71500-3

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No. 71500-3-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

INNERSPACE FLOOR COVERINGS, INC., a Washington Corp.,

Appellant,

vs.

JANET L. HILL, an individual,

Respondent.

BRIEF OF RESPONDENT JANET L. HILL

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I. INTRODUCTION

The trial court correctly dismissed Innerspace Floor Coverings, Inc.'s lawsuit against its former attorney, Janet Hill, on the basis that the lawsuit abated as a matter of law when Innerspace failed to reinstate as an active corporation within the statutory reinstatement period. Washington's Business Corporation Act's survival provision cannot save this lawsuit from abatement after the reinstatement period expires.

The trial court correctly dismissed Innerspace Floor Coverings, Inc.'s claim for civil conspiracy related to or arising out of the Finishing Touch lawsuit because, viewing the facts in the light most favorable to Innerspace, the Court concluded that Innerspace could not meet its burden to show a prima facie case for civil conspiracy. Although Innerspace appeals from the October 27, 2013 order on Janet Hill's second motion for summary judgment, the trial court confirmed that the claims related to the Finishing Touch lawsuit were not before the court on that motion. The trial court dismissed the civil conspiracy claim by order entered November 22, 2013, on Janet Hill's third motion for summary judgment. Innerspace did not appeal the November 22, 2013 order.

This Court should affirm dismissal of all claims against Janet Hill.

II. STATEMENT OF ISSUES

1. Did Innerspace's lawsuit against Janet Hill abate as a matter of law when the statutory period within which the dissolved corporation could reinstate as an active corporation expired without reinstatement?

2. Did the trial court correctly dismiss any claim for civil conspiracy against Janet Hill related to the Finishing Touch lawsuit as a matter of law where, viewing the facts in the light most favorable to Innerspace, Innerspace failed to show a *prima facie* cause of action to the requisite evidentiary standard of clear, cogent and convincing evidence?

III. STATEMENT OF THE CASE

A. Summary Background to Underlying Case.[1]

Attorney Janet Hill represented Innerspace LLC from its formation in 1998 until the LLC was administratively dissolved in 2005. CP 115. David Gillette and Allen Loun were the sole members of Innerspace LLC. CP 59. Innerspace LLC was a flooring subcontractor. In 2005, Messrs. Gillette and Loun formed Innerspace Floor Coverings, Inc. They were the only officers and shareholders of the corporation. CP 61. Ms. Hill was not asked to and did not prepare the incorporation paperwork. CP 115.

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[1] Janet Hill provides background to the court to place the issues on appeal in context and to explain the parties and claims referred to in the trial court orders from which Innerspace appeals.

Messrs. Gillette and Loun did not formally transfer assets from the LLC to the corporation; rather, they simply abandoned the LLC and started operating as a corporation. CP 27.

Ms. Hill represented the new company from its formation until March 2009 when her services were terminated on the sole remaining litigation matter—*Innerspace LLC v. Timberline Homes, LLC,* Snohomish County Superior Court Cause No. 04-2-10272-1. CP 115-116. Innerspace Floor Coverings, Inc. had long been out of business by that time, having closed its doors early in February 2007. CP 65, 1126.

In February 2007, Innerspace owed Ms. Hill thousands of dollars in attorney's fees and costs for legal services on its litigation matters. The outstanding debt Innerspace owed Ms. Hill resulted from her defending Innerspace in an employment case that went to trial in January 2007, *Cady, et al. v. Loun, et al.,* Snohomish County Superior Court Cause No. 05-2-13021-9. CP 1126. Innerspace lacked the funds to pay Ms. Hill for the legal services she provided in that matter. Messrs. Loun and Gillette told Janet Hill that the only way they would be able to pay her for her past due legal fees was to turn over to Ms. Hill (1) any funds Innerspace received in satisfaction of a Judgment Ms. Hill had obtained on its behalf in a lawsuit against defendants Borgmann and Bartholemew ("the Borgmann Judgment"); and (2) any funds Innerspace obtained from

a recovery in the *Timberline* lawsuit. CP 1126. Ms. Hill agreed to this payment arrangement under the circumstances.

B. The *Timberline* Case.

In 2003, Innerspace LLC entered into a contract with Timberline Homes LLC to install flooring in a home Timberline was building in Snohomish County. Timberline Homes LLC was solely owned by Robert A. Burke. Mr. Burke personally guaranteed payment under the contract between Innerspace and Timberline Homes. CP 129. Timberline Homes failed to pay all sums due under the contract. The unpaid amount was approximately $8,000.00. Innerspace recorded a materialman's lien on the real property, then asked Janet Hill to foreclose on the lien. CP 115. Ms. Hill filed suit in Snohomish County Superior Court on June 3, 2004 to foreclose on Innerspace's lien. CP 116. Timberline counterclaimed, alleging breach of contract, damage to property and wrongful lien. CP 116. Innerspace later amended the Complaint to add a claim for monies owed and to add Robert A. Burke as a defendant, based on his personal guarantee. CP 116. Trial was set for January 21, 2009. CP 116.

Allen Loun, Innerspace corporation's President, was the contact person to assist Janet Hill on the *Timberline* case. CP 1128.

On January 13, 2009, attorney Jami Elison deposed Allen Loun in the *Timberline* case. In that deposition, Mr. Elison learned that Mr. Loun

had resigned as President and as a director of Innerspace in 2007. CP 108-113. Jami Elison's client, Robert A. Burke, called Dave Gillette, Innerspace's Vice-President, in March 2009 and asked to meet with him about the *Timberline* case. Dave Gillette expressed surprise that the *Timberline* case was still pending. Mr. Burke asked Dave Gillette whether it would be "okay with [Gillette] if [Burke and Timberline] went after Innerspace and Janet Hill." CP 76. Messrs. Burke and Gillette agreed on a set of facts and signed mutual assignments of any claims relating to the contract and the *Timberline* lawsuit to one another. CP 98-99, 101. The two men, aided by their respective counsel, Jami Elison and Jose Vera, entered into an agreement in which Dave Gillette, on behalf of Innerspace LLC, confessed judgment on Timberline's counterclaim in the amount of $45,502.58.

