

NO. A04-599

State of Minnesota
In Supreme Court

Arturo Camacho and Kristi Camacho,

Appellants,

vs.

Todd and Leiser Homes,

Respondent.

**BRIEF OF RESPONDENT TODD AND LEISER HOMES, INC.,
A DISSOLVED CORPORATION**

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TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

STATEMENT OF THE ISSUES1

STATEMENT OF THE CASE2

STATEMENT OF FACTS3

ARGUMENT AND AUTHORITIES5

 I. APPLICABLE STANDARDS OF REVIEW5

 II. THE COURT LACKS JURISDICTION OVER THE DISSOLVED CORPORATION FORMERLY KNOWN AS TODD AND LEISER HOMES, INC. AND OVER THE CAMACHOS' CLAIMS WHICH ARE BARRED UNDER MINN.STAT. 302A.7291.....9

 III. THERE IS NO CONFLICT BETWEEN THE CORPORATE DISSOLUTION STATUTES AND THE HOME WARRANTY STATUTES17

 IV. THE EXISTENCE OF ANY POTENTIAL INSURANCE IS IRRELEVANT IN DECIDING WHETHER THE CAMACHOS HAVE A VIABLE CLAIM AGAINST A DISSOLVED CORPORATION.....22

CONCLUSION24

CERTIFICATE OF BRIEF LENGTH

TABLE OF AUTHORITIES

Federal Case Law

<u>Cohen v. Beneficial Indus. Loan Corp.</u> , 337 U.S. 541 (1949)	6
<u>Epps v. Stewart Information Services Corp.</u> , 327 F.3d 642 (8th Cir. 2003).....	7
<u>Mitchell v. Forsyth</u> , 472 U.S. 511 (1985)	6
<u>Oklahoma Natural Gas Co. v. State of Oklahoma</u> , 273 U.S. 257 (1927)	14
<u>Onan Corp. v. Industrial Steel Corp.</u> , 770 F.Supp. 490 (D.Minn. 1989)	13, 14, 19, 21

Minnesota Case Law

<u>Abad v. ISCO, Inc.</u> , 537 N.W.2d 620 (Minn. 1995)	13
<u>Amdahl v. Stonewall Ins. Co.</u> , 484 N.W.2d 811 (Minn.Ct.App. 1992).....	7
<u>Am. Tower, LP v. City of Grant</u> , 636 N.W.2d 309 (Minn. 2001)	8
<u>Anderson v. St. Paul Fire & Marine Ins.</u> , 414 N.W.2d 575 (Minn.Ct.App. 1987).....	24
<u>Berghuis v. Korthuis</u> , 228 Minn. 534, 37 N.W.2d 809 (1949).....	15
<u>Bisbee v. City of Fairmont</u> , 593 N.W.2d 714 (Minn.Ct.App. 1999)	6
<u>Boubelik v. Liberty State Bank</u> , 553 N.W.2d 393 (Minn. 1996)	9
<u>Brookfield Trade Ctr., Inc. v. County of Ramsey</u> , 584 N.W.2d 390 (Minn. 1998)	7
<u>Cashman v. Hedberg</u> , 215 Minn. 463, 10 N.W.2d 388 (1943).....	15
<u>Davis v. Furlong</u> , 328 N.W.2d 150 (Minn. 1983)	24
<u>Giovok v. Bemidji Loca Bus Line</u> , 223 Minn. 522, 27 N.W.2d 273 (1947)	24
<u>Gomon v. Northland Family Physicians, Ltd.</u> , 645 N.W.2d 413 (Minn. 2001)	8

Harms v. Indep. School District No. 300, 450 N.W.2d 571 (Minn. 1990)7

Hubred v. Control Data Corp., 442 N.W.2d 308 (Minn. 1989)9

Hunt v. Nev. State Bank, 285 Minn. 77, 172 N.W.2d 292 (1969).....7

J.F. Anderson Lumber Co. v. Myers, 296 Minn. 33, 206 N.W.2d 365 (1973)22

Kersten v. Minn. Mut. Life Ins. Co., 608 N.W.2d 869 (Minn. 2000)8

Kopio’s, Inc. v. Bridgeman Creameries, Inc., 79 N.W.2d 921 (Minn. 1956) ...1, 11

Lipka v. Minnesota School Employees Ass’n Local 1980,
550 N.W.2d 618 (Minn. 1996).....21

