

No. 350380

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

ROY BROOKS STODDARD, in his individual capacity, and as Trustee of the Roy B. Stoddard Revocable Living Trust, and as a shareholder of S & N Logging, Inc. and Newman Logging, Inc.,

Appellant,

v.

S & N LOGGING, INC., a Washington Corporation, NEWMAN LOGGING, INC., a Washington Corporation, and DONALD D. NEWMAN, an individual, and in his capacity as Trustee of the Don Newman Revocable Living Trust,

Respondents.

RESPONDENTS' BRIEF

Michael T. Zoretic, WSBA #21221
Zoretic Law, PLLC
PO Box 247
Pateros, WA 98846
(206) 465-8109
mike@zoreticlaw.com

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II. STATEMENT OF THE CASE

Mr. Roy Brooks Stoddard (“Mr. Stoddard”) filed this lawsuit in Okanogan County Superior Court on October 20, 2016. *CP 118*. As stated in his complaint, Mr. Stoddard alleged he was filing the suit in his own individual capacity, as Trustee of the Roy B. Stoddard Revocable Living Trust, and as a shareholder of S & N Logging, Inc. and Newman Logging, Inc. *CP 119*.

Mr. Stoddard’s stated claims were based on the following alleged facts:

1. Mr. Stoddard alleged that he and/or his trust is the owner of 25% of the shares of Defendant Newman Logging, Inc. (formerly known as S & N Logging, Inc.). *CP 120, ¶ 3.3*. Mr. Stoddard alleged he became a shareholder on October 4, 1994. *CP 121, ¶ 4.2*.

2. Mr. Stoddard alleged Defendant Donald Newman (and/or his trust) is the owner of the remaining 75% shares, and has acted as the sole officer and director of the corporate entities at all material times. *CP 122, ¶ 4.7*.

3. Mr. Stoddard alleged Defendant Newman Logging, Inc. “expired its registration as a Washington corporation, and on July 1, 2010, became inactive as a Washington business corporation.” *CP 120, ¶ 3.2*.

4. Mr. Stoddard further alleged that the officers and directors of the company (i.e., Defendant Donald Newman) conducted personal transactions with the corporation, including sales of property on February 3, 2000, March 3, 2003, May 19, 2005 and other undated transactions. *CP 120, ¶3.4*.

Based on these alleged facts, Mr. Stoddard asserted the following causes of action against Defendant Newman Logging, Inc. (formerly known as S & L Logging, Inc.):

A. Declaratory Judgment of Shareholder Status. A claim for Declaratory Judgment as to whether Mr. Stoddard is a shareholder in the corporation. *CP 121*, Claim IV.A. Mr. Stoddard based this claim on the allegation that “Newman Logging, Inc. contends Roy Brooks Stoddard does not own any stock of Defendant Newman Logging, Inc.” *CP 121*, ¶4.1. He further alleged Newman Logging, Inc. contends that Mr. Stoddard assigned his stock to Defendant Don Newman in 1997. *CP 121-122*, ¶4.4.

B. Corporate Dissolution. A claim for dissolution of Newman Logging, Inc. on three different grounds. *CP 122*, Claim IV.B. First, that Defendant Newman allowed the company to expire and failed “within a reasonable time to dissolve, to liquidate its assets, or to distribute its remaining assets among its shareholders under RCW 23B.14.300(2)(e).” *CP 122*, ¶4.8. Second, that Mr. Newman acted in an oppressive manner to Mr. Stoddard, making dissolution appropriate under RCW 23B.14.300(2)(b). *CP 122*, ¶4.11. Third, on the basis that Mr. Newman misappropriated and wasted company assets under RCW 23B.14.300(2)(d). *CP 123*, ¶4.14.

C. Accounting. A claim for accounting against Defendant Newman Logging, Inc. on the basis that Mr. Newman has “misappropriated and usurped company assets.” *CP 123*, ¶4.17. The alleged improper transactions include: a deed of property from S & N Logging, Inc. to Newman’s trust in 2000, an “Exchange Agreement” involving “Corporation Property” in 2005, and other matters. *CP 120*, ¶3.4.

