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IN THE SUPREME COURT OF THE STATE OF WASHINGTON
Court of Appeals Case No. 55882-3-II

IN RE THE DISSOLUTION OF APOGEE CAPITAL LLC

CYNTHIA A. EDWARDS
Respondent
v.
SCOTT J. EDWARDS
Petitioner

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The Petitioner is Scott Edwards ("Scott" or "Petitioner"), a member and manager of Apogee Capital, LLC ("Apogee"). Apogee was judicially dissolved and placed under the control of general receiver Resource Transition Consultants, LLC ("RTC") on petition of Respondent Cynthia Edwards ("Cindi" or "Respondent"), Scott's sister.

II. COURT OF APPEALS DECISION

The Court of Appeals issued an opinion affirming the Superior Court on July 19, 2022. Case No. 55882-3-II Slip Op. It then granted in part Petitioner's motion for reconsideration on November 15, 2022, modifying the language of its July 19 decision but still affirming the Superior Court in full. A copy of the November 15, 2022, decision in case number 55882-3-II is attached to this petition as Appendix A.

III. INTRODUCTION

This case concerns the two pure questions of law: one of statutory interpretation and one of contract interpretation. The Court of Appeals erred as to both.

First, the Court of Appeals omitted the word "except" from its interpretation of RCW 7.60.025(1), dramatically expanding the Superior Court's authority to appoint a general receiver over private businesses inconsistent with over a century of precedent. A copy of RCW 7.60.025 is attached to this Petition as Appendix B. Second, the Court of Appeals refused to apply the arbitration clause from Apogee's Operating Agreement to a dispute between Apogee's two members. Clerks Papers (CP) at 187.

In putting these two erroneous rulings together, the Court of Appeals got the analysis exactly backwards. Because arbitration of the parties' dispute (not to mention monetary damages) was available as an alternative remedy, the court should have found that appointment of a receiver was

inappropriate. RCW 7.60.025(1) (requiring a superior court to determine that other remedies are unavailable before appointing a receiver). Instead, the court ruled that, *because* Cindi sought appointment of a receiver, the case could not be arbitrated. Its decision elevated the extraordinary remedy of receivership over Washington's general policy favoring arbitration.

This Court should accept review to correct the Court of Appeals' errors and provide guidance on the proper standard for when appointment of a receiver over a private business is appropriate under RCW 7.60.025(1)—an issue on which contrary decisions now exist from the Courts of Appeals.

IV. ISSUES PRESENTED FOR REVIEW

1. Whether RCW 7.60.025(1) requires the Superior Court to consider whether "appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate" before appointing a receiver pursuant to RCW 7.60.025(1)(t), (u), and (nn).

2. Whether an LLC Agreement's requirement that "[a]ny legal dispute between or among Members and/or Manager(s) may, at the sole option of the Manager(s), be submitted to binding arbitration" encompasses a dispute between the LLC's two members where one seeks LLC dissolution on the basis that the other improperly liquidated LLC assets.

V. STATEMENT OF THE CASE

A. Apogee Background and Dispute Origins

Scott and Cindi each received a 33% share of Apogee Capital, LLC as gifts from their parents in December 2012. CP at 226. Scott has acted as Apogee's sole manager since 2012. *Id.* at 177, 225-26. Apogee purchased the 33% share belonging to their third sibling (Jeffrey Edwards) in 2016, leaving Scott and Cindi each owning 50% of the company. *Id.* at 226.

Around 2017, Cindi requested that Scott purchase her Apogee interest as well, cashing her out and allowing Scott to take full possession of the business. *Id.* at 227. After years of stalled negotiations, Scott notified Cindi that, unless she

objected, he would purchase Apogee's real estate holdings through his other business entities for their appraised fair market value and provide Cindi with her 50% share of the proceeds. *Id.* at 193-98, 521. Before executing these sales, Scott offered Cindi either side of the transaction: she could buy his Apogee interest or he would buy her Apogee interest—either way, Scott or Cindi would purchase the real estate and use the proceeds to buy the other's Apogee interest. *Id.* at 193-98, 521, 628-29. When Cindi did not respond, Scott carried out the sales and forwarded payment to Cindi. *Id.* at 39-48, 99-101, 111-13.

B. Cindi Moved to Dissolve Apogee and Appoint a General Receiver

After Scott completed the sales, Cindi filed a petition to dissolve Apogee. *Id.* at 1. She argued that Scott's conduct had "created deadlocks and disputes on business management matters and made the effective operation of the LLC impossible," necessitating dissolution. *Id.* Cindi's petition also requested appointment of a receiver to "continue the operations of the

Company without the interference of Scott Edwards" and "pursue assets wrongly diverted from Apogee by Scott Edwards." *Id.* at 1-2. Nowhere in the petition, nor anywhere in Cindi's briefing or argument before the Superior Court, did Cindi ever argue or show that appointment of a receiver was "reasonably necessary" or that "other available remedies [were] not available or [were] inadequate." *See* RCW 7.60.025(1); CP at 1-18, 232-37, 268-80, 592-97, 676-87.

The Superior Court commissioner rejected Cindi's petition in full. *Id.* at 266. However, the Superior Court revised the commissioner's order and granted Cindi's petition on April 30, 2021. *Id.* at 599-601. It ruled that "cause exists to order the judicial dissolution of Apogee Capital LLC" and that "cause exists pursuant to RCW 7.60.025(1), including provisions (t), (u), and (nn) for appointment of a general receiver." *Id.* at 601. The court never considered whether a receiver was "reasonably necessary" or the possibility of any "other available remedies."

RCW 7.60.025(1); CP at 601; *see* Verbatim Report of Proceedings (“VRP”) (Apr. 30, 2021) at 29-31.

Scott appealed this decision. He argued to the Court of Appeals that the Superior Court had erred because it “did not even consider whether alternative legal remedies were available or adequate to address [Cindi’s] concerns.” Appellant’s Opening Br. at 22. The Court of Appeals did not disagree with Scott on the facts, but on the law. It ruled that, because “the superior court appointed a receiver to aid the dissolution of Apogee under RCW 7.60.025(1)(t), (u), and (nn)” . . . “an inquiry [into whether the appointment of a receiver is reasonably necessary or if available remedies are inadequate] was not required here.” Court of Appeals Opinion at 24-25. Thus, it affirmed the Superior Court’s decision to appoint RTC as general receiver over Apogee and held that the Superior Court had not erred by failing to inquire into the necessity of a receiver or whether other remedies were available. *Id.* at 25.

C. **Scott Requested That the Dispute be Submitted to Binding Arbitration, Pursuant to the Apogee Operating Agreement**

Scott argued before the Superior Court that Cindi's petition should be dismissed because she had failed to comply with a provision of Apogee's Operating Agreement. CP at 588-89. Under that agreement, "Any legal dispute between or among Members and/or Manager(s) may, at the sole option of the Manager(s), be submitted to binding arbitration by any customary and reasonable method of arbitration then practiced in Pierce County, Washington." *Id.* at 187.

The Superior Court commissioner initially ruled that it lacked authority to rule on the applicability of the arbitration agreement and "reserved" on the issue. *Id.* at 267. On Cindi's motion to revise, the Superior Court ruled that "the judicial dissolution and appointment of a general receiver are not subject to the binding arbitration provisions of the Operating Agreement or otherwise required by law." *Id.* at 601. It elaborated in its oral ruling that this was because "it would be inequitable to enforce

the mandatory arbitration clause of the operating agreement." VRP (Apr. 30, 2021) at 31.

Scott assigned error to the Superior Court's arbitration ruling on appeal. Appellant's Opening Br. at 2. In its decision affirming the Superior Court, the court of appeals ruled that "the issue of dissolution is not a legal dispute 'between or among Members and/or Manager(s),'" but rather "a proceeding with respect to the continuing existence of the private entity at issue." Court of Appeals Opinion at 13. It held the same as to Cindi's request for appointment of a receiver. *Id.* at 15.

VI. ARGUMENT

Scott seeks this Court's review of the two issues raised above: (1) whether RCW 7.60.025(1) required the Superior Court to consider necessity and other available remedies before appointing a receiver and (2) whether the arbitration clause in Apogee's operating agreement required arbitration of the dispute between the parties.

RAP 13.4(b) provides this Court's standards for acceptance of petitions for review. Three of the four grounds for acceptance of review are met in this case.

