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No. ~~7335~~ BY C. J. HERRITT

SUPREME COURT OF THE STATE OF WASHINGTON
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CHADWICK FARMS OWNERS ASSOCIATION, a Washington
nonprofit corporation
Appellant

v.

FHC, LLC, a Washington limited liability company,
Respondent/Defendant/ Third Party Plaintiff

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, a Washington corporation; GUTTER KING, INC., a
Washington corporation, Third Party Defendants.

**RESPONDENT/DEFENDANT/THIRD PARTY PLAINTIFF FHC,
LLC'S REPLY BRIEF/OPENING STATEMENT**

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I. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the trial court properly granted FHC, LLC's motion for summary judgment, dismissing Chadwick Farms Owners Association's complaint because there is no statutory basis to permit claims against FHC, LLC, as its Certificate of Formation was cancelled on March 24, 2005.

2. Whether the trial court correctly refused to grant Chadwick Farms Owners Association's motion for leave to amend complaint because as of September 30, 2005, the complaint had been dismissed and there was no pending complaint that could have been amended.

II. RESTATEMENT OF THE CASE

FHC, LLC was formed for the purpose of constructing the project known as Chadwick Farms. CP 76. Following construction of the Chadwick Farms project, FHC, LLC's business purpose was completed and FHC, LLC ceased active operations. CP 76. On March 24, 2003, FHC, LLC was administratively dissolved by the Secretary of State. CP 13. At no time since March 24, 2003 did FHC, LLC apply for reinstatement following administrative dissolution on March 24, 2003. CP 76.

On August 18, 2004, Chadwick Farms Owners' Association ("HOA") brought a claim for construction defects against FHC, LLC arising from the original construction of the Chadwick Farms project. CP 15-19. On March 24, 2005, FHC, LLC's Certificate of Formation was cancelled pursuant to RCW 25.15.290(4).

On August 24, 2005, FHC, LLC moved for summary judgment dismissal of the HOA's claims arguing that FHC, LLC ceased to exist as of March 24, 2005 and all claims against it abated. CP 1-19. Almost one month after receiving the motion for summary judgment and only six days before the hearing on said motion, the HOA filed a motion for leave to amend its complaint naming the members of FHC, LLC as individual defendants and adding causes of action regarding those individual members who allegedly failed to make adequate provisions for the HOA's claims. CP 194-207. On September 30, 2005, the trial court entered an order dismissing with prejudice the HOA's complaint. CP 102-104. As the HOA's complaint had been dismissed, in its entirety, the HOA's motion for leave to amend was moot.

III. STANDARD FOR REVIEW

An order granting summary judgment is reviewed *de novo* and the appellate court engages in the same inquiry as the trial court, considering

the facts in the light most favorable to the nonmoving party. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wash.2d 299, 305, 96 P.3d 957 (2004). Questions of law presented on summary judgment are reviewed *de novo*. *Coppernoll v. Reed*, 155 Wash.2d 290, 296, 119 P.3d 318 (2005).

“The standard of review of a trial court’s denial of a motion to amend a pleading is ‘manifest abuse of discretion’”. *Herron v. Tribune Pub. Co., Inc.*, 108 Wash.2d 162, 165, 736 P.2d 249, 252 (1987) *citations omitted*.

IV. ARGUMENT

A. The Trial Court Correctly Dismissed all Claims Against FHC, LLC because Pursuant to Washington’s Limited Liability Act, FHC, LLC Ceased to Exist for all Purposes as of March 24, 2005.

The legal status of limited liability companies in Washington is governed by the Limited Liability Company Act. Formation of a limited liability company occurs when a Certificate of Formation is executed and filed with the Secretary of State. *See* RCW 25.15.070. Termination of a limited liability company is a two-step process. The first step is dissolution of a limited liability company. The second step is cancellation of the Certificate of Formation. Once the limited liability company’s Certificate

of Formation is cancelled, the limited liability company ceases to exist for all purposes. See RCW 25.15.270(2)(c).

