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## **EQUITABLE DEFENSES**

This memorandum discusses the typical defenses asserted in a suit in equity to bar the plaintiff's claim. Caution must be taken to update the case citations.

### **LACHES**

Laches cannot bar a claim merely because of delay in asserting a right, but the delay involved must work to the disadvantage and prejudice of the Defendant. Metropolitan St. Louis Sewer District v. Zykon, 495 S.W.2d 643 (Mo. 1973). Laches is principally a question of the inequity of permitting a claim to be enforced based on some change of condition or relation of the property or parties. Schaeffer v. Moore, 262 S.W.2d 854 (Mo. 1953).

### **ESTOPPEL**

Estoppel, much like laches, requires that the asserting party has in good faith become disadvantaged by a changed condition. Food Mart, Inc. v. Taylor, 809 S.W.2d 126 (E.D. 1991). Furthermore, the affirmative defense of estoppel is not a favorite of the law, and will not be lightly invoked. G.M. Morris Boat Company, Inc. v. Bishop, 631 S.W.2d 84 (Mo.App. 1982).

Estoppel must be pleaded with particularity and certainty without leaving anything to be supplied by inference or intendment, and where is grounds for inference or intendment, it will be against and not in favor of the estoppel. Coen v. American Surety Company of New York, 120 F.2d 393 (Ct.App. 1941), Shell v. Conrad, 153 S.W.2d 384 (Mo.App. 1941). Allegation that Plaintiff's act induced Defendants to change their positions or take action to their detriment, or facts from which such action could be inferred, is essential to plea of estoppel. U.S. ex rel. Coates v. St. Louis Clay Products Company, 68 F.Supp. 902 (D.C.Mo. 1947). Particularity requirement for pleading estoppel will be waived if pleadings are not attacked by motion of opposing party. Walters Auto Body Shop, Inc. v. Farmers Insurance Company, 829 S.W.2d 637 (Mo.App. 1992). Every fact essential to create estoppel must be established by clear and

satisfactory evidence. Central Production Credits Association v. Reed, 805 S.W.2d 300 (Mo.App. 1991). Whether elements of claim for equitable estoppel are present is question of fact for a jury. Coonce v. Aetna Life Insurance Co., 777 F.Supp. 759 (Western District Mo. 1991).

### **WAIVER**

Waiver is the intentional relinquishment of a known right, and if implied from conduct, conduct must clearly and unequivocally show a purpose to relinquish right. Shapiro v. Shapiro, 701 S.W.2d 205 (Mo.App. 1985). Waiver and estoppel are equitable doctrines devised to prevent wrong being done to innocent parties. Farley v. St. Charles Insurance Agency, Inc., 807 S.W.2d 168 (Mo.App. 1981). To rise to the level of implied waiver, actions must be so manifestly consistent with an indicative of intention to renounce particular right or benefit that no other reasonable explanation of conduct is possible. Waterwiese v. K.B.A. Construction Managers, Inc., 820 S.W.2d 579 (Mo.App. 1991).

### **UNCLEAN HANDS**

Party relying on clean hands doctrine must show that he himself has been injured, and wrong must have been done to Defendant himself and not to some third party. Price v. Ridler, 373 S.W.2d 59. Litigant will be barred from relief by the clean hands maxim only when he has been guilty of unlawful or inequitable conduct in matter with relation to which he seeks relief. Clark v. Brown, 814 S.W.2d 634 (Mo.App. 1991).

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