First, "the decision of the Court of Appeals is in conflict with a decision of the Supreme Court" under RAP 13.4(b)(1), as well as "in conflict with a published decision of the Court of Appeals" under RAP 13.4(b)(2). The Court of Appeals' decision is flatly contrary to the plain words of RCW 7.60.025(1) and over a century of precedent from every Court ruling on whether to appoint a receiver.

Second, the decision of the Court of Appeals is also in conflict with multiple Court of Appeals decisions concerning the scope of LLC agreement arbitration clauses and the authority of an arbitrator to order extraordinary equitable relief.

Finally, the Court of Appeals' erroneous rulings present questions "of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). A definitive

ruling from this Court would provide valuable guidance to the lower courts on both these questions of law.

A. **The Court of Appeals Read the Word "Except" out of RCW 7.60.025 to Interpret the Statute Inconsistently with Binding Precedent**

The Court of Appeals ruling that *no inquiry* into "whether the appointment of a receiver is reasonably necessary or if available remedies are inadequate" is required except "in three specific cases" listed in RCW 7.60.025(1) is flatly inconsistent with the text of the statute and over a century of binding precedent. The statute states that "except in" three specific cases, "a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate." RCW 7.60.025(1). Flipping this language entirely on its head, the Court of Appeals ruled that the inquiry is required *only in the three exempted cases*. This ruling vastly expands the Superior Court's power to appoint receivers in numerous situations that could be remedied through other

means where a petitioner offers only a bare statutory pretext. The court's ruling requires correction from this Court.

"The appointment of a receiver is an extraordinary remedy and is justified only under extraordinary circumstances." *Gahagan v. Wisner*, 139 Wash. 664, 667, 247 P. 965 (1926). "A receivership is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. It is not an end in itself." *Gordon v. Washington*, 295 U.S. 30, 37, 55 S. Ct. 584, 79 L. Ed. 1282 (1935); *see also Bergman Clay Mfg. Co. v. Bergman*, 73 Wash. 144, 146-47, 131 P. 485 (1913) ("The power to appoint a receiver is a delicate one, and should always be exercised with caution."); *Secord v. Wheeler Gold Mining Co.*, 53 Wash. 620, 624-25, 102 P. 654 (1909) ("[A] corporation will be placed in the hands of a receiver for the misconduct of its officers or directors only when necessary to preserve the property or rights of creditors or stockholders. The mere misconduct of officers of a corporation is not sufficient ground for the appointment of a receiver."). "Mistakes, inadvertence, or bad

policy, if honestly pursued, will not warrant the appointment of a receiver." *Secord*, 53 Wash. at 625.

The Washington legislature codified the Superior Court's equitable receivership powers in 2004 to update Washington's then-existing receivership statutes "originally enacted by the Territorial Legislature over 150 years" before. SSB 6189 Final Bill Report (2004) at 1; *see* LAWS OF 2004, ch. 165. When it did so, it exhaustively listed 40 specific circumstances where a receiver "may be appointed." RCW 7.60.025(1). The list includes such situations as when a "party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party," "[a]fter judgment, in order to give effect to the judgment," and concludes with a catch-all for "such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties." RCW 7.60.025(1)(a), (c), (nn). Thus, if the Court of Appeals is correct that meeting one of the 40 RCW 7.60.025(1) subsections is all that is required for

appointment of a receiver, appointment is permissible and not subject to reversal in every case where the parties dispute their respective property rights, every case in which a judgment has issued, and every case within the exercise of the Superior Court's discretion.

But the legislature included a critically important limiting factor on the Superior Court's use of this "extraordinary remedy." *Gahagan*, 139 Wash. at 667. That limiting factor is at the heart of this case. It reads in full:

> A receiver may be appointed by the superior court of this state in the following instances, ***but except*** in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed ***only if*** the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate.

RCW 7.60.025(1) (emphasis added).

Before proceeding with the 40 sets of circumstances where receivers may be appropriate, the statute demands that, for each of them *with three specific exceptions*, that the Superior Court must "determine[]" that the receiver is "reasonably necessary and that other available remedies either are not available or are inadequate." *Id.* It did not do so in this case. CP at 599-601; VRP (Apr. 30, 2021) at 29-31 (omitting any discussion of the necessity of a receiver or other available remedies).

But the Court of Appeals interpreted this statute exactly backwards. It ruled that the language quoted above requires this additional inquiry, not *except* in the three specific cases, but *only in* the three listed specific cases. App'x A at 24-25. The Court held:

> Based on the plain language of RCW 7.60.025(1), the superior court must additionally ask whether the appointment of a receiver is reasonably necessary or if available remedies are inadequate *in three specific cases:* where a statute requires a receiver, a state agent seeks a receiver, or a party seeks a receivership with respect to real property under RCW 7.60.025(1)(b)(ii). But none of those

> circumstances apply here. . . . Therefore, such an inquiry was not required here.

Id. (emphasis added)

"The meaning of a statute is a question of law reviewed de novo." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). "The court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* "Rules of statutory construction provide that a statute which is clear on its face is not subject to judicial interpretation." *Marquis v. City of Spokane*, 130 Wn.2d 97, 107, 922 P.2d 43 (1996); *see also Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002) ("An unambiguous statute is not subject to judicial construction."). The Court of Appeals' interpretation of RCW 7.60.025(1) flies in the face of the legislature's clear intent.

The legislature's use of the word "except" is not ambiguous and clearly requires an inquiry in all "except" the three named cases. The Court of Appeals' analysis does not explain, acknowledge, or account for the legislature's use of "except" in any way. It simply omits that critical word from the statute, entirely reversing the legislature's meaning.

No party to this matter ever proposed the reading of the statute that the Court of Appeals selected. *See generally* Resp't's Opening Br. at 34-38 (arguing that appointment of RTC was "reasonably necessary" and the Superior Court had no other available options). Even in responding to Scott's Motion for Reconsideration before the court of appeals, Cindi did not *defend* its statutory interpretation, but argued that "Revision of the Court's Ruling . . . Would Not Change the Court's Holding." Answer to Appellant's Mot. for Reconsideration at 1.[1]

[1] Cindi did allege that the "Court's reading of the statute is a rational one" because of "the additional determination language" in the statute. Answer to Appellant's Mot. for

An inquiry into reasonable necessity and other available remedies does not even make sense in the context of the three listed scenarios. If a receiver "is expressly required by statute," as under the first case, a further inquiry into whether other remedies are unavailable accomplishes little—appointment is required regardless. RCW 7.60.025(1); s*ee Glaubach v. Regence BlueShield*, 149 Wn.2d 827, 833, 74 P.3d 115 (2003) ("We avoid readings of statutes that result in unlikely, absurd, or strained consequences."). Another of the "three specific cases" references RCW 7.60.025(1)(b)(ii), where appointment is "by agreement or is reasonably necessary" for a specific purpose. Thus, the statute does not require a finding of "reasonable necessity" where the particular receivership basis independently bears that requirement or the parties are in agreement. Reversing the terms

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Reconsideration at 2. She did not explain how the court's reading accounts for the word "except."

of the statute to *only* require a finding of reasonable necessity in such a situation creates absurdity.

The Court of Appeals' decision was not only flatly inconsistent with the plain statutory language, it was also inconsistent with binding precedent from this Court and with numerous published opinions from the Court of Appeals. *See* RAP 13.4(b)(1), (2). This Court has clearly held as recently as 2016 that "'It is well established that a receiver should not be appointed if there is any other adequate remedy.'" *Jordan v. Nationstar Mortgage, LLC*, 185 Wn.2d 876, 893, 374 P.3d 1195 (2016) (quoting *King County Dep't of Comm. & Human Servs. v. Nw. Defenders Ass'n*, 118 Wn. App. 117, 126, 75 P.3d 583 (2003)). Though the current version of the statute dates to 2004, the requirement that a receiver is reasonably necessary and other remedies unavailable goes back over a century. *See, e.g.*, *Bergman Clay Mfg. Co.*, 73 Wash. at 147 ("[A] receiver should not be appointed if there is any other adequate remedy."); *Secord*, 53 Wash. at 624 ("It is the rule that courts of equity will not, at

the suit of a stockholder, resort to the extreme remedy of taking the property out of the hands of the managers elected by the stockholders, except as a last resort, and when considered to be absolutely necessary for the preservation of the trust fund.").[2]

Court of Appeals cases reiterating this requirement are legion. *See Bero v. Name Intelligence, Inc.*, 195 Wn. App. 170, 175, 381 P.3d 71 (2016) ("*Except* in certain narrow, inapplicable circumstances, the trial court may appoint a receiver only when it finds that a receivership is 'reasonably necessary and that other available remedies either are not available or are inadequate.'"

