 6 GCA § 4209(1) that a decree of final distribution is conclusive as to title held by everyone who had notice of the probate. *See Hemlani v. Nelson*, 2000 Guam 20 ¶ 33 (known heirs hold title in fee simple subject to any claims by third parties); *Shelton v. Vance*, 234 P.2d 1012, 1014 (Cal. Dist. Ct. App. 1951) ("While a decree of distribution is conclusive as to the rights of heirs, legatees, or devisees, insofar as they claim in such capacities, it does not determine that the deceased had any title to property distributed; nor does it bind third persons who claim an interest adverse to that of the intestate or testator.").

[15] We also reject the theory that 6 GCA § 4209(2) should be read to preclude later claims by those who had actual or constructive notice of the actions mentioned in 6 GCA § 4209(1), although preclusion by notice may still apply under the common law. *See In re Neubauer's Estate,* 321 P.2d 741, 744 (Cal. 1958) ("The judgment admitting the instrument to probate is therefore binding upon all persons interested in the will who, being constructively notified to appear at the probate, might have come in, and who, had they come in, would have been heard for or against its validity."). Rather, 6 GCA § 4209(2) is simply a catch-all statute applying to all "other cases." 6 GCA § 4209(2). It applies claim preclusion to parties "litigating for the same thing under the same title and in the same capacity" provided they had "notice, actual or constructive," of the prior action. *Id.* Title 6 GCA § 4209(2), as interpreted by courts, is simply

a statutory expression of the common law doctrine of claim preclusion. *See Castro v. Higaki*, 37 Cal. Rptr. 2d 84, 87 (Ct. App. 1994) (interpreting the identical California statute).

[16] Limtiaco argues that 15 GCA § 3013, which applies specifically to probate proceedings, limits the conclusiveness of probate decrees to heirs, devisees, and legatees:

> **§ 3013. Final Distribution: Decree; Contents; Conclusiveness.**
>
> In its order or decree of final distribution, the Superior Court must name the persons and the proportions or parts to which each is entitled, and such persons may demand, sue for, and recover their respective shares from the personal representative, or from any person having the same in possession. *Such order or decree, when it becomes final, is conclusive as to the rights of heirs, devisees, and legatees.*

15 GCA § 3013 (2005) (emphasis added). We agree that the plain language of the statute supports Limtiaco's interpretation. In addition, we note that 15 GCA § 3013 not only limits the conclusiveness of decrees of final distribution to "heirs, devisees, and legatees," it is also an expression of the limited jurisdiction of the Superior Court when convening as a court of probate.

2. Probate Courts Have Limited Jurisdiction

[17] Because the Guam Legislature enacted a probate code substantially similar to the California Probate Code in 1953, we look to California case law for interpretation. *People v. Angoco*, 2007 Guam 1 ¶ 52 n.4. California's superior courts, like the Superior Court of Guam, exercise a limited probate jurisdiction when convening as probate courts:

> [W]e conclude the probate court "jurisdiction" is specific and limited in subject matter . . . . We use the term "limited jurisdiction" in this sense; since the adoption of the California Constitution in 1879 there has been no "probate" court in the sense of a court separate and distinct from the superior court. The term "probate court" is but a convenient way of expressing the concept of a superior court sitting in exercise of its probate jurisdiction. . . . "Probate jurisdiction is in the superior court, and the probate court is a department of the superior court exercising such jurisdiction."

Copley v. Copley, 145 Cal. Rptr. 437, 441 (Ct. App. 1978) (citations omitted). A probate court has only those powers granted by the probate code as well as any legal or equitable powers necessary to exercise its function. *Id.* at 442-43. As the court of *In re Radovich's Estate* explained, a probate proceeding is "a specialized proceeding in rem [where] [t]he res is the right of heirship and distribution . . . ." 308 P.2d 14, 17 (Cal. 1957). Once the final decree of distribution issues and no appeal is taken, the distribution of estate property to "heirs, devisees, and legatees" is deemed conclusive. *See* 15 GCA § 3013. A distribution, however, does not quiet title to property, the reason being that "[a] decree of distribution distributes only such title as the deceased had at the time of his death." *Shelton*, 234 P.2d at 1014; *see also Carlson v. Carlson*, 12 P.2d 165, 166 (Cal. Dist. Ct. App. 1932) ("Heirs occupy the place of their ancestor. They take precisely the same interest in the property which he had at the time of his death, and have no greater or better claim than he had.").

