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NO. ~~7~~

SUPREME COURT OF THE STATE OF WASHINGTON

CHADWICK FARMS OWNERS ASSOCIATION, a Washington
nonprofit corporation,

Plaintiff/Appellant,

v.

FHC LLC, a Washington limited liability company,

Defendant/Third Party Plaintiff/Respondent/Cross-Appellant,

v.

AMERICA 1ST ROOFING & BUILDERS, INC., a Washington
corporation; CASCADE UTILITIES, INC., a Washington corporation;
MILBRANDT ARCHITECTS, INC., P.S., a Washington corporation;
PIERONI ENTERPRISE, INC., d/b/a PIERONI'S LANDSCAPE
CONSTRUCTION, a Washington corporation; TIGHT IS RIGHT
CONSTRUCTION, INC., a Washington corporation; GUTTER KING,
INC., a Washington corporation,

Third Party Defendants/Cross-Respondents.

BRIEF OF APPELLANT CHADWICK FARMS
OWNERS ASSOCIATION

Mary H. Spillane, WSBA #11981
WILLIAMS, KASTNER & GIBBS PLLC
Attorneys for Appellant

Two Union Square
601 Union Street, Suite 4100
P.O. Box 21926
Seattle, WA 98111-3926
(206) 628-6600

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its September 30, 2005 “Order Granting FHC LLC’s Motion for Summary Judgment and Dismissal of All Claims,” based upon its conclusion that, under the Washington Limited Liability Company Act, RCW Ch. 25.15, once two years had passed after FHC LLC was administratively dissolved, FHC LLC ceased to exist as a legal entity and any claims against it, including Chadwick Farms Owners Association’s already pending claims, could no longer be pursued.

2. Alternatively, the trial court erred in effectively denying, by failing to rule upon, Chadwick Farms’ motion to amend its complaint to add claims of personal liability against Phil Godfrey, an FHC LLC member, and Kevin Morrison, FHC LLC’s manager, who had failed to keep FHC LLC’s license current and who, notwithstanding the provisions of RCW 25.15.300(2), failed to make reasonable provision for payment of Chadwick Farms’ pending claims in winding up FHC LLC’s affairs.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under the Washington Limited Liability Company Act, RCW Ch. 25.15, may a limited liability company evade its debts and liabilities and bring an abrupt end to all claims against it – even claims already pending in litigation – simply by failing to seek reinstatement, and

failing to make reasonable provision for payment of all known claims and obligations, in winding up its affairs, within two years after its administrative dissolution?

2. Did the trial court err as a matter of law in dismissing Chadwick Farms' claims against FHC LLC, based upon its conclusion that, under the Washington Limited Liability Company Act, once two years had passed after FHC LLC had been administratively dissolved and failed to seek reinstatement, it ceased to exist as a separate legal entity such that any claims against it, including Chadwick Farms' already pending claims, could no longer be pursued?

3. If the answer to question to issue 2 is "no," then did the trial court err in not allowing Chadwick Farms to amend its complaint to add claims of personal liability against FHC LLC's member, Phil Godfrey, and manager, Kevin Morrison, who failed to keep FHC LLC's license current and who, in winding up its affairs, failed to make reasonable provision for payment of Chadwick Farms' pending claims as required by RCW 25.15.300(2)?

III. STATEMENT OF THE CASE

A. The Parties and Their Claims.

FHC LLC, a Washington limited liability company, was formed for the purpose of constructing a condominium project known as

Chadwick Farms. CP 2, 76 at ¶ 2. After completing construction of the project, FHC LLC ceased active operations. CP 2, 76 at ¶ 3. On March 24, 2003, the Secretary of State issued a Certificate of Administrative Dissolution for FHC LLC, because of the “failure of the limited liability company to file an annual report/license renewal within the time set forth by law.” CP 13. At no time since that administrative dissolution on March 24, 2003 did FHC LLC apply for reinstatement. CP 76 at ¶ 4.

On August 18, 2004, Chadwick Farms Homeowners Association, a Washington nonprofit corporation, sued FHC LLC, alleging that it was responsible for any number of construction defects at Chadwick Farms, and that, as a result of FHC LLC’s breach of express and implied warranties, including breach of the implied warranty of habitability, the Chadwick Farms condominium units and common elements suffered water intrusion. CP 121-25.

On March 24, 2005, more than seven months after Chadwick Farms initiated this action, two years had passed since the Secretary of State issued the Certificate of Administrative Dissolution for FHC LLC. FHC LLC had not filed an application for reinstatement as of that date. CP 76 at ¶ 4. Nor did it file a certificate of cancellation after that date. See CP 166-68, 169-73, 176 at ¶ 7.

FHC LLC answered Chadwick Farms' complaint on April 5, 2005, denying Chadwick Farms' claims, CP 126-29, and alleging that it "is no longer in business and is a dissolved entity." CP 127 at ¶ 2. FHC LLC also asserted numerous affirmative defenses, and reserved the right to bring third-party claims. CP 127-28.

On May 6, 2005, FHC LLC received leave to file a third-party complaint against five companies (America 1st Roofing & Builders, Inc., Cascade Utilities, Inc., Milbrandt Architects, Inc., P.S., Pieroni Enterprise, Inc., d/b/a Pieroni's Landscape Construction, and Tight Is Right Construction, Inc.). See 131-33, 137-38. Still later, on September 27, 2005, FHC LLC received leave to file an amended third-party complaint against yet another company (Gutter King, Inc.). See CP 211-13, 214-27.

