

No. _____

In the Supreme Court of the United States

JOHN STEPHEN THORNE,
Petitioner,
v.

UNION PACIFIC CORPORATION and
UNION PACIFIC RAILROAD COMPANY,
Respondents.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

Ryan G. Anderson
Counsel of Record
Law Offices of Ryan G. Anderson, PLLC
405 N. St. Mary's, Suite 800
San Antonio, Texas 78205
(210) 920-2400
(210) 855-5050 (fax)
ryan@rgalawpc.com

Counsel for Petitioner

QUESTION PRESENTED

Thorne initiated a declaratory judgment action seeking *inter alia* declarations that he owned the stock certificate issued by a predecessor-in-interest to Union Pacific and the current value of those shares. The District Court held that Thorne commenced his action within the 4-year limitations period established by the controlling Texas statute.

This case presents the issue whether the equitable defense of laches (unreasonable, prejudicial delay in commencing suit) may be employed to bar relief on Thorne's legal claims despite the action being commenced within the limitations period.

PARTIES TO THE PROCEEDINGS

Petitioner, JOHN STEPHEN THORNE, was appellant in the court below. Respondents, UNION PACIFIC CORPORATION and UNION PACIFIC RAILROAD COMPANY, were appellees in the court below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, John Stephen Thorne, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Fifth Circuit Court of Appeals is reported at 742 Fed. Appx. 875, and reproduced in the appendix hereto (“App.”) at 1a. The opinion of the District Court for the Western District of Texas is reported at 290 F. Supp. 3d 635, and reproduced at App. 5a.

JURISDICTION

The judgment of the Fifth Circuit was entered on November 20, 2018. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

INTRODUCTION

Twice in the last five years, this Court has addressed the issue of whether the equitable defense of laches can be employed to bar legal claims covered by a statute of limitations. *See SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 137 S. Ct. 954 (2017); *Petrella v. MGM*, 572 U.S. 663 (2014). In both cases, this Court answered “no”. *See SCA Hygiene*, 137 S. Ct. at 967; *Petrella*, 572 U.S. at 667. This Court’s decisions in both cases are consistent with its longstanding case law holding “[i]n actions at law, the question of diligence are determined by the words of the statute. If an action be brought the day before the statutory time expires, it will be sustained; if a day

after, it will be defeated.” *Patterson v. Hewitt*, 195 U.S. 309, 317, 25 S. Ct. 35, 36 (1904).

This case presents a slight variation on *SCA Hygiene* and *Petrella*, but the legal principles underlying both decisions apply equally here. *SCA Hygiene* and *Petrella* both involved federal statutes of limitations. This case, in federal court on diversity jurisdiction, involves a state statute of limitations. That is a distinction without a difference. For the same reasons that this Court rejected the application of laches to bar legal claims where a federal statute set the deadline for commencing an action, this Court should reject the District Court’s application of laches here. Petitioner John Thorne asserted legal claims seeking adjudication of his ownership of stock in Union Pacific and the value of that stock. The District Court held that he had commenced his claims within the four-year limitations period created by the controlling Texas statute. The District Court and the Fifth Circuit erred in applying laches to bar Thorne’s legal claims.

This Court should grant this petition and unequivocally affirm that laches cannot be applied by federal courts to bar a legal claim where the applicable limitations period has not expired, regardless of whether the limitations period is established by federal or state statute. Such a holding reinforces the traditional gap-filling purpose of laches with regard to equitable claims recognized by this Court in *SCA Hygiene* and *Petrella* and provides bright-line clarity to parties asserting legal claims in federal courts in diversity actions. *See SCA Hygiene*, 137 S. Ct. at 961; *Petrella*, 572 U.S. at 678.

STATEMENT OF THE CASE

A. Law regarding applicability of laches to legal claims.

This Court has long, and consistently, held that laches will not bar a legal claim brought within the controlling limitations period. *See SCA Hygiene*, 137 S. Ct. at 967 (2017) (holding that laches cannot be interposed as a defense against a damages claim that is brought within the period prescribed by statute); *United States v. Mack*, 295 U.S. 480, 489 (1935) (“Laches within the term of the statute of limitations is no defense at law.”); *Cross v. Allen*, 141 U.S. 528, 537 (1891) (“So long as the demands secured were not barred by the statute of limitations there could be no laches in prosecuting a suit upon the mortgages to enforce those demands.”).