D. Derivative Claims against Mr. Newman. Mr. Stoddard further alleged derivative claims on behalf of Newman Logging, Inc. against Mr. Newman

individually for breach of fiduciary duties, self-dealing, usurping corporate opportunities and acting oppressively and in bad faith. *CP 124, Claim IV.A; ¶5.3.* He also alleged that Donald Newman improperly sold the corporate assets without approval of the board of directors and shareholders under RCW 23B.12.020. *CP 125, ¶5.7-10.*

On November 18, 2016, Defendants' filed and served their Answer and accompanying Motion to Dismiss under CR 12(b)(6) and/or CR 56. *CP 108-117; CP 93-107.* The primary argument therein was that Newman Logging, Inc. had been administratively dissolved by the Secretary of State on July 1, 2010, and that under RCW 23B.14.340 any action against the Company or its shareholders had to be filed within three years of that date. *CP 94-95.*

Court Commissioner David Edwards heard the matter on December 20, 2016. The Court entered its Order on Defendant's Motion for Dismissal on January 3, 2017, stating its findings and conclusions:

The Court finds and concludes that Plaintiffs' claims against Defendants S & N Logging, Inc. and Newman Logging, Inc. are time-barred under RCW 23B.14.340 because the corporations had to be sued within three years of administrative dissolution, which Plaintiff alleges and the submitted evidence demonstrates occurred on July 1, 2010. Plaintiff did not initiate this lawsuit until October 20, 2016.

The Court further finds and concludes that Plaintiff's direct and/or derivative claims against Defendant Don Newman are also time-barred. Plaintiff has alleged improper transactions by Defendant Don Newman in 2000, 2003 and 2005, and alleged failure to properly handle manage winding down of the Company since its administrative dissolution on July 1, 2010. Plaintiffs' claims against Mr. Newman are barred under the statute of limitations as set forth in RCW 23B.14.340, RCW 7.24 and/or RCW 4.16.005, as no material dispute of fact exists that Plaintiff has failed to timely assert his direct claims within any applicable statute of limitations.

CP 10-12.

Mr. Stoddard assigns error to the Court's entry of its Order dismissing his claims. *See Appellant's Assignments of Error 1-4.*

III. SUMMARY OF ARGUMENT

Mr. Stoddard filed this shareholder and derivative lawsuit against Newman Logging, Inc. more than three years after the statute of limitations had expired under RCW 23B.14.340, and over a decade after the alleged acts of malfeasance by its majority shareholder, Donald D. Newman. On January 3, 2017, the Court entered an order dismissing the entirety of Mr. Stoddard's claims against the corporation under the clear language of the corporate survival statute, RCW 23B.14.340, which requires a lawsuit seeking "any remedy" or "any right or claim" against a dissolved corporation and/or its officers, directors and/or shareholders to be initiated within three years of the date of dissolution. This interpretation is consistent with the other dissolution statutes in effect at the time the lawsuit was filed.

Mr. Stoddard argues that the survival statute does not mean what it says, and asks this Court to grant a broad exclusion in RCW 23B.14.340, carving out any and all claims by a disgruntled shareholder against the corporation relating to dissolution. Without citing any authority, Mr. Stoddard essentially asks this Court to rewrite the corporate survival statute to abrogate any time limitation on shareholder lawsuits, all in order to save his stale and time-barred claims.

Even if the Court chooses to analyze the legislative history and other case law interpretations of the corporate dissolution statutes, the result here should be

the same. The Washington legislature and reviewing courts have never stated that the three-year survival statute, RCW 23B.14.340, applies only to third party claims. As with all other plaintiffs – whether they be creditors, third party claimant and/or shareholders – seeking “any remedy” or “any right or claim” against Newman Logging, Inc. or its officers, directors or shareholders, Mr. Stoddard was required to file his lawsuit within three years of the date of administrative dissolution. He failed to do so (missing the deadline by over three years), meaning his claims are barred under RCW 23B.14.340.

While the survival statute also applies to Mr. Stoddard’s derivative claims asserted against Defendant Donald Newman, those claims were further barred under the applicable statutes of limitation under RCW 7.24 and/or RCW 4.16.005. Mr. Stoddard asserted alleged acts of malfeasance by Mr. Newman that occurred well over a decade prior to the filing of this lawsuit, and well outside the timeframe of any possible statute of limitations.

IV. ARGUMENT

A. STANDARD OF REVIEW ON SUMMARY JUDGMENT.

Defendants’ motion was based on CR 12(b)(6) and/or CR 56. Because the trial court considered matters outside the pleadings, pursuant to CR 12(b)(7), the Court considered the motion as one for summary judgment under CR 56. *CP 10-12*.

The standard of review of the summary judgment order with is the subject of this appeal is *de novo*, and the appellate court performs the same inquiry as the trial court. *Smith v. Safeco Insurance Co.*, 150 Wn.2d 478, 483, 78 P.3d 1274 (2003).

