AAA 8329/14

Appellants:	1. Kiryat Ata Municipality 2. Kiryat Ata Local Planning and Building Commission
	v.
Respondents:	1. Nili Koren 2. Malka Baron
On behalf of the Appellants:	Adv. Ayala Segal
On behalf of the Respondents:	Adv. Menachem Levinson; Adv. Raphael Yanay

The Supreme Court sitting as Court of Administrative Appeals

1 Iyar 5776 (May 9, 2016)

Before President M. Naor, Justice U. Vogelman, Justice A. Baron

Appeal on a judgment of the Haifa Court of Administrative Affairs (Judge Y. Wilner) in AP 9196-11-13 of November 9, 2014.

J U D G M E N T

Justice U. Vogelman:

A person who owes a debt to a local authority requests that it issue a certificate that is required in order to transfer rights in land, however the latter refuses to do so until the old debt is paid. When will the debt be ruled to have expired by virtue of prescription, or that the authority so delayed in collecting the debt that it can no longer demand payment as a condition to granting the certificate? This is the question raised by the case before the Court.

Background and Prior Proceedings

1. The Respondents, who have resided in Australia for many years, inherited real estate in Kiryat Ata (hereinafter: the "Property") from their late father. In 2010, the Respondents sold their rights in the Property to a third party (hereinafter: the "Purchaser"). For the purpose of transferring their rights in the Property to the Purchaser, the Respondents approached the Appellants (hereinafter, jointly: the "Municipality") and requested a certificate of paid debts. Pursuant to Section 324 of

the Municipalities Ordinance [New Version] (hereinafter: the "Municipalities Ordinance"), this certificate is required in order to transfer the Property to the Purchaser (hereinafter, also: the "certificate"). The Municipality refused to issue the requested certificate due to its claim that there is an old debt for municipal property taxes (*Arnona*) and road paving and drainage assessments (hereinafter, also: the "assessments") registered in the name of the Respondents and their late father. Thereafter, on December 11, 2012, the Municipality imposed a tax lien on the Property in order to realize the debt. In consequence, the Respondents petitioned the Administrative Affairs Court in Haifa, requesting that it order that the collection procedures be cancelled and that the Municipality issue the required certificate for the transfer of rights in the Property to the Purchaser.

2. The court (Judge Y. Wilner) granted the petition in its entirety. The court first noted that the Respondents' debt expired due to prescription no later than 2010. The court found that the Municipality's cause of action against the Respondents with respect to the paving and drainage assessments was created in 1998, and no later than in 2003 (since the drainage and paving works were performed in 1998-2003). From the time the cause of action was created and until imposing the lien, the Municipality made only one attempt at collection – sending a demand notice in 2005. The Municipality did not prove that the Respondents received that notice, and in any event, this does not amount to a substantial attempt to collect the debt. It was further emphasized that from 2005 and until the liens were imposed in 2012 (after the Respondents requested the certificate), many years had lapsed without the Municipality making any substantial attempts at collection. Inasmuch as the Municipality stood idly by and did not act to collect the debt "in a real and serious manner" – the debt expired by reason of prescription before the lien was imposed on the Property (in 2012). The court further rejected the Municipality's claim that the Respondents' place of residence – Australia – made it difficult to initiate collection proceedings against them. The court found that, in practice, this fact did not prevent the Municipality from imposing a tax lien on the Property and it was not proven or argued that there was anything preventing imposing the lien earlier. It was further emphasized in this regard that the Municipality knew that the Respondents are represented in Israel by an attorney, and that the demand notice could have been served through him. The court parenthetically rejected the Municipality's claim that the petition was filed with undue delay, as it was not proven that the Respondents knew about the existence of the debt until after their request to receive the certificate was denied. The Municipality's claim that the court lacked subject-matter jurisdiction was also rejected. In light of all of the above, the court ordered the Municipality to deliver the required certificate to the Respondents within 15 days from the date of delivery of the judgment.

To complete the picture, it should be noted that the Municipality's request to stay the execution of the judgment, which was filed with this appeal, was denied in a decision dated January 6, 2015. As emerges from the Parties' pleadings, pursuant to that the Municipality performed the judgment and furnished the Respondents with the certificate that was required in order to register the Property in the Purchaser's name, and it was, indeed, so registered.

The Appeal

3. At the outset of its appeal, the Municipality addressed the *in limine* arguments that were rejected by the trial court. According to the Municipality, the court lacked subject-matter jurisdiction to rule on the petition, since there was no administrative decision against which relief could be sought. Additionally, it was argued that is the court was in error in rejecting the argument that the petition should be denied for laches. The Municipality posits that the rights in the Property were transferred to the Respondents' in 1997, pursuant to a grant of probate of a will, and therefore, as of that date the Respondents knew of the municipal property taxes debt in regard to the Property. It was further argued in the matter of the delay, that on November 23, 2011, the Respondents received a response from the Municipality specifying their debt and the debt of their late father, and that approximately two years lapsed from that time and until the petition was filed. According to the Municipality, given these circumstances, it must be concluded that the Respondents unduly delayed to an extent that should lead to the dismissal of the petition for laches. In the framework of the *in limine* arguments, the Municipality adds that the Respondents should have filed an objection against the debt with the Director of the Municipal Property Tax Department, and having failed to do so, they did not exhaust their remedies and their petition should, therefore, have been dismissed. Moreover, the trial court should have dismissed the petition for a lack of good faith and lack of clean hands on the part of the Respondents, who raised new arguments in the framework of their summation, presented the court with a false representation that they did not know of the municipal property taxes debt, and even attempted to mislead the court on various factual matters.