B. FHC LLC's Motion for Summary Judgment and Chadwick Farms' Response.

On August 24, 2005, FHC LLC moved for summary judgment dismissal of Chadwick Farms' claims, CP 1-8, 9-19; see also CP 67-76, asserting that, as of March 24, 2005 (seven months after Chadwick Farms filed its complaint), when two years had passed after FHC LLC was administratively dissolved, FHC LLC ceased to exist as a legal entity and any claims against it could no longer be pursued, CP 4-7, 67-72. In support of its motion, FHC LLC cited RCW 25.15.080 and RCW

25.15.290(4) for the proposition that FHC LLC's certificate of formation was canceled by operation of law on March 24, 2005, two years after its administrative dissolution.¹ CP 5. FHC LLC also cited RCW 25.15.070 and RCW 25.15.295 for the proposition that, once its certificate of formation was canceled, its winding up period ended and it ceased to exist.² Id. FHC LLC also relied upon the Court of Appeals decision in Ballard Square Condominium Owners Ass'n v. Dynasty Constr. Co., 126 Wn. App. 285, 108 P.3d 818, rev. granted, 155 Wn.2d 1024 (2005), a case that involves the Washington Business Corporations Act, not the Washington Limited Liability Company Act, for the proposition that

¹ In particular, FHC relied upon that portion of the first sentence of RCW 25.15.080, which provides that "[a] certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290" and RCW 25.15.290(4), which provides that, if an application for reinstatement is not made within two years after the effective date of administrative dissolution, "the secretary of state shall cancel the limited liability company's certificate of formation." See CP 5.

² RCW 25.15.070(2)(c) provides that: "A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation." RCW 25.15.295(2) provides in pertinent part that:

Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits

claims against a dissolved corporation are barred unless there is a specific statutory provision allowing such suits to continue.³ CP 5-6.

After receiving FHC's summary judgment motion, Chadwick Farms moved for and obtained, without opposition, a temporary restraining order enjoining FHC LLC from filing a certificate of cancellation with the Secretary of State. CP 166-68, 169-73, 174-93. In so doing, Chadwick Farms relied in part upon the language of RCW 25.15.295(2), which provides that:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits [Emphasis added.]

³ After FHC LLC filed its summary judgment motion, third-party defendant Pieroni Enterprise moved to dismiss FHC LLC's third-party claims on grounds that, when FHC LLC filed its first third-party complaint on May 11, 2005, it did not have standing to bring or to prosecute its third-party claims. See CP 20-28. Third-party defendants Milbrandt Architects and Cascade Utilities, but not Tight Is Right Construction or America 1st Roofing, joined in Pieroni Enterprise's motion. See CP 46-47, 50-51. In response, FHC LLC agreed that, if the court granted its summary judgment motion, then the court should also grant the third-party defendants' motions, but asserted that, if the court denied its motion, then the court should also deny the third-party defendants' motions. See CP 60-64. In reply, Cascade Utilities argued that whether the court denied FHC LLC's motion was irrelevant to the third-party defendants' motions because Chadwick Farms had no ability to maintain FHC LLC's form as a limited liability company, but FHC LLC did have that right and ability if it wanted to pursue claims against Cascade or anyone else. See CP 77-82. Pieroni Enterprises also argued that Chadwick Farms' arguments in opposition to FHC LLC's motion were not applicable to the third-party defendants' motions because FHC LLC was responsible for allowing its certificate of formation to be canceled and it had not brought its third-party claims before its certificate was administratively canceled. See CP 91-93; see also CP 88-90.

CP 170. Chadwick Farms sought to prevent FHC LLC from compromising Chadwick Farms' right to pursue this action, or from losing any rights to coverage as an additional insured under third-party defendants' insurance that FHC LLC may have had for its liabilities to Chadwick Farms. CP 172, 175-76.

Opposing FHC LLC's summary judgment motion, Chadwick Farms pointed out that FHC LLC's interpretation of the Washington Limited Liability Company Act would render several of its provisions meaningless and lead to absurd results, such as allowing limited liability companies to evade their liabilities and debts. CP 55-56. Chadwick Farms explained, *inter alia*, that (1) under RCW 25.15.285(3), a limited liability company continues in existence and may wind up its business affairs after administrative dissolution;⁴ (2) under RCW 25.15.295(2), "[u]pon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company prosecute and defend suits . . . ;" (3) under the second sentence of RCW 25.15.080, "[a]

⁴ RCW 25.15.285(3) provides:

A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company;" (4) under RCW 25.15.300(2), "[a] limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company . . .;" and (5) there was no evidence that a certificate of cancellation had ever been filed or that FHC LLC had ever completed the winding up process or made reasonable provision to pay all known claims and obligations.⁵ CP 52-56.

Because the basis for FHC LLC's summary judgment motion resulted from the failures of its member Phil Godfrey and its manager Kevin Morrison to keep FHC LLC's license current and, in winding up FHC LLC's business affairs, to make reasonable provision for the payment of Chadwick Farms' known and pending claims as required by RCW 25.15.300(2), Chadwick Farms also filed a motion to amend its complaint to add Mr. Godfrey and Mr. Morrison as additional, personally

⁵ FHC LLC certainly had not paid or made reasonable provision for payment of Chadwick Farms' claims, which had been filed and were known to FHC more than seven months before the date FHC LLC claims it ceased to exist and could no longer be sued.

liable, defendants.⁶ CP 194-207. Chadwick Farms noted that motion to be heard without oral argument on September 30, 2005, the same day that FHC LLC's summary judgment motion was to be heard. CP 301-03. No party, including FHC LLC, filed a response before the hearing date.

C. The Trial Court's Rulings or Lack Thereof.

On September 27, 2005, three days before FHC LLC's summary judgment motion was to be heard, the trial court granted FHC LLC leave to file an amended third-party complaint naming Gutter King as an additional third-party defendant. CP 211-13. That same day, the trial court also entered a stipulated order dismissing FHC LLC's third-party claims against Tight Is Right Construction. CP 208-10.

On September 30, 2005, after hearing argument on the summary judgment motions, the trial court accepted FHC LLC's proffered construction of the Washington Limited Liability Company Act's provisions, and entered the "Order Granting FHC LLC's Motion for

⁶ RCW 25.15.300(2) not only requires a limited liability company that has dissolved, *inter alia*, to pay or make reasonable provision to pay all claims and obligations known to it, but also provides that:

Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

The converse of this latter provision should also be true: Any person winding up a limited liability company's affairs who has not complied with RCW 25.15.300

Summary Judgment and Dismissal of All Claims.” See CP 102-04. The trial court also entered orders granting Cascade Utilities’, Milbrandt Architects’, and Pieroni Enterprise’s motions to dismiss FHC’s third-party claims against them. CP 105-07, 98-101, 108-12.