The purpose of a summary judgment motion is to avoid an unnecessary trial. *Eakins v. Huber*, 154 Wn. App. 592, 598, 225 P.3d 1041 (2010). A moving party may bring a summary judgment motion alleging there are no issues of material fact. *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 169, 273 P.3d 965 (2012). Once the moving party meets its burden of showing no genuine issue of material fact exists, the burden shifts to the nonmoving party, who “must set forth specific facts rebutting the moving party’s contentions. *Id.* If, after reviewing all the facts in the light most favorable to the nonmoving party, the court concludes no issue of fact exists, the moving party is entitled to summary judgment as a matter of law. See CR 56.

B. MR. STODDARD’S CLAIMS AGAINST THE CORPORATION WERE TIME-BARRED UNDER THE EXPRESS PROVISIONS OF RCW 23B.14.340 BECAUSE THEY WERE FILED MORE THAN THREE YEARS AFTER ADMINISTRATIVE DISSOLUTION.

1. The Express Language of RCW 23B.14.340 Bars these Claims.

Defendants moved to dismiss Mr. Stoddard’s claims against the corporation based on the clear language of Washington’s survival statute establishing a three-year deadline for filing claims against a dissolved corporation, which states in pertinent part:

RCW 23B.14.340: Survival of remedy after dissolution.

The dissolution of a corporation ... by administrative dissolution by the secretary of state ... shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, unless action or other proceeding thereon is not commenced ... within three years after the effective date of any dissolution that is effective on or after June 7, 2006. ...

RCW 23B.14.340 has two components: on the one hand, it specifically preserves “any remedy” and “any right or claim” against a corporation, its directors, officers or shareholders after the actual date of dissolution, but on the other hand, it establishes a three-year statute of limitations for filing any such claims, running from the date of dissolution.

The trial court’s application of RCW 23B.14.340 was therefore quite simple. Mr. Stoddard undoubtedly filed his lawsuit seeking “remedies, rights and claims” against the corporation and Mr. Newman, its officer, director and shareholder. However, the Complaint alleged that the corporation’s registration expired and became inactive on July 21, 2010. It was also uncontested that the Secretary of State’s Certificate of Administrative Dissolution was entered on that date. CP 23.

That meant Mr. Stoddard had until July 21, 2013 to initiate his lawsuit. He did not do so until October 20, 2016, almost six years after dissolution and almost three years after the deadline for filing claims imposed under RCW 23B.14.340. The trial court correctly applied the three-year statute of limitations to bar Mr. Stoddard’s claims and dismissed the lawsuit.

2. An Analysis of RCW 34B.04.340 and Related Statutes Shows the Plain Meaning of RCW 34B.04.340 Bars Mr. Stoddard’s Claims.

Mr. Stoddard bases his entire appeal on the single argument that RCW 23B.14.340’s broadly worded provisions about “any remedy” and “any right or claim” do not apply to a shareholder suit for declaratory judgment as to shareholders standing and ownership of shares, corporate accounting, judicial dissolution, or shareholder derivative claims. *Appellant’s Brief*, p. 3-4.

Mr. Stoddard is correct that an appellate court reviews questions of statutory construction *de novo*. *State v. Roggenkamp*, 153 Wash.2d 614, 621, 106 P.3d 196 (2005). The first step is to examine the statute and related statutes to determine whether the plain statutory language shows the intended meaning of the statute in question. *See Ballard Square Condo Owners Ass'n v. Dynasty Const.*, 158 Wn.2d 603, 615, 146 P.3d 914 (2006). If this examination leads to a plain meaning, that is the end of the inquiry. *Id.* Only if the statutory language is ambiguous (i.e., subject to more than one reasonable interpretation) should the court resort to legislative history, principles of statutory construction and relevant case law to resolve the ambiguity and ascertain the meaning of the statute. *Id.*

Mr. Stoddard does not argue – and no reasonable person could contend – that the express language of RCW 23B.14.340 does not on its face apply to the claims asserted by Mr. Stoddard. The survival statute uses the broadest possible terms to identify the types of lawsuits that must be filed within three years of corporate dissolution: “any remedy” and “any right or claim, or any liability incurred, existing prior to such dissolution or arising thereafter.” The survival statute does not contain any exceptions to the types of claims it applies to, and certainly does not except claims by corporate shareholders. In looking at RCW 23B.14.340 alone, the express language undoubtedly bars the claims asserted by Mr. Stoddard due to his late filing of the subject lawsuit.

Mr. Stoddard does not even pretend to argue otherwise, but claims, without citing any authority, that the companion statutes relating to dissolution create an ambiguity in the otherwise plain language of RCW 23B.14.340.

However, an examination of these related statutes shows that they are not inconsistent with the intended two-part meaning of RCW 23B.14.340.

