

No. 859901

Case #: 1035705

SUPREME COURT
OF THE STATE OF WASHINGTON

MARIA CRUZ, an individual

Petitioner,

v.

BULLDOG PROPERTY SERVICES, INC.,

Respondent.

**ANSWER TO PETITIONER'S MOTION FOR DISCRETIONARY
REVIEW**

[Treated as answer to petition for review](#)

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A. INTRODUCTION

Petitioner Maria Cruz (“Petitioner”) has petitioned the Washington State Supreme Court for discretionary review of the Division 1 Court of Appeals’ affirmation of the King County Superior Court’s order granting Respondent Bulldog Property Services, Inc.’s (“Respondent”) motion for summary judgment.

The Superior Court correctly dismissed Petitioner’s initial complaint for failure to state a claim upon which relief can be granted because Petitioner failed to perfect a claim against Respondent within the statutorily allowed time.

Petitioner filed suit within the three-year statute of limitations. She then failed to serve Respondent within the 90-day tolling period. Under RCW 4.16.170, her action “shall be deemed to not have been commenced for purposes of tolling the statute of limitations.” The three-year statute of limitations, RCW 4.16.080, then expired. As such, Petitioner’s claim is time barred.

In defense, Petitioner argues that the corporate survival statute, RCW 23B.14.340, extends the statute of limitations against Respondent. Petitioner is wrong. The corporate survival statute is a statute of repose, not a statute of limitations tolling provision or an alternative statute of limitations. Respondent moved for Summary Judgment, and because the

applicable statute of limitations ran before the action was commenced, Summary Judgment was properly granted by the Superior Court.

Petitioner misstates the issue at hand. The Superior Court found that since Bulldog's administrative dissolution took place after Cruz had initiated suit, Cruz is not entitled to an additional three years to serve the Summons and Complaint on Bulldog. RCW 23B.14.240 has meaning, just not the meaning Petitioner Cruz is asserting.

The statute's purpose is clear: to provide would-be plaintiffs with the opportunity to *initiate* a suit against an *already-dissolved* corporate entity; to allow them the otherwise unavailable opportunity to seek recompense from an entity which no longer exists. This scenario was not a relevant issue in the matter at hand. Petitioner Cruz had already initiated her suit before Bulldog was dissolved. She was given her opportunity to file a suit. She then should have served Bulldog within the statutorily required time but failed to do so.

Petitioner is now attempting to thwart the intent of RCW 23B.14.240, in order to tack on an extra three years to perfect service, which would be unfair to Respondent.

B. RESTATEMENT OF FACTS

This case arises out of alleged negligent maintenance of the lobby of a building owned by Bulldog Property Services, Inc. According to Cruz's

Complaint, on May 5, 2020, Bulldog placed cabinets and other remodeling materials in the lobby of the building, which caused herto fall while trying to access the building’s elevator. (Compl. ¶ 6). Petitioner alleges injury to her shoulder, knee, and hand. (*Id.* at ¶ 7). Petitioner filed her initial Complaint on November 21st, 2022. *See generally*, Order Setting Civil Case Schedule.

Bulldog Property Services, Inc. administratively dissolved on February 9, 2023, due to Bulldog Principal Steve Jesse’s inability to work after hip surgery. Bulldog was reinstated six months later in August 2023 after Jesse’s recovery. Jesse Decl. Ex. A. Cruz served Bulldog on May 16th, 2023. The date of service was after the statutorily required 90-day tolling period for service and after the subsequent statute of limitations for the negligence alleged.

The Superior Court heard oral arguments on Cruz’s Motion for Summary Judgment on September 15, 2023. After hearing oral arguments and considering the parties’ respective briefs, the Court granted Bulldog’s motion, holding that Cruz failed to serve her Complaint within the three-year statute of limitations.

On September 9, 2023, Cruz filed a Motion to Reconsider. The Superior Court issued an Order Denying the Motion to Reconsider on October 9, 2023. The Superior Court stated in their denial that “Per RCW 4.16.080, the statute of limitations for this type of action is three years. Per RCW 4.6.170, “an action is deemed commenced when the complaint is filed,” but a plaintiff must serve the defendant within ninety days from the

date of filing the complaint. Here, Petitioner filed her complaint within the three-year statute of limitations; however, in order for her action to be deemed commenced, she had to serve Respondent within 90 days of the filing of her complaint. She failed to do so. She finally served Respondent on May 16, 2023, meaning her action commenced on that day, which is outside the three-year statute of limitations.” The court continued, “Plaintiff argues that RCW 23B.14.340 creates a completely separate statute of limitations for dissolved corporations – three years after the effective date of dissolution. Plaintiff’s argument is contrary to the plain reading of the statute, is not supported by the cases cited by Plaintiff in her brief, and is contrary to common sense.”

In May 2024, Petitioner appealed King County Superior Court’s Order granting Defendant Bulldog Property Services, Inc.’s Motion for Summary Judgment to dismiss her Complaint. Cruz argued that RCW 23B.14.340 extended the statute of limitations for an additional three years after Respondent administratively dissolved.

The Superior Court correctly dismissed Cruz’s Complaint for failure to state a claim upon which relief can be granted because she failed to perfect a claim against Bulldog within the statutorily allowed time. The Appeals court affirmed the Superior Court’s decision, finding that Cruz’s suit is barred because “she failed to commence her action within the statute of limitations applicable to the particular cause of action asserted.”(Compl., App. at 4-5 (quoting *Ballard Square Condo. Owners*

Ass'n v. Dynasty Constr. Co., 158 Wn.2d 603, 609, 619 146 P.3d 914 (2006)).