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[2] Under the previous version of the statute, originally drafted in 1854 by the territorial legislature and most recently amended in 1998, the legislature provided six specific scenarios where appointment was appropriate. *See* Former RCW 7.60.020 (2002); LAWS OF 1998, ch. 295, § 18. The statutory language itself did not require an inquiry into whether a receiver was reasonably necessary or other available remedies. *See generally id.* Nonetheless, because a receiver is such an extraordinary remedy and the receivership appointment power "should always be exercised with caution," this Court itself has held since 1913 "that a receiver should not be appointed if there is any other adequate remedy." *Bergman Clay Mfg.*, 73 Wash. at 147. The legislature codified this requirement in 2004. LAWS OF 2004, ch. 165 § 4.

(emphasis added)); *Chengdu Gaishi Electronics, Ltd. v. G.A.E.M.A., Inc.*, 11 Wn. App. 2d 617, 626, 454 P.3d 891 (2019) ("[A] trial court must determine whether appointment of a receiver 'is reasonably necessary and that other available remedies either are not available or are inadequate'" under RCW 7.60.025(1)(i)); *Nw. Defenders Ass'n*, 118 Wn. App. at 126 ("It is well established that a receiver should not be appointed if there is any other adequate remedy.").

Thus, the Court of Appeals' decision in this case conflicts with numerous decisions from this Court and the Court of Appeals. This Court should grant review under RAP 13.4(b)(1) and (2).

B. The Courts of Appeals Require Guidance from this Court as to an Arbitrator's Authority to Compel Extraordinary Relief Such as LLC Dissolution

The Court of Appeals compounded its erroneous interpretation of RCW 7.60.025(1) by misinterpreting the Apogee Capital operating agreement. That agreement provides:

> Any legal dispute between or among Members and/or Manager(s) may, at the sole option of the Manager(s), be submitted to binding arbitration by any customary and reasonable method of arbitration then practiced in Pierce County, Washington.

CP at 187. Both the Superior Court and the Court of Appeals (for different reasons) held that the parties' arbitration agreement could not encompass a dispute about whether to dissolve Apogee and appoint a receiver. The Superior Court ruled simply that enforcement of the arbitration clause against Cindi would be "inequitable" without further explanation. VRP (Apr. 30, 2021) at 30.

The Court of Appeals affirmed on the independent basis that Cindi's petition fell outside the arbitration clause based on the equitable relief she sought. Court of Appeals Opinion at 12-17. It also ruled that "the superior court has exclusive authority to appoint and oversee a receiver." *Id.* The Court of Appeals' decisions run afoul of two Division I cases. This Court should grant review to provide guidance and resolve this conflict under RAP 13.4(b)(1).

1. The Court of Appeals' Decision is Inconsistent with Recent Division I Precedent Concerning the Nature of a "Dispute"

Central to the Court of Appeals' interpretation was its rejection of Scott's argument that "the issue of dissolution is a legal dispute between or among members because the core of Cynthia's petition is based on whether he breached certain fiduciary duties and whether he properly managed Apogee." Court of Appeals Opinion at 13. This ruling is inconsistent with a recent decision from Division I of the Court of Appeals, issued on August 22, 2022. *Berman v. Tierra Real Estate Group, LLC*, __ Wn. App. 2d __, 515 P.3d 1004, 1007 (2022).

Berman held "limited liability companies are bound by arbitration agreements found in their operating agreements." *Id.* Applying the "'strong presumption in favor of arbitrability,'" the court held that derivative claims fell within the scope of the operating agreement because the arbitration clause "unambiguously indicate[d] an intent to arbitrate *all disputes* between the parties." *Id.* at 1009-10 (emphasis added) (quoting

Peninsula Sch. Dist. No. 401 v. Pub. Sch. Emps. of Peninsula, 130 Wn.2d 401, 414, 924 P.2d 13 (1996)). Even though the company was a named party, the true dispute was that "Berman, a member, believe[d] that the other members' actions constituted a breach of fiduciary duty and civil conspiracy. The other members [of the LLC] disagree[d]. *That Berman's claims are derivative on behalf of the entity does not transform the dispute into one that is not between the members*." *Id.* at 1011 (emphasis added).

The analysis from *Berman* applies in this case as well, creating tension between Division I and Division II of the courts of appeals and necessitating this court's resolution. Whether brought in her own name or on behalf of Apogee, whether seeking monetary damages or LLC dissolution, the nature of the dispute in this case is identical to that in *Berman*. Apogee member Cindi believes that Apogee member Scott's actions breached his fiduciary duty. CP at 1. Thus, the members of

Apogee had a "legal dispute" which fell squarely within the Apogee arbitration clause, just as the derivative claim in *Berman*.

This Court should resolve these inconsistent decisions by granting review of this matter pursuant to RAP 13.4(b)(1).

2. *The Court of Appeals' Decision is Inconsistent with a Division I Case Providing Arbitrators with Authority to Order Equitable Relief*

Central to the court of appeals' ruling that the Apogee arbitration clause did not control this dispute was its holding that arbitrators lack authority to order LLC dissolution or appointment of a receiver. Court of Appeals' Opinion at 12-17. Division I of the Court of Appeals has previously held that arbitrators may, for example, order declaratory relief to be subsequently confirmed by Superior Court judgment. *Verbeek Props., LLC v. GreenCo Envtl., Inc.*, 159 Wn. App. 82, 92, 246 P.3d 205 (2010). This Court should grant review to rule on the scope and limits of an arbitrator's authority to provide equitable relief.

The Court of Appeals distinguished *Verbeek* on the grounds that RCW 25.15.274 prevents the LLC agreement from "limit[ing] the power of a court to order dissolution." Court of Appeals Opinion at 14 & n.6. But the party opposed to arbitration made the exact same argument in *Verbeek*, alleging that "only a court of record has authority to render declaratory judgments." 159 Wn. App. at 92. The court rejected that argument because arbitrators may "order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration" and a "party may obtain confirmation of such an award in the form of an order issued by the court." *Id.* (quoting RCW 7.04A.210(3); citing RCW 7.04A.220).

This case is not the first to raise the question of an arbitrator's authority to order business dissolution and appointment of a receiver. *See, e.g.*, *JC Aviation Investments, LLC v. Hytech Power, LLC*, Case No. 81539-3-I, 2021 WL 778043 (Mar. 1, 2021) at *3 (discussing whether LLC dissolution fell under an LLC agreement arbitration clause that

applied to "any dispute hereunder"); *see also In re Marriage of Pascale*, 173 Wn. App. 836, 846, 295 P.3d 805 (2013) (requiring arbitration of a "drafting of the final [marital] dissolution papers" because a dispute over those papers "plainly [fell] within the scope of the arbitration clause"). In *JC Aviation*, the court avoided the "question of an arbitrator's authority" by interpreting the LLC agreement arbitration clause not to include dissolution of the business. Case No. 81539-3-I, 2021 WL 778043 at *5 n.25. The parallel question of the arbitrator's authority over a receiver was not yet ripe for judicial decision because the superior court had not appointed one. *Id.* at *6.

Based on the frequent appearance of this issue in recent years at the Courts of Appeals, this Court's input as to the proper scope of an arbitrator's authority to order business dissolution raises an important question of public interest requiring this court's resolution pursuant to RAP 13.4(b)(4).

VII. CONCLUSION

The Court of Appeals erred by reading the words "except" out of RCW 7.60.025(1) and by interpreting the Apogee Capital LLC agreement's arbitration clause inconsistently with the contemporaneous published Division I case, *Berman v. Tierra Real Estate Group*, 515 P.3d 1004 (2022). This Court should grant review of both these issues to correct the court of appeals' clear statutory interpretation error and to resolve tension among the divisions of the courts of appeals.

This brief contains 4,595 words, excluding those portions exempted from word count by RAP 18.17(b).

Respectfully submitted this 15th day of December, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a true and correct copy of the foregoing document upon counsel of record, via the methods noted below, properly addressed as follows:

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DATED this 15th day of December, 2022.