Dissolution of a limited liability company can be accomplished in a number of ways. However, in the present matter we are dealing solely with administrative dissolution. Pursuant to RCW 25.15.280, administrative dissolution is automatic by the Secretary of State when a limited liability company fails to file its annual report. It is undisputed that FHC, LLC was administratively dissolved by the Secretary of State on March 24, 2003 pursuant to RCW 25.15.080.

A dissolved limited liability company continues to exist, solely for purposes of winding up, until its certificate of formation is cancelled. See RCW 25.15.285(3) and RCW 25.15.290. RCW 25.15.295(2) reads:

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.

RCW 25.15.295. RCW 25.15.080 reads:

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 is the limited liability company is not the surviving or resulting entity in a merger . . .

RCW 25.15.080 *emphasis added*. RCW 25.15.290(4) reads:

If an application for reinstatement is not made within the two-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, **the Secretary of State shall cancel the limited liability company's Certificate of Formation.**

RCW 25.15.290(4) *emphasis added*.

It is undisputed that FHC, LLC's Certificate of Formation was cancelled, by operation of law, on March 24, 2005, by the Secretary of State pursuant to RCW 25.15.290(4). Pursuant to the clear statutory framework set forth in the Limited Liability Company Act, as of March 24, 2005, FHC, LLC's winding up period was terminated, its Certificate of Formation was cancelled and FHC, LLC ceased to exist as a separate legal entity.

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 formation.

RCW 25.15.070(2)(c). Once FHC, LLC's Certificate of Formation was cancelled, the HOA's suit against FHC, LLC abated as there is no statutory provision permitting claims to continue against a cancelled limited liability company.

B. Contrary to the HOA's Argument, there is no Statutory Basis to Extend the Life of a Limited Liability Company once its Certificate of Formation is Cancelled.

In its opening brief, the HOA argues, despite FHC, LLC's cancelled status, the Court should extend the life of FHC, LLC for purposes of litigating the present matter. The HOA argues that because FHC, LLC did not file a Certificate of Cancellation, FHC, LLC still exists and has the capacity to continue the present litigation. Such an interpretation of the Limited Liability Company Act is contrary to its express provisions.

The HOA suggests that the Court should ignore the full language of RCW 25.15.080, cited and incorporated in its entirety in RCW 25.15.295(2), and limit cancellation of the Certificate of Formation to only occur when a limited liability company files a document with the Secretary of State requesting that its Certificate of Formation be cancelled. This is a tortured interpretation of the relevant statutes and produces an absurd result. Under the HOA's scenario, FHC, LLC, whose Certificate of Formation was cancelled by the Secretary of State pursuant to RCW 25.15.290(4), must thereafter, at some point in time, file a separate request to the Secretary of State to cancel its Certificate of Formation even though its Certificate of Formation was already cancelled. This is simply

nonsensical and certainly contrary to the express statutory provisions cited above.

It is the golden rule of statutory interpretation that absurd nonsensical results be rejected. See *Cooper's Mobile Homes, Inc. v. Simmons*, 94 Wash.2d 321, 333, 617 P.2d 415, 422 (1980)¹. The express provision of RCW 25.15.295(2) clearly states that suit can be maintained against a limited liability company only until it is cancelled pursuant to RCW 25.15.080. FHC, LLC, was cancelled as set forth in RCW 25.15.080. Therefore, once FHC, LLC, was cancelled, its winding up period terminated and it ceased to exist as a separate legal entity for all purposes.

If there is any doubt that cancellation of the Certificate of Formation of the limited liability company is the death of the limited liability company, for all purposes, RCW 25.15.070(2)(c) further resolves such doubt. It reads:

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.

¹ The "golden rule" of statutory interpretation mandates - "(The) unreasonableness of the result produced by one among alternative possible interpretations of a statute is a reason for rejecting that interpretation in favor of another which would produce a reasonable result." *Id.*

RCW 25.15.070(2)(c) *emphasis added*. The Legislature could not have been clearer. Once a limited liability company's Certificate of Formation is cancelled, it no longer exists.