After Dave Gillette agreed Robert Burke could "go after Innerspace and Janet Hill," Jose Vera wrote a letter to Janet Hill terminating her representation of Innerspace in the *Timberline* case. CP 135-136. Janet Hill filed a Notice of Withdrawal with the court and Jose Vera filed a Notice of Appearance. CP 142, 144-145. The court entered an order on the stipulation and confession of judgment on May 27, 2009, dismissing the *Timberline* case with prejudice. CP 148-152. Thereafter, in June 2009, Robert Burke wrote to Janet Hill telling her he

was "look[ing] to you and Allen Loun to satisfy the $43,502.58 judgment." CP 147. Janet Hill did not respond to Mr. Burke's letter.

C. Procedural History of the Lawsuit by Timberline, Robert A. Burke and Innerspace Against Janet Hill and Allen Loun.

On January 12, 2012, Timberline Homes, LLC, Robert A. Burke, Innerspace LLC, and John Doe Companies 1-15 filed suit against Janet Hill and Allen Loun in King County Superior Court under Cause No. 12-2-01982-7 SEA. CP 1-5. The Complaint contained no dates whatsoever, yet alleged causes of action for breach of contract, breach of fiduciary duty, "tort damages," conversion, civil conspiracy, and "breach of duty/standard of care."[2]

Allen Loun has never been served with process. CP 1125.

1. Janet Hill's First Motion for Summary Judgment (the Standing Motion).

After preliminary discovery, Janet Hill filed her first motion for summary judgment, challenging the standing of all plaintiffs. CP 25-152. She challenged the standing of Robert A. Burke and Timberline under *Kommavongsa v. Haskell*, 149 Wn.2d 288, 67 P.3d 1068 (2003), because those plaintiffs were adversaries to her client, Innerspace LLC, in the underlying litigation and sued her based on Dave Gillette's March 2009

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[2] Janet Hill elected to challenge the Complaint via motion for summary judgment instead of seeking a more definite statement under CR 12(e). CP 1-5.

assignment. CP 101. She challenged the standing of Innerspace because the LLC had been dissolved for more than three years when suit commenced and it was statutorily prohibited from commencing a lawsuit at that point. RCW 25.15.305; *Serrano California Condominium Homeowners Ass'n v. First Pacific Development, Ltd., et al.*, 143 Wn. App 521, 178 P.3d 1059 (2008) (holding lawsuit commenced more than three years after administrative dissolution barred by statute of limitations); *Maple Court Seattle Condominium Ass'n v. Roosevelt, LLC*, 139 Wn. App. 257, 160 P.3d 1068 (2007) ("Administratively dissolved…limited liability companies are no longer legal entities and have no standing to prosecute a claim."). CP 42-43. Janet Hill challenged the standing of the John Doe companies under CR 12(b)(6) for failing to state a claim upon which relief could be granted—the Complaint lacked any allegations to support a claim by the John Doe companies. Janet Hill argued that the three-year statute of limitations barred each of plaintiffs' causes of action and, thus, the lawsuit. CP 25-46.

The trial court dismissed the claims by Robert Burke, Timberline, Innerspace LLC, and the John Doe Companies for lack of standing, but

allowed Innerspace Floor Coverings, Inc. to substitute as plaintiff under the theory that the LLC merged into the corporation.[3] CP 543-547.

The trial court found a genuine issue of material fact existed as to when Innerspace Floor Coverings, Inc., knew the facts underlying Innerspace's causes of action and thus when the statute began to run.[4] CP 547.

2. Innerspace's Motion for Partial Summary Judgment.

Innerspace filed a motion for partial summary judgment on April 26, 2013. The motion asked the trial court to rule as a matter of law that (1) Janet Hill had a duty to inquire into Allen Loun's authority to act

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[3] Janet Hill contends that the trial court erred in allowing the substitution under the equitable doctrine of de facto merger. The de facto merger and mere continuation doctrines are exceptions to the general rule that a purchaser of a company's assets does not succeed to that company's liabilities. The exceptions recognize the continuity of two business entities for the equitable purpose of finding successor liability for a plaintiff injured by the original entity. *Cambridge Townhomes, LLC v. Pacific Star Roofing, Inc.*, 166 Wn.2d 475, 2029 P.3d 863 (2009). The doctrines of de facto merger and mere continuation were "developed to protect the rights of commercial creditors and dissenting shareholders following corporate acquisition." *Hall v. Armstrong Cork, Inc.*, 103 Wn.2d 258, 262, 692 P.2d 787 (1984). Neither doctrine applies to the facts of this case. The trial court turned the merger doctrine on its head to allow substitution of the corporation for the LLC in the absence of an asset purchase, actual merger, or assignment of the cause of action to the corporation. The substitution also improperly disregards the statute of limitation in the LLC statute that a dissolved LLC may not commence suit more than three years after dissolution. A lawsuit commenced after the bar date should not be saved by substituting a dissolved corporation for the LLC more than five years after the bar date for the LLC to commence suit.

[4] The court did not rule that the lawsuit was "duly and timely commenced," as Innerspace contends. *Appellant's Brief,* p. 4, 11. Innerspace's opening brief is peppered with other inaccuracies. Janet Hill draws the Court's attention only to those inaccuracies that are germane to the appeal.

for Innerspace and continue her authority to represent Innerspace in the *Timberline* case, resulting in unauthorized representation in that case from 2007 to 2009; and (2) Janet Hill violated the Rules of Professional Conduct in various ways. None of the issues in Innerspace's motion for partial summary judgment is before the court on this appeal.

An order granting the motion in part and denying it in part, was entered on September 10, 2013. CP 797-800.

3. Janet Hill's Second Motion for Summary Judgment.

Janet Hill filed her second motion for summary judgment on July 5, 2013, seeking dismissal of the lawsuit. CP 596-614, 1125-1187. The court heard argument on August 2, 2013, and reserved ruling on the motion. CP 667.

On August 7, 2013, the parties participated in an unsuccessful settlement conference with Judge John Erlick of the King County Superior Court bench.

On August 15, 2013, the trial court issued a letter ruling on Janet Hill's motion, granting the motion in part and denying it in part. CP 700-706. The trial court allowed Innerspace to proceed to trial on its claims related to the *Timberline* case and the civil conspiracy claim related to satisfaction of the Borgmann Judgment. The court dismissed Innerspace's

other claims, *viz.*, all causes of action related to the *Cady v. Loun* lawsuit; the cause of action for conversion; and the breach of fiduciary duty cause of action related to the Borgmann Judgment. *Id.* The court wrote: "Any claims related to the 'Finishing Touch' litigation have not been presented to this court, other than Plaintiff's references at oral argument and brief references in Plaintiff's filings and exhibits." Unsurprisingly, the court made no ruling regarding the Finishing Touch lawsuit. CP 700. No formal order was entered.

