



MondayMonday

Time Waits For No Man

February 3, 2014

It was in an apartment on the upper West Side of Manhattan, many years ago, that we met Pete Seeger. There was a cocktail party to raise money for a good cause and the draw was an appearance by Pete. The issue was serious and we all milled about, talking purposefully and grateful to be out of the cold that had permeated the streets below. About halfway through the evening, the front door blew opened and an icon appeared, dressed by Central Casting in precisely the right clothes: A dark Greek boatsman's cap upon its head, a sturdy cloth coat on its body and a wool muffler thrown about its throat.

The face was one we had grown up with; a face that stood at the front of every good and worthy cause; a face that exuded the honesty and conviction of one on the right path. All you had to do was follow and sing. The right path could be yours too.

And we all knew that. So when Peter Seeger smiled, shook hands and eventually open his banjo case, we were already sold. The music was only secondary; it was the man that mattered. At least, that's what we thought. Until that banjo cut through those old West Side walls



like a scythe, dropping every pretension down to the ground. We sung and wrote checks and all was well, once again, with the world. For that's what Pete Seeger did: He gave us back our faith in the simple song and the noble ideal. We were Americans and the words on his banjo said it all: "This machine surrounds hate and forces it to surrender." Goodbye Pete.

We use a small case this morning out of the First Department to offer warning of a small principle that can cause big problems. We've seen it applied to motion practice, the entry of orders and now, the dismissal of a complaint which, for no other reason, offended it.

Laches. No, not that city of the Mississippi, but the equitable nugget that says that he who sits on his rights, squashes them if he sits too long. And just what is too long? No one quite knows, but like pornography, a judge knows it when he sees it.

Enter Zacarias Perez, who in 1984 brought this action as a result of a motor vehicle accident with a vehicle owned and operated by the City of

New York. The years passed by and Mr. Zacarias and the City met from time to time, engaged in appearances in court, and gently waltzed about each other. The record, the Appellate Division relates, "demonstrates that the inordinate delays in this case . . . are attributable to plaintiffs and their counsel[.]" Unlike most cases in Supreme Court, Bronx County, this case obviously did not involve either the court or the City, since neither, it would seem, bears any blame for 28 years of adjourned dates.

At any rate, the City now moves to dismiss—after 28 years—alleging that its "ability to mount a defense has been significantly prejudiced," In 28 years the City hasn't managed to investigate the claim? Whose laches is it anyway? The bottom line is the only party to this dance (though it takes at least two to do the Hustle, at least in 1984) is the plaintiff, who has his case dismissed based on laches.

Perez v. City of New York, 2014 NY Slip Op 00578 (1st Dep't 1/30/14).

It's been awhile, but we recall that for someone to invoke laches he must be able to show that there was nothing he could do to ameliorate the situation. After 28 years, we doubt there was such a showing by the City here. The moral, however, is the same: Don't wait. Make the motion, serve the notice, sleep better for it.