The trial court, however, did not rule on Chadwick Farms’ motion to amend its complaint (to add Mr. Godfrey and Mr. Morrison as defendants), which was noted for hearing that same day without oral argument and as to which no party, including FHC LLC, had filed any opposition. Even after Chadwick Farms’ subsequent requests for a ruling on the motion to amend, CP 237-38, which FHC opposed, CP 239-245, the trial court did not issue a ruling, thus effectively denying the motion.

D. FHC LLC’s Subsequent Filing and Service of Its First Amended Third-Party Complaint.

On October 5, 2005, after obtaining summary judgment on the grounds that it had ceased to exist as a legal entity and thus was not capable of being sued (or suing), FHC LLC filed and served on Gutter King its First Amended Third-Party Complaint. See CP 214-27, 308-09. Gutter King did not appear until November 29, 2005. CP 306-07.

is personally liable to the claimants of the limited liability company by reason of such person’s actions in winding up the limited liability company.

E. Chadwick Farms' Appeal and FHC LLC's Cross-Appeal.

On October 28, 2005, within 30 days of the trial court's entry of the order dismissing its claims against FHC LLC, Chadwick Farms filed its Notice of Appeal to the Washington Supreme Court. CP 228-36. At that point, Gutter King had not appeared and, although no order dismissing FHC LLC's third-party claims against America 1st Roofing had been entered, Chadwick Farms believed that the trial court's summary judgment order, which was based on the conclusion that FHC LLC was no longer a separate legal entity capable of suing or being sued, could be considered a "written decision affecting a substantial right in a civil case which in effect determines the action and prevents a final judgment or discontinues the action," rendering it a decision appealable as a matter of right under RAP 2.2(a)(3).

On November 17, 2005, the Supreme Court Deputy Clerk concluded, however, that Chadwick Farms' notice of appeal should be designated as a notice for discretionary review, and directed Chadwick Farms to file a statement of grounds for direct review and a motion for discretionary review by December 19, 2005, which Chadwick Farms did. On November 28, 2005, a stipulated order dismissing FHC LLC's third-party claims against America 1st Roofing was entered, CP 113-15, and on December 14, 2005, unbeknownst to Chadwick Farms at the time it filed

its motion for discretionary review, a stipulated order dismissing FHC LLC's third-party claims against Gutter King was entered, CP 116-18.

On January 10, 2006, within thirty days after the dismissal of the last of FHC LLC's third-party claims, Chadwick Farms filed an Amended Notice of Appeal to the Supreme Court. CP 246-73. On January 11, 2006, the Supreme Court Deputy Clerk concluded that the matter was now appealable as a matter of right, redesignated Petitioner Chadwick Farms as the Appellant, and struck the pending motion for discretionary review. On January 12, 2006, FHC LLC filed its Notice of Appeal to the Supreme Court, seeking review of the orders dismissing its third-party claims against Cascade Utilities, Milbrandt Architects, Pieroni Enterprise, America 1st Roofing & Builders, and Gutter King. CP 276-300.

IV. ARGUMENT

- A. The Trial Court Erred in Concluding that, Under the Washington Limited Liability Company Act, Once Two Years Had Passed After FHC LLC's Administrative Dissolution, FHC LLC Ceased to Exist and Chadwick Farms' Pending Claims Against It Could No Longer Pursued and Had to Be Dismissed.

The principal issue on appeal is whether the trial court erred in concluding that, once two years had passed after FHC LLC was administratively dissolved and failed to seek reinstatement, FHC LLC ceased to exist and Chadwick Farms' already pending claims against it could no longer be pursued and had to be dismissed. That issue

necessarily involves interpretation and construction of provisions of the Washington Limited Liability Act, RCW Ch. 25.15.

1. Issues of statutory construction and grants of summary judgment are subject to *de novo* review.

Construction of a statute is a question of law that this Court reviews *de novo* under the error of law standard. Judd v. American Telephone and Telegraph Co., 152 Wn.2d 195, 95 P.3d 337 (2004); McGinnis v. State, 152 Wn.2d 639, 99 P.3d 1240 (2004). On appeal of a trial court's decision to grant summary judgment, this Court reviews questions of law *de novo*. Mains Farm Homeowners Ass'n v. Worthington, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993).

2. Statutes are to be read in *pari materia* so that all language is given effect and no portion is rendered superfluous or meaningless and so that absurd, unjust, and strained consequences are avoided.

"It is well established that a statute is to be interpreted so as to give effect to its purpose while avoiding absurd or pointless consequences." City of Pasco v. Napier, 109 Wn.2d 769, 773, 755 P.2d 170 (1988).

Courts "'do not interpret statutes to reach absurd and fundamentally unjust results.'" James v. Kitsap County, 154 Wn.2d 574, 595, 115 P.3d 286 (2005) (quoting Flanigan v. Dep't of Labor & Indus., 123 Wn.2d 418, 426, 869 P.2d 14 (1994)).

“Another well-settled principle of statutory construction is that ‘each word of a statute is to be accorded meaning.’” State v. Roggenkamp, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) (quoting State ex rel. Schillberg v. Barnett, 79 Wn.2d 578, 584, 488 P.2d 255 (1971)). More importantly, “[i]t is the duty of [the] court to construe statutes so as to avoid rendering meaningless any word or provision.” State v. Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994).

Under rules of statutory construction each provision of a statute should be read together (in *pari materia*) with other provisions in order to determine the legislative intent underlying the entire statutory scheme. The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes.

State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282, cert. denied, 531 U.S. 984 (2000) (footnotes omitted); State v. O’Brien, 115 Wn. App. 599, 601, 63 P.3d 181 (2003). As the court explained in Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) (footnotes omitted):

In construing a statute, courts should read it in its entirety, instead of reading only a single sentence or a single phrase. “Each provision must be viewed in relation to the other provisions and harmonized, if at all possible” Statutes must be construed so that all the language is given effect and no portion is rendered meaningless or superfluous. The court must also avoid constructions that yield unlikely, absurd or strained consequences.