/s/ Lisa Lefebvre
Lisa Lefebvre, Legal Assistant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

November 15, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Matter of the Dissolution of: APOGEE CAPITAL LLC, a Washington limited liability company.	No. 55882-3-II ORDER GRANTING MOTION FOR RECONSIDERATION IN PART AND AMENDING OPINION

Appellant, Scott Edwards, moves this court to reconsider its July 19, 2022 opinion. At the direction of this court, Respondent, Cynthia A. Edwards responded to Appellant's motion. After consideration, we grant Appellant's motion for reconsideration in part. We amend the July 19, 2022 opinion as follows:

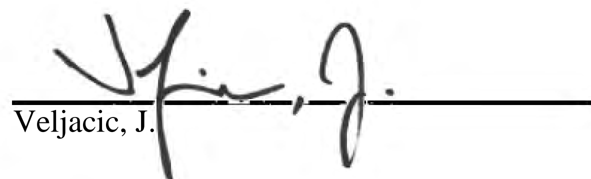
Sentence two in the first full paragraph of page 21 that reads, "Scott does not dispute that he sold Apogee's properties to LLCs that he owns for less than their fair market value." is deleted and replaced with the following sentence: "The parties dispute whether the properties were sold at fair market value."

We deny the remainder of Edwards' motion.

It is SO ORDERED.

Panel: Jj. Worswick, Lee, Veljacic.

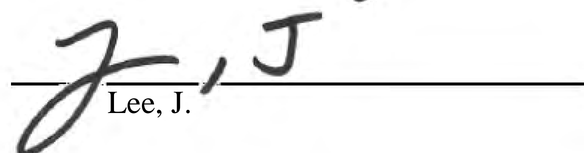
FOR THE COURT:



Veljacic, J.

We concur:

Worswick, P.J.



Lee, J.

Filed
Washington State
Court of Appeals
Division Two

July 19, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Matter of the Dissolution of: APOGEE CAPITAL LLC, a Washington limited liability company.	No. 55882-3-II UNPUBLISHED OPINION

VELJACIC, J. — Scott J. Edwards appeals the superior court's order granting Cynthia A. Edwards's petition to dissolve Apogee Capital, LLC (Apogee) and to appoint a general receiver.[1] Scott argues that the superior court erred by declining to enforce the arbitration clause in Apogee's operating agreement. Scott also argues that the superior court abused its discretion by granting Cynthia's petition to (1) judicially dissolve Apogee under RCW 25.15.274 and (2) appoint a general receiver under RCW 7.60.025. Both parties request their costs on appeal under RAP 14.2.

We hold that the arbitration clause in Apogee's operating agreement does not encompass the issue of dissolution or receivership. We also hold that the superior court did not abuse its discretion by granting Cynthia's petition for dissolution and the appointment of a general receiver. Therefore, we award Cynthia's costs on appeal because she is the substantially prevailing party on review. Accordingly, we affirm the superior court's order granting Cynthia's petition for dissolution and the appointment of a general receiver.

[1] Because the members of Apogee all share the same last name, we use first names for clarity. No disrespect is intended.

FACTS

I. Background

In December 2008, William Edwards formed Apogee as a manager-managed limited liability company for the purpose of holding and developing real estate. The marital community of William and Joyce Edwards originally held interest in Apogee as its sole member. In December 2012, Apogee's members executed a restated operating agreement. Scott was appointed as the sole manager.

In February 2015, William passed away, leaving his property to the Bill and Joyce Edwards Living Trust. In July 2015, the Bill and Joyce Edwards Living Trust distributed its sole membership interest in Apogee to William's three children—Scott, Cynthia, and Jeffery Edwards—in equal units.[2]

In April 2016, Apogee's members agreed to buy out Jeffery's interest pursuant to the method provided in the operating agreement. This resulted in Scott and Cynthia each holding an undivided one-half (50 percent) interest in Apogee.

II. Events Leading to the Petition

In August 2017, Cynthia began discussing with Scott the possibility of her withdrawing from Apogee. Cynthia considered withdrawing because of her estranged relationship with Scott and her concern regarding Scott's management of Apogee. These discussions were conducted through legal counsel. Throughout 2018, Scott had a number of Apogee's properties independently appraised.

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[2] We refer to Scott, Cynthia, and Jeffery individually for clarity. No disrespect is intended.

On March 14, 2018, Scott's attorney sent Cynthia's attorney a proposed settlement agreement to buy out Cynthia's membership interest based on the appraised values, assignment of promissory notes and deeds of trust for other properties, and half of Apogee's cash reserves. Scott and Cynthia were unable to agree on the terms of sale and the proposed agreement was never signed.

On December 6, 2018, Scott's attorney sent Cynthia's attorney an e-mail which stated that if Cynthia did not agree to settle by December 21, then Scott would proceed with managing Apogee for their mutual benefit. The e-mail also stated that this would likely result in the sale of Apogee's properties at their appraised figures.

On November 27, 2019, Scott's attorney sent a letter to Cynthia concerning her withdrawal and buyout. The letter stated that if Cynthia consented to the terms of the buyout, then she should sign the attached withdrawal/buyout agreement. Cynthia did not agree to the proposal and did not return a signed agreement.

On December 20, 2019, Scott's attorney sent a follow up letter to Cynthia concerning her withdrawal and buyout. Scott's attorney stated that if Cynthia did not sign the withdrawal/buyout agreement by December 31, then Scott would proceed with the buyout. Cynthia did not sign the withdrawal/buyout agreement. No meeting was called in accordance with article 5.3 of the operating agreement concerning Cynthia's withdrawal and buyout.

Scott then began selling various Apogee properties to LLCs he owned or were under his control. Scott stated that he "sold Apogee's real property to LLCs which [he] had formed in order to liquidate its assets in furtherance of [Cynthia's] withdrawal." Clerk's Papers (CP) at 228.

On November 13, 2020, Cynthia again expressed interest in withdrawing from Apogee, but reiterated that the previous proposals were unacceptable. Cynthia also raised concerns about Scott's management of the company. Specifically, Cynthia expressed concern that most, if not all, of Apogee's assets were sold to entities owned or controlled by Scott and that certain assets were missing. Cynthia requested an accounting within the next 30 days.

On February 3, 2021, Cynthia's attorney sent a follow up letter to Scott's attorney about the accounting request. Cynthia did not receive the accounting.

There is no evidence in the record that Cynthia signed any of the proposed withdrawal/buyout agreements. Additionally, there is no evidence that a meeting or vote occurred on the issue of Cynthia's withdrawal.

Apogee's only remaining assets are the proceeds from the real property sales at issue and some general company cash. In other words, Apogee owns no remaining real estate.

III. Relevant Provisions of Apogee's Restated Operating Agreement

Cynthia declared that, based on Scott's conduct and lack of transparency, she felt it was impossible for Scott to carry out Apogee's interests and operations as its manager. However, Apogee's power structure prevented either member from unilaterally removing the other. Cynthia contends that this resulted in a deadlock which is irreconcilable.

The provisions of Apogee's operating agreement that require a 51 percent vote in writing or pursuant to a meeting under article 5.3 are: the removal of the manager, withdrawal of a member, and dissolution of Apogee.

Article IV, section 4.3(b) provides the method in which the manager can be removed. That provision reads, in relevant part,

> (b) A Manager may be removed, for any reason, by the *affirmative vote*, *in writing*, of the holders of fifty-one percent (51%) of the outstanding Percentage Interests, *including any Percentage Interests held by the Manager whose removal is being voted upon*.

CP at 181 (emphasis added).

Article VI, section 6.2 provides the method in which a member can withdraw from Apogee. That provision reads,

> 6.2 Withdrawal of a Member. A Member may withdraw from the Company only with *consent* of the holders of fifty-one percent (51%) of outstanding Percentage Interests. In such an event, the Company shall purchase the Percentage Interests of the withdrawing Member at Fair Market Value.

CP at 182 (emphasis added).

Article VII, section 7.1 provides two methods to dissolve Apogee. That provision reads,

> 7.1 Events Causing Dissolution. The Company will be dissolved and its affairs will be wound up upon the happening of the first to occur of the following:
>
> (a) The *affirmative vote* of a Manager and the holders of fifty-one percent (51%) of the outstanding Percentage Interests; or
>
> (b) The entry of a decree of judicial dissolution pursuant to the Act.