The next day, August 16, 2013, Innerspace filed a motion under CR 59 for clarification and partial reconsideration of the court's letter ruling. CP 687-699. The motion sought clarification that the court was making "no ruling on Finishing Touch-related issues and that such issues are ripe for trial." It sought reconsideration of the letter ruling, including the dismissal of conspiracy claims related to the *Cady* lawsuit "based on sufficiency of direct evidence of a conspiracy." CP 689.

On September 3, 2013, the trial court issued its Order Partially Denying Plaintiff's Motion for Reconsideration. CP 751-752. The order denied Innerspace's request for reconsideration regarding the conspiracy claim relating to the *Cady* lawsuit because the evidence submitted in support of the conspiracy claim was "purely speculative and [did] not constitute evidence of a civil conspiracy." CP 752. The order did not

address the request for clarification regarding claims related to the Finishing Touch lawsuit.

On September 17, 2013, Janet Hill noted for presentation her proposed order on her second motion for summary judgment. CP 1336-1342. Innerspace objected to Janet Hill's proposed order. CP 802-804.

On October 27, 2013, the court entered Janet Hill's proposed order on her second motion for summary judgment, with modifications. CP 832-835. The order made no mention of claims related to the Finishing Touch lawsuit. Innerspace appeals from this order. CP 919-931.

In a conference call with counsel on September 3 or 4, 2013, the trial court asked that Janet Hill bring a motion before trial to resolve the question whether Innerspace's claim for civil conspiracy related to the Finishing Touch lawsuit would go to the trier of fact. The trial court agreed to hear the motion on November 22, 2013. CP 1435.

4. Janet Hill's Third Motion for Summary Judgment.

On October 25, 2013, Janet Hill filed her third motion for summary judgment. CP 816-831, 1350-1427. In her motion, Janet Hill asked the court to dismiss (1) any claims arising out of or related to the Finishing Touch lawsuit; (2) any claims for breach of contract; and (3) all

claims on the basis that Innerspace is an irrevocably dissolved corporation and lacks standing to maintain an action in court. CP 816-817.

a. The Lawsuit Abated As a Matter of Law on Innerspace's Failure to Reinstate the Corporation During the Statutory Period.

The Secretary of State administratively dissolved Innerspace Floor Coverings, Inc. on August 1, 2008, for failing to file its annual report and pay its annual license fee. CP 61. By statute, Innerspace could apply to reinstate as an active corporation within five years of dissolution. RCW 23B.14.220(1). Without reinstatement, a corporation ceases to exist at the end of the reinstatement period. The statute required Innerspace to file missing annual reports and pay its unpaid annual corporate license fees to reinstate as an active corporation. RCW 23B.14.220(1)(b) (the corporation must show that "the grounds for dissolution...have been eliminated"). "When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred." RCW 23B.14.220(3). It is undisputed that Innerspace never reinstated as an active corporation, and thus ceased to exist as of August 1, 2013. CP 1426.

Innerspace went out of business in early February 2007. CP 65, 1126. No evidence was submitted to the trial court to show any winding-up activity after March 2009.

Nearly three years later, on January 12, 2012, Innerspace[5] commenced suit against Janet Hill and Allen Loun, claiming they tortiously harmed Innerspace both before and after the company went out of business. CP 1-5. The trial court ruled the lawsuit abated by operation of law on expiration of the period for Innerspace to reinstate as a corporation and dismissed the lawsuit with prejudice. CP 910-915.

b. Request to Dismiss Claims Related to the Finishing Touch Lawsuit.

As requested by the trial court in early September 2013, Janet Hill brought the issue of the claims relating to the Finishing Touch lawsuit before the court for its determination whether sufficient evidence existed to put the matter before the trier of fact. CP 1435. Ms. Hill presented evidence from herself, Allen Loun, and Susan Nicholas, the owner of Finishing Touch, to show that Innerspace could meet none of the essential elements of a cause of action for civil conspiracy to the requisite burden of proof—clear, cogent and convincing evidence. CP 1350-1356, 1357-1427, 1434-1140, 1441-1445. Innerspace submitted a declaration by Dave

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[5] The LLC filed suit; the corporation later was substituted as plaintiff by court order.

Gillette in opposition to the motion. His declaration failed to provide specific facts to support a claim for civil conspiracy. Instead, Mr. Gillette recited what he believed occurred in the now distant past. Mr. Gillette's declaration constitutes speculation rather than a factual recitation capable of supporting a claim for civil conspiracy. CP 857-884.

Innerspace may claim that it relied on all declarations filed by Innerspace in the case and not only on the November 12, 2013 declaration submitted in opposition to the third motion for summary judgment.[6] However, the November 22, 2013 order dismissing "[a]ny and all claims or causes of action against Janet Hill arising from or related to the Finishing Touch lawsuit, Snohomish County Superior Court Cause No. 07-2-04512-9" lists only the November 12, 2013 declaration by Dave Gillette as having been considered by the trial court. CP 897-899.

IV. LEGAL ARGUMENT AND AUTHORITY

A. Standard of Review.

This court's review is de novo. The trial court dismissed Innerspace's causes of action on summary judgment. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998) ("The de novo standard

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[6] None of the earlier declarations submitted by Innerspace on earlier motions for summary judgment provided any evidence sufficient to defeat the motion to dismiss claims relating to the Finishing Touch lawsuit. Innerspace quotes from an earlier declaration that is similarly deficient and was not explicitly brought to the trial court's attention on this motion. *Appellant's Brief*, p. 9, CP 180-181.

of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment motion.").

The trial court's ruling that the lawsuit abated as a matter of law relates to Innerspace's standing to maintain the lawsuit. Standing is a threshold issue reviewed de novo. *Knight v. City of Yelm*, 173 Wn.2d 325, 337, ¶ 17, 267 P.3d 973 (2011).

Innerspace contends that the trial court made errors of law in dismissing the civil conspiracy cause of action and in ruling the entire lawsuit abated on expiration of the dissolved corporation's reinstatement period. The Court of Appeals reviews all questions of law de novo. *State v. Bunker*, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010).

B. The Trial Court Correctly Applied Common Law in Dismissing This Lawsuit on Janet Hill's Motion Because the Lawsuit Abated As a Matter of Law on Innerspace's Failure to Reinstate As an Active Corporation Within the Allowable Period.