4. On the merits, the Municipality is of the opinion that many of the collection actions that it undertook stopped the clock on the period of prescription. The Municipality insists that according to the action report it presented, it acted to collect the debts throughout the years. In fact, since 1994 (and perhaps even earlier, in years for which the documentation was not preserved), the Municipality registered liens with respect to the municipal taxes debts, disconnected water, issued attachment orders, and more. However, due to the fact that the Respondents resided abroad, the Municipality had no way to collect the debt. In the matter of the municipal taxes debt, it was specifically argued that the Respondents knew about this debt owed on the Property since 1997, as stated above. Moreover, as emerges from the Respondents' attorney's affidavit, he handled this Property since the early 1990's, and he clearly knew of the municipal taxes debt, but did not do anything about it.

5. The Municipality further argues that the trial court did not attribute sufficient weight to the fact that the Respondents are foreign residents, and rejected this argument on the grounds that the Respondents were represented by their attorney, Adv. Raphael Yanai (hereinafter: "Adv. Yanay"), and that nothing prevented the Municipality from serving the demand notice through him. According to the Municipality, Adv. Yanay represented the Respondents in the framework of the Property's sale agreement, which is not related to the municipal taxes debt. According to the Municipality, the lower court erred in finding that a local authority can be seen as not acting with due diligence by reason of the fact that it did not approach the attorney who represented the debtors in another matter. The Municipality further argues that the period of prescription was suspended with respect to the period in which the Respondents were absent from Israel, as stated in Section 14 of the Prescription Law, 5718-1958 [12 L.S.I. 129, 130] (hereinafter: the

"Prescription Law"), also considering the Attorney General's Directive related, *inter alia*, to causes for suspending debt collection. According to the Municipality, since the Respondents have been foreign residents for many years, the Municipality cannot be perceived as having delayed in taking collection actions against them. In this regard, the Municipality parenthetically argued that the Respondents did not raise the prescription argument at the first opportunity.

6. The Respondents rely on the judgment of the trial court. In response to the subject-matter jurisdiction argument, they argue that the administrative decision grounding the petition is the Municipality's refusal to grant the Respondents the certificate required to transfer ownership of the Property in the Land Registry. In response to the argument regarding lack of good faith on their part, the Respondents argue that the written summation and the documents that were attached thereto were filed pursuant to a decision dated August 24, 2014. According to the Respondents, they do not owe any amount whatsoever to the Municipality, which did not succeed in proving the origin of the obligation. The Respondents state that neither they nor their late father ever received demands to pay the debt, except for one letter that was sent in 1997 to their attorney's office and was answered thereby. The Respondents emphasize in this regard that it was held, as a finding of fact, that the Municipality did not do anything to bring the existence of the debt to their knowledge, and that it is inappropriate for an appeals instance to intervene in this finding. The Respondents are of the opinion that the fact that the Municipality did not approach them since 1997 with a demand to pay the debt attests to the nature of the debt and reinforces their position that there was no such debt.

7. In any event, according to the Respondents, it is inappropriate to reject the prescription plea due to their being foreign residents. According to the Respondents, their attorney represented them for more than 30 years, and the Municipality was aware of this representation, and in any event, there was no difficulty imposing a lien against the Property in the Land Registry, or on the rent payments. Inasmuch as the debt that is the subject of this proceeding expired by reason of prescription, and in accordance with the judgment in AAA 8832/12 *Haifa Municipality v. Yitzhak Solomon Ltd.* (April 15, 2015) (hereinafter: the "*Solomon* case"), the Appeal should be denied.

Discussion and Ruling

In Limine Arguments

8. I did not find merit in the *in limine* arguments raised by the Municipality. As for the jurisdiction argument, it should be noted that the Administrative Affairs Court Law, 5760-2000, also applies to the decisions of local authorities or holders of positions or offices therein (except for a decision that, according to the law, requires the approval of the Minister of Interior, and where the main issue of the petition is the Minister of Interior's decision), as stated in Section 5 and particularly 8(a) of the Appendix of that law. The refusal of a local authority to grant a certificate pursuant to Section 324 of the Municipalities Ordinance is the same as a decision not to grant a certificate (see the Law’s definition of a “decision of an authority” – "A decision of an authority in the performance of a public function pursuant to law, including the absence of a decision, as well as an act or omission"

(Section 2 of the Law)), and thus it can be challenged by means of an administrative petition to an Administrative Affairs Court.

9. I also did not find it appropriate to accept the laches argument with respect to the filing of the petition by the Respondents. Indeed, a not inconsiderable period of time passed from the time the Municipality notified the Respondents of the existence of the debts, incidentally to the request to transfer the ownership of the Property (the letter from the Coordinator of the Business Section of the Collection Department is dated November 23, 2011) and until the date of the submission of the petition (November 8, 2013). However, as emerges from the petition – and not directly denied by the Municipality – after the Municipality's refusal to issue the certificate, the Parties conducted negotiations (through the Respondents' attorney). While this cannot, in and of itself, block a laches claim (HCJ 410/78 *Mills Israel Ltd. v. Minister of Finance* (January 18, 1979), the essence of the matter is that the Municipality did not point to any special damage it incurred as a result of the delay in the submission of the petition. In these circumstances, and in striking the balance between the subjective component of the delay and its objective component, I am of the opinion that the petition was not delayed to the extent that tilts the scales towards denying it (see also AAA 867/11 *Tel Aviv Municipality v. ABC Management and Holdings Ltd.*, paragraphs 23-30 (December 28, 2014) (hereinafter: the "*ABC* case"). Finally, I did not find it appropriate to accede to the argument regarding a lack of good faith and lack of clean hands, which in my opinion was not sufficiently established (compare: HCJ 4363/00 *Poria Illit Committee by Chairman Eitan Ron v. Minister of Education*, IsrSC 56(4) 203, 228 (2002)), nor to the argument regarding exhaustion of proceedings, considering the Respondents' argument that they were unaware of the very existence of the said debt.