In *SCA Hygiene*, this Court explained that this rule rests on both separation-of-powers principles (where a Congressionally-enacted statute is involved) and the purpose for which the laches defense developed in equity courts – as a gap-filling doctrine where no statute of limitations has been enacted. *See id.*, 137 S. Ct. at 960-61.

The Fifth Circuit has applied this principle in the past, but not here. In *Nilsen v. Moss Point*, 674 F.2d 379 (5th Cir. 1982), the court held in the context of a Section 1983 claim that sought both legal and equitable relief, “the equitable part of a mixed claim can be barred by laches, [but] the legal part will be barred only by the statute of limitations”. *See id.* at 388. At least one federal court has recognized a split in the federal courts in this regard. *See Brin-Mont Chems.*,

Inc. v. Worth Chem. Corp., 154 B.R. 903 (M.D.N.C. 1993) (“Courts have disagreed whether laches can cut short an applicable statute of limitations” and collecting cases demonstrating the split). However, it appears that the courts that have held that laches can apply to shorten a limitations period applicable to a legal claim are outliers.

Texas courts that have addressed the issue have consistently held that laches cannot be applied to bar a claim at law where the statutory limitations period has not expired. *See Wayne v. A.V.A. Vending, Inc.*, 52 S.W.3d 412, 415 (Tex. App.—Corpus Christi 2001, pet. denied) (explaining “laches . . . [is] peculiarly available against the assertion of equitable rights, and may not be invoked to resist the enforcement of a purely legal right” and rejecting application to a claim for breach of contract, a legal right where the party has a complete, adequate, legal remedy in a suit for damages for the alleged breach of the lease agreement); *In re Moragas*, 972 S.W.2d 86, 92 (Tex. App.—Texarkana 1998, no writ) (laches is not available in suit to enforce statutory legal right); *Dillard v. Broyles*, 633 S.W.2d 636, 645 (Tex. App. — Corpus Christi 1982, writ ref’d n.r.e.); (“laches . . . [is] peculiarly available against the assertion of equitable rights, and may not be invoked to resist the enforcement of a purely legal right”); *Attorney General of the State of Texas on behalf of Ford v. Daurbigny*, 702 S.W.2d 298 (Tex. App.—Houston [1st Dist.] 1985, no writ) (holding laches is only available against an assertion of equitable rights, not a claim based on an express statutory duty); *City of Temple v. Brown*, 383 S.W.2d 639 (Tex. Civ. App. — Austin 1964, writ dism’d) (same); *Riggs v. Riggs*, 322 S.W.2d 571 (Tex. Civ. App. — Dallas 1959, no writ) (same).

Only where a claim is essentially equitable in nature, have Texas courts employed laches to shorten the time for filing a suit that was filed within the applicable statute of limitations. *See, e.g., Garcia v. Garza*, 311 S.W.3d 28 (Tex. App.—San Antonio 2010, pet. denied); *Brewer v. Nationsbank of Texas, N.A.*, 28 S.W.3d 801 (Tex. App. -- Corpus Christi 2000, no writ).

Texas courts appear to have departed from this rule only in the unusual circumstance where a Texas statute specifically precludes the operation of statutes of limitations as a bar to a municipality's claims. *See Houston Lighting & Power Co. v. City of Wharton*, 101 S.W.3d 633 (Tex. App. — Houston [1st Dist.] 2003, pet. denied).

