

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/22/2024 4:01 PM  
BY ERIN L. LENNON  
CLERK

Case #: 1035705

No. 859901  
COURT OF APPEALS  
DIVISIONS I  
OF THE STATE OF WASHINGTON

MARIA CRUZ, an individual  
Appellant,  
BULLDOG PROPOERTY SERVICES, INC.  
Respondent.

---

PETITION FOR REVIEW IN SUPREME COURT

---

David A. Williams, WSBA # 12010  
Law Office of David A. Williams  
9 Lake Bellevue Dr. Ste. 104  
Bellevue, WA 98005  
Email: [daw@bellevue-law.com](mailto:daw@bellevue-law.com)  
Phone: 425-646-7767  
Facsimile: 425-646-1011

Attorney for Appellant

## TABLE OF CONTENTS

TABLE OF CASES	3.
IDENTITY OF PETIONER	4.
COURT OF APPEALS DECISION	5.
ISSUE PRESENTED FOR REVIEW	6.
STATEMENT OF CASE	7.
ARGUMENT	9.
CONCLUSION	13.
APPENDIX	14.

## TABLE OF CASES/AUTHORITIES

RCW 23B.14.340 P. 6, 9, 11

RCW 4.16.170 P. 7

RCW 23B.14.3403 P. 8

Ballard Square Condominium Owners Association v Dynasty Construction  
Cok 158 Wash. 2d 603 146 P.3d 914 (2006). P. 10

RCW 23A.28.250. P. 11

## IDENTIFY OF PETITIONER

Petitioner is Maria Cruz, the Appellant.

## COURT OF APPEALS DECISION

Petitioner seeks review of the attached Court of Appeals decision, filed September 23, 2024.

### ISSUE PRESENTED FOR REVIEW

Whether Petitioner's personal injury lawsuit was an "available remedy" under RCW 23B.14.340 as of the date of Respondent's administrative dissolution, since the lawsuit had been timely filed and the applicable statute of limitations had not expired, giving Petitioner three years after dissolution to effect service?

## STATEMENT OF THE CASE

1. Cruz filed her Complaint November 21<sup>st</sup>, 2022. CP1-2.  
The Complaint alleged an injury that occurred May 5<sup>th</sup>, 2020. Id.
2. Bulldog was administratively dissolved, effective February 9, 2023. Declaration of David Williams, exhibit 1, CP 20-29.
3. Bulldog was served May 16, 2023. Declaration of David Williams, exhibit 1, CP 20-29.
4. Bulldog moved for Summary Judgement. CP 3-9. The Motion contended that because the action was filed on November 2, 2022, “the 90-day tolling period following filing of suit pursuant to RCW 4.16.170 would have expired on February 19<sup>th</sup>, 2023.” Id. The Motion contended, “furthermore”, service of process of the Summons, Complaint and Order Regarding Case Schedule was not accomplished until May 16, 2023, which is after the 90-day tolling period for commencement of

actions and after the running of the Statute of Limitations in a personal injury negligence action in Washington State:. Id. The Motion did not mention, let alone account for RCW 23B.14.3403.

5. Cruz responded, pointing out that Bulldog had been administratively dissolved before the three-year anniversary of the incident complained of, meaning that Cruz now had three years to accomplish service, which she had done in three months.
6. The trial court granted the Motion (CP 35-37) and denied Reconsideration. CP 40-41.
7. This appeal timely followed. CP 42-44.
8. The Court of Appeals affirmed by unpublished opinion.



## ARGUMENT

RCW 23B.14.340 provides:

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

(emphasis added)

This Court has not interpreted the statute as applied to the facts here. The Trial Court and Court of Appeals held that Petitioner's claim was barred under RCW 4.16.080—the three-year statute of limitations---because service of the complaint did not occur for more than 90 days after filing, though the Respondent had been administratively dissolved in the interim,

This holding overlooks and in fact renders meaningless the three-year provision provided.