On the Merits

Prescription, Active Collection and Passive Collection: From the Nesayer Rule to the Solomon Rule

10. The Local Authority collects various funds, the purpose of which is to serve the entire public and to provide basic municipal services to the residents. The Authority has many debtors, and debts to the Authority are created over and over again – periodic mandatory payments, various charges that are imposed as needed, and the like. Therefore, as a creditor, the Authority is a "repeat player". However, the workforce that is entrusted with enforcing the debts on behalf of the Authority is limited. Therefore, and in order to guarantee quick and efficient collection, the Authority was granted power to collect by an abridged procedure that does not involve legal proceedings or the ordinary execution proceedings. These collection procedures are referred to as "administrative collection" (LCA 5255/11 *Herzliya Municipality v. Kerem*, paragraph 17 (June 11, 2013); HCJ 6824/07 *Mana'a v. Tax Authority*, paragraph 26 (December 20, 2010)).

11. How does the prescription argument correspond with administrative collection proceedings? For the purpose of answering this question, it is important to distinguish between two paths that are available to an administrative authority that desires to collect its debts using this method. One path is referred to as "active" collection, and it means that the authority, at its own initiative, takes steps to collect

the debt – primarily by means of the power that is granted to it by virtue of the Taxes (Collection) Ordinance. Another path is "passive" collection, meaning collection in which the authority does not act to collect the debts, but rather waits until the individual requires approval for some action, at which time the approval will be conditioned upon the payment of the debt. Thus, for example, a person who requests to register a transaction for the transfer of rights in land in the Land Registry, is required to present a certificate from the local authority attesting to the fact that all of the debts owed by the owner of the property with respect to the property have been paid in their entirety, or that there are no such debts (Section 324 of the Municipalities Ordinance). The authority's refusal to grant the required certificate until the payment of the debt can frustrate the possibility of the debtor completing the registration of the transaction. This may lead to the debtor paying his debt, i.e., to collection by passive means.

12. When "active" collection is at issue, i.e., when the authority conducts administrative collection proceedings pursuant to the Taxes (Collection) Ordinance, the debtor – the person against whom the administrative collection proceedings are instituted – may submit an administrative petition against the authority that is the creditor, and may argue, in the framework thereof, that the debt expired due to the lapse of the period of prescription. This is the essence of the ruling in the *Nesayer* case (LCA 187/05 *Nesayer v. Nazareth Illit Municipality* (June 20, 2010) (hereinafter: the "*Nesayer* case"); also see TAL HAVKIN, PRESCRIPTION 38 (2014) (Hebrew) (hereinafter: "HAVKIN")). It was similarly ruled in the *Solomon* case that the laws of prescription also apply to "passive" collection. As was ruled there, a local authority shall be obligated to grant a certificate pursuant to Section 324 of the Municipalities Ordinance if the period of prescription lapsed (*per* President (Emeritus) A. Grunis, paragraph 56). It was concurrently emphasized in that case that arguments relating to the doctrine of laches *within* the period of prescription can also be raised (*ibid.*, paragraphs 41-42). In her dissent in that case, Justice D. Barak-Erez, who preferred the application of the doctrine of laches rather than the rules of prescription when dealing with administrative collections, explained that, in fact, there is no significant difference between her approach and the approach of the President (Emeritus): the main practical difference between the two approaches will, so it was stated, be expressed "only in those situations in which the authority was negligent in exercising collection proceedings, and the period of prescription lapsed in the interim. According to the approach of my colleagues, in such an event the passing of time cannot be remedied with respect to the collection of the debts. In contrast, a laches approach could take into consideration both the authority's negligence and the degree of the assessee's fault, at least in those situations in which he consciously evaded payment, as well as the damage that is caused to the public" (paragraph 24 of her opinion). In other words, both the majority opinion and the minority opinion agreed that within the period of prescription, the doctrine of laches can be applied, and according to the majority opinion, once the period of prescription has lapsed, the authority is not permitted to demand the payment of debts that have expired due to prescription.

13. As to the chronological application of this rule, the opinions were divided. The majority opinion – *per* Deputy President E. Rubinstein**,** Justices H. Melcer, D. Barak-Erez and myself concurring – was that the new rule should apply prospectively and not to previous debts that have already accrued (the final

paragraph of the judgment), so that the authorities will be able to "plan their actions prospectively" (paragraph 13 of the opinion of Deputy President E. Rubinstein), and so that "legitimate assumptions of all of the local authorities that relied on Section 324(a) of the Municipalities Ordinance, as it was interpreted until now, shall not – all at once – be frustrated" (para. 9 of the opinion of Justice H. Melcer).