As stated in Mr. Stoddard's brief, RCW 23B.14.050 is a companion statute governing the process of dissolution, which has been amended over time along with the survival statute. Section (1) and (2) of RCW 23B.14.050 states:

(1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will be applied toward satisfaction or making reasonable provision for satisfaction of its liabilities or will otherwise not be distributed in kind to its shareholders, but in any case subject to applicable liens and security interests as well as any applicable contractual restrictions on the disposition of its properties;

(c) Satisfying or making reasonable provision for satisfying its liabilities, in accordance with their priorities as established by law, and on a pro rata basis within each class of liabilities;

(d) Subject to the limitations imposed by RCW 23B.06.400, distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Except as otherwise provided in this chapter, dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

Section 2(e) clarifies that dissolution does not prevent “commencement of a proceeding against a corporation” and Section 2(f) essentially states that actions pending by or against a corporation do not terminate. But nothing in this statute creates or identifies a survival period for shareholder lawsuits against a dissolved corporation. It does not contain any limitation of the survival provisions of RCW 23B.14.340 or in any way attempt to limit its application in the “winding up process.”

Defendants certainly recognize that under RCW 23B.14.050(2)(e) and (f) – and the survival statute, RCW 23B.14.340 – the mere fact of corporate dissolution in 2010 would not have acted to terminate Mr. Stoddard’s lawsuit if it had already been filed. Nor did it prevent Mr. Stoddard from filing an action after dissolution. However, the important point is that the plain language of RCW 23B.14.340 places a time limit of three years for initiating “any” claims against the corporation, including those shareholder claims asserted by Mr. Stoddard. Nothing in RCW 23B.14.050 indicates that the three-year survival period of “any remedy” for “any right or claim” created by RCW 28.04.340 excludes shareholder claims.

Likewise, RCW 23B.14.340 – which recognizes the survival of remedies against corporations after dissolution as long as the suit is initiated within three years – does not have any language contradicting RCW 23B.14.050 or exempting shareholder claims relating to dissolution. The two statutes are not contradictory in any way.

Mr. Stoddard cites RCW 23B.14.300 for the proposition that “Shareholders may seek judicial administration of the winding down, liquidation, and distribution of assets by judicial dissolution.” However, this unremarkable statement has no bearing on the issue of whether shareholder claims against a corporation that has been administratively dissolved for over three years are barred under the plain language of RCW 23B.14.340.

In short, Mr. Stoddard cites no authority for his argument that RCW 23B.14.050 or other dissolution statutes inherently exempts shareholder claims from the survival period under RCW 23B.14.340. Courts “generally do not consider arguments that are unsupported by pertinent authority” and “[w]hen no authorities are cited, the court may assume that counsel, after diligent search, has found none.” *Burke v. Hill*, 190 Wn.App. 897, 916, 361 P.3d 195 (2015) (rejecting an unsupported interpretation of RCW 23B.14.340 that was contrary to its plain language).¹

Mr. Stoddard has failed to meet his initial burden. Under the first step of statutory interpretation (i.e., a review of the subject language and related statutes), no ambiguity exists and the plain meaning of the three-year limitation

¹ It should be noted that Mr. Newman’s counsel requested – and was granted – a 30-day continuance based on his stated need to conduct additional legal research for authorities to cite his arguments. See Mr. Stoddard’s Motion for Extension dated April 11, 2017.

applies to bar Mr. Stoddard's claim. *Chadwick Farms Owner Association v. FHC LLC*, 166 Wn.2d 178, 187, 207 P.3d 1251 (2009) (Holding the plain language of RCW 25.15.303 and other provisions of the Limited Liability Act resolve the statute's meaning; therefore no need to consult the legislative history.) That should end the inquiry and the Court should affirm dismissal of Mr. Stoddard's lawsuit without further analysis.

3. The Legislative History, Principles of Statutory Construction and Relevant Case Law Confirm that RCW 34B.04.340 Bars Mr. Stoddard's Claims.

Even if the Court finds some ambiguity after this first-step of statutory interpretation, further review of the legislative history and other authority still supports the application of RCW 23B.14.340 to Mr. Stoddard's shareholder claims.

a. *Ballard Square* and the 2006 Amendments to the Washington Business Corporation Act, RCW 23B.

The legislative history of RCW 34B.04.340 and RCW 23B.14.050, including the 2006 amendments, was discussed at length in both the Court of Appeals' and the Supreme Court's decision in *Ballard Square Condominium Owners Ass'n v. Dynasty Const. Co.*, 126 Wn.App. 285, 295-96, 108 P.3d 818 (2005), *aff'd on other grounds*, 158 Wn.2d 603, 609-13, 146 P.3d 914 (2006). Although not directly on point with our case, the chronology of the *Ballard Square* lawsuit is tied into the legislature's 2006 amendments to the dissolution provisions of RCW 23B.14, including the modifications to RCW 23B.14.340.