Ly v. Nystrom, 615 N.W.2d 302 (Minn. 2000)8

Martinco v. Hastings, 265 Minn. 490, 122 N.W.2d 631 (1963)22

Marzitelli v. City of Little Canada, 582 N.W.2d 904 (Minn. 1998)6

McGowan v. Our Savior’s Lutheran Church, 527 N.W.2d 830 (Minn. 1995)1, 6

Morris v. American Fam. Mut. Ins. Co., 386 N.W.2d 233 (Minn. 1986)24

Occhino v. Grover, 640 N.W.2d 357 (Minn.Ct.App. 2002), rev. denied (Minn.
May 28, 2002)8

Ortiz v. Gavenda, 590 N.W.2d 119 (Minn. 1999)1, 14, 15, 16

Pederson v. American Lutheran Church, 404 N.W.2d 887 (Minn.Ct.
App. 1987), pet. for rev. denied (Minn. June 30, 1987).....5

Podvin v. Jamar Co., 655 N.W.2d 645 (Minn.Ct.App. 2003)1, 5, 13

R.B. Thompson, Jr. Lumber Co. v. Windsor Dev. Corp., 383 N.W.2d 363,
rev. denied (Minn. May 21, 1995)8, 19

Rinn v. Transit Cas. Co., 332 N.W.2d 357 (Minn. 1982)24

Ryan Contracting, Inc. v. JAG Investments, Inc., 634 N.W.2d 176
(Minn. 2001).....15

<u>Seiz v. Citizens Pure Ice Co.</u> , 207 Minn. 277, 290 N.W. 802 (1940).....	21
<u>Stabs v. City of Tower</u> , 40 N.W.2d 362 (Minn. 1949).....	21
<u>Stanek v. A.P.I., Inc.</u> , 474 N.W.2d 829 (Minn.Ct.App. 1991), <u>rev. denied</u> (Minn. Oct. 31, 1991).....	7
<u>State v. Murphy</u> , 545 N.W.2d 909 (Minn. 1996).....	21
<u>State ex rel. Farrington v. Rigg</u> , 259 Minn. 483, 107 N.W.2d 841 (1961)	5-6
<u>Tereault v. Palmer</u> , 413 N.W.2d 283 (Minn.Ct.App. 1987), <u>rev. denied</u> (Minn. Dec. 18, 1987)	22
<u>Tuma v. Comm’r of Econ. Sec.</u> , 386 N.W.2d 702 (Minn. 1986)	7, 8
<u>Vlahos v. R&I Constr. of Bloomington, Inc.</u> , 676 N.W.2d 672 (Minn. 2004).....	12

Minnesota Statutes

Minn.Stat. §5.25.....	11
Minn. Stat. §300.59	19
Minn. Stat. §302A.001	9
Minn. Stat. §302A.161.....	9
Minn. Stat. §302A.701	10
Minn.Stat. §302A.711	10
Minn. Stat. §302A.725	10
Minn. Stat. §302A.727	10,15
Mnn.Stat. §302A.729.....	15
Minn. Stat. §302A.7291	1, 2, 5, 10, 11, 12, 15, 16, 17
Minn. Stat. §302A.781	1, 11, 12, 14, 18, 19, 20

Minn. Stat. §327A.0112, 19

Minn. Stat. §541.12.....15

Minn. Stat. §573.02.....15

Minn. Stat. §645.168, 9, 19

Minn. Stat. §645.178, 19

Minnesota Rules

Minn.R.Civ.P. 10.03.....4

Minn.R.Civ.P. 12.02.....5

Minn.R.Civ. P. 12.08.....6

Minn.R.Civ.App.P. 103.03(e)6

Minn.R.Evid. 41123

Other Authorities

2003 Minn. Sess. Law Serv. 1st Sp. Sess. Ch. 8 (S.F. 10)(WEST)20

STATEMENT OF THE ISSUES

Whether Appellants' claims against Respondent, a dissolved corporation, are barred as a matter of law under Minn.Stat. §302A.7291 since the claims were not brought within two years from the date that Respondent filed its notice of intent to dissolve.

The trial court held in the negative. The Court of Appeals reversed and dismissed Appellants' claims.

Authorities:

Minn. Stat. §302A.7291, subd. 3

Minn. Stat. §302A.781, subd. 1

Kopio's Inc. v. Bridgeman Creameries, Inc., 79 N.W.2d 921 (Minn. 1956)

Whether Appellants' claims against a dissolved, non-existent corporation are barred due to lack of personal jurisdiction and lack of subject matter jurisdiction.

The trial court held in the negative. The Court of Appeals reversed and held that Appellants' claims were barred for lack of personal jurisdiction.