It thus emerges from the above that with respect to debts that accrued prior to the delivery of the judgment in the *Solomon* case, a claim of prescription shall not apply to passive collection. Thus, we cannot accept the ruling of the trial court (that was delivered before the judgment in the *Solomon* case) that the Respondents' debt expired by virtue of prescription. Therefore, the question that remains to be ruled upon is whether it was appropriate to accept the petition on the grounds of the authority's delay in exercising administrative collection proceedings.

In the Absence of Prescription – The Doctrine of Laches

14. Given that we are concerned with actions by administrative authorities, even in the absence of application of the rules of prescription, the doctrine of laches, which is an independent doctrine in any administrative proceeding, does apply. Meaning, an assessee may argue that the authority is barred from collecting the debt because it delayed in doing so for too long a period of time (the *Solomon* case, paragraph 41).

15. The claim of laches in the case at hand is not the common type. Laches is most commonly claimed in public law as an *in limine* argument by the administrative authority that seeks to block a petition for relief (I elaborated on this type of laches argument in the *ABC* case, and it is not relevant to the case at hand, except as stated in paragraph 9 above). Laches can be raised as an *in limine* claim in another way – as in this case – by an individual required to perform some action of a governmental nature by an administrative authority (the *Nesayer* case, paragraph 12 of the opinion of Justice A. Procaccia), or when an individual seeks an order instructing an administrative authority to perform such an action. Thus, the obligation not to delay applies to both of the players in the public arena: it is the obligation of the individual to raise his arguments against the authority's decision in a timely manner, and it is also the obligation of the authority not to delay in adopting administrative decisions and in taking administrative actions. Indeed, the "rules of laches that apply in public law to a petitioner who is late in submitting his petition against the public authority, also apply, *mutatis mutandis*, to the matter of the public authority that itself delays in proceedings it institutes against the citizen" (BAA 2531/01 *Hermon v. Tel-Aviv-Jaffa Central Committee of the Israel Bar Association*, IsrSC 58(4) 55, 80 (2004)), and as aptly expressed by Justice I. Zamir, "Justice is not one-way. As it may block the argument of a citizen, so it may also block the argument of the authority" (CA 1188/92 *Jerusalem Local Planning and Building Commission v. Bareli*, IsrSC 49(1) 463, 472 (1995)).

16. As we know, "the authority's obligation to exercise its powers with due dispatch is among the fundamental principles of good governance, and it is also anchored in Section 11 of the Interpretation Law, 5741-1981, which states: 'Any empowerment, and the imposition of any duty, to do something shall, where no time for doing it is prescribed, mean that it shall or may be done with due dispatch'" [35

L.S.I. 370, 373]. This obligation is an administrative obligation that derives from the principle of reasonableness, which is a fundamental principle of administrative law" (HCJ 6745/15 *Abu Hashia v. Military Commander of the West Bank Area*, paragraph 4 of the opinion of Justice Z. Zylbertal (February 1, 2015) (hereinafter: the "*Abu Hashia* case"); see also HCJ 5931/04 *Mazorski v. State of Israel, The Ministry of Education*, IsrSC 59(3) 769, 782-783 (2004)). We have also ruled that a delay that was caused by prosecution authorities can result in leniency in punishment (CrimA 4434/10 *Yehezkel v. State of Israel*, paragraph 9 (March 16, 2011); CrimA 6922/08 *Anonymous v. State of Israel*, paragraphs 33-37 (February 1, 2010)); that extreme delay can lead to the cancellation of an expropriation (HCJ 10784/02 *Keren Kayemet LeYisrael* **v.** *Atarim on the Tel Aviv Beach, Company for the Development of Tourism Sites in Tel-Aviv-Jaffa*, IsrSC 58(3) 757, 763-764 (2004), and more.

When is it deemed a Delay in Administrative Collection Actions?

17. The Taxes (Collection) Ordinance does not instruct an authority as to the period of time it is allotted to initiate collection proceedings from the day it is legally entitled to act, nor how to act once it has commenced collection proceedings (see also "Exercising Administrative Collection Proceedings pursuant to the Tax (Collection) Ordinance", The Attorney General's Directives 7.1002 (5772) (hereinafter: the "Directive")). However, it would seem indisputable that even if prescription is not applicable, an authority cannot collect any debt at any time, even if it took no reasonable steps for collection over the years. As was stated in one case: "The possibility that a local authority might sit on its hands for years and then one day awaken, and when it desires, come down hard on the citizen, out of the blue, with harsh means of administrative collection, seems to me to be unreasonable and unfair" (AP (Administrative Tel Aviv) 1312/07 *Alzinati v. Lod Municipality* (October 22, 2008); on the need to act in a timely manner, see also ITZHAK ZAMIR, THE ADMINISTRATIVE AUTHORITY, Volume II, 1092-1112 (2nd ed., 2011) (Hebrew) (hereinafter: "ZAMIR"); DAPHNE BARAK-EREZ, ADMINISTRATIVE LAW, Volume I, 407-412 (2010) (Hebrew)). The Attorney General stated similarly in 2012, in a detailed directive, "It is unreasonable that an administrative authority shall unjustifiably institute administrative collection proceedings for the first time after many years, while, due to the lapse of so much time, placing the citizen in a situation in which it will be difficult to contend with the debt allegation" (The Directive, pp. 3-4).