Ballard Square is the only case Mr. Stoddard's counsel discusses in his brief. While counsel's recitation of the facts and procedural background of the

case is generally accurate, he is incorrect in stating that *Ballard's* decision and analysis “does not apply to Appellant’s legal rights and claims, as a corporate shareholder.” *Appellant’s Brief*, p. 12. In fact, the Supreme Court expressly held in *Ballard Square* that the plain language of the 2006 amendments to RCW 23B.14.340 act to bar a “postdissolution cause of action” if not filed within the survival period. *Id.* at 616.

Ballard Square involved a construction defect claim filed by a homeowner’s association in 2002, several years after the developer/builder Dynasty had been administratively dissolved in 1995. The association claimed that the defective conditions were not discovered until after the date of dissolution, which it apparently believed would rescue its claims from the two-year limitations period that was then in effect under the old version of RCW 23B.14.340.

At the time the lawsuit was filed, RCW 23B.14.340 provided that dissolution of a corporation “shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if ... commenced within two years ... of such dissolution.” *Ballard Square*, 158 Wn.2d at 610. (Emphasis added by court.) Although Dynasty argued that this version of the statute precluded the Association’s suit, the trial court and Division I granted summary judgment on different grounds. As the Supreme Court later stated, the appellate and trial court “correctly held the statute did not apply by its plain language because the Association’s claim did not exist “prior to dissolution.” *Id.*

The lower courts instead dismissed the case under the common law rule that “all suits against a dissolved corporation are terminated once the corporation has wound up its affairs.” *Id.* at 608, citing *Ballard Square Condo Owners Ass’n v. Dynasty Constr. Co*, 126 Wn. App. 285 (2005). The Court of Appeals’ ruling in 2005 effectively held that the existing two-year survival period applied to claims arising before dissolution, but there was no right to sue a dissolved corporation for claims arising after the dissolution of a corporation. *Id.*

The homeowners’ association appealed, and while the case was pending, the legislature enacted Senate Bill 6596, modifying RCW 23B.14.050 and RCW 23B.14.340, as well as other portions of the Washington Business Corporation Act, RCW 23B.

As amended, RCW 23B.14.340 now includes an express reference to claims arising after dissolution, and further imposes a three-year period for filing “any” claims against the corporation or its directors, officers and shareholders running from the date of dissolution:

The dissolution of a corporation either (1) by the filing with the secretary of state of its articles of dissolution, (2) by administrative dissolution by the secretary of state, (3) by a decree of court, or (4) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution *or arising thereafter*, unless action or other proceeding thereon is not commenced within two years after the effective date of any dissolution that was effective prior to June 7, 2006 or within three years after the effective date of any dissolution that is effective on or after June 7, 2006. Any such action or proceeding against the corporation may be defended by the corporation in its corporate name.

Ballard Square, at 615 (new language in italics).

The legislative amendments to RCW 23B.14.050 and RCW 23B.14.340 were, as stated in the committee reports, intended to deal with the perceived harshness of the Court of Appeals ruling by granting the right to file a post-dissolution claim, but creating a statute of limitations period for doing so. *Committee Comments to Senate Bill 6596*; *see also, Ballard Square*, 158 Wn.2d at 610-11 (“The statutory scheme shows the legislature’s intent that claims arising after dissolution are not absolutely barred, unlike the harsh common law rule.”) The legislative history will be further discussed below.

After the amendments were adopted, the Supreme Court issued its ruling in *Ballard Square*, 158 Wn.2d 603 (2006). The court discussed the history of RCW 23B.14.340 and agreed that under the existing version of the statute when the lawsuit was filed in 2002, the then-existing two-year survival period only applied to predissolution claims. *Id.* at 610. However, the Supreme Court disagreed with the Court of Appeals’ rationale for its decision, noting in *dicta* that “under the plain language of former RCW 23B.14.050(2)(e) (1989) as it existed when the Association commenced its suit, post-dissolution claims could be brought against a dissolved corporation, subject to the relevant statute of limitations for the type of claim asserted.” *Id.* at 615.

Despite this, the Court held that the 2006 amendments to former RCW 23B.14.340 applying the survival period to both predissolution and postdissolution causes of action applied retroactively to the Association’s claims and therefore barred the lawsuit. In interpreting the new language of RCW 23B.14.340 (and which is currently in effect), the court held:

On its face, the amended statute requires that a postdissolution cause of action be commenced within two years of dissolution if dissolution occurred *prior to* the June 7, 2006, effective date of the amendments. Here, dissolution occurred in 1995, long before the effective date of the amendments. The Association brought suit in 2002, well over two years after dissolution. By its plain language, RCW 23B.14.340 as amended bars the Association's suit.