Corporations are entirely creatures of statute. They derive their existence and ability to act through statutes. To retain corporate form, the corporation must comply with the law. Failing to fulfill corporate duties results in administrative dissolution. If a corporation ceases to legally exist, it has neither the protections nor the privileges of the corporation statutes. *Equipto Division Aurora Equipment Co. v. Yarmouth*, 134 Wn.2d 356, 373, 95 P.2d 451 (1998), Johnson dissent.

At common law, all suits against a corporation abated on dissolution. *Hawley v. Bonanza Queen Mining Co.*, 61 Wash. 90, 91, 111 P. 1073 (1910) ("The necessary effect of the dissolution of a corporation is to abate all actions pending against it at the time of its dissolution, in the absence of a saving statute providing for the continuation of such actions."). On dissolution, a corporation "ceased to exist for all purposes and therefore could not sue or be sued." *Ballard Square Condominium Owners Ass'n v. Dynasty*, 158 Wn.2d 603, ¶ 9, 146 P.3d 914 (2006), citing 16A William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 8144 (2003). The Washington Legislature enacted survival statutes over the years that permit some suits to survive dissolution and prohibit others. The trend has generally been to liberalize survival.

1. History of Washington's Business Corporation Act's Survival Provisions.

Washington's early business corporation statutes contained no survival provision for lawsuits by or against a dissolved corporation. All suits abated as a matter of common law when a corporation dissolved. *Ballard Square*, 158 Wn.2d at ¶ 9. The Legislature enacted a survival statute in 1965 when it adopted the 1959 Model Business Corporation Act. The provision was codified at former RCW 23A.28.250 (Laws of 1965,

ch. 53, § 108 (effective July 1, 1967). The statute provided that claims by or against a corporation existing prior to dissolution survived corporate dissolution so long as suit was commenced within two years. 158 Wn.2d at ¶ 10. Only suits saved by the survival statute could be brought by or against a dissolved corporation.

a. 1989 Adoption of the Revised Model Business Corporation Act.

Former RCW 23A was repealed by the 1989 legislature, effective July 1, 1990, when the legislature adopted the Revised Model Business Corporations Act. Laws of 1989, ch. 165, § 204. The enactment of RCW 23B.14, the dissolution statute, "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." 158 Wn.2d at ¶ 13. The Act allowed a dissolved corporation to take actions that had been forbidden to it under the common law, including to sue and be sued: "Dissolution of a corporation does not: ... (e) Prevent commencement of a proceeding by or against the corporation in its corporate name...." Former RCW 23B.14.050(2)(e).

The legislation provided for the survival of remedies by and against corporations after the corporation dissolved, including by administrative dissolution:

> The dissolution of a corporation…shall not take away or impair any remedy available **to or against** such corporation…for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. The directors of any such corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders. **Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.** The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Laws of 1989, ch. 165, § 167, pp. 722-23, codified at RCW 23B.14.340 (emphasis added).

However, the 1990 Legislature amended the language of the new act before it took effect to *delete* the provision allowing suits *by* dissolved corporations, thereby stripping a dissolved corporation of its right to affirmatively bring suit:

> The dissolution of a corporation…shall not take away or impair any remedy available ((~~to or~~)) against such corporation…for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced with two years after the date of such dissolution. ((~~The directors of any such corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders.~~)) Any such action or proceeding ((~~by or~~)) against the corporation may be ((~~prosecuted or~~)) defended by the corporation in its corporate name. ((~~The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.~~))

Laws of 1990, ch. 178, § 6, p. 1099, amending RCW 23B.14.340.

The Bill Digest for SSB 6389 (1990) (the legislation enacting the 1990 amendments) recites that the act tracks national developments in corporate law and keeps Washington in line with other major commercial states in the country. Summarizing the amendments, the Bill Digest noted: "Affirmative causes of action do not survive dissolution; however, dissolved corporations retain the right to defend actions...." CP 1458-1459. Thus, beginning in 1990, once a corporation has been dissolved—whether by voluntary, judicial or administrative dissolution—it may not commence or maintain a suit for claims arising before dissolution.

b. 2006 Amendments to the Business Corporation Act.

In 2006, the Legislature amended the Business Corporation Act in response to the Court of Appeals' decision in the *Ballard Square* case. *Ballard Square Condominium Owners Ass'n v. Dynasty Construction Co.*, 158 Wn.2d 603, 146 P.3d 914 (2006). In *Ballard Square*, the Court of Appeals affirmed the trial court's dismissal of claims against the developer of a condominium building as barred due to the developer's dissolution. 158 Wn.2d at 603. Our Supreme Court held that the post-dissolution claims could be brought under the prior statute, but that the 2006

amendments to the statute applied retroactively to bar the suit. 158 Wn.2d at ¶ 19-20, 31.

The 2006 amendments provided that suits may be commenced against dissolved corporations for three years after the effective date of dissolution and clarified that claims arising after dissolution may be asserted against the corporation. Laws of 2006, ch. 52 § 17, p. 244, amending RCW 23B.14.340; SB 6596 Final Bill Report at 2. The legislation did not change the survival provision to allow claims by a dissolved corporation.

The Supreme Court in *Ballard Square* construed the former survival statute, RCW 23B.14.340, and former RCW 23B.14.050, that included the winding up statute at section (1). The Court discussed former RCW 23B.14.050(1) and (2) as they existed before the 2006 statutory amendments, noting that "[t]he plain language of subsection (2)(e) permitted any suit to be brought by or against the corporation regardless of dissolution, and the plain language of both sections shows that the introductory language in [former RCW 23B.14.050(1)] limiting activities to winding up and liquidating does not limit subsection (2)(e)." 158 Wn.2d at ¶ 17. In other words, the Court implied that RCW 23B.14.050(2)(e) allowed dissolved corporations to sue for matters other than winding up the business. The Supreme Court acknowledged,

however, that former RCW 23B.14.340 limited suits that could be brought against a dissolved corporation to the then two-year statutory survival period. 158 Wn.2d at ¶ 18. Nothing in RCW 23B.14.340 allows suit by corporations after the corporation is dissolved.