Authorities:

Minn.Stat. §302A.7291

McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830 (Minn. 1995)

Ortiz v. Gavenda, 590 N.W.2d 119 (Minn. 1999)

Podvin v. The Jamar Co., 655 N.W.2d 645 (Minn. Ct.App. 2003)

STATEMENT OF THE CASE

Todd and Leiser Homes, Inc. (hereafter referred to as "TLH") was, at one time, a Minnesota corporation. In approximately 1993, TLH served as the general contractor for the construction of a home located at 300 Lady Slipper in Vadnais Heights, Minnesota, which home was subsequently purchased by Arturo and Kristi Camacho in July 1999.

TLH ceased doing business and, pursuant to procedures set forth in Minnesota law, filed a Notice of Intent to Dissolve with the Minnesota Secretary of State in April 1997. Articles of Dissolution and a Certificate of Dissolution were filed in May 1999.

In September 2003, *more than six years* after TLH filed its Notice of Intent to Dissolve, the Camachos initiated a lawsuit naming TLH as a defendant and alleging that TLH was negligent and/or that it breached statutory warranties relative to the construction of the home.

Pursuant to Minn.Stat. §302A.7291, a claim against a dissolved corporation is barred unless it is brought within two (2) years after the date that a Notice of Intent to Dissolve is filed. Based on the undisputed facts, TLH submitted a motion to dismiss the Camachos' claims pursuant to Minn.Stat. 302A.7291. The Ramsey County District Court, the Honorable Gary Bastian, denied TLH's motion. On appeal, the Minnesota Court of Appeals reversed the trial court decision and dismissed the Camachos' claims finding that the claims were untimely under the corporate

dissolution statutes and barred due to lack of jurisdiction. The Camachos petitioned for review in this Court.

STATEMENT OF FACTS

Todd and Leiser Homes, Inc. was, at one time, a corporation created and organized under Minnesota law. (A.25-A.27) In 1993, TLH acted as general contractor during the construction of a residential home located at 300 Lady Slipper in Vadnais Heights, Minnesota (hereinafter referred to as the "Home"). (A.2-A.3)

One of the owners of TLH subsequently retired and the other owner entered the seminary. (See Transcript of Proceedings on file with Court, at p. 3) On April 29, 1997, TLH filed a Notice of Intent to Dissolve with the Minnesota Secretary of State. (A.25) Articles of Dissolution were filed with the State on May 6, 1999. (A.27) At that time, the Secretary of State issued a Certificate of Dissolution. (A.26)

The Camachos purchased the Home in July 1999 and allege that they subsequently discovered moisture intrusion in the Home. (A.3) On September 23, 2003, the Camachos served Robert Todd, a former officer of TLH, with a Summons and Complaint alleging claims of negligence and breach of statutory warranties against the dissolved corporation. (A.77; see also Appendix of Appellant Todd and Leiser Homes submitted to Court of Appeals, at A017) No prior notice or claim had been submitted by the Camachos from 1999 through September 2003.

The Camachos initiated their lawsuit more than six (6) years after TLH's Notice of Intent to Dissolve was filed with the Secretary of State. (A.1-A.9; A.25) In an Answer to the Complaint, TLH alleged lack of personal jurisdiction, lack of subject matter jurisdiction, insufficient service of process, and also alleged that the Camachos' claims were barred due to the corporation's dissolution. Todd and Leiser Homes, Inc. appended and incorporated by reference various documents to its Answer, including its Notice of Intent to Dissolve, Articles of Dissolution, and Certificate of Dissolution. (A.18-A.27)¹

TLH filed a motion to dismiss the Camachos' claims pursuant to the provisions of Minnesota's corporate dissolution statutes, including Minn.Stat. 302A.7291, which bar claims submitted more than two years after a corporation's Notice of Intent to Dissolve is filed. (A.9-A.15, A.53-A.68) The Honorable Gary Bastian denied TLH's motion by Order and Memorandum dated February 5, 2004. Judgment was entered on the Order on February 19, 2004. (A.68-A.70) TLH appealed, and the Minnesota Court of Appeals reversed the trial court decision and dismissed the Camachos' claims for lack of jurisdiction based on the corporation's dissolution. (A.71-A.71; A.73-A.81) The Camachos submitted a petition for review in this Court which was granted on March 15, 2005. (A.82)

¹ Pursuant to Minn.R.Civ.P. 10.03, "[a] copy of any written instrument which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading."