18. However, this coin has another side, which is the concern for overzealous collection – a demand notice immediately followed by another demand letter for immediate payment, immediately followed by an attachment and another – so that laches will not take hold and the debt be lost. The authority's obligation to act with due dispatch should not lead it to its losing site of its obligation – as a trustee of the public – to act reasonably and proportionately (see, in general, HCJ 15/96 *Thermokir Horashim v. The Second Authority for Television and Radio*, IsrSC 50(3) 397, 409 (1996)) in enforcing the law. Even when authority has been granted, the attendant discretion may call for restraint and moderation, since due dispatch is not always maximum speed. The Attorney General also elaborated on this in the Directive he issued, by stating that prior to exercising a means of enforcement pursuant to the Taxes (Collection) Ordinance, the question whether the means is reasonably required in order to collect the tax should be examined. In this framework, *inter alia*, the

necessity and the efficiency of the proceeding will be examined while weighing various considerations, including the scope of the debt and the situation of the debtor (The Directive, p. 13). If these considerations are weighed in accordance with the rules that the authority itself prescribed, it may make a local authority's decision not to apply certain collection means into a reasonable decision that would grant it "immunity" against a subsequent claim of laches.

19. Hence, a balance must be struck. When will it be said that the authority so delayed in collecting its debts that it, itself, caused the rug to be pulled out from under its ability to collect those debts? Naturally this is not an arithmetic or technical test, and similarly, the question of what will be considered a delay in the other sense we addressed – a claim of laches raised by an individual as a defense against proceedings brought against him by an authority – is a complex functional term. In the *Solomon* case, Justice D. Barak-Erez stated that the court will consider the infringement of the reliance interest of the individual, as well as the public damage that could be caused from not exercising the authority (*ibid.*, paragraph 20). Similarly, but not identically, Zamir states that the court must examine the relative weight of the interests involved in the matter by way of conducting a "damage balance": the damage to the private interest that is infringed by the administrative action as opposed to the damage to the public interest that the administrative action is meant to serve (ZAMIR, p. 1110). We will briefly address these matters.

The Reliance Interest and the Public Interest

20. Reliance is an inherent part of human and social behavior. "The actions of people are made in response to human actions or factual situations that they encounter. Such reactions rely on various assumptions – that the present state of affairs is what it appears to be, that a certain state of affairs will also exist in the future, etc." (Daphne Barak-Erez, *Protecting Reliance in Administrative Law*, 27 MISHPATIM 17, 19 (1996) (Hebrew)). It is thus not surprising that the reliance interest is a common thread in Israeli law, and that this interest moved from private law to public law, where it is customary that by virtue of its role as a trustee of the public, the authority is obligated to consider the individual's reliance interest (HCJ 9098/01 *Ganis v. The Ministry of Building and Housing*, IsrSC 59(4) 241, 284 (2004) [http://versa.cardozo.yu.edu/opinions/ganis-v-ministry-building-and-housing]).

21. In the case at hand, the relevant question is that of the individual's reliance on the authority's conduct when there is a difference between written law and the extent it is *de facto* realized. Occasionally, when the executive authority adopts a clear policy of non-enforcement, which becomes customary and acceptable conduct, an expectation is gradually created among the public that the authority will continue to act in such manner in the future. Therefore, a consistent policy of not collecting mandatory payments – such as, municipal property taxes – could establish a reliance interest that is worthy of protection (at least with respect to the collection of past debts), due to the fact that deviating from such enforcement customs prejudices the individual's reliance interest (see and compare, MICHAL TAMIR, SELECTIVE ENFORCEMENT 33 (2008) (Hebrew); CrimA 6328/12 *State of Israel v. Peretz*, paragraph 25 (September 1, 2013) (hereinafter: the "*Peretz* case")). This is certainly the case in regard to a custom not to collect municipal tax payments with respect to a certain *type of assets*, where the assessee may assume that the non-collection is based

on an exemption from municipal taxes and not on a mistake or omission by the authority. As stated by Justice M. Mazuz: "In cases such as these, the legitimate reliance interest exists not by virtue of the lack of collection of the municipal property taxes over an extended period of time, but by virtue of the fact that during those years it was the widely accepted norm and practice that assets of such type were not charged municipal property taxes " (AAA 89/13 *Ramat Gan Municipality v. Harel*, paragraph 6 of the opinion of Justice M. Mazuz (February 24, 2015) (hereinafter: the "*Ramat Gan Municipality* case")).

22. Another question is what is to be ruled in a specific case in which mandatory payments were mistakenly or negligently not collected from a certain person for years. Would there be a protected reliance interest in such case? In the *Ramat Gan Municipality* case, Justice D. Barak-Erez, writing for the majority, was of the opinion that an assessee cannot rely on the non-collection of a tax or other mandatory payment "when it is clear that it is contrary to the provisions of the law" (the *Ramat Gan Municipality* case, paragraph 6 of the opinion of Justice D. Barak-Erez; see also the *Abu Hashia* case, paragraph 7 of the opinion of Justice Z. Zylbertal). This is clear when addressing prospective collecting. It is obvious that the authority – even if it erred and did not collect mandatory payments for many years – is entitled to begin collecting once the mistake has been discovered, since "a mistake that was made by an authority, does not have to continue to be repeated over and over again […]" (compare HCJ 301/69 *Shmilovitch v. Tel-Aviv-Jaffa Municipality*, IsrSC 24(1) 302, 305 (1970); the *Peretz* case, paragraph 35). A situation in which the authority suddenly wakes up and wishes to be paid for past debts that it did not demand for many years, is more complicated. Even without ruling on the question whether it is even possible to speak of an individual's reliance interest in the framework of this discussion, there is no dispute that the reliance interest of a person whom the authority mistakenly "skipped" over – if such interest is worthy of protection – is not at the same level of the reliance interest of a person from whom the authority refrained from collecting its debts due to acceptable custom and practice. And as is the intensity of the interest, so the intensity of the protection (compare: the *Peretz* case, paragraphs 32-34; AAA 3782/12 *Commander of the Tel Aviv-Jaffa District of the Israel Police v. Israel Internet Association*, paragraph 10 of my opinion (March 24, 2012)).