[18] The question before us, however, is not whether Zahnen's title to Lot 1 is now binding on the whole world as a result of the probate decree. Clearly it is not. Rather, the question before us is whether Limtiaco *could* have litigated his claim before the probate court but failed to do so. Thus, we must determine whether the probate court had jurisdiction to settle Limtiaco's claim to the disputed property. If not, then his claim is not precluded in a subsequent action to quiet title.

[19] Under former section 851.5 of the California Probate Code (now dispersed in other sections of the code), California probate courts have jurisdiction to determine third party claims to property purportedly owned by the decedent. Cal. Prob. Code § 851.5 (enacted 1965, repealed

1988);[6] *see also In re Linnick's Estate*, 217 Cal. Rptr. 552, 556 (Ct. App. 1985) (discussing effect of former section 851.5 on the probate courts' jurisdiction over third parties). The general rule before the adoption of section 851.5, and the rule at the time that Guam adopted California's probate code, was that "'the probate court has no jurisdiction to determine adverse claims to the properties of an estate . . . when asserted by a stranger to said estate.'" *In re Dabney's Estate*, 234 P.2d 962, 965 (Cal. 1951) (quoting *In re King's Estate*, 248 P. 519, 520 (Cal. 1926)). A "stranger to the estate" is a person not in "privity" with the probate proceedings. *Linnick*, 217 Cal. Rptr. at 556.

[20] There are two general lines of cases where a party has been found to be in privity with the estate for the purposes of establishing the jurisdiction of a probate court. *Cent. Bank v. Super. Ct.*, 285 P.2d 906, 909 (Cal. 1955). The first and most common involve controversies "between the estate or those acting in its behalf and the executor or administrator thereof acting in his personal capacity." *Id.* An attorney, for example, acting on behalf of the estate and claiming part of the estate as his own has been held to be in privity with the estate. *In re De Barry's*

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[6] The California statute that currently extends probate jurisdiction to third-party claimants is section 850 of the California Probate Code:

> **§ 850. Petition for Court Orders**
>
> (a) The following persons may file a petition requesting that the court make an order under this part:
>
> . . . .
>
> (2) The personal representative *or any interested person* in any of the following cases:
>
> . . . .
>
> (C) Where the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another.

Cal. Prob. Code § 850 (2008) (emphasis added).

Estate, 111 P.2d 728, 734 (Cal. Dist. Ct. App. 1941). A second category is "controversies involving particular property claimed by the estate and . . . conceded by both parties to be or to have been acquired by the claimant in the course of probate proceedings." *Central Bank*, 285 P.2d at 909-10. A person acquiring property from an estate while it is open in probate is "subject to the perils of the proceeding" and therefore bound by the final decree just as an heir, devisee, or legatee would be. *Bordallo v. Torres*, No. 89-00013A, 1989 WL 265036, at *4 (D. Guam App. Div. Sept. 26, 1989); *In Re Dobbins' Estate*, 97 P.2d 1051, 1054 (Cal. Dist. Ct. App. 1940); *see also* 15 GCA § 3013.