The 2006 legislature added a proviso to RCW 23B.14.050(2) that makes the limitation of RCW 23B.14.340 explicit: "*Except as otherwise provided in this chapter*, dissolution of a corporation does not ... (e) Prevent commencement of a proceeding by or against the corporation in its corporate name." RCW 23B.14.050(2) (emphasis added). Following the Supreme Court's reasoning in *Ballard Square*, the survival statute limits RCW 23B.14.050(2)(e), prohibiting suits by a dissolved corporation. The exception in RCW 23B.14.340 has swallowed the rule in RCW 23B.14.050(2)(e). If the survival statute did not bar suits by dissolved corporations, and if RCW 23B.14.050(2)(e) allowed this lawsuit, then a policy issue arises. Creditors of the dissolved corporation and persons injured by its tortious activity would receive less favorable treatment by the survival statute than the corporation receives. The legislature's concerns regarding creditors' rights is evident in the 2006 amendments to the Business Corporation Act, which specifically addressed that issue:

> One area of the act that has not been revised since 1989, and that has been the subject of several lawsuits, is the provision dealing with dissolution of a corporation, specifically, the area of creditors' rights once a corporation has been dissolved. For example, it has been argued that claims arising after dissolution of the corporation are barred from remedy.

SB 6596 Final Bill Report (2006) at 1.

"Survival provisions are clarified to make clear that claims arising after filing for dissolution can be asserted against the corporation, and the survival period is extended to three rather than two years." *Id.* at 2.

If suits by dissolved corporations are allowed, the limitations period in the survival statute should apply equally to lawsuits commenced by a dissolved corporation and to lawsuits against them. Any suit not commenced within three years of the date of dissolution should be barred.

If the survival statute does not bar these claims completely by not providing for survival of proceedings by a dissolved corporation, application of the three-year limitations period should operate to bar any lawsuit by the dissolved corporation not commenced within three years of administrative dissolution. Innerspace did not file this lawsuit within three years of dissolution. The corporation was administratively dissolved on August 1, 2008. The bar date would be August 1, 2011. The lawsuit was commenced by filing on January 12, 2012, more than three years later than dissolution. As a policy matter and under this counterfactual analysis, the

three-year statute of limitations contained in the survival statute should apply to this action and should bar the suit.

Even if the court does not read the dissolution statute as barring Innerspace from commencing this lawsuit after dissolution, nothing in the dissolution statute permits the lawsuit to continue after Innerspace ceases to exist at the end of the reinstatement period.

2. No Statute Allows Innerspace to Maintain a Lawsuit After the Reinstatement Period Expires Without Reinstating the Corporation.

No provision of the dissolution statute addresses survival of a lawsuit brought by a dissolved corporation on expiration of the period in which it is allowed to reinstate as an active corporation. Where the statute is silent, the common law applies. RCW 4.04.010; *Potter v. Washington State Patrol*, 165 Wn.2d 67, ¶ 11, 196 P.3d 691 (2008) ("our state is governed by the common law to the extent the common law is not inconsistent with constitutional, federal, or state law."). The Supreme Court in *Ballard Square* noted that enactment of RCW 23B.14.050(2) "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." 158 Wn.2d at ¶ 13. The dissolution statute abrogates much of the common law for the five-year period from dissolution to the end of the reinstatement period, but not thereafter. A statute abrogates the

common law only when the statutory provisions "'are so inconsistent and repugnant to the common law that both cannot simultaneously be in force.'" 165 Wn.2d at ¶ 11, quoting *State ex rel. Madden v. Pub. Util. Dist. No. 1*, 83 Wn.2d 219, 222, 517 P.2d 585 (1973). Nothing in Washington's business corporation dissolution statute is inconsistent with prior common law that, absent reinstatement, a corporation is dead and cannot maintain a lawsuit when the statutory reinstatement period ends.

Where a corporation reinstates, it regains its corporate powers and may commence and maintain lawsuits. *Equipto Division Aurora Equipment Co. v. Yarmouth*, 134 Wn.2d 356, 365, 95 P.2d 451 (1998) ("The dissolution is conditional because the corporation can be reinstated within five years (formerly two years) of dissolution and reinstatement dates back to the date of dissolution as if the administrative dissolution had never occurred."). Where a corporation fails to reinstate, it ceases to exist and may not exercise any corporate power. It is dead. *State v. Evans*, 177 Wn.2d 186, 298 P.3d 724 (2013) (discussing corporate existence in context of identity theft statute and concluding a corporation can be considered "living or dead" depending on whether it remains in operation or instead has been dissolved).

Thus, even if the statute of limitations in the survival statute as applied to RCW 23B.14.050(2)(e) did not bar this lawsuit, nothing in the

dissolution statute allows a suit by a dissolved corporation to survive beyond the end of the reinstatement period. The survival statute limits suits to those filed against the dissolved corporation within three years from the date of dissolution. RCW 23B.14.340. Even if filed on the last day possible, two years would remain to conclude the lawsuit before the reinstatement period ended. Presumably, if timely filed, the current survival statute would not prevent lawsuits against the dissolved corporation from being maintained to conclusion. *See, e.g., Ballard Square,* 158 Wn.2d at ¶¶ 27-31 (holding the right to sue a dissolved corporation did not exist at common law and now exists by statute, "as a matter of legislative grace"; therefore, it is not a vested right and it may be abolished during pendency of a lawsuit at any time before final judgment).

a. Lawsuits Abate Without Corporate Reinstatement under the Common Law.

Washington common law is unequivocal regarding abatement of lawsuits by expired corporations. Any lawsuit brought by a dissolved corporation abates upon the expiration of the reinstatement period where the corporation does not reinstate its corporate existence. *Equipto,* 134 Wn.2d 356, 95 P.2d 451 (1998) (corporation not allowed to reinstate when application made after reinstatement period); *Follett v. Clark*, 19 Wn.2d 518, 43 P.2d 536 (1943) (administratively dissolved corporation may not

bring or maintain lawsuit); *Gamble v. Alder Group Mining & Smelting Co.*, 5 Wn.2d 578, 105 P.2d 811 (1940) ("The corporation, even though not dissolved, could not be reinstated under the provisions of [the corporations statute], and it had, in effect, become dead," precluding it from maintaining an action); *National Grocery Co. v. Kotzebue Fur & Trading Co.*, 3 Wn.2d 288, 296-97, 100 P.2d 408 (1940) ("So long as a corporation may reinstate itself it is not dead, and is, therefore, subject to process and suit."); *Hawley v. Bonanza Queen Mining Co.*, 61 Wash. 90, 111 P. 1073 (1910) ("A corporation is a mere creature of the law, and the privilege as a corporation is contingent upon a compliance with the law."); *Maple Court Seattle Condo. Ass'n v. Roosevelt, LLC*, 139 Wn. App. 257, 160 P.3d 1068 (2007) (dissolved corporations that fail to reinstate within the permitted time frame lack standing to pursue lawsuits; holding the same rule applies to LLCs); *Roger Lee Construction Co., Inc. v. Toikka*, 62 Wn. App. 87, 813 P.2d 61 (1991) (holding payment of delinquent fees after motion to dismiss during trial allowed corporation to maintain its lawsuit because the payment occurred during the reinstatement period); *Inducon Corp. v. Crowley Maritime Corp.*, 53 Wn. App. 872, 771 P.2d 356 (1989) (dismissing lawsuit by dissolved corporation that failed to pay delinquent fees it "could and should have paid")[7]; *Pacesetter Real Estate,*

