

[REDACTED]

Robert Singer, of Manchester, by brief, for the plaintiff.

Robert H. Fryer, Londonderry, by brief, for defendant William C. Colgate.

MEMORANDUM OPINION

This is an action by the holder of a promissory note seeking to recover from the maker and accommodation indorser the unpaid balance of the note. The plaintiff as well as the defendant indorser filed motions for summary judgment together with supporting affidavits. After a hearing *Troisi, J.*, RSA 502-A:5 (Supp. 1975), granted the plaintiff's motion. The defendant appealed. All questions of law were reserved and transferred.

The defendant indorser's only argument is that the plaintiff was guilty of laches and therefore should be barred from relief. However, the plaintiff seeks only legal, not equitable, relief. "Laches is a doctrine peculiarly applicable to suits in equity." 2 J. Pomeroy, *A Treatise on Equity Jurisprudence* § 419a n.7 (5th ed. S. Symons 1941). Thus, it has no applicability here. "[W]here only strictly legal rights are in controversy no neglect in asserting the right, short of the time prescribed by the statute of limitations, will bar the appropriate legal remedy." *Aronovitch v. Levy*, 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953), *quoted in* E. Re, *Equity and Equitable Remedies, Cases and Materials* 1139 (1975); *see* Note, *Laches in Federal Substantive Law: Relation to Statutes of Limitations*, 56 B.U.L. Rev. 970, 970 & 974-75 (1976).

Defendant's exception overruled.

[REDACTED]

Probate Court, Hillsborough County
No. 7627

In re ESTATE OF JAMES STAVROU

March 31, 1977

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Peter J. Bourque, of Manchester, by brief and orally, for the estate.

Wiggin & Nourie, of Manchester, and *Hedley G. Pingree*, *Douglas R. Chamberlain*, and *Kenneth Bouchard* (*Mr. Bouchard* orally) for *Dessie B. Houlne*.

MEMORANDUM OPINION

James M. Stavrou died on March 19, 1976, having record title to real estate located in Manchester, subject to a mortgage which has been paid from mortgage insurance on his life. His sister was appointed administratrix and petitioned for a license to sell the real estate, the other assets not being sufficient to pay debts and expenses of the estate. Dessie B. Houlne duly filed a claim as common law widow of the deceased and claimed equitable ownership of the real estate by reason of a resulting trust, and in October 1976, she filed a bill in equity in Hillsborough County Superior Court alleging a resulting trust in her favor in the real estate giving her title thereto. She claims that the granting of the license to sell the property was unlawful while her adverse claim is pending and seeks a stay pending final adjudication of her claim.

It is not for the probate court to decide whether Dessie B. Houlne has an equitable title but is rather a matter for the superior court under its equity jurisdiction. *In re Bunker Estate*, 110 N.H. 285, 266 A.2d 114 (1970). Given the wide discretion vested in it, we cannot say that it was improper for the probate court to grant the petition for a license to sell. *See Badger v. Story*, 16 N.H. 168 (1844). No sufficient reason has been advanced why Dessie B. Houlne cannot protect any interest she may have by attachment of the property under a writ in aid of her bill in equity. RSA 498:16-20.

Appeal dismissed.