B. Thorne is asserting legal claims.

In this case, Thorne is seeking, *inter alia*, a declaration recognizing that he is the owner of the stock represented by the certificate in his possession. Because “declaratory judgment, in and of itself, is neither legal nor equitable, it takes on the character of the underlying right or relation it declares.” *Bauhaus USA, Inc. v. Copeland*, 292 F.3d 439, 448 and nn. 17, 19 (5th Cir. 2002) (Weiner, J., dissenting). “In Texas, stock is considered personal property, even when the underlying corporation itself owns real property.” *Brosseau v. Ranzau*, 81 S.W.3d 381, 387 (Tex. App.—Beaumont 2002, pet. denied); *see also Evans v. Prufrock Restaurants, Inc.*, 757 S.W.2d 804, 805-06 (Tex. App.—Dallas 1988, writ denied) (“The transaction was the sale of a personality rather than realty. . . . It is a well-established fact that the sale of stock is personality not real estate.”); *Griffith v. Jones*, 518 S.W.2d 435, 437 (Tex. Civ. App.—Tyler 1974, writ ref'd

n.r.e.) (“Shares of corporate stock are personal property in the nature of choses in action.”); *see also Engel v. Teleprompter Corp.*, 703 F.2d 127, 131 (5th Cir. 1983) (“Under Texas law, shares of corporate stock are personal property.”).

Ownership of personal property is a question of law, not equity. *See Walter Connally & Co. v. Browning*, 72 S.W.2d 412, 413 (Tex. Civ. App. – 1934, no writ) (rejecting injunctive relief and concluding that the ownership of the property was the only issue, for “the judgment debtor had a clear and adequate remedy at law”); *see also Day v. Bullen*, 127 Ill. App. 155, 157 (1906) (“The proper forum for the determination of the question of the ownership of personal property is at law and not in equity.”).

Because ownership of the shares of stock at issue is a question of law, rather than equity, laches cannot bar Thorne’s claim that he owns the shares of stock at issue. Refraining from applying laches (a judicially-created equitable doctrine) to shorten a time period established by a legislatively-enacted statute of limitations on a claim at law pays proper deference to the separation of powers between the branches of government. *Cf. Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 950-51 (10th Cir.) (“Because laches is a judicially created equitable doctrine, whereas statutes of limitations are legislative enactments, it has been observed that in deference to the doctrine of the separation of powers, the Supreme Court has been circumspect in adopting principles of equity in the context of enforcing federal statutes. Accordingly, when a limitation on the period for bringing suit has been set by statute, laches will generally not be invoked to

shorten the statutory period.”) (internal citations and quotations omitted), *cert. denied*, 537 U.S. 1066 (2002).

C. Proceedings below.

Thorne sent a demand letter to Union Pacific on June 30, 2011, to recover stock and back dividends, which Union Pacific refused. Thorne sued Union Pacific on June 29, 2015.

Union Pacific moved for summary judgment on several grounds, including limitations and laches. On November 20, 2017, the District Court for the Western District of Texas entered its order denying Union Pacific’s motion as to the statute of limitations but granting it as to laches. On December 4, 2017, the District Court entered its Final Judgment. App. 26a. The Fifth Circuit Court of Appeals affirmed the decision without substantial analysis. App. 1a.

REASONS FOR GRANTING THE WRIT

Litigants deserve certainty regarding the deadlines with which they are required to assert legal rights, lest they be lost forever, regardless of the court. Bright-line rules, such as those established by legislatively-enacted statutes of limitations, provide that certainty and should be relied upon exclusively wherever they apply. While courts developed laches as an analogous doctrine to prevent stale claims where no statute provides a bright line for commencing the action, that defense has traditionally been reserved to equitable claims. The District Court ignored that important distinction when it applied laches to bar Thorne’s legal claims that it recognized were not barred by the controlling statute of limitations. In doing so, the District Court has inserted

unnecessary uncertainty into the case law governing the timeliness of legal claims.

This dispute was brought to federal court pursuant to its diversity jurisdiction against a historical backdrop ranging from the early years of Texas and its railroads and through generations of the Thorne family, culminating in the certificate being gifted to Petitioner Thorne by his grandfather, L.S. Thorne. That history, while not controlling of the precise issue raised in this petition, is nevertheless worth brief mention for the purpose of providing context.

Thorne's claims are predicated on his ownership of a stock certificate issued by the Southern Pacific Railroad Company ("SPRC") in 1859. The certificate, which bears the number 1656, issued to Mary Key 300 shares of \$100 each. SPRC subsequently underwent several sales, takeovers, and reorganizations. Thorne maintains that the 300 shares of SPRC stock at issue in this case survived each of those events, and remains valid today and now constitute an interest in Union Pacific.