Id. at 616 (italics in original).

Mr. Stoddard's brief contains only limited discussion of *Ballard Square* and legislative history of the 2006 amendments. Without any specific citation, he makes the conclusory statement that "shareholder rights, which expressly continue completely intact after an administrative dissolution, were not the subject of *Ballard* and not the subject of the three year survival period that the legislature adopted in response to *Ballard*." *Appellant's Brief*, at p. 12. This conveniently ignores the Supreme Court's holding in *Ballard Square* that the "plain language" of RCW 23B.14.340 as amended in 2006 now requires "a postdissolution cause of action," as well as a predissolution cause of action under the prior statute, to be filed within the survival period.

- b. Subsequent cases confirm the plain meaning of RCW 23B.14.340.

A detailed discussion of the legislative history of the dissolution and survival statutes now codified as RCW 23B.14.050 and RCW 23B.14.340, and the *Ballard Square* decisions, is contained in *Burke v. Hill*, 190 Wn.App. 897, 361 P.3d 195 (2015). While also not directly on point, the *Burke* decision again held that the survival and dissolution statutes have plain meaning that cannot be altered by judicial interpretation.

In *Burke*, a corporation was administratively dissolved under RCW23B.14.200. Three and one-half years later, the dissolved corporation sued its former attorney for malpractice. While the court action was still pending, the five-year period for corporate reinstatement allowed under RCW23B.14.220 expired. The attorney moved to dismiss, claiming nothing in the statutes allowed a corporation to maintain a lawsuit after expiration of the reinstatement period and all lawsuits abate upon dissolution without corporate reinstatement under the common law. *Id.*, at 901. The trial court agreed and dismissed the case.

Division I reversed, holding the plain language of RCW 34B.14.050 and .340 did not include any requirement that a corporation submit for reinstatement in order to prosecute a claim. In reference to the argument by the defendant that RCW 23B.14.340 applied to suits filed by the corporation, the Court stated:

We disagree. The 2006 survival statute's plain language applies only to suits against a corporation. Nothing in the survival statute prohibits suits *by* the corporation.

Burke, at 912. The court further warned against the defendant's attempt to re-write the survival statute:

Hill's survival statute argument adds language to the survival statute in the guise of interpretation. We decline to rewrite unambiguous statutory language under the guise of interpretation. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). Similarly, we "must not add words where the legislature has chosen not to include them." *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Instead, we construe statutes assuming that the legislature meant exactly what it said. *In re Marriage of Herridge*, 169 Wn.App. 290, 297, 279 P.3d 956 (2012).

Id. at 913.

The *Burke* court also cited to another post-*Ballard Square* case, *Donlin v. Murphy*, 174 Wn.App 288, 300 P.3d 424 (2013). In *Donlin*, a shareholder filed a

derivative claim against his co-shareholder, alleging malfeasance. The company was later administratively dissolved by the Secretary of State, and the defendant moved to dismiss, arguing the plaintiff no longer had standing as a shareholder due to the post-lawsuit dissolution. The trial court dismissed the case, but the appellate court reversed.

After considering the Washington Business Corporation Act's legislative history, the court concluded that "[u]nder the WBCA, Donlin's derivative action--in essence, a suit by the corporation--was not affected in any way by the administrative dissolution of GIS." *Donlin*, at 299. The court also held that under RCW 23B.14.050(2)(f)'s plain meaning, a lawsuit did not "[a]bate or suspend a proceeding pending by or against the corporation on the effective date of dissolution." *Donlin*, 174 Wn.App. at 298 (alteration in original) (quoting RCW 23B.14.050(2)(f)).

The *Donlin* case did not involve or discuss the survival period under RCW 34B.14.340, as the lawsuit was filed prior to administrative dissolution. However, the court's ruling shows that plain meaning of RCW 23B.14.050(2)(f) allows a derivative action to be filed before or after the date of dissolution. In turn, the plain language of RCW 23B.14.340 would correspondingly require "any" such action to be filed within three years of dissolution.

4. The Legislative History of RCW 23B.14.340 and Related Statutes Do Not Support the Court Creating a Shareholder Exception to the Survival Statute.