See also State v. Thorne, 129 Wn.2d 736, 761, 921 P.2d 514 (1996)

(“Each provision must be viewed in relation to other provisions and harmonized. . .”).

3. In dismissing Chadwick Farms’ claims against FHC LLC, the trial court erroneously failed to give effect to all of the pertinent provisions of the Washington Limited Liability Company Act and erroneously construed the Act in a manner that renders several of its provisions meaningless or superfluous and that leads to absurd consequences.

In accepting FHC’s proffered statutory construction and dismissing Chadwick Farms’ claims on grounds that FHC LLC had ceased to exist as a separate legal entity (such that any claims against it, including Chadwick Farms’ already pending claims, could no longer be pursued once two years had passed after its administrative dissolution), the trial court failed to give effect to all of the pertinent provisions of the Washington Limited Liability Company Act. It construed the Act in a manner that renders several of its provisions meaningless or superfluous and that leads to absurd (and unnecessarily harsh and fundamentally unjust) consequences. In so doing, the trial court erred.

Under the Washington Limited Liability Company Act, if the Secretary of State determines that a limited liability company has failed to pay its license fees or has failed to file its annual report or license renewal when due, the Secretary of State gives the limited liability company

written notice of the determination and the limited liability company has sixty days to correct the matter. RCW 25.15.285(1)-(2). If the limited liability company does not correct the matter within 60 days, the limited liability company is thereupon administratively dissolved and the Secretary of State gives the limited liability company written notice of the administrative dissolution. RCW 25.15.285(2). That is what the Secretary of State did in this case when it issued the Certificate of Administrative Dissolution for FHC LLC on March 24, 2003.

An administrative dissolution in itself, however, does not eliminate the limited liability company's existence. To the contrary, under RCW 25.15.285(3), "[a] limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs." Under RCW 25.15.290(1), "[a] limited liability company administratively dissolved under RCW 25.15.285 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution."

Under RCW 25.15.290(4):

If an application for reinstatement is not made within the two-year period set forth in [RCW 25.15.290(1)] . . . , the secretary of state shall cancel the limited liability company's certificate of formation.

The statute does not specify how, when, or in what form the Secretary of State is to cancel the certificate of formation once the two-year reinstatement period expires. RCW 25.15.070(2)(c) provides that a limited liability company's existence as a separate legal entity "shall continue until cancellation of the limited liability company's certificate of formation," and RCW 25.15.080 provides in pertinent part that:

A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290, or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. *A certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company* [Emphasis added.]

RCW 25.15.295(2) in turn provides that:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company. [Emphasis added.]

RCW 25.15.300(2) then provides in pertinent part that "[a] limited liability company which has dissolved shall pay or make reasonable provision to

pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company . . . ,” and specifically provides that “[a]ny person winding up a limited liability company’s affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person’s actions in winding up the limited company.”

FHC LLC’s position below, which the trial court accepted in dismissing Chadwick Farms’ claims, was that, under RCW 25.15.080’s first sentence and RCW 25.15.290(4), FHC LLC’s certificate of formation was canceled by operation of law on March 24, 2005, two years following FHC LLC’s administrative dissolution, and that, under RCW 25.15.070 and RCW 25.15.295, once FHC LLC’s certificate of formation was canceled by such operation of law, its winding up period was terminated and FHC LLC ceased to exist as a separate legal entity capable of suing or being sued and any pending claims against could no longer be pursued. See CP 4-7, 67-72.

FHC LLC’s position, and the trial court’s ruling, however, ignore other key provisions of the Washington Limited Liability Company Act and lead to absurd and fundamentally unjust results. First, because there is no evidence that a Certificate of Cancellation was ever filed with respect

to FHC LLC, FHC LLC's position, and the trial court's ruling, ignore the second sentence of RCW 25.15.080, which provides that:

A certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company. . . .

Second, and again because there is no evidence that a Certificate of Cancellation has ever been filed, FHC LLC's position, and the trial court's ruling, ignore the fact that, under RCW 25.15.295(2), even after the dissolution of a limited liability company, suits may be brought and defended in the name of the limited liability company "until the filing of a certificate of cancellation." As previously noted RCW 25.15.295(2) provides in pertinent part that:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits [Emphasis added.]

Thus, pursuant to RCW 25.15.295(2), a dissolved LLC may defend and prosecute suits until the filing of a certificate of cancellation, which, according to RCW 25.15.080 shall be filed "to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company."

Third, FHC's position, and the trial court's ruling, ignore RCW 25.15.270, which provides in pertinent part that:

A limited liability company is dissolved and its affairs shall be wound up *upon* the first to occur of the following:

* * *

(3) The written consent of all members;

* * *

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The expiration of two years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company. [Emphasis added.]

RCW 25.15.270 does not provide that the affairs of a limited liability company must be wound up *by* (or *as of*) the first to occur of the specified events. It provides that the affairs of the limited liability company shall be wound up *upon* the first to occur of the specified events. It is unlikely that, in cases where the dissolution occurs by written consent of the members or by entry of a decree of judicial dissolution, the members or managers would have wound up the affairs of the limited liability company before obtaining the consent or the decree.

Thus, under RCW 25.15.270, it appears that the Legislature did not intend that the winding up of a dissolved limited liability company's affairs (which would include prosecuting or defending any suits) had to be completed on or before the occurrence of one of the events specified in

RCW 25.15.270. Rather, once one of the specified events in RCW 25.15.270 occurs (including the expiration of the two-year reinstatement period following administrative dissolution referenced in RCW 25.15.270(6)), the winding up of the dissolved limited liability company's affairs is required to take place. Then, under other key provisions of the Washington Limited Liability Company Act, once that winding up is completed (which would include the making of reasonable provision for payment of all known claims and obligations, RCW 25.15.300(2)), a certificate of cancellation would be filed, RCW 25.15.080. Until the filing of the certificate of cancellation, the persons winding up the limited liability company's affairs could continue to defend and prosecute suits, in the name of and on behalf of the limited liability company, RCW 25.15.295(2).