There is no dispute that FHC, LLC's Certificate of Formation was cancelled by the Secretary of State on March 25, 2005. Per the express language of the Limited Liability Company Act, FHC, LLC ceased to exist as of March 25, 2005. Because it does not exist, the HOA's claims against it must be dismissed as there is no statutory provision that saves claims against a cancelled limited liability company.

What the HOA is asking this Court to do, what the Legislature chose not to, is to create a survival of claims provision that would apply to cancelled limited liability companies such as is present in the Business Corporations Act. However, a limited liability company's existence both at formation and termination, are defined by statute. Where the Legislature has chosen to terminate the life of a limited liability company upon cancellation of the Certificate of Formation, the Court has no statutory basis to do otherwise. *See Ballard Square Condominium Owners Assn. v. Dynasty Construction Co.*, 126 Wash. App. 285, 298, 108 P.3d 818, 824 (2005) citing *Matter of Marriage of Williams*, 115 Wash.2d 202, 208, 796 P.2d 421 (1990) (citing *State v. Calderon*, 102 Wash.2d 348, 351, 684 P.2d 1293 (1984); *State v. McCullum*, 98 Wash. 2d 484, 493, 656 P.2d 1064

(1983); *Glass v. Stahl Specialty Co.*, 97 Wash.2d 880, 887-88, 652 P.2d 948 (1982); *Green Mt. Sch. Dist. 103 v. Durkee*, 56 Wash.2d 154, 161, 351 P.2d 525 (1960)). Where the legislature has chosen to only allow claims against a limited liability company until it is cancelled; there is no statutory basis for the HOA's claims against FHC, LLC, because FHC, LLC is a cancelled limited liability company. It is of no consequence that the HOA filed its complaint against FHC, LLC prior to March 24, 2005. The Limited Liability Company Act terminates the existence of a limited liability company upon cancellation and does not distinguish between claims that were brought prior to cancellation or those brought after cancellation. There simply is no basis to save the HOA's claims because they were brought prior to March 24, 2005.

It is a basic principle of statutory interpretation that a Court cannot add words to a statutory provision that are not there. See *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wash.2d 674, 681, 80 P.3d 598, 601-02 (2003) ("Further, a court must not add words where the legislature has chosen not to include them.") RCW 25.15.295 is clear. All claims, including claims brought prior to cancellation, are terminated once a limited liability company is cancelled. To find an exception for claims that are brought prior to cancellation would be to add words to the statute that do not exist. Rules of statutory interpretation strictly forbid adding of

words. As such, the trial court properly dismissed the HOA's claims against FHC, LLC.

C. Public Policy Goals of Certainty and Definiteness are Legitimate Goals which must not be Totally Abandoned in Favor of Saving the HOA's Claims.

The HOA argues in its opening brief that the Court should usurp the authority of the Legislature in determining a balance between the competing public policy goals of certainty and definiteness of a limited liability company and preservation of remedies by a claimant. The public policy goals of certainty and definiteness are legitimate goals and cannot be totally abandoned in favor of saving the HOA's claims against FHC, LLC. *See Ballard Square*, 126 Wash.App. at 296 and 108 P.3d at 824. Balancing these legitimate goals is the role of the Legislature. In the present matter, the Legislature found the balance between the two interests by permitting claims against dissolved limited liability companies and abating all claims once the limited liability company was cancelled.

Abating claims, including pending claims, is not without historical legal support. At common law, a dissolved corporation ceased to exist for all purposes. As a result, all claims, including pending claims abated. *See id.* at 289, 820. Only where the Legislature extended the life of a dissolved corporation could claims continue and/or be brought. *See id.* Likewise, the capacity of a limited liability company to be sued is

governed by statute. Under Washington law, once a limited liability company is cancelled, it ceases to exist, for all purposes pursuant to RCW 25.15.070(2)(c) and RCW 25.15.295(2).