Mr. Stoddard makes broad, unsupported statements about the legislature's intent, but offers little to support his claims. He cites to one portion of the testimony in the House Bill Report for Senate Bill 6596, which explains the

history of the survival statutes, concluding with the following comment:

This worked reasonably well for a while, but in the late 1990's there were court decisions, including *Ballard Square* last year, which was very well reasoned but reached a nonsensical result: if you dissolve a corporation, a claim arising after dissolution has nowhere to go."

Appellant's Brief, at p. 12. While *Ballard Square*, as discussed above, specifically dealt with creditor's claims, this statement would be true regarding both third party and shareholder proceedings.

The legislature wanted to allow predissolution and postdissolution claims to survive corporate dissolution for a limited period. In explaining the changes to RCW 23B.14.340, the House Bill Analysis of SB 6596 contains no language expressing an intent to exclude shareholder claims, and instead used the following broad language:

Survival period for claims against a dissolved corporation

The survival period for claims existing prior to or arising after dissolution of a corporation is as follows:

Dissolutions effective prior to the effective date of this act

Actions or proceedings asserting claims against a dissolved corporation, its directors, officers, or shareholders, must be commenced within two years after the effective date of the corporation's dissolution.

Dissolutions effective on or after the effective date of this act

Actions or proceedings asserting claims against a dissolved corporation, its directors, officers, or shareholders, must be commenced within three years after the effective date of the corporation's dissolution.

The Senate Bill Report for SB 6596 also contains a lengthy discussion of the background and contents of the bill. The Background portion of the final Senate Bill Report does mention the concern about recent rulings on the "area of

creditor's rights once a corporation has been dissolved." However, in stating its summary of the changes to RCW 23B.14.340, the Report also contains more broad language:

Survival provisions are clarified to make clear that claims arising after filing for dissolution can be asserted against the corporation, and extending the survival period to three rather than two years.

Senate Bill Report, SB 6596.

Neither of these references in the legislative reports would support the conclusion that the Legislature intended its changes to the survival statute, adding "postdissolution claims" and keeping the existing "any remedy" language, shall only apply to third party claims and not apply to shareholder claims. To the extent Mr. Stoddard is arguing that the legislature accidentally failed to limit the meaning of "any remedy" and "any right or claim" to exclude shareholder claims, there is nothing in the legislative comments to support such a drastic ruling by the court.

In fact, the legislature showed it was aware of the applicability of RCW 23B.14.340 to shareholder-rights claims when it incorporated the three-year survival period in a newly-created statutory cause of action relating to improper distributions. In addition to the changes to RCW 23B.14.050 and .340 discussed in *Ballard Square*, Bill 6596 added a new section to existing distribution provisions in RCW 23B.08.310 (Directors and Officers). The summary describes these changes as follows:

A shareholder is personally liable for distributions he or she received while knowing the distribution, or a portion thereof, was made in violation of the WBCA's provisions for distribution, or made in violation of the corporation's articles of incorporation. The shareholder in violation is entitled to contribution from every other

shareholder also in violation. A proceeding against the shareholder for the violation must begin within two years of the effective date of the distribution, or within three years after the date of dissolution of the corporation, whichever is earlier.

The reference to RCW 23B.14.340 is clear, as the actual language of the new statute expressly states “the expiration of the survival period specified in RCW 23B.14.340.” The legislature was not content with allowing such claims against shareholders to always be filed up to three years after dissolution under the survival statute, so it added the limitation of only two years after the actual distribution. This shows the legislature’s recognition of RCW 23B.14.340’s applicability to shareholder dissolution claims.

5. Mr. Stoddard Is Requesting Substantial – and Absurd – Changes Changes to the Washington Business Corporation Act.

Mr. Stoddard is asking the Court to do more than simply ignore the plain language of the corporate survival statute. He is claiming that the only reasonable interpretation of RCW 23B.14.050 and .340 is that shareholders have all rights intact relating to dissolution “until winding up and distribution actually happens, even if three years, ten years or twenty years pass.” *Appellant’s Brief* at p. 13. If the Court accepts Mr. Stoddard’s arguments, it will effectively be required to change the express language of both RCW 23B.14.340 and .050 by carving out a broad exception for “any claims of shareholders arising from and/or related to shareholder status, declaratory relief actions, accountings and derivative claims”.

According to Mr. Stoddard, the Court would also need to create an open-ended right for disgruntled shareholders (or those claiming to be shareholders) to sue the corporation or its other shareholders. Where the legislature has clearly stated a three-year survival period, Mr. Stoddard is asking for the appellate court

to rule that there is no limitations period at all. The Court should not go down such a dangerous path. *Davis v. Cox*, 183 Wn.2d 269, 282, 351 P.3d 862 (2015) (“This goes beyond interpretation and requires us to rewrite the statute; we decline the invitation. We ‘cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.’” (*quoting State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003))).