Reading all of the key provisions of the Washington Limited Liability Company Act *in pari materia*, as they should be read, e.g., State v. Chapman, 140 Wn.2d at 448, a limited liability company may be administratively dissolved, but can still wind up its affairs (including defending and prosecuting suits) during and after the two-year reinstatement period, until the winding up (including making reasonable provision for payment of known claims) is complete and a certificate of cancellation is filed. Moreover, construing the provisions of RCW Ch.

25.15 together in that way gives effect to all of them and avoids the absurd and fundamentally unjust results that would follow from the statutory interpretation that FHC proffered and the trial court accepted.

FHC's position, and the trial court's ruling, would allow a limited liability company to evade its liabilities and debts, and all claims including already pending claims, simply by failing to file an annual report or failing to pay its license fees, allowing itself to be administratively dissolved, and then failing, within two years after its administrative dissolution, to either seek reinstatement, "wind up" pending suits against it, or pay or make reasonable provision to pay its known claims and obligations. Nothing in the Washington Limited Liability Company Act supports such an absurd or fundamentally unjust result.

Nor does anything in the Washington Limited Liability Company Act suggest that the Legislature intended to give limited liability companies such preferential treatment over other organizational forms to escape debts and liabilities, or to allow limited liability companies to manipulate the system to avoid their debts and liabilities. To the contrary, RCW 25.15.300(2) makes clear a legislative intent that "[a] limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations" known to it.

Under FHC's position, and the trial court's ruling, all it takes to eliminate a limited liability company's debts and liabilities is the passage of two years following administrative dissolution without the limited liability company applying for reinstatement. Thus, if the two-year period passed while a jury was deliberating on claims against a limited liability company (or after a jury returned a verdict in favor of the claimant, but before entry of judgment), the claims would have to be dismissed under FHC's position and the trial court's ruling. Moreover, the ability of a claimant to recover could well hinge on what county suit had to be brought and how quickly a case could get to trial in that county. Statutes should not be construed so as to yield such absurd and fundamentally unjust results. E.g., James v. Kitsap County, 154 Wn2d at 595.

When the various provisions of the Washington Limited Liability Company Act are read together (in *pari materia*) in such a way as to give effect to all of them, to render none of them (or the language used in them) superfluous or meaningless, and to avoid absurd, unjust, or strained consequences, the logical conclusion to be reached is that expiration of the two-year period for reinstatement following a limited liability company's administrative dissolution does not correspondingly extinguish pending claims that had been brought against the limited liability company during that two-year period.

Because the trial court failed to give effect to all the pertinent provisions of the Washington Limited Liability Company Act, but instead accepted a construction of the Act that renders some of its provisions meaningless or superfluous and yields absurd and fundamentally unjust results, the trial court erred in dismissing Chadwick Farms' claims against FHC LLC.

B. The Legislature's Recent Passage of Senate Bill 6531, which the Governor Signed on March 29, 2006, Removes Any Possible Doubt that Chadwick Farms' Claims Against FHC LLC Were Not Extinguished with the Passage of Two-Year Reinstatement Period Following FHC LLC's Administrative Dissolution.

During the 2006 legislative session, the legislature enacted Senate Bill 6531, an act "[r]elating to preserving remedies when limited liability companies dissolve . . . ," which added a new section to RCW Ch. 25.15 that reads as follows:

The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

Senate Bill 6531 was signed by the Governor on March 29, 2006 and takes effect on May 6, 2006, ninety days after adjournment of the session in which it was passed, which occurred on March 8, 2006. See Const. art. II,

§ 41; Senate Bill Report SB 6531 at 1 (Feb. 11, 2006); House Bill Report SB 6531 at 3 (Feb. 28, 2006).⁷

The purpose of Senate Bill 6531 was to explicitly preserve remedies when limited liability companies dissolve.⁸ The Legislature was aware that under existing law:

After dissolution of an LLC, but before cancellation of the certificate of formation, members of the LLC or court appointed receiver may wind up the business of the LLC. A person winding up the affairs of an LLC may prosecute or defend legal actions in the name of the LLC.

House Bill Report SB 6531 at 2 (Feb. 28, 2006).

In enacting Senate Bill 6531, the Legislature identified the problem it sought to address as follows:

The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. *There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the LLC.* [Emphasis added.] However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.

⁷ See <http://apps.leg.wa.gov/billinfo/summary.aspx=6531> where copies of Senate Bill 6531, the Senate Bill Report, the House Bill Report, and the Final Report can be found. Copies of those documents are also attached as Appendices A, B, C, and D respectively.

⁸ See SB 6531's title ("AN ACT Relating to preserving remedies when limited liability companies dissolve"); and the "Brief Description" contained in SB 6531's Final Bill Report ("Preserving remedies when limited liability companies dissolve").

The current Business Corporation Act provides that dissolution of a corporation does not eliminate any claim against the corporation that was incurred prior to dissolution if an action on the claim is filed within two years of dissolution. There is no “certificate of cancellation” necessary to end a corporation. (*Note: Another currently pending bill, SB 6596, would increase this two year period to three years, and would make the provision apply to claims incurred before or after the dissolution.*) [Italics in original.]

House Bill Report SB 6531 at 2-3 (Feb. 28, 2006). Moreover, as noted in the summary of the testimony given in support of the bill contained in the House Bill Report, there was concern that:

A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation.⁹ The same problem exists with respect to claims against LLCs. The Bar Association is working on a comprehensive review of the LLC law, but it is not done yet. This bill addresses only the problem of survival of claims following dissolution.

The bill is a step in the right direction. It affirmatively states that claims, such as homeowners’ warranty claims, will survive the dissolution of an LLC.

House Bill Report SB 6531 at 3 (Feb. 28, 2006). Similarly, the summary of testimony contained in the Senate Bill Report states: “This bill is good for homeowners. It removes an incentive for LLCs to act in bad faith. . . .

⁹ The House Bill Report for SB 6596 makes reference to the Ballard Square decision. See House Bill Report SB 6596 at 7 (Mar. 1, 2006); Ballard Square Condominium Owners Ass’n v. Dynasty Constr. Co., 126 Wn. App. 285, 108 P.3d 818, rev. granted, 155 Wn.2d 1024 (2005).