CP at 184 (emphasis added).

Article IX, section 9.2 provides the definition for affirmative vote and consent. That provision reads,

> 9.2 Actions of Company. Except as otherwise provided herein, any action identified herein as requiring the agreement, vote or consent of the Members shall require the affirmative agreement, vote or consent of the Members (in writing or at a meeting described in Section 5.3) owning fifty-one percent (51%) of the outstanding Percentage Interests.

CP at 186.

Article V, section 5.3 provides the method in which member meetings are called to order. In relevant part, that provision reads,

> 5.3 Meetings. Any Member, on not less than thirty (30) days' advance written notice to the other Members, may call a meeting of the Members to discuss or vote upon any matter which is reserved to a vote of the Members hereunder. Such notice shall include a description of the specific purpose of the meeting and any actions proposed to be voted upon by the Members at the meeting.

CP at 182.

Apogee's purpose as an LLC is to "acquire, develop, improve, lease, operate, encumber, sell, own and otherwise deal in and with real and personal property located in the State of Washington and elsewhere." CP at 177.

Under Article IV, section 4.1, the manager has the exclusive authority to do "any and all things necessary" to carry out Apogee's business activities. CP at 179. This includes the power "[t]o sell, assign, exchange or convey any right, title or interest in or to [Apogee's] assets." CP at 180.

Although Scott possesses broad authority in conducting Apogee's business affairs, his authority is not without limit. For the manager to wind up business affairs and liquidate the assets of Apogee, there must first be an event causing dissolution. Article 7.3 reads,

> 7.3 Winding Up. Upon dissolution of the Company for any reason, the Managers will have the authority and responsibility to wind up the affairs of the Company and to liquidate its assets.

CP at 184.

IV. PROCEDURAL HISTORY

On March 2, 2021, Cynthia filed a petition to dissolve Apogee and to appoint a general receiver. Cynthia requested dissolution because she contended that it was not reasonably practicable to carry on the activities of Apogee in conformity with its operating agreement.

Specifically, Cynthia contended that the basis of her petition included: deadlock on the issue of withdrawal and her buyout; Scott's failure to provide an accounting pursuant to the operating agreement; her concern that the buyout agreements did not accurately value her 50 percent interest in Apogee; Scott's misappropriation of business assets; Scott's self-dealing transfers; and Scott's alleged breach of fiduciary duties. Cynthia also requested the appointment of a general receiver to aid in dissolution and to pursue the assets that were sold by Scott.

In response, Scott argued that the superior court should deny the petition because article 9.9 of the operating agreement[3] required the parties to submit the issue of dissolution and receivership to binding arbitration. Scott also argued that there was no basis to order dissolution and that it would be premature to appoint a receiver.

On April 2, following a show cause hearing, the superior court commissioner denied Cynthia's petition. The commissioner reserved ruling on whether the arbitration clause applied in this case.

Cynthia moved to revise the commissioner's order. The superior court granted the motion. In its oral ruling, the court noted the deadlock between Scott and Cynthia:

> What we have here is a very unfortunate situation where the two remaining members in this company have the exact same interest, 50/50. And from what I've read, there is a deadlock.

---

[3] Article IX, section 9.9 of the operating agreement reads,

> Arbitration. Any legal dispute between or among Members and/or Manager(s) may, at the sole option of the Manager(s), be submitted to binding arbitration by any customary and reasonable method of arbitration then practiced in Pierce County, Washington.

CP at 187.

> We have one member who has pretty much sold off all of the revenue-producing assets. There is clearly a dispute between the members, which it does not appear there's any way to resolve within the terms of the operating agreement because of the 50/50 split between the members. And we are left with one member who really has no power to exercise her rights under the operating agreement because nobody has 51 percent anymore.

Report of Proceedings (RP) (Apr. 30, 2021) at 29-30. Based on the record before it, the court concluded that it was not reasonably practicable for Apogee to carry on its business activities in conformity with its operating agreement and that the appointment of a receiver was justified:

> [B]ased on the facts that have been presented, the Court is finding that it is no longer reasonably practical to operate this company. And I believe that appointment of a receiver is justified under these circumstances.
>
> . . . .
>
> I think dissolution is required because it's impossible now for the parties to fully exercise their rights under this operating agreement with a 50/50 split of power.

RP (Apr. 30, 2021) at 30-31. The court also concluded that the arbitration provision did not apply to Cynthia's petition and the circumstances rendered dissolution equitable:

> There was sort of a request to also look at the arbitration provision of the operating agreement. And it is true that paragraph 9.9 did provide that the parties would submit to binding arbitration at the sole decision of the manager. However, based on my ruling and my finding that it is simply inequitable to have a situation where one of the members has no remedies that were formally provided under the operating agreement, I'm also finding that it would be inequitable to enforce the mandatory arbitration clause of the operating agreement.
>
> So I will allow this matter to proceed in court. And if the parties at some point agree—and by parties, I now am including in the receiver—if the parties agree that they wish to engage in arbitration, nothing I'm saying today would preclude that. So I'm just saying it's not required under the agreement. The parties can still move forward with arbitration if they find ultimately that that would be a more efficient way to resolve the remaining disputes.

RP (Apr. 30, 2021) at 31.

Accordingly, the superior court entered an order granting Cynthia's petition to dissolve Apogee and to appoint a general receiver. The court also ordered that the issues of dissolution and receivership were not subject to the binding arbitration clause in the operating agreement.

Scott moved for reconsideration pursuant to CR 59, which the court denied. In its oral ruling denying Scott's motion for reconsideration, the court stated,

> I want to make something very clear at the outset though. I think there was some misunderstanding of my initial ruling. My concern in granting the request for a receiver was not the propriety of the real estate transactions. I made no judgement [sic] as to whether those were good or bad faith. And I don't think I could have because the receiver has not yet done any sort of investigation, there's been no accounting, et cetera.
>
> The basis for the Court's holding last time was this problem with the 50/50 ownership split, and the fact that without 100 percent agreement of the members, this company can never be dissolved. I think that's a problem. . . . When we have that kind of problem and there doesn't appear to be any way to give someone a 51 percent ownership interest, at least right now, the Court sees no other way to end the problem than to appoint a receiver and start winding things down. So that is what the Court was thinking last time.
>
> . . . .
>
> It's almost like if we were in contract law, this would be like the contract being void for impossibility of performance because the parties just cannot fulfill the terms of the Operating Agreement anymore.

RP (May 21, 2021) at 26-27. Scott appeals the superior court's order dissolving Apogee and appointing a receiver.

ANALYSIS[4]

I. Arbitration

Scott argues that the superior court erred by declining to enforce the arbitration clause in Apogee's operating agreement. We disagree.

A. Legal Principles

We review de novo a superior court's decision to compel or deny arbitration. *Burnett v. Pagliacci Pizza, Inc.*, 196 Wn.2d 38, 46, 470 P.3d 486 (2020). "The burden of demonstrating that an arbitration agreement is not enforceable is on the party opposing the arbitration." *Id.* at 46-47.

[4] Scott argues that he did not breach any fiduciary duties based on the self-dealing transfers. However, the superior court expressed no opinion on these transfers or whether Scott breached any fiduciary duty. Accordingly, we do not address Scott's argument pertaining to that issue.

"[B]oth state and federal law strongly favor arbitration and require all presumptions to be made in favor of arbitration." *Gandee v. LDL Freedom Enters., Inc.*, 176 Wn.2d 598, 603, 293 P.3d 1197 (2013); *see also* RCW 7.04A.060, .070. "In determining whether to enforce an arbitration provision, [we] must consider (1) 'whether the arbitration agreement is valid' and (2) 'whether the agreement encompasses the claims asserted.'" *Cox v. Kroger Co.*, 2 Wn. App. 2d 395, 404, 409 P.3d 1191 (2018) (quoting *Wiese v. CACH, LLC*, 189 Wn. App. 466, 474, 358 P.3d 1213 (2015)).

