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ORIGINAL

NO. 71500-3-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

INNERSPACE FLOOR COVERINGS, INC., a corporation,

Appellant,

vs.

JANET HILL et al,

Respondents.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

TABLE OF STATUTES OR LEGISLATIVE MATERIAL

ARGUMENT & AUTHORITY

This appeal does not include a question about when a lawsuit must be commenced; instead, the question is whether a lawsuit must conclude by an established date. Despite extensive citations to authority for dates when a lawsuit must be commenced, Respondent's critical assertion is made without any citation. The argument made by Respondent is found on p27 of Brief of Respondent Janet L. HIll:

> To maintain this lawsuit, Washington law required Innerspace to reinstate as an active corporation within the reinstatement period, even if its only activity as a corporation was to prosecute this lawsuit.

No authority is provided for that argument. The controlling statute establishes no such limitation for dissolved corporations. Although the legislature provided such a limitation for an LLC, for corporations the legislature left the period open-ended limiting only commencement dates.

Even though the legislature did not limit the time period for corporations to conclude pending lawsuits, the trial court erroneously resurrected the notion of "corporate death" to superimpose a common law limitation connected with a reinstatement period. This, despite the fact, that our courts of appeals have confirmed both that (a) the courts will not add a limitation the legislature did not enact and that (b) "dissolution" can no longer be equated with "corporate death." Because the common law notion has been abrogated and because courts do not add limitation

periods, there is no authority for the decision of the trial court or Respondent's argument on appeal.

A. There is no question on appeal about commencement of a lawsuit because the trial court ruled that a factual question under the discovery rule is proper for trial and that ruling is not appealed.

The question of whether Innerspace timely commenced this lawsuit is not a subject on appeal. Respondent argued the commencement issue below. The trial court ruled:

> Because there is a question of fact as to when the claims pursued by Innerspace Floor Coverings, Inc., were discovered, summary judgment is DENIED as to Plaintiff Innerspace Floor Coverings, Inc.'s claims;[1]

That Order was not appealed by Respondent.

B. The question on appeal is whether the Washington legislature required that timely commenced lawsuits and wind-up by corporations conclude by an established date.

The plain language of the controlling statutes, RCW 23B, et seq., provides no date when a lawsuit must conclude. "Courts will not read into a statute that which the legislature left out."[2] If the legislature had wanted to require re-instatement for the continued maintenance of a lawsuit, or if the legislature wanted to establish a deadline when a lawsuit must conclude, the legislature could have done so. It did not.

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[1] CP 547

[2] *State v. Jacob*, 176 Wn. App. 351, 361, 308 P.3d 800 (2013), citing *Seattle Ass'n of Credit Men v. Gen Motors Acceptance Corp.*, 188 Wn. 635, 639, 63 P.2d 359 (1936).

1. The Washington legislature elected to not impose a limitation period for corporations, in contrast to the limitation period the legislature enacted for an LLC under RCW 25.15.285.

The legislature knew how to impose a limitation period because it did precisely that for limited liability companies.

RCW 25.15.270(6):

> A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:
> ...
> (6) The expiration of two years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company.

In contrast, nothing in chapter 23B requires reinstatement as a condition of maintaining a lawsuit. And nothing in chapter 23B establishes a deadline when lawsuits must conclude. Under well-established law, the trial court did not have authority to add limitations to the statute. "We will not read into the statute a limitation that the legislature did not establish and does not exist."[3] The trial court erred by violating these principles.

The fact that the legislature elected to establish a limitation period for winding-up in the context of an LLC is itself evidence that the legislature did not intend any such limitation for the winding-up of corporations. "[W]here the Legislature uses certain statutory language in

[3] *State v. Jacob*, 176 Wn. App. 351, 362, 308 P.3d 800 (2013), citing *Seattle Ass'n of Credit Men v. Gen. Motors Acceptance Corp.*, 188 Wn. 635, 639, 63 P.2d 359 (1936).

one instance, and different language in another, there is a difference in legislative intent."[4]

2. The Washington legislature did <u>not</u> require reinstatement, and Respondent's argument that the reinstatement deadline constitutes "corporate death" is an attempt to bring back a common law notion that has been abrogated.

Lacking a statutory basis for the decision, the trial court turned to common law, specifically to the abrogated notion of corporate death. It was improper to turn to common law (a) after the legislature had adopted a comprehensive scheme, and (b) particularly for the purpose of adding a limitation the legislature did not enact. Our courts have decidedly put an end to the old corporate death analysis.

> The WBCA's legislative history reinforces the conclusion that "dissolution" has a special statutory meaning. Under the statute, "corporate dissolution" should not be equated with "corporate death."[5]

In the same decision, this Court explained, under the new statutory regime for dissolution, "that *suits by or against the* [dissolved] *corporation are not affected in any way* [by dissolution]."[6]

Our courts have already held legislative history to confirm that, while changes have continued to occur with regard to the administrative

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[4] *In re Matter of Swanson*, 115 Wn.2d 21, 27, quoting *United Parcel Serv., Inc. v. Department of Rev.*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984).
[5] *Donlin v. Murphy*, 174 Wn. App. 288, 299, 300 P.3d 424, 429 (2013).
[6] *Id.* (emphasis in original quotation).

question of the dates when lawsuits must be commenced, the legislature has held fast to the abrogation of dying or death notions, explaining:

> [Enactment of RCW 23B.14] showed the legislature's intent *to cut any remaining ties to the common law rule* that all claims against a corporation died upon dissolution of the corporation.[7]

Rather than rely on notions of dying, the appropriate analysis now is a technical review of the controlling statutes. It was error for the trial court to blend old common law into the statutory regime, and error to draw from common law to impose a limitation the legislature did not enact.

C. Janet Hill's communications with Allen Loun while he was at Finishing Touch during the time when Finishing Touch was suing Innerspace, in conjunction with her assisting Allen Loun in obtaining Innerspace financial records, is sufficient evidence to go to the jury as part of the civil conspiracy claim.

The trial court below allowed a civil conspiracy claim to go to the jury; however, the trial court parsed out a portion of the claim that pertained to Finishing Touch. Respondent's brief presents factual arguments it would make to the jury about the intent and actions that occurred; nonetheless, facts of record show that while the hostile competitor Finishing Touch was suing Innerspace, Respondent Janet Hill was communicating with Allen Loun at Finishing Touch.[8] These facts, combined with the fact that Janet Hill had earlier acted on behalf of Allen

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[7] *Ballard Square Condominium Owners Ass'n v. Dynasty*, 158 Wn.2d 603, 611, 146 P.3d 914 (2006) (emphasis added).

[8] CP 531, 535; *see also* CP 533.

Loun, rather than her client Innerspace, to obtain financial records that would be very harmful to Innerspace in its dispute with Finishing Touch, are sufficient to go to the jury.[9] The jury can decide who to believe in terms of motivations and what happened factually.

CONCLUSION

The trial court erred by bringing abrogated common law "death" notions into play with the current statutory regime. The trial court erred by using the common law to establish a limitation that the legislature did not enact for corporations, even though the legislature had enacted a limitation for limited liability companies. The trial court erred by parsing away a portion of the civil conspiracy claim. These errors should be remedied by reversal and remand for trial.

DATED this 3rd day of October 2014.

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[9] *Lyle v. Haskins*, 24 Wn.2d 883, 889-900, 168 P.2d 797 (1946).

PROOF OF SERVICE

I certify under penalty of perjury that on the 3rd day of October, 2014, I served a copy Appellant's Reply Brief via email, per agreement of the parties, on the following:

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