The change is reasonable and will avoid dramatic, unintended consequences.” Senate Bill Report SB 6531 at 1 (Feb. 11, 2006).

Thus, not only does the legislative history of Senate Bill 6531 confirm that the existing Washington Limited Liability Company Act implicitly preserves already filed claims against a limited liability company (which is what Chadwick Farms had against FHC LLC) during the winding up period following dissolution and before the filing of a certificate of cancellation, but also the amendment in Senate Bill 6531 further clarifies that the dissolution of an LLC does not take away or impair any liability against a limited liability company as long as an action or proceeding on the claim is brought within three years after the effective of the limited liability company’s dissolution (which Chadwick Farms did in this case). Even if the trial court’s construction of the Washington Limited Liability Company Act, as it existed prior to the enactment of Senate Bill 6531, was correct, which it was not, Senate Bill 6531, being curative and remedial, should apply retroactively to preserve Chadwick Farms’ claims against FHC LLC.

Although statutory amendments generally apply prospectively, an amendment will be applied retroactively if (1) the legislature so intended, or (2) the amendment is curative, or (3) the amendment is remedial. E.g., McGee Guest Home, Inc. v. Dep’t of Social & Health Servs., 142 Wn.2d

316, 324, 12 P.3d 144 (2000). “An amendment is curative only if it clarifies or technically corrects an ambiguous statute.” Id. at 325 (quoting In re F.D. Processing, Inc., 119 Wn.2d 452, 461, 832 P.2d 1303 (1992)). “A statutory amendment is remedial if it relates to practice, procedures, or remedies and does not affect a substantial or vested right.” Robin L. Miller Constr. Co. v. Coltran, 110 Wn. App. 883, 43 P.3d 67 (2002). “When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial, and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law.” In re Personal Restraint of Matteson, 142 Wn.2d 298, 308, 12 P.3d 585 (2000) (quoting Tomlinson v. Clarke, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992)). In analyzing the issue of retroactivity, the Court will look to the statute’s purpose and language, and may also look to the legislative history. McGee Guest Home, 142 Wn.2d at 325.

Here, there is no question that Senate Bill 6531 clarifies existing law with respect to the preservation of remedies when limited liability companies dissolve, a matter as to which some ambiguity existed. Indeed, Senate Bill 6531 was enacted during controversies about the meaning of the law with respect to the preservation of remedies against both business

corporations and limited liability companies when they dissolve, and does not contravene any previous constructions of the law by this Court. Senate Bill 6531 also relates to remedies,¹⁰ and does not affect a substantial or vested right. Because Senate Bill 6531 is curative and remedial, and because its retroactive application will serve its remedial purpose, Senate Bill 6531 should be applied retroactively to preserve Chadwick Farms' claims against FHC LLC, claims that were brought within three years of FHC LLC's administrative dissolution, and more than seven months before the expiration of the two-year reinstatement period and before the filing of any certificate of cancellation for FHC LLC, which has never been done.

C. After Erroneously Concluding that Chadwick Farms' Claims Against FHC LLC Had to Be Dismissed, the Trial Court Abused Its Discretion in Failing to Allow Chadwick Farms to Amend Its Complaint to Add Personal Liability Claims Against the Member and Manager Who Failed to Comply with RCW 25.15.300(2) in Winding up FHC LLC's Affairs.

For reasons previously discussed, the trial court erred as a matter of law in concluding that, under the Washington Limited Liability Company Act, any claims against FHC LLC, including Chadwick Farms' already pending claims, could no longer be pursued and had to be dismissed, once two years had passed following FHC LLC's

¹⁰ See footnote 8, *supra*, and accompanying text.

administrative dissolution and FHC LLC had not sought reinstatement. Should this Court determine, however, that the trial court did not err in reaching that conclusion, the trial court still abused its discretion in effectively denying, by failing to rule upon, Chadwick Farms' motion to amend its complaint to add personal liability claims against Mr. Godfrey and Mr. Morrison who, in winding up FHC LLC's affairs, failed to make reasonable provision for the payment of Chadwick Farms' pending claims as required by RCW 25.15.300(2).

1. Motions to amend are reviewed for manifest abuse of discretion.

The decision to grant leave to amend the pleadings is within the discretion of the trial court. . . . Therefore, when reviewing the court's decision to grant or deny leave to amend, we apply a manifest abuse of discretion test. . . . The trial court's decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."

Wilson v. Horsley, 137 Wn.2d 500, 505, 974 P.2d 316 (1999) (citations omitted). "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

2. The trial court abused its discretion in failing to grant Chadwick Farms leave to amend its complaint when justice so required.

Under CR 15(a), once a responsive pleading has been served, a party may amend its pleading “only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” “These rules serve to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party.”

Wilson v. Horsley, 137 Wn.2d at 505.

Here, once the trial court erroneously concluded that Chadwick Farms’ claims against FHC LLC could no longer proceed and had to be dismissed, justice required that the trial court freely give Chadwick Farms leave to amend its complaint to proceed against the member and manager who were responsible for winding up FHC LLC’s affairs, but who did not make reasonable provision for Chadwick Farms’ claims in winding up FHC LLC’s affairs, despite the requirements of RCW 25.15.300(2).

RCW 25.15.300(2) provides in pertinent part that:

A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company Any person winding up a limited

liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

That statute not only requires the persons winding up a limited liability company to pay or make reasonable provision for known claims, but also eliminates those persons' personal liability by reason of their actions in winding up the limited liability company when they do so. See RCW 25.15.300(2). Implicit in the statutory provision is the converse proposition – any person winding up a limited liability company's affairs who has not complied with RCW 25.15.300 *is* personally liable to the claimants of the limited liability company by reason of such person's actions in winding up the limited liability company.