"The agreement to arbitrate is a contract, the validity of which courts review absent a clear agreement to not do so." *Burnett*, 196 Wn.2d at 46. "'Mutual assent is required for the formation of a valid contract.'" *Id*. at 48 (internal quotation marks omitted) (quoting *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 388, 858 P.2d 245 (1993)). "As a general rule, nonsignatories are not bound by arbitration clauses." *Townsend v. Quadrant Corp*., 173 Wn.2d 451, 460, 268 P.3d 917 (2012). "However, courts have recognized limited exceptions to this rule, including the principle of equitable estoppel." *Id*. at 461. "Equitable estoppel 'precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes.'" *Id*. (internal quotation marks omitted) (quoting *Mundi v. Union Sec. Life Ins. Co*., 555 F.3d 1042, 1045-46 (9th Cir. 2009)). "[E]quitable estoppel may require a nonsignatory to arbitrate a claim if that person, despite never having signed the agreement, 'knowingly exploits' the contract in which the arbitration agreement is contained." *Id*. (quoting *Mundi*, 555 F.3d at 1046).

Whether a dispute is subject to arbitration is decided by the terms of the parties' agreement "without inquiry into the merits of the dispute." *Heights at Issaquah Ridge, Owners Ass'n v. Burton Landscape Grp., Inc.*, 148 Wn. App. 400, 403, 200 P.3d 254 (2009). We read agreements

to uphold the parties' objective intent as shown by the terms used. *Hearst Commc'ns, Inc. v. Seattle Times, Co*., 154 Wn.2d 493, 503-04, 115 P.3d 262 (2005). "'An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.'" *GMAC v. Everett Chevrolet, Inc*., 179 Wn. App. 126, 140, 317 P.3d 1074 (2014) (quoting *Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980)).

B. Validity of the Arbitration Clause

As an initial matter, Scott appears to argue that the superior court's failure to issue findings of fact and conclusions of law on the issue of arbitration amounts to reversible error. As discussed above, the court declined to apply the arbitration clause because it would be "inequitable" under the circumstances of this case. RP (Apr. 30, 2021) at 31. In equity, no findings of fact and conclusions of law are required. *See Mony Life Ins. Co. v. Cissne Family, LLC*, 135 Wn. App. 948, 952, 148 P.3d 1065 (2006). Accordingly, this argument fails.

The parties dispute whether the arbitration clause is procedurally unconscionable with respect to Cynthia because she did not sign the operating agreement. However, as Scott points out, Cynthia raises the issue for the first time on appeal. Because the issue was not raised in the superior court, we decline to address Cynthia's argument concerning procedural unconscionability on appeal. RAP 2.5(a).

C. The Issue of Dissolution is Not Encompassed by the Arbitration Clause

Scott argues that the arbitration clause encompasses the issue of dissolution because Cynthia's petition implicates a legal dispute between Apogee's members and managers. We disagree.

Article 9.9 of Apogee's operating agreement provides that,

> *Any legal dispute between or among Members and/or Manager(s)* may, at the sole option of the Manager(s), be submitted to binding arbitration by any customary and reasonable method of arbitration then practiced in Pierce County, Washington.

CP at 187 (emphasis added).

Here, the objective intent as shown by the terms used limits arbitration to legal disputes between or among members and/or managers of Apogee. But, the issue of dissolution is not a legal dispute "between or among Members and/or Manger(s)." CP at 187. Instead, it is a proceeding with respect to the continuing existence of the private entity at issue. *See* RCW 25.15.265, .274. Because a petition for judicial dissolution is not a legal dispute between Apogee's members and managers, we conclude that Scott's argument fails.[5]

Scott contends that the issue of dissolution is a legal dispute between or among members because the core of Cynthia's petition is based on whether he breached certain fiduciary duties and whether he properly managed Apogee. But whether a dispute is subject to arbitration is decided by the terms of the parties' agreement "without inquiry into the merits of the dispute." *Heights at Issaquah Ridge*, 148 Wn. App. at 403. Accordingly, this argument fails.

Scott also argues that an arbitrator possesses broad authority under the Uniform Arbitration Act (UAA), chapter 7.04A RCW, which includes the power to order dissolution. Cynthia argues that an arbitrator has no authority to issue a decree of dissolution because such authority is exclusively reserved to the superior courts, citing RCW 25.15.018(3)(k) and RCW 25.15.274.

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[5] On this point, Scott is correct that the arbitration clause at issue here is far broader than that in *JC Aviation Investments, LLC v. Hytech Power, LLC*, No. 81539-3-I, slip op. at 2 (Wash. Ct. App. Mar. 1, 2021) (unpublished), http://www.courts.wa.gov/opinions/pdf/815393.pdf. But his reliance on *JC Aviation* fails because the objective intent of the arbitration clause here, as evidenced by the words used, does not cover dissolution proceedings.

RCW 25.15.018(3)(k) provides that "[a] limited liability company agreement may not: . . . [v]ary the power of a court to decree dissolution in the circumstances specified in RCW 25.15.274." And RCW 25.15.274 provides that

> [o]n application by a member or manager the superior courts may order dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the limited liability company's activities in conformity with the certificate of formation and the limited liability company agreement; or (2) other circumstances render dissolution equitable."

Even if Apogee's arbitration clause encompassed the issue of dissolution, which it does not, and even if the superior courts did not retain exclusive jurisdiction over dissolutions pursuant to RCW 25.15.274, that clause in the operating agreement cannot limit the power of a court to order dissolution under RCW 25.15.274 on application by a member.[6] RCW 25.15.018(3)(k). Therefore, in no circumstance could we conclude that the arbitration clause required Cynthia to submit the issue to binding arbitration. She is permitted to seek a decree of dissolution in the superior court.

Additionally, Scott's interpretation of the operating agreement also fails to give effect to article 7.1, which provides the methods in which dissolution can occur.

Article 7.1 provides that,

> Events Causing Dissolution. The Company will be dissolved and its affairs will be wound up upon the happening of the first to occur of the following:
>
> (a) The affirmative vote of a Manager and the holders of fifty-one percent (51%) of the outstanding Percentage Interests; or
>
> (b) The entry of a decree of judicial dissolution pursuant to the Act.

CP at 184. Article 1.1 of the operating agreement defines the term "Act" as the Washington Limited Liability Companies (LLC) Act, chapter 25.15 RCW. CP at 177. RCW 25.15.274

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[6] For this reason, Scott's reliance and argument based on *Verbeek Properties, LLC, v. GreenCo Envtl., Inc.*, 159 Wn. App. 82, 92, 246 P.3d 205 (2010), fails.

provides the authority for a superior court to dissolve an LLC. By allowing for dissolution pursuant to RCW 25.15.274, Article 7.1 is an objective manifestation that the parties intended to allow a member of Apogee to seek a decree of dissolution in superior court, as contemplated by the statute. Because Scott's argument would nullify article 7.1(b), we reject Scott's arguments. *GMAC*, 179 Wn. App. at 140 ("An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.") (quoting *Wagner*, 95 Wn.2d at 101). Therefore, we hold that the arbitration clause does not encompass the issue of dissolution.

D. The Issue of Receivership is Not Encompassed by the Arbitration Clause

Scott argues that the arbitration clause encompasses the issue of receivership because Cynthia's petition implicates a legal dispute between Apogee's members and managers. We disagree.

As explained above, the objective intent of the parties, as shown by the terms used, limits arbitration to legal disputes between or among members and managers of Apogee. Also like dissolution, the appointment of a receiver is not a dispute between or among members and managers of Apogee. Rather, "'a receivership is merely ancillary to the main cause of action'"—it is a remedy. *Bero v. Name Intelligence, Inc*, 195 Wn. App. 170, 176, 381 P.3d 71 (2016) (quoting *King County Dep't of Cmty. & Human Servs. v. Nw. Defenders Ass'n*, 118 Wn. App. 117, 127-28, 75 P.3d 583 (2003)). Because the appointment of a receiver is not a legal dispute between members or managers of Apogee, we hold that the arbitration clause does not encompass the issue of receivership. Accordingly, Scott's argument fails.

Scott argues that an arbitrator has broad authority under the UAA, chapter 7.04A RCW, which includes the power to appoint and oversee receivers. Cynthia argues that arbitration clause cannot encompass the issue of receivership because under the receivership statute, chapter 7.60 RCW, the superior court has exclusive jurisdiction to appoint and oversee a receiver. We agree with Cynthia.

A receiver is defined as "*a person appointed by the court* as the court's agent, and subject to the court's direction, to take possession of, manage, or dispose of property of a person." RCW 7.60.005(10) (emphasis added). Additionally, the receivership statute provides in relevant part that

> *the court in all cases has exclusive authority over the receiver*, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties.