ARGUMENT AND AUTHORITIES

The Court of Appeals properly dismissed the Camachos' claims against the dissolved corporation formerly known as Todd and Leiser Homes, Inc. Since the dissolved corporation no longer exists, it does not have the capacity to be sued or to be served with process. Additionally, the Camachos did not commence their claims within two years after notice of corporate dissolution as required by Minn.Stat. §302A.7291. Accordingly, the court lacks personal and subject matter jurisdiction. For these reasons, the decision of the Court of Appeals must be affirmed.

I. APPLICABLE STANDARDS OF REVIEW

A. Motion to Dismiss.

A party may move to dismiss a claim for lack of jurisdiction over the person, insufficient service of process, or lack of subject matter jurisdiction. Minn.R.Civ.P. 12.02(a), 12.02(b), and 12.02(d). Motions under Rule 12 "test only the legal sufficiency of the pleadings." Pederson v. American Lutheran Church, 404 N.W.2d 887, 889 (Minn.Ct.App.1987), pet. for rev. denied (Minn. June 30, 1987). Generally, the court may not consider extrinsic evidence on a motion to dismiss. Minn.R.Civ.P. 12.02.

B. Subject Matter Jurisdiction.

Whether a court has subject matter jurisdiction is a legal issue. Podvin v. Jamar Co, 655 N.W.2d 645, 648 (Minn.Ct.App. 2003). The issues of subject matter jurisdiction cannot be waived. State ex rel.

Farrington v. Rigg, 259 Minn. 483, 485, 107 N.W.2d 841, 842 (1961). The lack of subject matter jurisdiction may be raised at any time, even on appeal. Marzitelli v. City of Little Canada, 582 N.W.2d 904, 907 (Minn. 1998); Minn.R.Civ. 12.08(c) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”) Appellate courts review determinations of subject matter jurisdiction de novo. Bisbee v City of Fairmont, 593 N.W.2d 714, 717 (Minn.Ct.App. 1999).

An order denying summary judgment is immediately appealable when dismissal is sought based on the district court’s lack of subject matter jurisdiction. Minn.R.Civ.App.P. 103.03(e); McGowan v. Our Savior’s Lutheran Church, 527 N.W.2d 830, 833 (Minn. 1995). Such cases fall into “that small class which finally determine claims of right, separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” Id. at 833 (quoting Mitchell v. Forsyth, 472 U.S. 511, 524-25 (1985)(quoting Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949)). No purpose is served by putting the court and the parties “through the rigors of a trial” before the determination of subject matter jurisdiction is made. McGowan, 527 N.W.2d at 833.

C. Personal Jurisdiction.

The determination of whether personal jurisdiction exists is a question of law, and the appellate court need not defer to the trial court's decision. Stanek v. A.P.I., Inc., 474 N.W.2d 829, 832 (Minn.Ct.App. 1991), rev. denied (Minn. Oct. 31, 1991). An order denying a motion to dismiss for lack of personal jurisdiction is appealable as a matter of right. Id. at 831; see also Hunt v. Nev. State Bank, 285 Minn. 77, 88, 172 N.W.2d 292, 299-300 (1969). The determination of whether a summons and complaint is properly served is a jurisdictional question of law. Amdahl v. Stonewall Ins. Co., 484 N.W.2d 811, 814 (Minn.Ct.App.1992)(citations omitted), review denied (Minn. July 16, 1992). "The party seeking to establish the court's *in personam* jurisdiction carries the burden of proof, and the burden does not shift to the party challenging jurisdiction." Epps v. Stewart Information Services Corp., 327 F.3d 642, 647 (8th Cir. 2003)(citations omitted). An appellate court may decide an issue not decided by the trial court if the issue disposes of the entire controversy and neither party benefits from having the district court decide the issue. Harms v. Independent School District No. 300, 450 N.W.2d 571, 577 (Minn. 1990).

D. Statutory interpretation.

Interpretation of a statute is a legal question. Brookfield Trade Ctr., Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998). The goal in reading a statute is to effectuate the purpose of the legislature. Tuma v. Comm'r of Econ. Sec., 386 N.W.2d 702, 706 (Minn. 1986), see also

Minn.Stat. 645.16 (2002). When statutory language is not reasonably susceptible to more than one interpretation, a court must give effect to its plain meaning as a manifestation of legislative intent. Kersten v. Minn. Mut. Life Ins. Co., 608 N.W.2d 869, 874-75 (Minn. 2000); see also Tuma, 386 N.W.2d at 706. If the legislative intent "is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." Am. Tower, LP v. City of Grant, 636 N.W.2d 309, 312 (Minn. 2001); see also Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002); Minn. Stat. 645.16 (2002); Occhino v. Grover, 640 N.W.2d 357, 359 (Minn.Ct.App. 2002), rev. denied (Minn. May 28, 2002).