The trial court was not precluded by law from granting Chadwick Farms' motion for leave to amend to add claims against the persons responsible for winding up FHC LLC's affairs just because it felt compelled to dismiss Chadwick Farms' claims against FHC LLC on the erroneous grounds that FHC LLC could no longer sue or be sued once the two-year reinstatement period had passed following its administrative dissolution. The motion to amend was noted for consideration without oral argument on the same day that the trial court considered and erroneously decided to grant FHC LLC's summary judgment motion. As

of that date, no party, including FHC LLC, had filed any response or opposition to the motion to amend. Amendment of the complaint would not have prejudiced FHC LLC, or Mr. Godfrey or Mr. Morrison, who were aware of the litigation since its inception. See CP 196. Indeed, even in objecting to Chadwick Farms' subsequent request for a ruling on its motion to amend the complaint, CP 237-38, FHC LLC never claimed that it, or Mr. Godfrey or Mr. Morrison, would be prejudiced by the amendment, see CP 239-42.

Even assuming that the trial court's failure to rule on the motion to amend on the day that it granted FHC LLC's motion for summary judgment was the product of oversight, that oversight could and should have been corrected when Chadwick Farms made its subsequent requests for a ruling on the motion to amend. No tenable grounds or reasons appear to exist for the trial court's failure to rule on, and its effective denial of, Chadwick Farms' motion to amend.

Leave to amend should have been freely given. Justice so required and the trial court abused its discretion in failing to rule, thereby effectively denying Chadwick Farms' motion to amend its complaint to add personal liability claims against Mr. Godfrey and Mr. Morrison.

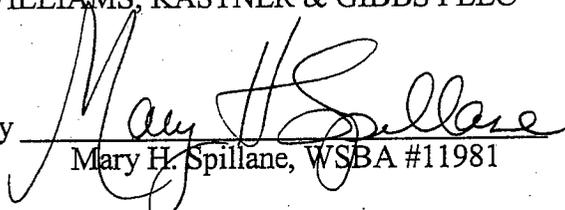
V. CONCLUSION.

For the reasons set forth above, the trial court's order granting FHC LLC's motion for summary judgment dismissing Chadwick Farms' claims against FHC LLC should be reversed and the case remanded for resolution of those claims. Alternatively, this Court should find that the trial court abused its discretion in failing to rule upon Chadwick Farms' motion to amend its complaint and remand the case with instructions that Chadwick Farms be granted leave to amend its complaint to pursue personal liability claims against Mr. Godfrey and Mr. Morrison.

RESPECTFULLY SUBMITTED this 31st day of March, 2006.

WILLIAMS, KASTNER & GIBBS PLLC

By



Mary H. Spillane, WSBA #11981

Attorneys for Appellant

Two Union Square
601 Union Street, Suite 4100
P.O. Box 21926
Seattle, WA 98111-3926
(206) 628-6600

APPENDICES

- A. Senate Bill 6531
- B. Senate Bill Report SB 6531
- C. House Bill Report SB 6531
- D. Final Bill Report SB 6531

APPENDIX A

CERTIFICATION OF ENROLLMENT

SENATE BILL 6531

59th Legislature
2006 Regular Session

Passed by the Senate February 11, 2006
YEAS 41 NAYS 0

President of the Senate

Passed by the House February 28, 2006
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SENATE BILL 6531 as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

SENATE BILL 6531

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Senators Weinstein, Fraser and Kline

Read first time 01/13/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to preserving remedies when limited liability
2 companies dissolve; and adding a new section to chapter 25.15 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 25.15 RCW
5 under Article VIII to read as follows:

6 The dissolution of a limited liability company does not take away
7 or impair any remedy available against that limited liability company,
8 its managers, or its members for any right or claim existing, or any
9 liability incurred at any time, whether prior to or after dissolution,
10 unless an action or other proceeding thereon is not commenced within
11 three years after the effective date of dissolution. Such an action or
12 proceeding against the limited liability company may be defended by the
13 limited liability company in its own name.

--- END ---

APPENDIX B

SENATE BILL REPORT

SB 6531

As Passed Senate, February 11, 2006

Title: An act relating to preserving remedies when limited liability companies dissolve.

Brief Description: Preserving remedies when limited liability companies dissolve.

Sponsors: Senators Weinstein, Fraser and Kline.

Brief History:

Committee Activity: Judiciary: 1/31/06 [DP]

Passed Senate: 2/11/06, 41-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Cindy Fazio (786-7405)

Background: When a limited liability company dissolves, it must pay, or make reasonable provisions to pay, all claims and obligations known to the limited liability company, whether or not the identity of the claimant is known. If there are insufficient assets, the claims and obligations must be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available.

Summary of Bill: When a limited liability company dissolves, an action for claims or rights against it must be commenced within three years after the effective date of dissolution in order to survive. This includes claims or rights, or liability incurred, prior to, or after, dissolution.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Washington State Bar Association could not do a comprehensive review of the Limited Liability statute for this session, but this one small change should provide important relief in the short term pending that review. This bill is good for homeowners. It removes an incentive for LLCs to act in bad faith. The survival question can only be answered in court without this change. The bill will not add costs to the price of houses. The change is reasonable and will avoid dramatic, unintended consequences.

Testimony Against: None.

Who Testified: PRO: Senator Brian Weinstein, Prime Sponsor; Michelle Ein, Washington Homeowner's Coalition; Ken Harer, Red Oaks Condominiums.

APPENDIX C

HOUSE BILL REPORT

SB 6531

As Passed House:

February 28, 2006

Title: An act relating to preserving remedies when limited liability companies dissolve.

Brief Description: Preserving remedies when limited liability companies dissolve.

Sponsors: By Senators Weinstein, Fraser and Kline.

Brief History:

Committee Activity:

Judiciary: 2/20/06 [DP].

Floor Activity:

Passed House: 2/28/06, 97-0.

Brief Summary of Bill

- Provides a three year period following dissolution of a limited liability company during which the dissolution of the company does not extinguish any cause of action against the company.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership.

Attributes of Corporations and LLCs

Corporations are creatures of statutory law and are created only by compliance with prescribed formal procedures. A corporation is managed by directors and officers, but is owned by shareholders who may have very little direct role in management. Generally, ownership shares are transferable, and each shareholder is liable for corporate debts only to the extent of his or her own investment in the corporation. A corporation is treated as a taxable entity.