Thorne alleges that, at some time between 1874 and 1893, Ms. Key or her son "gifted, sold, or otherwise properly conveyed" the stock certificate at issue to his grandfather, Lansing Stephen ("L.S.") Thorne. L.S. Thorne is an interesting figure in the history of Texas railroads. He began his career in the railroad industry at eighteen years of age, heading west from New York state in 1854 to help survey the path of the Central Pacific Railroad. He also spent three years as a superintendent for Southern Pacific Railway, laying track from Arizona to Texas. Following a stint as a clerk, conductor and yardmaster for the Kansas City &

Pacific Railroad, L.S. Thorne came to Texas in 1874 to join the Texas & Pacific Railway as trainmaster. He quickly rose up the ranks, becoming master of transportation, district superintendent of transportation, and then general superintendent. In 1893, he was made vice president and general manager of the railroad, a position that he held until his retirement in 1911. During his tenure, Texas & Pacific Railway doubled its track and more than doubled its earning capacity.

Upon Jay Gould's death, his son George Gould asked L.S. Thorne to assume management of all of the Gould railroad property, of which Texas & Pacific was one. L.S. Thorne declined, preferring to remain in Texas. In addition to his service to the railroad, L.S. Thorne was a director of the American Exchange National Bank in Dallas, Texas and a member of the Unitarian Church, the Dallas Club, and the Dallas Country Club. In sum, L.S. Thorne was not the type of individual who would swindle a family friend out of shares of the railroad he was managing; nor would he pass on a worthless stock certificate that would tarnish the family name.

Thorne alleges that the certificate was thereafter gifted through generations of his family, culminating in his grandfather's 2005 gift of the certificate to him (the great-great grandson of L.S. Thorne). He further alleges that the shares have "evolved and grown into a valuable portion of equity" in Union Pacific. Thorne sent a demand letter to Union Pacific on June 30, 2011, to recover stock and back dividends. Union Pacific refused his demand on August 3, 2011.

Thorne then sued, well aware of the fact that he would be required to prove this historical narrative addressing the continued validity of the certificate and how the certificate came to be owned by him by a preponderance of the evidence at trial. Instead of requiring Thorne to prove his case on the merits, the District Court ruled that his claims were barred by laches, despite the fact that the claims regarding his alleged ownership of the stock and the value of the stock are legal claims and the limitations period established by the controlling Texas statute had not yet expired. His claims were barred, according to the District Court's opinion, because three witnesses (Thorne's great-great-grandmother, great-grandmother, and her sister) were dead and a fourth (Thorne's grandfather) has been diagnosed with onset of Alzheimer's disease. While the absence of these witnesses certainly impacts Thorne's ability to prove his case, it should not bar his legal claims outright through application of laches, especially where the claims are legal, and not equitable claims.

The District Court's employment of laches was not necessary to protect Union Pacific; the statute of limitations was already protecting the same interests. Just as laches was judicially-created to address stale claims, statutes of limitations are passed by legislative bodies to address the same problem. Texas courts have long recognized that the fading memories of witnesses or even their unavailability due to the lapse of time between the events involved and the filing of the lawsuit is the justification for enacting statutes of limitations. In *Gaddis v. Smith*, 417 S.W.2d 577, 578 (Tex. 1967), the Texas Supreme Court explained "the purpose of statutes of limitations is to compel the

assertion of claims within a reasonable period after their origin, and while the evidence upon which their enforcement or resistance rest is yet fresh in the minds of the parties or their witnesses". *Id.* at 578. (citing *Harrison Machine Works v. Reigor*, 64 Tex. 89 (1885)). Given the applicability of a specific statute of limitations establishing the time in which Thorne's legal claims could be commenced and addressing the same problem for which laches was developed, laches should not be employed as a "super" statute of limitations that shortens a litigant's time in which to file his lawsuit without warning and a mechanism for avoiding the clear intent of an existing law.