When interpreting a statute, a court must focus on the words of the statute to ascertain and effectuate the intention of the legislature. Minn.Stat. 645.16 (2004). In ascertaining the intention of the legislature, there is a presumption that "[t]he legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn.Stat. 645.17 (2002). A court should not read into a statute what the legislature has left out. Ly v. Nystrom, 615 N.W.2d 302, 315 (Minn. 2000).

If a statute's unambiguous language merely produces a troubling result, the Court must apply it without reference to its drafting history. See R.B. Thompson, Jr. Lumber Co. v. Windsor Dev. Corp., 383 N.W.2d 362, 366-67 (Minn.Ct.App. 1986)(deciding the court must follow a statute's

unambiguous language despite its propensity to create troubling results), rev. denied (Minn. May 21, 1995). "When the words of a law * * * are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing [its] spirit." Minn.Stat. §645.16.

Application of a statute to the undisputed facts of a case involves a question of law. Boubelik v. Liberty State Bank, 553 N.W.2d 393, 402 (Minn. 1996). A reviewing court need not defer to the district court's application of the law when the material facts are not in dispute. Hubred v. Control Data Corp., 442 N.W.2d 308, 310 (Minn. 1989).

II. THE COURT LACKS JURISDICTION OVER THE DISSOLVED CORPORATION FORMERLY KNOWN AS TODD AND LEISER HOMES, INC. AND OVER THE CAMACHOS' CLAIMS WHICH ARE BARRED UNDER MINN.STAT. §302A.7291.

Todd and Leiser Homes, Inc. was, at one time, a corporation as defined under Minnesota law. See generally Minn.Stat. §302A.001 et seq. ("Minnesota Business Corporation Act"). As a corporation, TLH was a creature of statute, and its existence was governed and limited by the Minnesota laws that allow for a corporation's creation and its dissolution. See id. While the corporation existed, TLH had only those limited powers and authority allowed by applicable Minnesota statutes, including the capacity to sue and to be sued. See generally Minn.Stat. §302A.161, subds. 1 and 3.

Under Minnesota law, a corporation may also voluntarily dissolve and end its corporate existence. See generally Minn.Stat. §302A.701 and .711 (2002)².

The corporation formerly known as Todd and Leiser Homes, Inc. filed its Notice of Intent to Dissolve on April 29, 1997. (A.25) Prior to dissolution, the corporation paid all of its known creditors and claimants. (A.27) The Articles of Dissolution were filed on May 6, 1999. (Id.) No notice was given to creditors pursuant to Minn. Stat. §302A.727 since “[a]ll known debts, obligations, and liabilities of the corporation had “been paid and discharged.” (Id.)

The Minnesota Secretary of State issued a Certificate of Dissolution on May 5, 1999 stating that “...**the corporation is hereby dissolved and its corporate existence is terminated as of this date....**” (A.26)

A claim against a dissolved corporation is purely statutory. Minn.Stat. §302A.7291. The right to bring such a claim is provided by statute.³ Accordingly, when the corporation formerly known as Todd and

² The corporate dissolution statutes were enacted in 1981 and have been amended several times since then. See Minn.Stat. §302A.701 et seq. A corporation may dissolve with or without giving notice to known creditors or claimants. See generally 302A.725, 302A.727, and 302A.7291.

³ Not only are the Camachos’ claims barred by Minnesota’s corporate dissolution laws, but there also is no method for serving process or obtaining personal jurisdiction on Respondent since the corporation dissolved long ago and no longer exists. The Camachos attempted service by delivering a summons and complaint to a former officer of the

Leiser Homes, Inc. dissolved, its capacity to be sued was limited by the provisions of Minnesota law. See Minn.Stat. 302A.7291. Minnesota Statutes §302A.7291, subd. 3 provides as follows:

If the corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or **claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.**

Minn. Stat. §302A.7291, subd. 3(a)(emphasis and underscoring added).

As has been stated by this Court, “...*in the absence of statutory extension, all such powers of a corporation abate at the end of the corporate existence, including the power to sue and be sued.*” Kopio’s Inc v. Bridgeman Creameries, Inc., 79 N.W.2d 921 (Minn. 1956)(emphasis added); see also Minn.Stat. §302A.781.