Indeed, under relevant case law from this Court, Petitioner had three years after dissolution to file its lawsuit in the first place! In Ballard Square Condominium Owners Association v Dynasty Construction Cok 158 Wash. 2d 603 146 P.3d 914 (2006), this Court held:

The Washington State Legislature enacted a survival statute in 1965 as part of the Washington Business Corporation Act, former Title 23A RCW. Washington's survival statute was virtually identical to section 98 of the 1959 Model Business Corporation Act. Former RCW 23A.28.250, LAWS OF 1965, ch. 53, § 108 (effective July 1, 1967). The survival statute, like section 98, provided that a corporation's dissolution did not "take away" or "impair" lawsuits based on claims that existed prior to dissolution, provided the plaintiff sued within two years. Former RCW 23A.28.250.

When former Title 23A RCW was replaced in 1989 by Title 23B RCW, the legislature included a new survival statute that in relevant part mirrors former RCW 23A.28.250. RCW 23B. 14.340 then provided that dissolution of a corporation "shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, *prior to* such dissolution if . . . commenced within two years [or within three years after the effective date of dissolution that is effective on or after June 7, 2006]. (emphasis added)

In its unpublished opinion here, the Court of Appeals cited Ballard for the proposition that “a claim must still be ‘commenced within the statute of limitations applicable to the particular cause of action asserted’”. Opinion, p. 4. But that case concerned what all parties conceded to be a post-dissolution lawsuit!

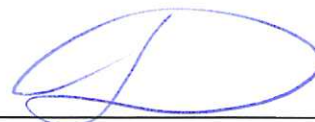
#### ARGUMENT

This Court should accept review and reverse, clarifying that RCW 23A.14.340 means exactly what it says.

#### CONCLUSION

This Court should take review and reverse the flawed Court of Appeals decision.

Date this 22 day of October, 2024



---

David A. Williams, WSBA #12010  
Attorney for Appellant

# APPENDIX 1

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

MARIA CRUZ,

Appellant,

v.

BULLDOG PROPERTY SERVICES,  
INC., a Washington Corporation,

Respondent.

No. 85990-1-I

DIVISION ONE

UNPUBLISHED OPINION

BIRK, J. — Maria Cruz appeals the summary judgment dismissal of her negligence lawsuit against Bulldog Property Services, Inc., arguing the corporate dissolution statute, RCW 23B.14.340, extended the statute of limitations for an additional three years after Bulldog administratively dissolved. Finding no error, we affirm.

Cruz alleged that on May 5, 2020, she fell and was injured “due to negligence by [Bulldog’s] agents/employees, who created a dangerous condition on rental premises that [Cruz] managed at the time.” Cruz alleged Bulldog’s agents “carelessly placed cabinets and other remodeling materials in the lobby of the building,” causing her to fall and suffer injuries. On November 21, 2022, Cruz filed a personal injury suit against Bulldog. Bulldog administratively dissolved on February 9, 2023. Cruz served Bulldog a copy of the summons and complaint on May 16, 2023, more than three years after her injury. Bulldog was reinstated on June 5, 2023.

Bulldog filed a motion for summary judgment, requesting that the trial court dismiss Cruz's claims because she failed to serve process until after the expiration of both the three year limitation period and the 90 day period after filing pursuant to RCW 4.16.170. The trial court granted Bulldog's motion and dismissed Cruz's complaint with prejudice. Cruz filed a motion for reconsideration, which the trial court denied. Cruz appeals.

We review trial court orders granting summary judgment de novo, reviewing the facts before the trial court and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 158 Wn.2d 603, 609, 146 P.3d 914 (2006). Summary judgment is appropriate only when there are no genuine issues of material fact and where reasonable minds could reach but one conclusion. Crisostomo Vargas v. Inland Wash., LLC, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019); CR 56(c).

The limitations period for a negligence action is three years. RCW 4.16.080; James v. McMurry, 195 Wn. App. 144, 148 n.1, 380 P.3d 591 (2016). Barring application of the discovery rule, a cause of action for negligent injury accrues at the time the act or omission occurs. In re Estates of Hibbard, 118 Wn.2d 737, 744-45, 826 P.2d 690 (1992). The limitations period is tolled for 90 days to allow service following the filing of a complaint, or vice versa. RCW 4.16.170. This statute is known as the "tentative commencement rule" and, when it applies, provides that an action shall be deemed commenced for the purpose of tolling any statute of limitations when the complaint is filed or summons served, whichever occurs first. Pac. Erectors, Inc. v. Gall Landau Young Constr. Co., Inc., 62 Wn.