General partnerships, on the other hand, are business entities recognized as common law that require no formal creation, and are owned and managed by the same individuals who are each liable for the debts of the partnership. A general partnership is not a taxable entity.

The LLCs were authorized by the Legislature in 1994. An LLC is a noncorporate entity that allows the owners to participate actively in management, but at the same time provides them with limited liability. The Internal Revenue Service has ruled that an LLC with attributes that make it more like a partnership than a corporation may be treated as a non-taxable entity.

A properly constructed LLC, then, can be a business entity in which the ownership enjoys the limited liability of a corporation's shareholders, but the entity itself is not taxed as a corporation.

Dissolution of an LLC

An LLCs may be dissolved in a number of ways, including:

- reaching a dissolution date set at the time the LLC was created;
- the occurrence of events specified in the LLC agreement as causing dissolution;
- by mutual consent of all members of the LLC;
- the dissociation of all members through death, removal or other event;
- judicial action to dissolve the LLC; or
- administrative action by the Secretary of State for failure of the LLC to pay fees or to complete required reports.

Certificate of Cancellation

After an LLC is dissolved, or if an LLC has been merged with another entity and the new entity is not the LLC, the certificate of formation that created the LLC is cancelled.

Cancellation may occur in a number of ways:

- The certificate of formation may authorize a member or members to file the certificate of cancellation upon dissolution, or after a period of winding up the business of the LLC.
- A court may order the filing of a certificate of cancellation.
- In the case of a merger that results in a new entity that is not the LLC, the filing of merger documents must include the filing of a certificate of cancellation.
- In the case of an administrative dissolution of an LLC, there is a two year period during which the LLC may be reinstated before the secretary of state files the certificate of cancellation.

After dissolution of an LLC, but before cancellation of the certificate of formation, members of the LLC or a court appointed receiver may wind up the business of the LLC. A person winding up the affairs of an LLC may prosecute or defend legal actions in the name of the LLC.

Preservation of Remedies

The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the

LLC. However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.

The current Business Corporation Act provides that dissolution of a corporation does not eliminate any claim against the corporation that was incurred prior to dissolution if an action on the claim is filed within two years after dissolution. There is no "certificate of cancellation" necessary to end a corporation. *(Note: Another currently pending bill, SSB 6596, would increase this two year period to three years, and would make the provision apply to claims incurred before or after dissolution.)*

Summary of Bill:

Dissolution of a limited liability company will not eliminate any cause of action against the company that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of the dissolution.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation. The same problem exists with respect to claims against LLCs. The Bar Association is working on a comprehensive review of the LLC law, but it is not done yet. This bill addresses only the problem of survival of claims following dissolution.

The bill is a step in the right direction. It affirmatively states that claims, such as homeowners' warranty claims, will survive the dissolution of an LLC. Whether or not there are any assets left to satisfy a claim is a separate problem that will have to be addressed later.

Testimony Against: None.

Persons Testifying: Senator Weinstein, prime sponsor; Alfred Donohue, Forsberg Umlauf, P.S.; and Sandi Swarthout and Michelle Ein, Washington Homeowners Coalition.

Persons Signed In To Testify But Not Testifying: None.

APPENDIX D

FINAL BILL REPORT

SB 6531

As Passed Legislature

Brief Description: Preserving remedies when limited liability companies dissolve.

Sponsors: Senators Weinstein, Fraser and Kline.

Senate Committee on Judiciary

House Committee on Judiciary

Background: When a limited liability company dissolves, it must pay, or make reasonable provisions to pay, all claims and obligations known to the limited liability company, whether or not the identity of the claimant is known. If there are insufficient assets, the claims and obligations must be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available.

Summary: When a limited liability company dissolves, an action for claims or rights against it must be commenced within three years after the effective date of dissolution in order to survive. This includes claims or rights, or liability incurred, prior to, or after, dissolution.

Votes on Final Passage:

Senate	41	0
House	97	0

Effective: 90 days.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2006, I caused a true and correct copy of the foregoing document to be mailed, postage prepaid, to the following parties and counsel of record:

Counsel for Defendant/Third-Party Plaintiff/Respondent FHC LLC:

John P. Hayes, WSBA #21009
Viivi M. Vanderslice, WSBA #34990
FORSBERG & UMLAUF, P.S.
900 Fourth Avenue, Suite 1700
Seattle, WA 98164-1039

Counsel for Third Party Defendant America 1st Roofing & Builders, Inc.:

R. Scott Fallon, WSBA #2574
FALLON & MCKINLEY
1111 Third Avenue, Suite 2400
Seattle, WA 98101

Counsel for Third Party Defendant Cascade Utilities, Inc.:

Jonathan Dirk Holt, WSBA #28433
Vicky L. Strada, WSBA #34559
SCHEER & ZEHNDER LLP
720 Olive Way, Suite 1605
Seattle, WA 98101

Counsel for Third Party Defendant Milbrandt Architects, Inc., P.S.:

Martin T. Crowder, WSBA #2140
Michaelanne Ehrenberg, WSBA #25615
KARR TUTTLE CAMPBELL
1201 Third Avenue, Suite 2900
Seattle, WA 98101-3028

Counsel for Third Party Defendant Pieroni Enterprise, Inc.,
d/b/a Pieroni Landscape Construction:

W. Scott Clement, WSBA #16243
John E. Drotz, WSBA #22374
GARDNER BOND TRABOLSI
St. Louis & Clement PLLC
2200 Sixth Avenue, Suite 600
Seattle, WA 98121

Counsel for Third Party Defendant Tight is Right Construction, Inc.:

Leigh D. Erie, WSBA #14960
Joseph A. Hamell, WSBA #29423
GIERKE, CURWEN, METZLER & ERIE P.S.
2102 North Pearl Street, Bldg. D
Tacoma, WA 98406-2530

Counsel for Third Party Defendant Gutter King Corp.:

David J. Bierman, WSBA # 14270
ALEXANDER & BIERMAN, P.S.
4800 Aurora Ave. N.
Seattle, WA 98103

Dated this 31st day of March, 2006 at Seattle, Washington.

Carrie A. Cardiali

Carrie A. Cardiali