The language contained in the dissolution statutes is clear and unambiguous. The statutes set forth a clear *jurisdictional statute of limitations* for claims against dissolved corporations which requires that all

corporation, which is ineffective. (A.77) Minnesota Statute §5.25, subd. 5(b) states, in part, “If a business entity has voluntarily dissolved...service must be made according to subdivision 3 or 4 [by serving the Office of the Secretary of State], **so long as claims are not barred under the provisions of the chapter that governed the business entity.**” Id. Here, not only have the Camachos never attempted service through the Secretary of State, but even if they had, this method is ineffective since the Camachos’ claims are barred due to their failure to submit a claim within 2 years after Respondent’s Notice of Intent to Dissolve was filed pursuant to Minn.Stat. §302A.7291. (A.77)

claims against a dissolved corporation must be brought within two (2) years from the date that the corporation filed its Notice of Intent to Dissolve. See Minn. Stat. §302A.7291, subd. 3(a).

The statute bars all claims that are not brought within the two-year period, including those made by someone who becomes a creditor or claimant at any time after the dissolution.⁴ Subdivision 1 of Minn.Stat. §302A.781 specifically states that:

...a creditor or claimant whose claims are barred under section 302A.727, 302A.7291, or 302A.759 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

Id. (emphasis and underscoring added).

Here, compliance with the two-year time limit in Minn.Stat. §302A.7291 was a condition precedent to the Camachos' right to bring a claim against the dissolved corporation formerly known as Todd and Leiser Homes, Inc. In addition, a claim for alleged breach of statutory warranty under Minn.Stat. §327A.01 et seq. begins to run when the homeowner "discovered the builder's refusal or inability to ensure that the home is free from major construction defects." See Vlahos v. R&I Constr. of Bloomington, Inc., 676 N.W.2d 672, 678 (Minn. 2004). Todd and Leiser

⁴ The exception for claimants who, within one year after the articles of dissolution have been filed, can demonstrate good cause for failing to file a claim earlier is not applicable since the Camachos did not bring a claim during the one-year period despite the fact that they owned the home during that time. Minn.Stat. 302A.781, subd. 2; see A.3.

Homes, Inc. filed its Notice of Intent to Dissolve with the Minnesota Secretary of State's Office in 1997. The dissolution documents were, at all times part of the public record and available to the public including the Camachos. Despite this, the Camachos did not attempt to submit a claim until more than six (6) years after the corporation had dissolved and it no longer had the ability to conduct any type of business. Having failed to comply with the statute, the Camachos' claims are barred.

This Court has strictly construed time limits for asserting claims against dissolved corporations. For example, in Abad v. ISCO, Inc., 537 N.W.2d 620 (Minn. 1995), reh'g denied (Oct. 31, 1995), this Court reversed the Court of Appeals decision and held that there was no "good cause" for the plaintiffs' failure to sue during the two-year period after ISCO, Inc. filed its notice of intent to dissolve. Id. Other Minnesota courts have similarly held that claims brought more than two (2) years after notice of corporate dissolution are barred. See Podvin v. The Jamar Company, 655 N.W.2d 645, 649 (Minn.Ct.App. 2003)(holding that claims asserted 16 years after corporation's voluntary dissolution were barred); see also Onan Corp vs. Industrial Steel Corp., 770 F.Supp. 490 (D.Minn. 1989)(holding corporation had no capacity to be sued after expiration of statutory time period following date when it filed certificate of voluntary dissolution and stating that corporation is rendered legally dead by the dissolution and cannot be

resurrected despite the important policy goals underlying CERCLA or MERLA).

Minnesota courts have stated that corporations should be allowed “to die a natural death” rather than extending corporate accountability in perpetuity. Onan Corp. v. Indus. Steel Corp., 770 F.Supp. 490, 493-95 (D.Minn. 1989). The statutes state that “[t]he goal of every dissolution. . . is to end the corporate existence as quickly and neatly as possible.” Minn.Stat. 302A.781 gen. cmt. (West 1985). The legislative comments further provide that “[b]arring claims filed after dissolution serves to promote certainty and timely filing of claims.” Id.

As stated by the United States Supreme Court in Oklahoma Natural Gas Co. v. State of Oklahoma:

[C]orporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authority for the prolongation. The matter is not really procedural or controlled by the rules of the court in which the litigation pends. It concerns the fundamental law of the corporation enacted by the state which brought the corporation into being.