23. And now to the other side of the scale – the side of the public interest, which is multilayered. At the basic level stand the various interests underlying the collection of the municipal property tax and the assessments that a local authority is authorized to collect. Municipal property tax is a tax that is intended to finance the local authority's activity (see AAA 3447/12 *Tarna Hotels and Recreation Enterprises Ltd. v. Hadera Municipality, including the Director of Municipal Taxes of the Hadera Municipality*, paragraphs 10-11 (November 12, 2013)). The payment of assessments assists the authority in financing development works in the area of its jurisdiction (AAA 2314/10 *Rosh Ha'Ayin Municipality v. Ashbad Assets Ltd.*, paragraph 12 (June 24, 2012); CA 10252/05 *Airport City Ltd. v. Director of VAT*, paragraph 24 (March 3, 2008)). The collection of these payments from all of the creditors who are obligated to pay them expresses the interest of collecting real tax and is warranted by the necessity to properly manage the public's funds (compare with CA 8417/09 *Jerusalem Municipality v. Levy*, paragraph 19 (August 21, 2012); AAA 1164/04 *Herzliya Municipality v. Yitzhaki*, paragraph 9 (December 5, 2006)). A ruling that would block the authority from collecting its said debts on the grounds of the doctrine of laches

harms the public purse. It leads to unequal division of the financial burden that is imposed upon its residents. This is the importance of collection.

24. However, this is not the entire picture. An additional public interest is that the authority act in a proper manner, and internalize the harm of negligent conduct. Just as one of the central justifications of the "abuse of process" doctrine that applies in criminal law, which, in appropriate circumstances, allows a dismissal of charges when the filing of the information or the conducting of criminal proceedings fundamentally contradict the principles of justice and legal fairness (Criminal Procedure [Consolidated Version] Law, 5742-1982), is the "desire to guarantee that the legal authorities behave properly, as is required by their status as a governmental body" (CrimA 4596/05 *Rosenstein v. State of Israel*, IsrSC 60(3) 353, 372 (2005)), this is also the case in the matter at hand, since accepting the individual's laches claim assists in achieving the desired conduct on the part of the authority. It can incentivize the authority not to sit on its hands and delay in the collection of debts. All of this, of course, in a reasonable and proportionate manner as stated above. This is also a public interest that must be taken into consideration.

An Additional Remark regarding the Duty of Fairness

25. In my view, an additional matter – the duty of fairness – should be added to the various, relevant considerations. Much ink has been spilled on an authority's duty of fairness, which is a cornerstone of public administration law, and "that doctrine by which each public authority is and should be unequivocally bound" (CA 7699/00 *TAMGASH Project Management and Development Company Ltd. v. Kishon Drainage Authority*, IsrSC 55(4) 873, 889 (2001) (*per* Justice M. Cheshin, dissenting (but not on this matter)). This duty, which is manifested in different forms depending on specific circumstances and changing needs, applies to any governmental function (HCJ 3100/05 *Stockelman v. Israel Land Administration*, paragraph 33 (August 17, 2009); LAA 867/06 *Director of Municipal Property Taxes in the Haifa Municipality v. Dor Energy (1998) Ltd.*, paragraph 32 (April 17, 2008); HCJ 164/97 *Conterm Ltd. v. Ministry of Finance, Customs and VAT Department*, IsrSC 52(1) 289, 319 (1998) (hereinafter: the "*Conterm* case") [http://versa.cardozo.yu.edu/opinions/conterm-ltd-v-finance-ministry]).

26. According to some opinions, alongside the authority's duty of fairness, a citizen is also under a duty to act fairly with the authority. There is some dispute as to the scope of the duty of fairness that applies to the citizen in his relationship with the authority (see the *Conterm* case), and this is not the place to decide that dispute. What is important in the case at hand is that all agree that even if the individual must act in fairness in his relationship with the authority, the duty of fairness imposed upon an individual is *less* demanding than the duty imposed upon the authority – "naturally the authority's duty of fairness is greater" (AAA 7217/70 *Ilanit Rehabilitation Center Ltd. v. State of Israel – Haifa District Commissioner*, paragraph 21 of the opinion of Justice D. Barak-Erez, and paragraph 3 of the opinion of Justice E. Rubinstein (June 27, 2012); the *Ramat Gan* case, paragraph 28 of the opinion of Justice Y. Danziger (dissenting); HCJ 4284/08 *Klepner v. Israel Postal Company Ltd.*, paragraph 36 (April 26, 2010); and compare with the ruling that the duty of fairness that obligates an authority in its conduct with the citizen by virtue of public law, preceded, is broader, and is more stringent than the obligation of good faith that derives from contracts law:

CA 6518/98 *Hod Aviv Ltd. v. Israel Land Administration*, IsrSC 55(4) 28, 45 (2001); HCJ 4422/92 *Ofran v. Israel Land Administration*, IsrSC 47(3) 853, 860 (1993)). In other words, the two – the authority's duty of fairness on the one hand, and the individual's duty of fairness, on the other hand – are not equal. If the authority's duty is greater, then "it follows from the standard of conduct that is expected of the authority, […] that there will be cases in which the authority will be required to 'internalize' a mistake that occurred and not roll it over to the citizen, who was not aware thereof" (the *Ramat Gan* case, paragraph 28 of the opinion of Justice Y. Danziger (dissenting)).