[7] Prior to the 1989 amendments to the Business Corporation Act, a corporation was

Inc. v. Fasules, 53 Wn. App. 463, 468, 767 P.2d 961 (1989) (suit by dissolved corporation commenced after reinstatement period dismissed: "Since Pacesetter failed to comply with the 2-year reinstatement period, it lacks standing to bring this action."); *United States for Use of Acme Granite & Tile Company v. F.D. Rich Company*, 417 F.2d 549 (9th Cir. 1970) (under Washington law, lawsuit by corporation abated when corporation dissolved during suit).

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 its lawsuit.

b. As With Corporations, Lawsuits Abate Without LLC Reinstatement.

The rule is the same for LLCs. *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 207 P.3d 1251 (2009). In that case, the Court explained that the LLC amendments "journeyed through the legislative process hand in hand with the amendment to the survival statute pertaining to corporations that was addressed by this court in [*Ballard Square*]. Both statutory provisions were in response to the Court of Appeals' decision in *Ballard Square*, where that court determined that, absent a survival statute, claims against a corporation arising after dissolution of the corporation

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required to pay all fees due the State before commencing suit. Former RCW 23A.44.120.

abated." 166 Wn.2d at ¶ 34. Applying the rule to the LLC, the *Chadwick* court concluded:

> Under the statutory scheme applying to limited liability companies that are administratively dissolved, if the company does not seek reinstatement it must wind up the company's affairs within that two year period, because once the two years pass, the company no longer exists and has no power to act. While the company still exists, and during the time it is winding up (the time following dissolution and before cancellation of the certificate of formation), it has the power to prosecute and defend suits. But once the company is canceled, it can no longer prosecute or defend suits; it no longer exists as a legal entity....
>
> Here, FHC, as an administratively dissolved limited liability company, had two years in which to wind up, including prosecuting and defending suits, or else it had to seek reinstatement to obtain additional time in which to complete the winding up process. Because FHC did not seek reinstatement, then any suits it brought or any suits against it were limited to the two year period available for winding up the affairs of the company before it was canceled as a matter of law. Once the two-year reinstatement/winding up period passed and the company's certificate of formation was canceled, it could no longer sue or be sued because it ceased to exist.

166 Wn.2d at ¶¶ 21-22 (citations omitted).

c. Reinstatement Period Defines End of Corporate Existence.

While the Business Corporation Act does not explicitly place a time limit on the dissolved corporation within which it must conclude the winding up process, it does place an end to the corporation's post-dissolution existence. That limit is five years, absent application for

reinstatement. RCW 23B.14.220. If a dissolved corporation has unfinished winding up activities, such as a properly commenced lawsuit against others, it is incumbent on the corporation to reinstate as an active corporation to avoid having the lawsuit abate by operation of law. *See Maple Court Seattle Condominium Ass'n v. Roosevelt, LLC,* 139 Wn.2d 257, 160 P.3d 1068 (2007) (holding a dissolved LLC could not maintain an action against others after the statutory winding up period expired and noting that actions by dissolved corporations do not survive without reinstatement). At the end of the reinstatement period, the corporation ceases to exist.

d. Innerspace's Argument Fails to Address the Issue on Appeal.

Innerspace argues that the court erred by equating corporate dissolution with corporate death. *Appellant's Brief*, pp. 15-17. But Innerspace misreads the trial court's Memorandum Opinion. The trial court ruled that in Washington, "common law rules apply to dissolved corporations once the statutory reinstatement period has ended." CP 915. It is only then, and not during the five-year period between dissolution and the end of the reinstatement period, that a corporation ceases to exist.

The trial court was correct in relying on *Pacesetter* and the cases cited therein in applying Washington's common law holding that a

corporation's failure to apply for reinstatement within the time permitted results in irrevocable dissolution and thereafter any pending lawsuit may not be maintained. The *Pacesetter* court noted that "[t]his view is consistent with case law across the country," citing to 16A *Fletcher Cyclopedia of the Law of Corporations*, § 8113, p. 358 (1988). 53 Wn. App. at 468. Innerspace cites to no Washington authority to the contrary. Where a party cites no authority to support its argument, the court presumes it has found none. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

Innerspace cites to foreign authority for the proposition that the trend across the country is to allow suits to continue to conclusion despite expiration of the reinstatement period. *Appellant's Brief* at 11-12 & n.21. The cases cited and the section of *Fletcher* that Innerspace relies on fail to prove its point. Section 8113 notes that all states provide for survival of remedies for a limited period of time after dissolution and courts have held both that pending suits abate on expiration of the survival period and that they do not abate. 16A *Fletcher Cyclopedia of the Law of Corporations*, § 8113 (2013). One must look to the law of the state of incorporation to determine whether the common law regarding abatement has been abrogated by statute. In Washington, it has not; the common law applies.

Here, the trial court correctly dismissed Innerspace's lawsuit against Janet Hill under Washington's common law when Innerspace failed to reinstate before the end of the reinstatement period.

C. Innerspace's Argument That the Trial Court Improperly Dismissed Its Civil Conspiracy Claim Related to the Finishing Touch Lawsuit Lacks Merit.

1. Innerspace Improperly Asserts That the Trial Court Dismissed the Finishing Touch Conspiracy Claim on Janet Hill's Second Motion for Summary Judgment.