273 U.S. 257, 259-60, 47 S.Ct. 391, 392, 71 L.Ed. 634 (1927).

Moreover, “[l]imitation periods in a statutorily-created cause of action are jurisdictional.” See Ortiz v. Gavenda, 590 N.W.2d 119, 122 (Minn. 1999). Failure to follow the statutory procedures acts as a jurisdictional bar to pursuing such claims, similar to the jurisdictional limitation imposed upon the courts of Minnesota pursuant the terms of the Wrongful Death

Act, Minn. Stat. 573.02 et seq. See, e.g., Berghuis v. Korthuis, 228 Minn. 534, 37 N.W.2d 809 (1949); Cashman v. Hedberg, 215 Minn. 463, 10 N.W.2d 388 (1943).

Minnesota courts have repeatedly held that the statutory prerequisites in a statutorily-created cause of action must be strictly complied with or else the legal right to bring the claim is extinguished.⁵ For example, in Ortiz v. Gavenda, 590 N.W.2d 119 (Minn. 1999), this Court held that the failure to appoint a trustee during the statutory three-year time limit as required under Minn.Stat. 573.02 precluded a wrongful death action.⁶ This Court stated that the 3-year period during which a wrongful

⁵ The statute undisputedly provides that any claim that has not been filed within the prescribed two-year period is barred *as a matter of law*. The Legislature clearly intended that the two-year period between a corporation's filing of its Notice of Intent to Dissolve and the Articles of Dissolution and Certificate of Dissolution was sufficient notice for any known or potential claimant or creditor. See Minn.Stat. §302A.727. This intent is verified by the legislative comments stating that the "longer period is permitted" in those instances because, among other things, a "creditor **may not even be aware of the imminent dissolution of the debtor corporation. Even these claims must be settled; after two years have expired from the filing of notice of intent to dissolve, the claim will be barred.**" Minn.Stat. 302A.729, gen. cmt. (repealed; replaced by 302A.727). Such claims are barred "in the interests of certainty." Id.

⁶ Minnesota courts have similarly required strict compliance with the one-year limitation period relating to creation of mechanics' liens as set forth in Minn.Stat. 541.12, subd. 3 (2002). If the statutory requirements are not met, any cause of action ceases to exist at the end of the year. See, e.g., Ryan Contracting, Inc. v. JAG Investments, Inc., 634 N.W.2d 176 (Minn. 2001)(holding that statutory one-year time limit for filing complaint and service of defendant/landowner are strictly construed).

death claim may be brought “is not an ordinary statute of limitations. It is considered a condition precedent to the right to maintain the action, and the lapse of such period is an absolute bar. It conditions the right.” Id. at 122.

TLH ceased to exist in 1999 when its Articles and Certificate of Dissolution were issued. After TLH dissolved, it no longer had the capacity to be sued. As a result, the Camachos’ claims are nothing more than an attempt to “breathe life into a claim that has never been anything more than a nullity.” Ortiz, 590 N.W.2d at 123. To hold otherwise would not only invalidate the corporation’s dissolution but would also improperly extend the life of the corporation contrary to the purpose and intent of the provisions of Minnesota’s Business Corporation Act.

In addition, the Camachos did not submit a claim until 2003, **more than six years after** the date when TLH filed its Notice of Intent to Dissolve with the Minnesota Secretary of State. The right to bring a claim against a dissolved corporation is governed by Minnesota’s Business Corporation Act, the law under which the corporation was created. Here, the court lacks jurisdiction to hear the Camachos’ claims since they were not submitted within the two-year period authorized by Minn. Stat. §302A.7291. See Ortiz v. Gavenda, 590 N.W.2d 119 (Minn. 1999).

Based on the clear language and intent of the corporate dissolution statutes, the Camachos have attempted to sue a corporation that no longer

exists. Thus, their claims are a nullity and cannot be adjudicated by the courts as a matter of law. For these reasons, this Court should affirm the dismissal of the Camachos' claims.

III. THERE IS NO CONFLICT BETWEEN THE CORPORATE DISSOLUTION STATUTES AND THE HOME WARRANTY STATUTES.

In the lower courts, the Camachos have argued that the language of the corporate dissolution statutes as well as the legislative mandates set forth in Minn.Stat. §302A.7291 should be disregarded. The Camachos argued that the home warranty statutes should “trump” the clear limitations mandated by the corporate dissolution laws so that they can pursue time-barred claims against a non-existent entity that dissolved more than six (6) years ago.