[21] Neither of these exceptions applies to Limtiaco. He had no special relationship to the estate as executor or administrator, and he acquired the deeds to the disputed property long before the probate proceedings began. Although his creditor's claim for funeral expenses was properly before the probate court, he was a stranger to the estate with regard to his unrelated claim to title in the disputed property. The probate court lacked jurisdiction to hear Limtiaco's property claim and therefore properly declined to rule on the question of title. Limtiaco could not have quieted title to the disputed property in the probate proceeding, even if he so desired. Moreover, because it lacked jurisdiction over the matter, the probate court's distribution of Lot 1 to Zahnen and his sister was only conclusive as to the rights of Zahnen and his sister and did not extinguish Limtiaco's claim to title. *See* 15 GCA § 3013; *see also Shelton*, 234 P.2d at 1014; *Carlson*, 12 P.2d at 166. Because the probate court had no jurisdiction over Limtiaco's claim, it had no authority to issue a "final judgment on the merits," and claim preclusion does not apply. *Trans Pac. Exp. Co.*, 2000 Guam 3 ¶ 16.

[22] The principal case relied upon by Zahnen, *Bordallo v. Torres*, can be easily distinguished from the instant case. In *Bordallo*, appellant Torres was an attorney for the administrator of an

estate. 1989 WL 265036, at *1. At some point during the probate proceedings, Torres acquired title to property within the estate. *Id.* at *2. In the decree of final distribution, the property was instead given to Appellee Bordallo. *Id.* In a subsequent quiet title action, Torres' claim to title was found to be barred by claim preclusion because the final distribution had already settled the claim. *Id.* at *4. The District Court of Appeals correctly concluded that because Torres had acquired the property during the probate proceedings, the decree of final distribution was conclusive as to his subsequent claim to title. *Id.*; *see also Dobbins*, 97 P.2d at 1054. The analysis above also reveals that Torres, unlike Limtiaco, was in privity with the estate for two reasons. First, he was in privity with the estate because of his relationship as attorney for the estate's administrator. *De Barry*, 111 P.2d at 734 (attorney hired by the executrix not a stranger to the estate). Second, he was in privity with the estate for having acquired property from the estate while the estate was still opened in probate. *Central Bank*, 285 P.2d at 909-10. Thus, unlike here, the probate court had jurisdiction to conclusively determine title to the property in question as to Torres' claim.

B. Limtiaco's Claim Is Not Barred by Laches

[23] Although asserting laches offensively is a somewhat unusual tactic, we will consider the argument given that either party could have been in the role of plaintiff under the circumstances of this case. *See Village of Wagon Mound v. Mora Trust*, 2003-NMCA-035, ¶ 41, 133 N.M. 373, 62 P.3d 1255 ("[W]e see no theoretical reason why laches can only be asserted in defense."); *but see Enviro Properties, Corp. v. Armco, Inc.*, 2001 WL 306874, at *3 (Conn. Super. Ct. 2001) ("Laches may only be employed as an equitable defense."). A person wishing to assert the defense of laches must prove "'(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice against the party asserting the defense.'" *Duenas v. Guam Election*

Comm'n., 2008 Guam 1 ¶ 17 (quoting *Guam Election Comm'n v. Responsible Choices for All Adults Coalition*, 2007 Guam 20 ¶ 77).

1. Limtiaco's Delay Did Not Constitute a Lack of Diligence

[24] The determination of lack of diligence requires that the court consider both the length of the delay between the potential and actual actions and the circumstances surrounding the delay. *In re Beaty*, 306 F.3d 914, 927 (9th Cir. 2002). The proof of lack of diligence must be made using "particularized evidence" that the delay is unreasonable, and "[m]ere delay alone will not establish laches." *Id.* Zahnen argues that Limtiaco should have filed suit in 1974 after he and his wife received the warranty deed. He argues that Limtiaco should have filed a breach of contract claim against the Zahnens for failing to record the deeds. We presume that the reason Zahnen does not assert that Limtiaco had a duty to simply register his claim is that, as the lower court correctly noted, he could not have done so without the assistance of the Zahnens. In support of this conclusion, the lower court pointed to 21 GCA § 29149, which says in part:

> A registered owner of land desiring to transfer his whole estate *or interest therein, or some part or parcel thereof . . . may execute an instrument of conveyance in any form authorized by law for that purpose.* Upon filing such instrument at the registrar's office, *and surrendering to the registrar the duplicate certificate of title,* the transfer shall be complete and the title so transferred shall vest in the transferee; thereupon, the registrar shall issue in duplicate . . . a new certificate.