Relying on that principle, Texas courts have repeatedly refused to apply laches where limitations has not expired based on the fading of memories or absence of evidence. *See Pearson v. Am. Fid. & Cas. Co.*, 321 S.W.2d 620, 622 (Tex. Civ. App.—Amarillo 1959, writ ref'd n.r.e.) (rejecting a laches defense despite the death of witnesses by whom the truth of the situation could be proven injuriously affected party but did not warrant application of laches defense); *Willis v. Donnelly*, 118 S.W.3d 10, 39 (Tex. App.—Houston [14th Dist.] 2003), *aff'd in part, rev'd in part on other grounds*, 199 S.W.3d 262 (Tex. 2006) (fading memories due to passage of time did not warrant application of laches); *Stephens v. Dolcefino*, 126 S.W.3d 120, 129 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) ("potentially faded memories and the inability to collect all evidence necessary to defend the claims asserted" do not warrant application of laches); *Wakefield v. Bevly*, 704 S.W.2d 339, 345 (Tex. App. -- Corpus Christi 1985, no writ) (holding faded memory of party, among other factors, did not warrant application of laches in a suit

filed before the statute of limitations has expired). The courts in *Wakefield* and *Willis* noted the respective roles of statutes of limitations and laches, recognizing that fading memory “is one of the policy reasons behind the statute of limitations.” *Wakefield*, 704 S.W.2d at 345; *see also Willis*, 118 S.W.3d at 39 (recognizing same policy underlying statutes of limitations).

The District Court cited *Fazakerly v. Fazakerly*, 996 S.W.2d 260 (Tex. App.--Eastland 1999, pet. denied), in support of its employing of laches to bar Thorne’s claims. The District Court’s reliance on *Fazakerly* appears misplaced, primarily for the reason that limitations had long since expired. In that case, a daughter challenged her father’s and stepmother’s ante nuptial agreement after expiration of the statute of limitations; 25 years after the agreement was signed; eight years after the father’s death; and after the stepmother became incapacitated by Alzheimer’s. *See id.* at 265. In contrast, in this case, the statute of limitations had not expired when Thorne filed his lawsuit.

Statutes of limitations are enacted to address the exact policy issues invoked in this case – stale evidence resulting from the passage of time. Limitations periods balance the need to protect parties from stale claims against the interest in affording aggrieved parties sufficient time to investigate and initiate their claims. It is a balancing of interests that courts and legislatures have struck. By utilizing laches to override the limitations period in this case, the District Court has upset that balance and struck its own balancing of the interests in determining that the claims should be barred. Permitting trial courts to strike their own

individual balances of the respective interests where a bright-line rule has been established invites arbitrary results and undermines confidence in the judicial system.

Finally, the use of an equitable tool such as laches seems particularly improper in a situation such as this where the alleged harm – the absence of witnesses – visits a far greater hardship on Thorne than Union Pacific. At trial, Thorne will be required to prove his claims and establish by a preponderance of the evidence both the continued validity of the certificate and his rightful possession of it before he can recover. The absence of the witnesses identified by the District Court makes his job that much harder. But laches should not be a tool to prevent him from even trying. The District Court erred in entering summary judgment based on laches, and the Fifth Circuit erred in affirming that decision.

CONCLUSION

Petitioner John Thorne was given a valuable piece of property that had been handed down through generations of his family. When he presented the stock certificate to Union Pacific, Union Pacific refused to recognize him as the owner of the stock. Thorne then went to court to prove that he is the rightful owner and that he is entitled to be registered on Union Pacific's books as the holder of the number of Union Pacific shares that the original 300 shares in Southern Pacific Railroad are now worth. The District Court held that Thorne had commenced his lawsuit within the time period established by the controlling statute of limitations. It then employed the equitable doctrine of laches to hold that Thorne's legal claims were

nevertheless time-barred. The Fifth Circuit affirmed the District Court's judgment.

This Court should grant this petition and reaffirm that laches cannot be employed to bar legal claims that are commenced within the time period set by the controlling statute of limitations. Regardless of whether the statute was enacted by Congress or a state legislature, the policy considerations underlying this Court's recent decisions in *SCA Hygiene* and *Petrella* apply, and mandate that Thorne's claims be allowed to proceed.

Respectfully submitted,

Ryan G. Anderson
Counsel of Record
Law Offices of Ryan G. Anderson, PLLC
405 N. St. Mary's, Suite 800
San Antonio, Texas 78205
(210) 920-2400
(210) 855-5050 (fax)
ryan@rgalawpc.com

Counsel for Petitioner