Innerspace appeals from the trial court's order dated October 27, 2013, ruling on Janet Hill's second motion for summary judgment. In its opening brief to this Court, Innerspace argues the October 27 order dismissed its civil conspiracy claim related to the Finishing Touch lawsuit. But the trial court did not rule on the civil conspiracy claim related to the Finishing Touch lawsuit in the October 27, 2013 order, notwithstanding Innerspace's motion to clarify, arguing that the Finishing Touch civil conspiracy cause of action was not before the court on Janet Hill's second motion for summary judgment and asking the trial court to rule that any civil conspiracy claim relating to the Finishing Touch lawsuit may proceed to trial. CP 687-699. The October 27 order dismissed a number of Innerspace's claims and allowed others to go to trial.[8] The Finishing

[8] In its Notice of Appeal of the October 27, 2013 order, Innerspace appeals the order "in whole or in part." CP 919. It does not limit its appeal to only one aspect of the

Touch claim was not among them, for good reason. CP 834-35. When Janet Hill filed her second motion for summary judgment on July 5, 2013, Innerspace had not yet identified any claim for civil conspiracy relating to Finishing Touch or the lawsuit it filed against David Gillette, Innerspace, and others. The trial court refrained from ruling on any civil conspiracy claim related to Finishing Touch in its October 27, 2013 order, even after Innerspace asked the court to clarify the court's August 15, 2013 letter ruling in which the court said, "[a]ny claims related to the 'Finishing Touch' litigation have not been presented to this court, other than Plaintiff's references at oral argument and brief references in Plaintiff's filings and exhibits." CP 700.

In a conference call with counsel on September 3 or 4, 2013, the trial court asked that Janet Hill bring a motion before trial to resolve the question whether Innerspace's claim for civil conspiracy would go to the trier of fact. The trial court agreed to hear the motion on November 22, 2013. CP 1435. Thus, the trial court anticipated hearing a separate

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order, *i.e.*, civil conspiracy regarding the Finishing Touch lawsuit. To the extent Innerspace intended to appeal any other portion of the order, Innerspace waived its appeal by not assigning error to any other portion of the order and by not submitting argument in its opening brief on any other claim or cause of action dismissed therein. RAP 10.3(a)(5); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("Points not argued and discussed in the opening brief are deemed abandoned and are not open to consideration on their merits."). That Innerspace intended to appeal only the civil conspiracy claim related to the Finishing Touch lawsuit is evident from Appellant's Brief: "The partial dismissal that is appealed is the dismissal that pertained to transactions identified as Finishing Touch, a competitor to Appellant called Finishing Touch Floors." *Appellant's Brief* at 8.

motion on the Finishing Touch claims when he entered the October 27, 2013 order. Innerspace overreaches in claiming the trial court improperly dismissed that claim in the October 27, 2013 order, by weighing the evidence or in any other way. The trial court did not weigh evidence, as Innerspace claims; rather, the court simply made no ruling whatsoever on the Finishing Touch claim in the October 27, 2013 order. The question is not debatable and this portion of Innerspace's appeal lacks merit.

2. The Trial Court Properly Dismissed the Claims Related to the Finishing Touch Lawsuit on Janet Hill's Third Motion for Summary Judgment.

Janet Hill filed her third motion for summary judgment on October 25, 2013 (two days before the trial court entered its October 27 order); the motion was heard on November 22, 2013. Janet Hill presented irrefutable evidence to the trial court showing that Innerspace could not make a prima facie case of civil conspiracy related to the Finishing Touch lawsuit to any standard, much less to the clear, cogent and convincing standard required. She argued that the facts Innerspace relied on for its conspiracy claim were as consistent with lawful activity as with unlawful activity. Janet Hill also argued that no cause of action of any kind related to Finishing Touch could survive summary judgment because the events complained of occurred in 2007, Innerspace agents knew the facts at the time, and the statute of limitations barred any cause of action.

On summary judgment, the moving party bears the initial burden of showing the absence of a material fact and Ms. Hill may do so by showing an absence of evidence to support the plaintiff's claim. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 & n.1, 770 P.2d 182 (1989). If Ms. Hill meets her initial showing, the burden then shifts to Innerspace, the party having the burden of proof at trial. If the plaintiff (Innerspace) fails to establish the existence of an element essential to its case, the trial court should grant the motion. *Id.*, citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct 2548, 91 L. Ed. 2d 265 (1986). "The non-moving party cannot rely on speculation but must assert specific facts to defeat summary judgment." *Smith v. Preston Gates Ellis, LLP*, 135 Wn. App. 859, ¶ 6, 147 P.3d 600 (2006). This standard comports with the purpose behind the summary judgment motion, which is to avoid unnecessary trials where no genuine issue as to a material fact exists. 112 Wn.2d at 226.

On her third motion for summary judgment, Janet Hill presented evidence from Janet Hill, Allen Loun and Susan Nicholas (the owner of Finishing Touch) to show that Innerspace could not prove civil conspiracy related to the Finishing Touch lawsuit filed in May 2007:

Janet Hill declaration:

2. I had no participation whatsoever in the 2007 Rod Nicholas Finishing Touch lawsuit against Dave Gillette, Innerspace Floor Coverings, Tiffany's Flooring Concepts & Design, and others. I did not represent any party to the lawsuit. I did not represent any witness in the suit. I did not know what the claims or defenses in the lawsuit were at the time the lawsuit was pending. I only learned detail about the Finishing Touch lawsuit during discovery in the instant suit.

3. All I knew about the Finishing Touch lawsuit in 2007 was the description Dave Gillette gave me in his May 21, 2007 email sent to me from his Tiffany's Flooring Concepts & Design email account.

The email, Exhibit 1 to Ms. Hill's declaration reads in pertinent part:

> I have not yet been served by either party. The other party being Finishing Touch Floors because they are saying that I have caused harm to their company by hiring their employees that were fired or quit when Allen went to work there. Don Thompson who was the vice president there isn't even working for me. Everything I am being accused of is exactly what Allen is doing. I also have been told that Allen is or will be filing bankruptcy soon. Please keep all of this confidential. Any ideas?

4. Dave Gillette did not communicate with me further about the Finishing Touch lawsuit. I did not ask him anything about the lawsuit.

5. Allen Loun did not communicate with me at all about the Finishing Touch lawsuit. I did not talk with Allen Loun about the lawsuit and did not represent him in any way in connection with the Finishing Touch lawsuit.

6. I saw no documents filed in or related to the Finishing Touch lawsuit in 2007 or at any time until plaintiff mentioned it in this lawsuit in 2013.

CP 1351, 1354.