Mr. Stoddard’s interpretation, if adopted, would also lead to absurd results. By his logic, a corporation could have dissolved and completed its winding up and distribution process several decades ago, but nothing would prevent a person like Mr. Stoddard from filing a lawsuit claiming he was a shareholder who did not receive his just share. Or a lawsuit claiming that the officers and directors and shareholders had engaged in malfeasance at some point during the decades preceding the lawsuit. In fact, that scenario is very similar to what happened in the present case, only instead of waiting several decades, Mr. Stoddard had waited six years after the corporation was dissolved to file his lawsuit, including allegations of malfeasance occurring more than a decade prior.

The court should avoid absurd results in statutory interpretation. *Burke v. Hill*, 190 Wn.App. 897, 361 P.3d 195 (2015). Such a ruling here would turn RCW 23B.14.340 (and RCW 23B.14.050, for that matter) on their heads and result in substantial uncertainty, delay and prejudice to corporate defendants like Mr. Newman and countless other entities in our state.

C. MR. STODDARD'S DERIVATIVE CLAIMS WERE BARRED UNDER RCW 23B.14.340 AND/OR OTHER STATUTES OF LIMITATIONS.

The above discussion also establishes that Mr. Stoddard's stated claim for a derivative action on behalf of the Corporation against Defendant Donald Newman individually is not timely, based on Mr. Stoddard's own allegations. Mr. Newman was a director, officer and shareholder of Newman Logging, Inc., and under the plain language of RCW 23B.14.340, any lawsuit against him had to be filed within three years of administrative dissolution:

The dissolution of a corporation ... by administrative dissolution by the secretary of state... shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, unless action or other proceeding thereon is not commenced within ... three years after the effective date of any dissolution that is effective on or after June 7, 2006.

(Italics supplied.)

Mr. Stoddard does not address the derivative claims in his brief and does not set forth any separate arguments or authorities, other than those he offered relating to the direct claims against the corporation. However, he does not dispute that his derivative claims are actions against Mr. Newman, whom he alleges is an officer, director and shareholder of Newman Logging, Inc. CP 124-125.

Defendants' counsel has cited and discussed the *Donlin* case above, explained its limited ruling confirming the right to maintain a derivative action that was filed before administrative dissolution. *Donlin v. Murphy*, 174 Wn.App 288, 300 P.3d 424 (2013). With no authority exempting such actions from the

survival statute's plain language, the Court should apply RCW 23B.14.340's plain language and uphold dismissal of Mr. Stoddard's derivative claims.

However, even if the Court were to conclude that RCW 23B.14.340 does not apply to derivative actions, the trial court still correctly dismissed Mr. Stoddard's claims under the applicable statutes of limitations for his stated claims. The transactions identified in the Complaint by Mr. Stoddard as constituting breaches of Mr. Newman's fiduciary duties and/or improper sale of assets allegedly occurred in 2000, 2003 and 2005. None of these actions took place within the last six years, the longest possible limitations period for any claim against Mr. Newman under RCW 7.24 and/or RCW 4.16.005. In fact, the most recent alleged incident of malfeasance occurred over 11 years ago. Mr. Stoddard's derivative claims were time-barred under any conceivable statute of limitation.

V. CONCLUSION

Mr. Roy Stoddard had three years from the date Newman Logging, Inc. was administratively to sue the corporation and its officers, directors and/or shareholders for his stated claims. He failed to do so, and instead waited a total of six years to initiate this ill-advised lawsuit. Mr. Stoddard slept on his rights and now asks the Court to rewrite existing laws to save his time-barred claim. For the reasons set forth above, Defendants request that the Court reject his arguments and affirm the trial court's order of dismissal.

Respectfully submitted this 19th day of June, 2017,

A handwritten signature in black ink, appearing to read "Michael T. Zoretic", with a long horizontal flourish extending to the right.

Michael T. Zoretic, WSBA #21221
Zoretic Law, PLLC
PO Box 247
Pateros, WA 98846
(206) 465-8109
mike@zoreticlaw.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on the 19th day of June, 2017, I caused a true and correct copy of the foregoing document, "Respondents' Brief" to be delivered to the following counsel of record by electronic mail (as per electronic service agreement) and U.S. Mail:

Dale L. Crandall
Attorney, At Law, PLLC
PO Box 173
Loomis, WA 98827
dale@crandall-law.com



Michael T. Zoretic, WSBA #21221
Zoretic Law, PLLC
PO Box 247
Pateros, WA 98846
(206) 465-8109
mike@zoreticlaw.com

ZORETIC LAW, PLLC

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