RCW 7.60.055(1) (emphasis added).

Because a receiver is defined as a person appointed by the superior court, and because the court maintains exclusive authority over the receiver, an arbitrator could not appoint and oversee a general receiver. Therefore, Scott's argument fails.

Additionally, we also note that by referencing the LLC act, Apogee's operating agreement also indirectly provides for the appointment of a receiver. Under the receivership statute, the superior court may appoint a general receiver:

> (t) . . . in any other action for the dissolution or winding up of any other entity provided for by Title . . . 25 RCW;

> (u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests.

RCW 7.60.025(1). By allowing for dissolution pursuant to RCW 25.15.274, the objective intent of the parties, as evidenced by the writing, is that they also intended to allow a member to seek the appointment of a receiver, which is ancillary to seeking a decree of dissolution in superior court, as contemplated by the statute. *Bero*, 195 Wn. App. at 176; *GMAC*, 179 Wn. App. at 140. Accordingly, we hold that the arbitration clause does not encompass the issue of receivership.

II. Judicial Dissolution

Scott argues that the superior court abused its discretion by ordering the dissolution of Apogee. We disagree.

A. Legal Principles

We review an order granting judicial dissolution for an abuse of discretion. *Scott v. Trans-Sys., Inc*. 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003) (addressing corporate dissolution). The superior court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or reasons. *Spencer v. Badgley Mullins Turner, PLLC*, 6 Wn. App. 2d 762, 784, 432 P.3d 821 (2018).

The grounds upon which a superior court may order dissolution of an LLC are provided in RCW 25.15.274. That statute reads,

> On application by a member or manager the superior courts may order dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the limited liability company's activities in conformity with the certificate of formation and the limited liability company agreement; or (2) other circumstances render dissolution equitable.

RCW 25.15.274.[7] "Dissolution should not be granted as a matter of right, since the provision allowing judicial dissolution is 'clearly couched in language of permission.'" *Scott*, 148 Wn.2d at 708 (quoting *Henry George & Sons, Inc. v. Cooper-George, Inc.*, 95 Wn.2d 944, 951, 632 P.2d 512 (1981)).

B. The Superior Court did Not Err by Failing to Enter Findings of Fact

As an initial matter, Scott appears to argue that the superior court's order should be reversed because it failed to enter findings of fact. We disagree.

A petition to dissolve a private entity is not a legal dispute—it is equitable in nature. *See Scott*, 148 Wn.2d at 716 (addressing corporate dissolution proceedings); *see also Cooper-George, Inc.*, 95 Wn.2d at 952 (stating that involuntary dissolution proceedings, although generally statutory in most jurisdictions, are fundamentally equitable in nature, and the statutes should be construed and applied consistent with equitable principles). In equity, no findings of fact and conclusions of required. *Mony Life Ins. Co.*, 135 Wn. App. at 952. Accordingly, this argument fails.

Regardless, even if the superior court was required to enter findings of fact on the issue of dissolution, its failure is not fatal to an order if we can determine the questions the superior court decided and the reasons for its decision. *Noll v. Special Elec. Co., Inc.*, 9 Wn. App. 2d 317, 322, 444 P.3d 33 (2019). The reviewing court can consider the superior court's oral ruling to aid this

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[7] Based on the plain language of the statute, it appears the superior court must consider both the certification of formation *and* the LLC agreement. *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) ("'[E]ach word of a statute is to be accorded meaning.'") (quoting *State ex rel. Schillberg v. Barnett*, 79 Wn.2d 578, 584, 488 P.2d 255 (1971)). Scott does not take issue with the fact that Apogee's certification of formation is not in the record. Actually, nobody mentions the issue at all. Generally, a party's failure to provide argument and citation to authority constitutes a waiver of the issue. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Accordingly, we do not address the issue.

determination. *Id*. If the reviewing court is unable to determine the trial court's understanding, then the appropriate remedy is to remand the case for findings of fact. *Id*. at 323.

Here, we can determine the issues the superior court decided and the reasons for its decision. In its oral ruling, the court ordered dissolution because, based on the record, it believed it was not reasonably practicable for Apogee to carry on its activities in conformity with its operating agreement. The court also appeared to reason that, based on the record, other circumstances rendered dissolution equitable. More specifically, the court found it "simply inequitable to have a situation where one of the members has no remedies that were formally provided under the operating agreement." RP (Apr. 30, 2021) at 31. Because we can determine the issues the superior court decided and the reasons for its decision, we conclude that the superior court did not err by failing to enter findings of fact on the issue of dissolution. *Noll*, 9 Wn. App. 2d at 322.

C. The Superior Court did Not Abuse Its Discretion by Ordering Dissolution

Scott appears to argue that the superior court abused its discretion by ordering dissolution because it failed to consider the seriousness of the deadlock and whether dissolution would be beneficial to its members or injurious to the public. Scott relies on *Cooper-George, Inc*., 95 Wn.2d 944, to support his argument. This argument fails.

In *Cooper-George*, the Supreme Court held that the trial court erred by ordering dissolution of the corporation at issue under former RCW 23A.28.170(1) (1965) merely on the basis that one of the jurisdictional requirements were met. 95 Wn.2d at 953. Under the former statute, a court could order dissolution of a corporation if a shareholder could prove one of four reasons. *Id*. at 946-47. After interpreting prior statutes and case law, the court held former RCW 23A.28.170(1) contemplates that when a shareholder proves one of the bases for dissolution, then the trial court

"shall determine whether there exist equitable grounds for ordering dissolution of the corporation." *Id*. at 953. The court went on to state that, "[i]n so ruling, the trial court should consider the seriousness of the deadlock and whether the corporation is able to conduct business profitably despite the deadlock. Moreover, the trial court should consider whether such a dissolution will be beneficial or detrimental to all the shareholders, or injurious to the public." *Id*.

Scott's reliance on *Cooper-George* is misguided because that case dealt with the former corporate dissolution statute and its predecessor statutes, which provided specific bases and inquiries for dissolution. *See id*. at 946-47. Unlike the former corporate dissolution statute, RCW 25.15.274 does not appear to require inquiry into whether dissolution would be beneficial for all members or injurious to the public. Scott provides no authority requiring such an inquiry into the dissolution of an LLC. *See* Larry E. Ribstein and Robert R. Keatinge, *Judicial dissolution*, 2 RIBSTEIN AND KEATINGE ON LTD. LIAB. COS. § 14:18 (June 2021) ("The showing required for judicial dissolution of an LLC may differ from that for a corporation."). "Where no authorities are cited in support of a proposition, we are not required to search out authorities, but may assume that counsel, after [a] diligent search, has found none." *Helmbreck v. McPhee*, 15 Wn. App. 2d 41, 57, 476 P.3d 589 (2020), *review denied*, 196 Wn.2d 1047 (2021). Accordingly, this argument fails.

Regardless, the record shows that the superior court did in fact consider whether equitable circumstances existed to dissolve Apogee. A review of the court's oral ruling shows that it considered the seriousness of the parties' deadlock (specifically, on the issue of removal, withdrawal, and dissolution) and the fact that Scott sold all of Apogee's revenue producing assets. The court also considered whether breaking the deadlock by dissolution would be beneficial for Apogee's members. Therefore, even if *Cooper-George*'s equitable inquiry applies to LLC

dissolutions, the record shows that the court did in fact consider those factors. Accordingly, this argument fails.

Next, Scott argues that the superior court abused its discretion by granting dissolution because it was reasonably practicable to carry on Apogee's activities in line with its operating agreement. Specifically, Scott contends that dissolution was unnecessary because he was already "in the midst of liquidating many of Apogee's assets to accommodate [Cynthia's] withdrawal" and that Apogee could carry on its business activities in line with its operating agreement since "Apogee possesses few remaining assets and has little business left to conduct." Br. of Appellant at 31. We disagree.

Here, Scott does not dispute that he "sold Apogee's real property to LLCs which [he] had formed in order to liquidate its assets in furtherance of [Cynthia's] withdrawal." CP at 228. However, there is no evidence that Cynthia withdrew from Apogee in accordance with article 6.2. She did not sign any of the buyout agreements and there is no evidence in the record that a meeting occurred in accordance with article 5.3 concerning her withdrawal. Additionally, there is no evidence that the parties agreed to dissolve Apogee in the manner described by article 7.1(a) to permit the liquidation of its assets under article 7.3. Again, there is no evidence in the record that the parties agreed in writing or conducted a meeting in accordance with article 5.3 to dissolve Apogee and permit liquidation.