D. The Legislature's Recent Passage of Senate Bill 6531 Confirms the Legislature's Intent that all Claims Abate Once the Limited Liability Company is Cancelled

In its opening brief, the HOA argues that Senate Bill 6531, not currently in effect, should be applied to this matter to save the HOA's claims. Whether Senate Bill 6531 should be applied retroactively to the present matter is irrelevant because Senate Bill 6531 does not save the HOA's claims against FHC, LLC. Senate Bill 6531 does not change the statutory framework concerning abatement of claims against a cancelled limited liability company. Rather, all Senate Bill 6531 does is clarify RCW 25.15.290(2). RCW 25.15.290(2) and Senate Bill 6531 permit claims to be filed against a dissolved limited liability company. There certainly is no dispute on that point. However, the right to pursue a claim against a dissolved limited liability company terminates once that dissolved limited liability company is cancelled. Senate Bill 6531 does nothing to save claims against a cancelled limited liability company. Senate Bill 6531 reads:

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 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, *emphasis added*. Senate Bill 6531 only applies to dissolved limited liability companies and has absolutely no application to a cancelled limited liability company. Had the Legislature wanted Senate Bill 6531 to save a claim against a cancelled limited liability company it would have used the word "cancelled", as opposed to "dissolved". The Legislature specifically chose to only permit claims solely against a dissolved limited liability company. The Legislature's recent passage of Senate Bill 6531 only confirms the position of FHC, LLC and the order of the trial court. Once a limited liability company is cancelled, all claims against it abate as there is no statutory provision that permits claims against a cancelled limited liability company. "When statutory language is unambiguous, the Court will look only to that language to determine legislative intent. The Court cannot add words or clauses to an unambiguous statute when the Legislature has chosen not to include that language. The Court should assume that the Legislature means exactly what it says." *State v. Freeman*, 124 Wash. App. 413, 415, 101 P.3d 878, 879 (2004).

At any time since 1994 when the Limited Liability Company was first enacted, the Legislature could have enacted a statute that would have permitted pending claims to continue against a cancelled limited liability company as it did for corporations. The Legislature could have adopted a survival of claims statute against cancelled limited liability companies like it did for corporations. The Legislature could have made the winding up period continue potentially indefinitely as it did for corporations. Even at its most recent session when the specific issue of survival of claims against a limited liability company was addressed, the Legislature could have adopted a statute to permit claims against cancelled limited liability companies. But the Legislature chose not to do so. Instead, the Legislature chose to terminate the existence of a limited liability company upon cancellation of the Certificate of Formation pursuant to RCW 25.15.080. The trial court correctly dismissed the HOA's claims against FHC, LLC as there is no statutory basis to permit the HOA's claims against FHC, LLC once FHC, LLC was cancelled on March 24, 2005.

E. Because the HOA's Complaint Against FHC, LLC was Dismissed in its Entirety on September 30, 2005, there was no Complaint that could have been Amended

The HOA argues that the trial court abused its discretion by failing to grant its motion for leave to file an amended complaint naming additional parties and additional causes of action separate and apart from

the claims against FHC, LLC. On the contrary, the trial court's action was not an abuse of discretion as there was no complaint that could have been amended.

On September 30, 2005, the trial court entered an order dismissing, in its entirety, the HOA's complaint. As such, as of September 30, 2005, there was no pending complaint that could have been amended. The HOA argues in its opening brief that its motion for leave to amend was set for hearing on September 30, 2005 and should have been decided despite its complaint having already been dismissed. At the outset, when a motion will be considered by the trial court is determined by the trial court, not by the party. Solely because a party requests its motion for leave to amend a pleading be heard on a certain day does not mean the trial court is obligated to hear or decide the motion on that day. King County Local Rule 7(b)(3)(A) reads "no later than six court days before the date the party wishes the motion to be considered." *Emphasis added.* Just because a party wishes to have a motion heard on a particular day does not mean the motion will be heard on that day. Had the HOA wanted to insure that its motion for leave to amend would be considered prior to FHC, LLC's motion for summary judgment, it should have made arrangements with the trial court. Instead, the HOA waited almost one month after FHC, LLC filed its motion for summary judgment, just days before the hearing on said

motion, and made no arrangements with the Court to insure that the motion for leave would be heard prior to the motion for summary judgment.

As such, the only motion the trial court formally agreed to hear on September 30, 2005 was FHC, LLC's motion for summary judgment. On September 30, 2005, the Court granted the motion for summary judgment and entered an order dismissing, in its entirety, the HOA's complaint. As such, the HOA's motion for leave to amend was moot as there was no complaint that could have been amended.²

V. CONCLUSION

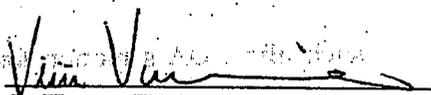
Therefore, for all the foregoing reasons, FHC, LLC requests the Court affirm the trial Court's dismissal of Chadwick Farms Owners Association's Complaint against FHC, LLC because as of March 24, 2005, FHC, LLC ceased to exist as a separate legal entity and all claims against it abated. FHC, LLC further requests the Court affirm the trial

² In addition, the trial had substantive reasons not to grant the motion for leave to amend the pleadings. The claims and parties the HOA wished to add were entirely separate from the construction defect claims that were asserted pursuant to the Condominium Act. Asserting claims against the members of FHC, LLC for not allocating assets, or making provisions for the HOA's claims, even though FHC, LLC had no assets to allocate as it lost substantial sums of money on the construction of the project, from whether a building was constructed in compliance with applicable building codes. It is within the sound discretion of the trial court to deny a motion for leave to amend where the amendment "is likely to result in jury confusion, the introduction of remote issues, or a lengthy trial." *Herron v. Tribune Publishing Co., Inc.*, 108 Wash.2d 162, 165-66, 736 P.2d 249, 253 (1987).

court's refusal to grant leave for Chadwick Farms Owners Association's request to amend its complaint because there was no pending complaint that could have been amended.

Dated this 3rd day of May, 2006.

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**FHC, LLC's CROSS APPEAL AGAINST RESPONDENTS
CASCADE UTILITIES, INC., MILBRANDT ARCHITECTS, INC.
P.S., PIERONI ENTERPRISE, INC. D/B/A PIERONI'S
LANDSCAPE CONSTRUCTION, INC., AMERICA 1ST ROOING &
BUILDERS, INC. AND GUTTER KING, INC.**

VI. ASSIGNMENT OF ERROR

The trial court erred in entering its orders of September 30, 2005, November 28, 2005 and December 14, 2005 granting Third-Party Defendant Cascade Utilities, Inc., Milbrandt Architects, Inc., P.S., Pieroni Enterprise, Inc. d/b/a Pieroni's Landscape Construction, Inc., America 1st Roofing & Builders, Inc. and Gutter King, Inc.'s Motions for Summary Judgment and Orders of Dismissal of FHC, LLC's Third-Party Complaint ruling that suit could not be maintained against said Third-Party Defendants because FHC, LLC is a cancelled limited liability company and does not have the capacity to maintain its third-party claims.

VII. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether an administratively dissolved and cancelled limited liability company has the capacity to maintain third-party claims.

VIII. STATEMENT OF FACTS

This matter arises out of claims for construction defects at the Chadwick Farms condominium project. On August 18, 2004, the

Chadwick Farms Owners' Association ("HOA") brought a Complaint for Damages against FHC, LLC, the owner of the project during construction, alleging defects and damages resulting from the original construction of the project. CP 119-25. On May 12, 2005, FHC, LLC filed a Third-Party Complaint against the subcontractors who defectively built the Chadwick Farms project. CP 139-52. The Third-Party Complaint was amended on October 4, 2005 naming Gutter King, Inc. as a Third-Party Defendant. CP 214-27. On December 14, 2005, the court entered an order dismissing FHC, LLC's claims against Gutter King, Inc. thereby dismissing all pending claims by FHC, LLC. CP 116-118.

On March 24, 2003, FHC, LLC was administratively dissolved for failure to file an annual report. CP 13. Pursuant to statute, two years later the Secretary of State cancelled its Certificate of Formation.

IX. LEGAL ARGUMENT

A. Standard of Review

The trial court's grant of summary judgment to Respondent is reviewed *de novo*. *Hogan v. Sacred Heart Medical Center*, 101 Wash, App. 43, 2 P.3d 968 (2000). The appellate court should review any findings of fact *de novo* because the evidence submitted to the lower court was comprised entirely of written submissions, affidavits, declarations and

deposition transcripts. *Id.* Where the record consists entirely of written and graphic material, the appellate court should give an independent review of the record. *In re Marriage of Flynn*, 94 Wash. App. 185, 190, 972 P.2d 500 (1999) (holding that de novo review is appropriate where the trial court's decision is based on affidavits of the parties).

B. Pursuant To RCW 25.15.295 a LLC May Prosecute and Defend Claims Until Cancellation.

On August 24, 2005, FHC, LLC brought a Motion for Summary Judgment seeking dismissal of the HOA's claims against it. CP 1-19. FHC, LLC argued in its Motion for Summary Judgment that FHC, LLC, a cancelled limited liability company, did not have the capacity to be sued by the HOA. In response to FHC, LLC's Motion, Respondent Pieroni Construction brought its own Motion for Summary Judgment (which was joined by the other Respondents) seeking dismissal of FHC, LLC's claims against it. CP 20-45. Pieroni argued that FHC, LLC, a cancelled limited liability company, could not maintain suit against the Respondents. The arguments offered by FHC, LLC against the HOA's claims and the arguments of Pieroni construction against FHC, LLC's claim are essentially the same. FHC, LLC, a cancelled limited liability company does not have the capacity to sue or be sued. The trial court agreed and dismissal claims against and by FHC, LLC. CP 96-97.

The HOA filed a Notice of Appeal seeking review of the dismissal

of its claims against FHC, LLC. CP 246-49. To the extent this Court grants the relief sought by the HOA and allows the claims to proceed against FHC, LLC, FHC, LLC should likewise be permitted to pursue its claims against Respondents.

Pursuant to Washington's Limited Liability Company Act, all claims, regardless of when they were brought and regardless of whether they were brought by or against an LLC, abate upon cancellation of the Certificate of Formation. The sole statute that permits post dissolution activities by a limited liability company is RCW 25.15.295(2). It reads:

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.

RCW 25.15.295(2).

The express terms of RCW 25.15.295 make no distinction as to claims brought by or against a limited liability company. RCW 25.15.295 specifically permits claims against a dissolved limited liability company and claims by a dissolved limited liability company. As such, if this Court finds that FHC, LLC has the capacity to be sued by the HOA it must

likewise find that FHC, LLC has the capacity to pursue its claims against Respondents.

In addition to making no distinction between pursuing or defending claims, RCW 25.15.295 also makes no distinction as to when claims were initiated. Per the express terms of RCW 25.15.295, all claims, even if they were initiated before cancellation, abate once the limited liability company is cancelled. There is no language in RCW 25.15.295 or any other provisions of the Limited Liability Company Act that allows claims to survive if they were brought prior to cancellation. Per RCW 25.15.295, no claims survive cancellation. It makes no difference whether the claims were brought before FHC, LLC dissolved, before FHC, LLC was cancelled or after FHC, LLC was cancelled. Once FHC, LLC was cancelled all claims abate.

The Limited Liability Company Act is distinct and separate from the Business Corporations Act. Unlike the Limited Liability Company Act, the Business Corporations Act specifically permits claims commenced prior to dissolution to continue following dissolution. There is no such like provision in the Limited Liability Company Act. It is the basic rule of statutory interpretation that a Court must not add words or clauses to statutes that do not exist. "When statutory language is unambiguous, the court will look only to that language to determine legislative intent. The

court cannot add words or clauses to an unambiguous statute when the Legislature has chosen not to include that language. The court should assume that the Legislature means exactly what it says." *State v. Freeman*, 124 Wash. App. 413, 415, 101 P.3d 878, 879 (2004). Because the Legislature decided that all claims abate upon cancellation, without distinction for pending or future claims, there is no statutory basis for the Court to make inconsistent rulings on the appeal of the HOA and the appeal of FHC, LLC. See *Ballard Square Condominium Owners Association v. Dynasty Construction Co.*, 126 Wash. App 285, 108 P.3d 818 (2005) (holding that absent a statute that permits post-dissolution claims against a corporation, the Court has no statutory basis on which to allow a post-dissolution claims).