27. How is this expressed in the context of the case at bar? In my opinion, in the circumstances of this case, one must examine whether the authority made efforts to collect over the years, or whether it ignored the debt and completely refrained from enforcement attempts. Additionally, weight should be given to the question of the lapse of time – meaning, how "old" is the debt for which payment is being requested. The older the debt that the authority seeks to collect, and regarding which fewer efforts were exerted – the more the scales will tilt towards the opinion that its collection is contrary to the duty to act in fairness, and *vice versa*. On the other hand, the individual's conduct shall also be examined. Even given the lesser duty that is imposed upon the individual, I am of the opinion that conduct on his part that lacks good faith, and that clearly reflects attempts to evade payment of the mandatory payment shall be held against him.

The Attorney General's Directive

28. An additional tool which may be of assistance is the Attorney General's Directive that was mentioned above. According to the Attorney General, an authority must initiate collection proceedings within a reasonable period of time that should not exceed *three years* (it should be noted, parenthetically, that the memorandum of the Prescription (Amendment no. 6) (Exception to the Law's Application to Administrative Collecting Proceedings) Law, 5776-2016), which was just recently circulated, proposes that the Prescription Law not apply to active or passive administrative collection proceedings, and but rather the doctrine of laches. As is proposed there, under the laches rule, the period of time for an authority to initiate administrative collection proceedings would be three years). However, according to the Attorney General, an authority that initiates collection proceedings after the lapse of three years, in circumstances of at least one of the "causes for suspension" enumerated in the Directive, shall not be considered to have delayed. *Inter alia*, a debtor's presence abroad, in circumstances that do not enable initiating collection proceedings against him, constitute a cause for suspension. In such a case, the period shall be extended until the authority becomes aware of the debtor's return to Israel, or until a change in the circumstances that prevent initiating the collection proceedings – up to a maximum of 25 years from the time the authority was entitled to initiate administrative collection proceedings (The Directive, pp. 8-9).

29. After initiating the collection proceedings, the authority is required, as stated in the Attorney General's Directive, to act with due diligence. After sending a first letter of demand, pursuant to Section 4 of the Taxes (Collection) Ordinance "the authority must continue as directed by the Ordinance, exercise the means of collection prescribed therein in an effort to collect the debt, at reasonable intervals, and cannot delay or prolong the collection proceedings." In the Directive, the Attorney General

defines maximum reasonable periods of time: between the first demand letter and a demand letter for immediate payment – half a year; after the demand letter for immediate payment and from the day the authority became aware of assets which can be attached until sending a notice regrading imposing a first attachment – one year (The Directive, p. 9). In the matter of passive collection, the Attorney General emphasizes that the "rule is that an authority that unjustifiably, and in deviation from this Directive, refrained from initiating collection proceedings pursuant to the Taxes (Collection) Ordinance, while waiting for the time at which it can collect by passive collection, shall not, when the time comes, be able to do so, and it will be obligated to grant the certificate, perform the action or pay the remuneration to the debtor, as applicable" (The Directive, p. 11).

30. As noted, the Attorney General's Directive can be of assistance as a basis for ruling on the question of the laches. Having said that, one must recall the flexible nature of this doctrine. Indeed, prescription in civil law, and the doctrine of laches in public law, both seek to strike a balance between the right of a claimant to realize its substantive legal right and the damages that are anticipated for the defendant and the public due to the lapse of time between the time the cause of action was created and the initiation of the proceeding. However, while the prescription arrangement that applies in civil law provides for a strict rule that requires the court to reject a claim that expired due to the lapse of the period of prescription (a "closed arrangement"), the doctrine of laches in public law is a flexible concept that is examined in accordance with the circumstances of the case (the *Nesayer* case, paragraph 17 of the opinion of Justice A. Procaccia; HAVKIN, at p. 16; on refraining from determining a universal, uniform quantitative threshold, see my opinion in AAA 683/13 *Israel Airports Authority v. Tuito*, para. 108 (September 3, 2015)).

From the General to the Specific

31. We have addressed the various considerations required for arriving at a decision. We noted that in order to determine whether the administrative authority delayed in collecting its debts, it is necessary to consider the individual's reliance interest, the public interest – both the interest to collect real taxes, and the interest of proper, appropriate conduct on behalf of the authority; the fact that the authority's duty of fairness exceeds that of the individual, alongside his obligation – in this case – to act in good faith; and that which is stated in the Attorney General's Directive.

32. How is this to be applied in the case at hand? The Respondents' reliance interest cannot, in and of itself, be a decisive factor. In terms of the municipal property tax payments, this is not a case of people who mistakenly believed that they were exempt from paying municipal property taxes in light of a prevailing custom of the authority with respect to a certain type of assets, and in this sense there is no strong reliance interest. However, the Respondents declared that the Property had been rented out since the 1990's to tenants, and their position is that the municipal property tax payments were paid by them. This point was not ruled upon by the trial court, and is of importance for the matter of reliance. As for the reliance that relates to the payment of the assessments, according to the factual ruling of the trial court, the Municipality did not prove its argument that the Respondents knew of the debt before 2011 (the date they requested the certificate). There is also no indication that the lone notice that was sent to an address in Israel (a letter dated November 2, 2005) was received by the

Respondents. Thus the foundations laid by the Parties do not create a cause for intervening in the findings of the trial court, and the result is that the matter of reliance cuts both ways.