The superior court did not abuse its discretion by concluding that it was not reasonably practicable to carry on Apogee's activities in conformity with its operating agreement. The business purpose of Apogee is "to acquire, develop, improve, lease, operate, encumber, sell, own and otherwise deal in and with real and personal property located in the State of Washington and elsewhere." CP at 177. However, Apogee's only remaining assets are the proceeds from Scott's

property sales and some company cash. There is no evidence that Scott will be acquiring any more real estate on behalf of Apogee. In fact, based on the record and Scott's arguments before us, it appears that he was in the process of winding up business affairs, dissolving, and liquidating Apogee without Cynthia's consent, even though she still remained a member, all the while doing so without a majority vote.

The superior court also did not abuse its discretion by concluding that other circumstances rendered dissolution equitable. Scott does not dispute that he sold Apogee's properties to LLCs that he owns for less than their fair market value.[8] The record shows that Scott was liquidating assets to facilitate Cynthia's withdrawal, but as explained above, she did not withdraw in conformity with the procedure set out by the operating agreement and no event of dissolution occurred to permit liquidation. Additionally, the parties were deadlocked on matters requiring a 51 percent vote between them, which was unobtainable, such as Cynthia's withdrawal, removal of Scott as the manager, and the issue of dissolution. Furthermore, the record shows that the relationship between Cynthia and Scott had become strained. Cynthia contends their differences are irreconcilable, which Scott does not appear to dispute. Scott also does not appear to dispute that he did not give Cynthia her requested accounting of Apogee's assets and transactions. Accordingly, the superior court did not abuse its discretion by ordering dissolution.

III. GENERAL RECEIVERSHIP

Scott argues that the superior court abused its discretion by appointing a general receiver. We disagree.

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[8] In Scott's motion for reconsideration, he stated that "the only allegation of a breach of fiduciary duty which [Cynthia] can credibly level against [Scott] is that, in exercising his exclusive authority to sell Apogee's property, he did so for lower than their fair market value." CP at 623.

A. Legal Principles

A superior court's decision to appoint a receiver is reviewed for an abuse of discretion. *Mony Life Ins. Co.*, 135 Wn. App. at 952. "A [superior] court abuses its discretion when its decision is 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Id*. at 952-53 (internal quotation marks omitted) (quoting *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 423, 138 P.3d 1053 (2006)).

A receiver is "a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, or dispose of property of a person." RCW 7.60.005(10). Relevant here, a receiver must be a "general receiver" if they are "appointed to take possession and control of all or substantially all of a person's property with authority to liquidate that property and, in the case of a business over which the receiver is appointed, wind up affairs." RCW 7.60.015.

Also relevant here, a receiver may be appointed by the superior court in the following instances:

> (t) . . . [In an] action for the dissolution or winding up of any other entity provided for by Title . . . 25 RCW;
>
> (u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;
>
> . . . .
>
> (nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

RCW 7.60.025(1). "Because receiverships are an 'extraordinary remedy,' Washington courts employ them with caution." *Bero*, 195 Wn. App. at 175 (quoting *Gahagan v. Wisner*, 139 Wash. 664, 667, 247 P. 965 (1926)).

B. The Superior Court did Not Abuse Its Discretion by Appointing a General Receiver

Scott argues that the superior court abused its discretion in appointing a general receiver because it failed to make findings of fact on the issue. "But the appointment of a receiver does not require findings of fact and conclusions of law." *Mony Life Ins. Co*., 135 Wn. App. at 952. This argument fails.

Scott also argues that the superior court abused its discretion in appointing a general receiver because it failed to consider whether such an appointment was reasonably necessary and that other remedies either are not available or are inadequate. We disagree.

The language that Scott relies on can be found in RCW 7.60.025(1). In relevant part, that statute provides,

> A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, *a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate*.

RCW 7.60.025(1) (emphasis added). The statute then goes on to list multiple instances where a superior court may appoint a receiver. RCW 7.60.025(1)(a)-(nn).

Based on the plain language of RCW 7.60.025(1), the superior court must additionally ask whether the appointment of a receiver is reasonably necessary or if available remedies are inadequate in three specific cases: where a statute requires a receiver, a state agent seeks a receiver,

or a party seeks a receivership with respect to real property under RCW 7.60.025(1)(b)(ii). But none of those circumstances apply here. Rather, the superior court appointed a receiver to aid the dissolution of Apogee under RCW 7.60.025(1)(t), (u), and (nn). Therefore, such an inquiry was not required here. Accordingly, this argument fails.

Here, the superior court appointed a general receiver to aid in the dissolution and liquidation of Apogee as well as to make an accounting on the assets that were transferred by Scott to his own LLCs. Under RCW 7.60.025(1)(t), (u), and (nn), these are permissible reasons to appoint a general receiver. Additionally, the court also considered the equitable circumstances in dissolving Apogee and appointing a receiver based on the record before it, as discussed above. Accordingly, we hold that the superior court did not abuse its discretion by appointing a general receiver.

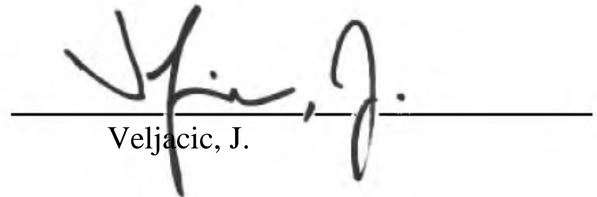
IV. Costs on Appeal

Both parties request their costs on appeal pursuant to RAP 14.2. Generally, the party that substantially prevails on review will be awarded appellate costs, unless the court directs otherwise in its decision. RAP 14.2; *Doe v. Benton County*, 200 Wn. App. 781, 793, 403 P.3d 861 (2017). Because Cynthia is the substantially prevailing party on review, we award her costs on appeal.

CONCLUSION

We affirm the superior court's order granting Cynthia's petition for dissolution and appointment of a general receiver. We also award Cynthia's appellate costs under RAP 14.2.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Veljacic, J.

We concur:

Worswick, P.J.

Lee, J.

APPENDIX B

West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.60. Receivers (Refs & Annos)

West's RCWA 7.60.025

7.60.025. Appointment of receiver

Effective: January 1, 2022
Currentness

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

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(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

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(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(*l*) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) In connection with a proceeding for relief with respect to a voidable transfer as to a present or future creditor under RCW 19.40.041 or a present creditor under RCW 19.40.051;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

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(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03A.936, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30A.44.100, 30A.44.270, and 30A.56.030, in the case of a state commercial bank, RCW 30B.44B.100, in the case of a state trust company, RCW 32.24.070, 32.24.073, 32.24.080, and 32.24.090, in the case of a state savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

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(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70A.210.070(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(*ll*) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also must be

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given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

Credits

[2021 c 176 § 5201, eff. Jan. 1, 2022; 2021 c 65 § 6, eff. July 25, 2021; 2019 c 389 § 1, eff. July 28, 2019. Prior: 2011 c 214 § 27, eff. July 1, 2012; 2011 c 34 § 1, eff. July 22, 2011; 2010 c 212 § 4, eff. March 25, 2010; 2006 c 52 § 1, eff. June 7, 2006; 2004 c 165 § 4, eff. June 10, 2004.]

OFFICIAL NOTES

Reviser's note: This section was amended by 2021 c 65 § 6 and by 2021 c 176 § 5201, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date--2021 c 176: See note following RCW 24.03A.005.

Explanatory statement--2021 c 65: See note following RCW 53.54.030.

Findings--Purpose--Limitation of chapter--Effective date--2011 c 214: See notes following RCW 80.04.010.

Application--2010 c 212: "This act is prospective and applies only to actions or proceedings commenced on or after March 25, 2010." [2010 c 212 § 6.]

Effective date--2010 c 212: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2010]." [2010 c 212 § 7.]

Purpose--Captions not law--2004 c 165: See notes following RCW 7.60.005.

Notes of Decisions (113)

West's RCWA 7.60.025, WA ST 7.60.025
Current with all legislation from the 2022 Regular Session of the Washington Legislature.

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