B. WHY REVIEW SHOULD BE DENIED

“A party moving for discretionary review of an interlocutory trial court order bears a heavy burden.” *In re Dependency of Grove*, 127 Wn.2d 221, 242, 897 P.2d 1252, 1259 (1995). Discretionary review is disfavored “because it lends itself to piecemeal, multiple appeals.” *Right-Price Recreation LLC v. Connells Prairie Cmty.*, 146 Wn.2d 370, 380, 46 P.3d 789, 795 (2002). “Interlocutory review is available in those rare instances where the alleged error is reasonably certain and its impact on the trial is manifest.” *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591, 594 (2010).

Discretionary review is only appropriate in limited circumstances including:

- (1) The superior court has committed an obvious error which would render further proceedings useless;
- (2) The superior court has committed probable error and the decision ... substantially alters the status quo or substantially limits the freedom of a party to act; [and]
- (3) The superior court so far departed from the accepted and usual course of judicial proceeding ... as to call for review by the appellate court[.]

RAP 2.3(b)(1) – (4).

The Superior Court did not commit obvious nor probably error in interpreting and applying RCW 23B.14.340 to the facts of this case. Rather, Petitioner misinterprets the statute's purpose and meaning in a manner that seeks to unlawfully expand the statute of limitations within which she can bring suit, contrary to the purpose of the statute.

As the Superior Court concluded and the Appeals Court confirmed, RCW 23B.14.340 is not a tolling statute that can lawfully extend the operable three-year statute of limitation. The corporate survival statute provides that “[t]he dissolution of a corporation... shall not take away or impair any remedy available against such corporation... prior to such dissolution or arising thereafter... unless action ... is not commenced within ... three years after the effective date of any dissolution...” RCW 23B.14.340. The statute makes no reference to tolling other statutes of limitations. The statute merely “allows claims that would otherwise be extinguished by the dissolution of a corporation under the harsh application of the common law” which bars claims against corporations upon dismissal. *R.N. v. Kiwanis Int’l*, 19 Wn. App. 2d 389, 400–01, 496 P.3d 7448 (2021). The statute preserves “remed[ies] available” against the corporation—it does not create new remedies. When the three-year statute of limitations expired, Appellant had no “remedy available” which could be preserved.

This is not a case where there are competing statutes of limitations because RCW 23B.14.340 is not a statute of limitations. *R.N. v. Kiwanis Int’l*, 19 Wn. App. at 404 (“The corporate survival statute is not a statute of limitations”). The court of appeals calls the statute a “statute of repose.”

Id. “A statute of limitations bars Petitioner from bringing an already accrued claim after a specific period of time. A statute of repose terminates a right of action after a specified time, even if the injury has not yet occurred.” *100 Virginia Ltd. P’ship v. Vertecs*, 158 Wn.2d 566, 146 P.3d 423 (2006) (discussing RCW 4.16.310, the construction statute of repose); *see R.N. v. Kiwanis Int’l*, 19 Wn. App. 2d at 402–03 (analogizing between RCW 4.15.310 to RCW 23B.14.340). Here, the action was subject to the three-year statute of limitations found in RCW 4.16.080. RCW 23B.14.340 preserved those claims despite Bulldog’s dissolution, but it did not provide an alternative statute of limitation. When the three-year statute of limitations expired, Petitioner’s claim was time barred.

Petitioner’s interpretation of RCW 23B.14.340 would lead to absurd results. If the corporate survival statute acted like a tolling statute or a competing statute of limitations, then it would abrogate all statutes of limitations against corporations and non-profit entities. Any plaintiff with a time-barred claim would only need to wait until the corporation was dissolved before their claim would be revived for another three years. The legislature could not have intended such an absurd result when it enacted the corporate survival statute. The legislature knows how to enact tolling statutes. *E.g.*, RCW 4.16.170 (tolling statute for service and filing complaint); RCW 19.86.120 (tolling certain claims during pendency of attorney general action); RCW 4.96.020 (tolling claims against government during notice period). The legislature knows how to enact statutes of limitations. RCW 4.16 et seq. The fact that it did not expressly

enact a tolling agreement or statute of limitations shows that it did not have such extravagant results in mind.

E. CONCLUSION

Contrary to Petitioner's claim that the RCW 23B.14.340 should tack on an additional three years for service of process to perfect an already initiated suit, it is clear that the intent of RCW 23B.14.340 is to provide a would-be plaintiff with the opportunity to sue an already-defunct entity. Petitioner continues to ignore this reality. Therefore, Bulldog Property Services respectfully requests the court dismiss Petitioner's challenge to the Appeals Court's affirmation of the Superior Court's ruling.

RESPECTFULLY SUBMITTED this November 19, 2024.

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/s/ Jennifer L. Crow
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Property Services, Inc.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am employed by the law firm of Scheer.Law PLLC.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Oregon, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below, I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>C/O Plaintiff</u> David A. Williams 9 Lake Bellevue Dr Ste 104 Bellevue, WA 98005-2454 (425) 646-7767 daw@bellevue-law.com	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via E-Mail <input type="checkbox"/> Via E-Service <input type="checkbox"/> Via Overnight Mail

DATED this 19th day of November 2024 in Portland, Oregon.

/s/ Rowik Kinnard
Rowik Kinnard, Legal Assistant
rowikk@scheer.law

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Good Morning,

Attached is Respondent Bulldog Property Services, Inc.'s Answer to Petitioner's Motion for Discretionary Review for filing in the above matter.

Please reach out if you have any questions,

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