21 GCA § 29149 (2005) (emphasis added). The Zahnens were registered owners of Lot 1, and only they had the duplicate certificate of title necessary to register the Limtiacos' claim to the disputed property within Lot 1. The failure to register the Limtiacos' interest in the disputed property was due in large part to the Zahnens' failure to travel to the registrar's office to assist in registering the two deeds. Moreover, the lower court's findings of fact include (1) that Limtiaco paid Mr. Zahnen $500 for the costs of recording the deed; (2) that Limtiaco again paid Mr.

Zahnen $200 for the cost of gas incurred while making the trip to record the deed; and (3) that Mr. Zahnen promised to record the deed. From the record it appears that Limtiaco did make a significant effort to get the Zahnens' assistance in registering the deeds.

[25] Limtiaco argues that his rights to the disputed property were secure and that he was not obligated to vindicate those rights in court. He points to the statute of frauds, 21 GCA § 4101, which states in part that "[a]n estate in real property . . . can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing." 21 GCA § 4101 (2005). Title 21 GCA § 4102 provides an example of how such a transfer could be accomplished with only two unembellished sentences.[7] We must assume then, as the lower court did, that the 1974 and 1982 deeds properly conveyed title to the Limtiacos. Although an unregistered deed is not afforded the same protections as a registered one, for example, protection from adverse possession, see 21 GCA § 29140 (2005), it does not follow that an unregistered deed is somehow an imperfect vestment of title. Rather, as the law clearly states, "[a]n unrecorded instrument is valid as between the parties thereto and those who have notice thereof." 21 GCA § 37105 (2005). We do not disturb the lower court's finding that Zahnen and his sister had notice of the deeds.

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[7] **§ 4102. Form of Grant.**

A grant of an estate in real property may be made in substance as follows:

> I, *A.B.*, grant to *C.D.*, all that real property situated in (insert location), bounded (or described) as follows:
>
> (Here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as for instance, *The Norris Ranch.*)
>
> Witness my hand this (insert day) day of (insert month and year.)

21 GCA § 4102 (2005).

[26] Once title was conveyed through the deeds, nothing more was required to vest title in Limtiaco under the laws of Guam. The general rule appears to be that once title is vested, an owner cannot be guilty of laches for failing to do more in exercise of those rights. *See Village of Larchmont v. City of New Rochelle*, 418 N.Y.S.2d 966, 969 (N.Y. Sup. Ct. 1979) ("Laches cannot deplete legal title for the law exacts no diligence as a condition to the retention of title to property"). This doctrine has been applied to bar laches as a defense to adverse possession. *Marriage v. Keener*, 31 Cal. Rptr. 2d 511, 513-14 (Ct. App. 1994); *Lewis v. Johnson,* 507 So. 2d 918, 921 (Ala. 1987). We find laches even less applicable to the present case, where title was conveyed by a written instrument rather than operation of law. We do not go so far as to hold as a matter of law that laches cannot operate to extinguish title, but it would be a rare case indeed where a party could be divested of title merely for delay in the exercise of his or her rights.

[27] Limtiaco may have failed to convince his wife's uncle, Mr. Zahnen, to register the deeds, but his failure to drag Mr. Zahnen into court cannot be construed as a lack of diligence. Nothing in the record contradicts the assumption that the Zahnens and Limtiacos were anything but good neighbors. To find that laches applies in the instant case would have the effect of encouraging otherwise secure claimants, similarly situated, to immediately file a court action or risk losing their claim forever. As one judge observed, it is unwise for courts to make rules that "tend to encourage litigation in situations where the parties, but for this court's decision, could agree to peaceful co-existence." *Swank, Inc. v. Ravel Perfume Corp.*, 438 F.2d 622, 624 (C.C.P.A. 1971) (Lane, J., concurring).