Allen Loun declaration:

> 12. In May 2007, my new employer, Finishing Touch, sued Dave Gillette, Innerspace, Dave Gillette's new company, and others. I did not discuss that lawsuit or seek advice about it from Janet Hill.
>
> * * *
>
> 14. After I resigned from Innerspace [in 2007], my only communication with Janet Hill on anything having to do with Innerspace related to the Timberline case.

CP 1401.

Susan Nicholas declaration:

> 3. In May 2007, I filed a lawsuit against Dave Gillette, Innerspace Floor Coverings, Inc., Tiffany's Flooring Concepts & Design, Inc. and former Finishing Touch employees who were working with Dave Gillette and his companies in violation of a non-competition agreement, and using Finishing Touch's trade secrets and confidential customer and financial information to take business away from Finishing Touch. Ultimately, we settled the lawsuit in July 2007.
>
> 4. I have never seen any financial documents belonging to Innerspace Floor Coverings, Inc. Until discovery in my lawsuit against Dave Gillette, I had no customer information belonging to Innerspace.
>
> 5. Allen Loun did not give me or, to my knowledge, anyone else at Finishing Touch any Innerspace financial documents or confidential customer information in 2007 or at any other time. Allen Loun did not discuss Innerspace's business with me. He did not discuss its financial position or its confidential customer information with me.

> 6. I do not know who Janet Hill is, have never met her, and only recently learned that she was formerly Innerspace's attorney.

CP 1442.

Janet Hill submitted evidence showing that Stoel Rives attorneys represented Finishing Touch, CP 1361-1390, and Jose Vera represented Innerspace and all the other defendants in the Finishing Touch lawsuit. CP 1392-93. She presented evidence that, as Innerspace's attorney, in spring of 2007, she asked Dave Gillette to send financial records for Innerspace to Allen Loun so that he could prepare his income tax return. CP 1437-1440. Mr. Loun was entitled to receive that information as a fifty percent shareholder of Innerspace. RCW 23B.16.200.

In opposition to Janet Hill's third motion for summary judgment regarding the civil conspiracy claim, Innerspace submitted Dave Gillette's declaration in which he gave his view of why Janet Hill asked him to provide Innerspace financial information to Allen Loun (then still its President, a director and shareholder). Dave Gillette assumed that Janet Hill asked him to give the financial information to Allen Loun so that Allen Loun could provide it to Susan Nicholas at Finishing Touch so that Finishing Touch could sue Dave Gillette and Innerspace, all with the goal of putting Innerspace out of business. CP 857-860. Mr. Gillette described no facts to support his assumption that Janet Hill and Allen Loun

conspired to put Innerspace out of business. Moreover, Innerspace had gone out of business in early February 2007, CP 1126, months before Mr. Loun received the financial records and months before the Finishing Touch lawsuit was filed on May 15, 2007. CP 1361.

To prove civil conspiracy, Innerspace "must prove by clear, cogent and convincing evidence that (1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and, (2) the conspirators entered into an agreement to accomplish the conspiracy." *All Star Gas, Inc. v. Bechard*, 100 Wn. App. 732, 740, 998 P.2d 367 (2000). "[W]hen the facts and circumstances relied upon to establish a conspiracy are as consistent with a lawful or honest purpose as with an unlawful undertaking, they are insufficient." 100 Wn. App. at 740, quoting *Lewis Pacific Dairymen's Ass'n v. Turner*, 50 Wn.2d 762, 772, 314 P.2d 625 (1967).

Innerspace's claim for civil conspiracy related to the Finishing Touch lawsuit failed for at least three reasons: (1) Innerspace failed to submit any specific facts to support either prong of a conspiracy cause of action, as it was required to do. *Smith,* 135 Wn. App. 859, ¶ 6; 100 Wn. App. at 740; (2) the evidence Innerspace submitted and relied on to establish a conspiracy is as consistent with a lawful or honest purpose as with an unlawful undertaking. 100 Wn. App. at 740; and, (3) Innerspace

knew the "facts" underlying its conspiracy claim in 2007, thus, the three-year statute of limitations barred its cause of action. The discovery rule does not apply to toll the statute. RCW 4.16.080(3) (The statute of limitations for civil conspiracy is three years.); *Bowles v. Washington Department of Ret. Svs.,* 121 Wn.2d 52, 79-80, 847 P.2d 440 (1993) (Under the discovery rule, a cause of action accrues—and the statute of limitations begins to run—when the plaintiff knows, or has reason to know, the factual basis for the cause of action.).

Even assuming, *arguendo*, that Allen Loun asked for Innerspace financial information to provide it to Finishing Touch so that Finishing Touch could use the information against Innerspace—an intent for which there is no factual support—Dave Gillette's declaration does not provide specific facts to show that Janet Hill shared that intent. It provides only Mr. Gillette's speculation and conjecture, which cannot create a genuine issue of material fact to preclude summary judgment dismissal. 135 Wn. App. at 859, ¶ 6. Thus, Innerspace failed to show it could meet the combination requirement of the first prong of a cause of action for civil conspiracy, which is an element essential to that cause of action.

In sum, the trial court did not consider the Finishing Touch conspiracy claim on Janet Hill's second motion for summary motion and properly dismissed that cause of action as a matter of law on Ms. Hill's

third motion for summary judgment. This court should affirm the trial court's dismissal of this cause of action.

V. CONCLUSION

The trial court correctly dismissed all claims as a matter of law when Innerspace allowed the period in which it could reinstate as an active corporation to expire without applying for reinstatement. At that moment, Innerspace ceased to exist and its lawsuit abated under Washington's common law. No provision of Washington's Business Corporation Act saved the suit.

The trial court also correctly dismissed Innerspace's claim for civil conspiracy because Innerspace failed to show it could prove all essential elements of its cause of action to the requisite standard of proof. Innerspace relied on speculation and conjecture, rather than facts. The undisputed facts on summary judgment led to the conclusion that Innerspace could show neither prong of its claim and that the acts alleged were as consistent with lawful activity as unlawful conspiracy.

Janet Hill asks the court to affirm dismissal of Innerspace Floor Coverings, Inc.'s lawsuit against her.

DATED this 3rd day of September, 2014.

FORSBERG & UMLAUF, P.S.

By: _____

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing BRIEF OF RESPONDENT JANET HILL on the following individuals in the manner indicated:

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SIGNED this 3rd day of September, 2014, at Seattle, Washington.

Rozalynne Weinberg

Rozalynne V. Weinberg