App. 158, 164 n.3, 813 P.2d 1243 (1991). When RCW 4.16.170 applies, filing and service upon at least one defendant must occur within the 90 days before the statute of limitations is tolled. Seamans v. Walgren, 82 Wn.2d 771, 776, 514 P.2d 166 (1973). Both filing and service must occur or a suit is a nullity. Citizens Interested in the Transfusion of Yesteryear v. Bd. of Regents of the Univ. of Wash., 86 Wn.2d 323, 330, 544 P.2d 740 (1976), overruled on other grounds by Jones v. Stebbins, 122 Wn.2d 471, 860 P.2d 1009 (1993). Here, Cruz alleged the incident occurred on May 5, 2020. Cruz filed suit on November 21, 2022, but Bulldog was not served until May 16, 2023, outside both the 90 day period and the three year limitation period.

Despite failing to serve Bulldog within the limitation period and not coming within the provisions of RCW 4.16.170, Cruz argues the corporate dissolution statute, RCW 23B.14.340, extended the statute of limitations for an additional three years after Bulldog administratively dissolved. RCW 23B.14.340 states,

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

A corporation is a distinct legal entity, existing artificially in law and maintaining its own legal obligations and interests separate from its officers, directors, employees, and other agents through whom it acts. State v. Brelvis Consulting, LLC, 7 Wn. App. 2d 207, 215, 436 P.3d 818 (2019). At common law, when a corporation dissolved it ceased to exist for all purposes and therefore could not be sued.



Ballard Square, 158 Wn.2d at 609. The common law rule has been modified in most states by statutes generally known as survival statutes, which permit lawsuits to be filed against dissolved corporations for a limited period. Id.; RCW 23B.14.340.

RCW 23B.14.340 is such a survival statute, preserving claims against dissolved corporations as long as they are filed within three years after the date of dissolution. R.N. v. Kiwanis Int'l, 19 Wn. App. 2d 389, 401, 496 P.3d 748 (2021), review denied, 199 Wn.2d 1002, 504 P.3d 825 (2022). The three year period “is not a statute of limitations” but instead “is a statute of repose.” Id. at 404. “A statute of limitation bars a plaintiff from bringing an accrued claim after a specific period of time,” whereas a “statute of repose terminates the right to file a claim after a specified time even if the injury has not yet occurred.” Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co., 176 Wn.2d 502, 511, 296 P.3d 821 (2013). The statute ensures that a corporation’s dissolution does not foreclose claims, but a claim must still be “commenced within the statute of limitations applicable to the particular cause of action asserted.” Ballard Square, 158 Wn.2d at 619.

Cruz’s claim is not barred because the corporation dissolved. Rather, it is barred because she failed to commence her action “within the statute of limitations applicable to the particular cause of action asserted.” Id. If she had timely commenced her action within the three year limitation period, and within three years of dissolution, then RCW 23B.14.340 would have protected her suit from the common law rule barring claims against a dissolved corporation. But the three



year statute of limitations remained applicable to her claim, is an independent defense, and expired before she commenced the action.

Affirmed.

Birk, J.

WE CONCUR:

Seldman, J.

Díaz, J.

# **LAW OFFICE OF DAVID WILLIAMS**

**October 22, 2024 - 4:01 PM**

## **Filing Motion for Discretionary Review of Court of Appeals**

### **Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Bulldog Property Services, Inc., Respondent v. Maria Cruz, Appellant (859901)

### **The following documents have been uploaded:**

- DCA\_Motion\_Discretionary\_Rvw\_of\_COA\_20241022160024SC648141\_1856.pdf  
This File Contains:  
Motion for Discretionary Review of Court of Appeals  
*The Original File Name was 20241022155838scan.pdf*

### **A copy of the uploaded files will be sent to:**

- SRoleru@williamskastner.com
- jen@scheer.law
- jeremy@davislawgroupseattle.com
- lora@bellevue-law.com

### **Comments:**

---

Sender Name: David Williams - Email: daw@bellevue-law.com

**Filing on Behalf of:** David Andrews Williams - Email: daw@bellevue-law.com (Alternate Email: )

Address:

9 Lake Bellevue Drive Suite 104

Bellevue, WA, 98005

Phone: (425) 646-7767

**Note: The Filing Id is 20241022160024SC648141**