2. Zahnen Was Not Prejudiced by the Lack of Witnesses

[28] We also consider whether Zahnen was prejudiced due to the Limtiacos' delay in registering their property. *See Duenas*, 2008 Guam 1 ¶ 17. Zahnen certainly suffered a loss of

witnesses when he found himself unable to call upon either the Zahnens or Mrs. Limtiaco to testify at trial. Prejudice, however, "'must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue.'" *Bono v. Clark*, 128 Cal. Rptr. 2d 31, 38 (Ct. App. 2002) (quoting *Miller v. Eisenhower Med. Ctr.*, 614 P.2d 258, 264 (Cal. 1980)). Zahnen argues that Mr. and Mrs. Limtiaco had differing accounts about their acquisition of the disputed property. In her deposition,[8] Mrs. Limtiaco testified that the original agreement was for the Zahnens and Limtiacos to exchange parcels of land for the construction of swimming pools. She also claimed that later the Zahnens wanted to sell the disputed property for $5,000 but eventually gave it to them as a gift instead. Limtiaco, on the other hand, testified that he twice paid $2,500 to the Zahnens, once for each of the two deeds. At oral argument, Zahnen's attorney conceded that Mrs. Limtiaco's deposition was admitted into evidence during the trial.

[29] Zahnen argues that he was prejudiced because "the trial court could not hear [Mrs. Limtiaco's] testimony as to why she never asked her aunt and uncle to complete the sale or sales." Appellant's Brief, p. 14 (May 24, 2007). He also argues that because of the absence of Mrs. Limtiaco and the Zahnens "one cannot ascertain the true facts of the transaction or transactions between the elder Zahnens and the Limtiacos." Appellant's Brief, p. 14. However, it does not automatically follow from these assertions that Zahnen was prejudiced without more evidence as to how Mrs. Limtiaco and the Zahnens might have testified at trial. *See Bono*, 128 Cal. Rptr. 2d at 38 (finding that the unavailability of a deceased witness to a transaction is not by itself evidence of prejudice). If Zahnen is asking this court to speculate as to the existence of some underlying contract or condition regarding the sale, we decline to do so. Zahnen, not the

[8] The deposition of Fidela Limtiaco was related to the probate proceeding rather than the quiet title action.

court, has the burden of providing "particularized evidence" that the absence of witnesses prejudiced him. *In re Beaty*, 306 F.3d at 927.

[30] In fact, the evidence in this case suggests that neither the Zahnens nor Mrs. Limtiaco would have substantially contradicted Limtiaco's version of events. *See Salter v. Hamiter*, 887 So. 2d 230, 241 (Ala. 2004) (finding no prejudice caused by a thirty-three year delay in registering deeds, in part because a number of disinterested witnesses confirmed the deceased grantor's intention). Limtiaco's testimony was supported by a number of documents, including two signed deeds and cancelled checks to the Zahnens. As heirs to the Zahnens' combined estate, including, presumably, their documents, Zahnen and his sister were of course free to submit any of those documents at trial. With the exception of Mrs. Limtiaco's deposition testimony, admitted at trial, that the disputed property may have been given as a gift or in exchange for another parcel, no other evidence or argument contradicting Limtiaco's version of events appears in the record of this appeal. Zahnen therefore fails to demonstrate that he was prejudiced by the unavailability of witnesses.

[31] Because nothing in the record indicates that Limtiaco lacked diligence in failing to register his deeds or bring suit, and because the record fails to show that the delay caused prejudice to Zahnen, the court did not abuse its discretion in finding that the doctrine of laches does not apply. *See In re Beaty*, 306 F.3d at 926.

IV.

[32] Limtiaco could not have brought a quiet title claim before the probate court because the court lacked jurisdiction to decide that claim. Limtiaco was not precluded, therefore, from defending his title to the disputed property in a later quiet title suit before a court of general jurisdiction. Nor was there any obligation on Limtiaco, as titleholder of the disputed property, to

bring forth his claim sooner or suffer the bar of laches. Therefore, the judgment of the lower court is **AFFIRMED**.

Original Signed By: Richard H. Benson

RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: Robert J. Torres

ROBERT J. TORRES, JR
Associate Justice

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice