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SUPREME COURT
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STATE OF WASHINGTON

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CASE NO.: 81959-9

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CITY OF MARYSVILLE,

Petitioner,

vs.

MARC RENNER,

Respondent.

CITY OF MARYSVILLE'S REPLY TO PETITION FOR
REVIEW TO THE SUPREME COURT OF THE STATE OF
WASHINGTON

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ORIGINAL

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A. THE COURT OF APPEALS DID NOT ERR IN HOLDING RENNER FAILED TO ESTABLISH ESTOPPEL OR WAIVER.

Renner presents a new issue for review: to wit, “Did the Court of Appeals err by holding the petitioner’s multiple deceptive acts did not preclude it from raising its claim statute compliance defense?” Renner fails to offer any actual legal authority or argument supporting this issue. Nevertheless, in the event the court decides to grant review of this issue, the City offers the following reply.

First, the Court of Appeals did not make any finding that the City committed “multiple deceptive acts.” This representation is not supported by the record or the court of appeals decision, and is improper.

Second, the Court of Appeals did find that the City properly raised the claim filing defense when it formally answered Renner’s complaint. It also found that consistent with that position, the City elaborated on the defense in the February 3, 2006 document answering Renner’s interrogatories. The court noted the document was “somewhat misleadingly captioned” as objections when it also contained answers to the discovery, “But at 21 pages it was not so long as to excuse counsel from reading it. Reading the document would have provided Renner with ample opportunity to correct the alleged defects before the statute of limitations ran in December 2006.” On this basis, the Court of Appeals

concluded the City was not precluded from raising the claim filing defense.

Renner once again makes the unsupported argument that because the City did not originally offer its discovery responses as evidence in support of its summary judgment motion, that it must have “overlooked” its own responses. Renner’s assumption is wrong and uninformed. The City did not attach the responses to its initial motion because the evidence supporting the motion – the City’s answer asserting the affirmative defense – was more than sufficient to prove the defense had been asserted and not waived. The City only addressed the discovery responses in its subsequent reply and appellate pleadings as they have been continually raised by Renner, thus requiring a response.

Third, this case is entirely distinguishable from *Dyson v. King County*, 61 Wn. App. 243 (1991), *rev. den.*, 117 Wn.2d 1020 (1991). *Dyson* was a case where the defendant did not assert defective claim filing as an affirmative defense until *after* the limitations period had run. The court found that this was “affirmative misleading action” and barred the defendant from intentionally waiting and raising the defense after it was too late for the plaintiff to do anything about it. This case does not apply here where the City raised the defense from the beginning, and provided

specific information detailing the claim deficiencies a year prior to the expiration of the statute of limitations.

Renner cannot legitimately allege he was surprised by the City's motion for summary judgment dismissal as the City had asserted the affirmative defense of insufficient claim filing. Nor can he explain or justify his failure to correct the deficiencies in his claim. Even if it is true that Renner's attorney did not bother to read the discovery pleadings sent to him by Defendant because he assumed they were a duplicate of an earlier – and much shorter – document, the City still affirmatively and clearly raised the claim filing defense in its answer to Plaintiff's complaint. Renner was not misled or lulled into believing that his claim met the statutory requirements.

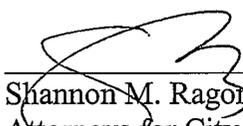
If Renner was unable to determine how his claim was deficient, and if he truly believed he had never received a response to his 79 discovery requests, he should have sought to compel these responses. His complete indifference to receiving responses to *any* of his discovery requests proves he had no interest in pursuing his lawsuit. It is certainly not evidence of a plot by the City to commit affirmatively misleading acts to trick him into believing his claim was sufficient. Therefore, the Court of Appeals holding that Renner failed to show evidence of waiver or estoppel was proper.

B. THE CITY HAS A RESPONSE TO EACH OF THE REMAINING ISSUES RAISED BY RENNER, BUT WILL REFRAIN FROM RAISING THEM HERE IN COMPLIANCE WITH THE RULES FOR APPELLATE PROCEDURE.

The court should be aware that the City has a response to each of the remaining issues raised by Renner in his opposition to the petition for review, but does not state them in this reply in compliance with the rules for appellate procedure. The City reserves these responses and legal argument for its supplemental brief to the court if review is granted.

RESPECTFULLY SUBMITTED this 4th day of September, 2008.

KEATING, BUCKLIN & McCORMACK,
INC., P.S.


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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing via messenger on:

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DATED this _____ day of September 2008.

Katie Johnson