If this Court finds that FHC, LLC was not a cancelled limited liability company or was not cancelled as that term is used in RCW 25.15.295 and permits the HOA's claims against FHC, LLC, this Court must also permit FHC, LLC's claims against Respondents.

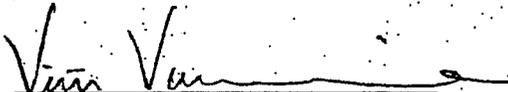
X. SUMMARY

Washington's Limited Liability Company Act only permits claims against a limited liability company prior to cancellation of the limited liability company. There are no statutory provisions that allow claims,

including pending claims, to survive following cancellation of a limited liability company. FHC, LLC was cancelled on March 24, 2005. As a result, FHC, LLC ceased to exist. Pursuant to statute, all claims, including the HOA's claims, against FHC, LLC are barred. If this Court finds otherwise and permits the claims against FHC, LLC by the HOA, RCW 25.15.295(2) mandates that the Court make a consistent ruling and hold that FHC, LLC's claims against Respondents likewise proceed.

Dated this 3rd day of May, 2006.

FORSBERG & UMLAUF, P.S.

By: 
John P. Hayes, WSBA #21009
Viivi M. Vanderslice, WSBA #34990
Attorneys for Respondent and
Appellant, FHC, LLC

900 Fourth Ave., Suite 1700
Seattle, WA 98164
(206) 689-8500

CERTIFICATE OF SERVICE

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

On the date given below I caused to be served **RESPONDENT/ DEFENDANT/ THIRD PARTY PLAINTIFF FHC, LLC'S REPLY BRIEF/OPENING STATEMENT** on the following individuals in the manner indicated:

CLERK
CJ HERRITT

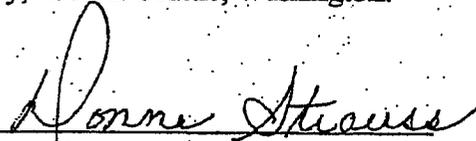
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SUPERIOR COURT

Clerk Washington State Supreme Court 415 12th Ave. SW P.O. Box 40929 Olympia, WA 98504 <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Mail	Mr. David J. Bierman Alexander & Bierman, P.S. 4800 Aurora Ave. N. Seattle, WA 98103-6518 <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Mail
Mr. John P. Evans Williams Kastner & Gibbs, PLLC 601 Union St., Suite 4100 Seattle, WA 98111-3926 <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Mail	Ms. Vicky Strada Scheer & Zehnder, LLP 720 Olive Way, Suite 1605 Seattle, WA 98101 <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Mail

<p>Mr. Martin T. Crowder Karr Tuttle Campbell 1201 Third Ave., Suite 2900 Seattle, WA 98101 <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Mail</p>	<p>Mr. W. Scott Clement Gardner Bond Trabolsi St. Louis & Clement 2200 Sixth Avenue, Suite 600 Seattle, WA 98121 <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Mail</p>
<p>Mr. R. Scott Fallon Fallon & McKinley, PLLC 1111 Third Ave., Suite 2400 Seattle, WA 98101 <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Mail</p>	

Dated this 3rd day of May, 2006 at Seattle, Washington.



Donna Strauss
Legal Secretary to Viivi M. Vanderslice

#278368/239.0001

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BY C. J. HERRITT

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON
CHADWICK FARMS OWNERS ASSOCIATION

Plaintiff/Petitioner

vs
FHC, LLC, ET AL.,

No. 77881-7

DECLARATION OF
FAXED DOCUMENT
(DCLR)

Defendant/Respondent

I declare as follows:

1. I am the party who received the foregoing facsimile transmission for filing.
2. My address is: 119 W. Legion Way, Olympia, WA 98501
3. My phone number is (360) 754-6595.
4. The facsimile number where I received the documents is (360) 357-3302.
5. I have examined the foregoing document, determined that it consists of 31 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: 5/3/06 at Olympia, Washington.

Signature: Ingrid Y. Elsinga
 Print Name: Ingrid Y. Elsinga