33. As for the public interest – the case at bar concerns the collection of a not inconsiderable debt (according to the letter of the Collection Department dated November 23, 2011 – more than NIS 400,000 in aggregate). One cannot say that the matter lacks consequences for the public purse. However, the authority's conduct was far from that required under the criteria established under the Attorney General's Directive, upon which it relies. Despite the Municipality's arguments in this proceeding, I am not convinced that the Municipality took any steps to collect its debts from the Respondents, other than issuing letters of demand. As already noted, and as emerges from the attached documents, in the matter of the assessments, a single demand letter was sent in 2005, and thereafter, during a period of 6 years – until the request for the certificate – no steps were taken. To a large extent, the Municipality abandoned the municipal property taxes debt. The various actions that the Municipality claims to have undertaken – registering a lien, disconnecting water and the like – were made between 1994-1999, when a debt arrangement was concluded. Thereafter, no real actions were undertaken. This matter also has consequences for the examination of the authority's compliance with the duty of fairness. The debt for which the Municipality demands payment is a longstanding debt, and the collection efforts in its regard were paltry. To this one must add that no lack of good faith on the part of the Respondents was proven, certainly in view of the court's finding regarding the lack of proof of the Respondents' knowledge of the debt.

34. Indeed, had it become clear that the Respondents were aware of the debt and were evading payment by their presence abroad, this would have been held against them when striking the balance. However, this was not proven. I would emphasize in this regard that the Municipality did not explicitly argue, and certainly did not prove, that it knew that the Respondents were not living in Israel and that the failure of the collection efforts is on these grounds. It is unacceptable that a municipality that does attempt to collect its debts, raises a claim that the Respondents were abroad when it eventually – not in real time – becomes aware of the fact, and argues that that can frustrate the claim of laches. Moreover, the Attorney General's Directive to which the Municipality refers will be of no assistance in this context. The Directive refers – *inter alia* – to a category in which the debtor is abroad in circumstances which do not allow for initiating collection proceedings. In such circumstances, the period will be extended until such time as the authority becomes aware of the debtor's return to Israel, or until a change in the circumstances that prevent initiating collection proceedings. However, as we have seen in this case, it was not proven that the failure to initiate collection proceedings was based on the Respondents' presence abroad. Moreover, it was found that their presence abroad did not prevent imposing a lien in 2012, after the Respondents' attorney requested a certificate to transfer the rights. We thus see that the Municipality, which relies upon the Attorney General's Directive, did not even come close to meeting the terms and conditions of the Directive and the time frames therein. In my opinion, all of the above, when taken together, lead, to the conclusion that the Municipality delayed in collecting the debt.

In conclusion, even if prescription does not apply to the case at hand (as was

explained above), administrative collection proceedings cannot be taken to collect the debt that is the subject of this proceeding, by reason of laches. This conclusion makes it unnecessary to rule on the matter of the actual existence of the debt.

The Result

35. In light of the above, I propose to my colleagues that we deny the appeal, and order the Municipality to pay the Respondents' costs in an amount of NIS 10,000.

President M. Naor:

In the *Solomon* case it was held that the law of prescription does not apply to passive collection proceedings. It was concurrently held that the judgment would not apply to previous debts, i.e., to debts that accrued before the date of delivery of the judgment (April 15, 2015). As my colleague Justice U. Vogelman explained, this does not mean that the authorities are freed of any timetables with respect to the prior debts, as the doctrine of laches does apply to passive collection (the *Solomon* case, para. 42 of the opinion of President A. Grunis, and also see: CFH 1595/06 *Estate of the Late Edward Aridor v. Municipality of Petach Tikva* (March 21, 2013) which rejected the application of a new ruling regarding expiration due to prescription of claims for expropriation compensation, and which ruled – with no ifs, ands, or buts – that defendants in proceedings to which the new rule shall not apply, are entitled to assert laches in defense against the claims).

In the matter at hand, the debts that are the subject of the appeal accrued prior to the delivery of the decision in the *Solomon* case, and therefore the laws of prescription do not apply in all that relates to passive collection proceedings. In this sense, the *Solomon* rule, which did not yet exist when the trial court delivered its judgment, puts spokes in the wheels of the Respondents' claim regarding prescription. However, as my colleague Justice Vogelman held, the rejection of the prescription argument does not mean that there was no laches. In fact, even though the trial court decided the case based on the prescription argument, it discussed the case in the language of the doctrine of laches, and while applying criteria that are relevant to that doctrine. Like the trial court and my colleague Justice **Vogelman**, I am also of the opinion that the Appellant delayed in collecting its debts from the Respondents, and that the delay in the circumstances of the case was manifested in refraining from initiating administrative collection proceedings. In reaching this conclusion, I am of the opinion that weight should also be attributed the harm that could have been caused to the Respondents due to delayed collection of the debt, particularly in light of the agreement for the sale of the Property that was concluded in the interim with a third party.

Subject to the above, I concur in the opinion of my colleague Justice U. Vogelman.

Justice A. Baron:

I concur in the comprehensive opinion of my colleague Justice U. Vogelman,

and with the remarks of my colleague, President M. Naor.

Decided as stated in the judgment of Justice U. Vogelman.

Given this day, the 23rd of Iyar 5776 (May 31, 2016).