Contrary to the Camachos' and the Amicus arguments, the corporate dissolution and home warranty statutes do not conflict. The Minnesota Business Corporation Act permits claims (including warranty claims) to be submitted against existing and dissolving corporations. However, claims against a dissolving corporation must be submitted within two years after notice of corporate dissolution. Minn.Stat. §302A.7291. It is only now, after they have failed--without good cause--to comply with the statute, that the Camachos seek to disregard it. The Legislature could have, but did not, provide an exception or a longer period for claims that are unknown, stale, and clearly time-barred. When examining the nature

and purpose of the corporate dissolution statutes which were enacted in 1981⁷, four years after the home warranty statutes, it is clear that the Legislature did not include and did not intend to create an exception to the two-year limitation period for homeowner or warranty claims.

Had the Legislature intended to provide limitations, exceptions, or extension to the 2-year period of limitations for claims against dissolved corporations (e.g., that the statute would not apply to negligence, breach of contract, or warranty claims), it would have done so. The dissolution statutes do not contain any exceptions allowing an extension of time for claims by homeowners, statutory warranty claims, or claims against dissolved home builders.

Rather, the clear and stated purpose of the corporate dissolution statutes is to allow corporations to have a finite end to their existence. The statutes' intent is stated as follows: "[t]he goal of every dissolution...is to end the corporate existence as quickly and neatly as possible." Minn.Stat. §302A.781 gen. cmt. (West 1985). The legislative comments further provide that "It is in the interests of all parties to the dissolution to provide some incentive for creditors and claimants to file their claims at the time that other claims are being processed. . . . Barring claims filed after dissolution serves to promote certainty and timely filing of claims." *Id.* Minnesota courts have stated that corporations should be allowed "to die a

⁷ Minnesota's business corporation laws were initially enacted in 1933.

natural death” rather than extending corporate accountability in perpetuity. Onan Corp. v. Indus. Steel Corp., 770 F.Supp. 490, 493-95 (D.Minn. 1989)(corporation had no capacity to be sued three years after date when it filed certificate of voluntary corporate dissolution).⁸

The home warranty statutes are not “more specific” than the corporate dissolution statutes. In fact, the warranty statutes do not contain any provisions relating in any way to or extending claims against corporations or dissolved corporations.

The home warranty statutes set forth in Minn.Stat. §327A.01 et seq. were enacted in 1977. When the legislature enacts or amends a statute, such as the corporate dissolution statutes at issue here that were enacted in 1981, it is presumed that the legislature is aware of and takes into consideration the provisions of existing statutes, including the home warranty statutes.

Despite other amendments, at no time has the Minnesota Legislature prolonged a dissolved corporation’s existence in order to allow

⁸ Former Minnesota statutory provisions (i.e., Minn.Stat. §300.59) continued the existence of the corporation and permitted suits for three years following dissolution. However, in 1981, the Legislature repealed the former statutes and enacted the current laws that shortened the time period because “extending the corporate existence for three years after dissolution does not promote” the goal of “end[ing] the corporate existence as quickly and neatly as possible.” Minn.Stat. §302A.781, 1981 Reporter’s Notes and General Comment.

time-barred warranty, negligence, or other claims by homeowners.⁹ In fact, none of the recent amendments to the home warranty statutes suggested or included any provisions relating to claims against dissolved corporations. See 2003 Minn. Sess. Law Serv. 1st Sp. Sess. Ch. 8 (S.F. 10)(West). Likewise, despite numerous amendments to the corporate dissolution laws, the Legislature has not at any time created exceptions for homeowners who fail to follow the law and who fail to assert a claim against a dissolved corporation in a timely manner.

If this Court were to adopt the Camachos' arguments, it would be undertaking to resurrect a dissolved corporation whose existence has long been nullified by law.

In the lower courts, the Camachos also argued that the courts should not adopt TLH's arguments because "it would be insane for any builder henceforth to do anything other than incorporate, build one home, and dissolve; ... reincorporate, build another home...." First of all, there is *no evidence* in this case supporting the Camachos' unfounded and specious hypothesis in relation to TLH.¹⁰ By asking this Court to render a

⁹ Other than the one-year good cause exception set forth in Minn.Stat. §302A.781, subd. 2 which is inapplicable because it is undisputed that the Camachos did not submit a claim within the one-year period following dissolution.

¹⁰ At the time of the motion hearing, the Camachos did not submit any evidence to rebut the propriety of TLH's dissolution nor is there any basis for a claim of fraud in relation to the dissolution. "In the absence of fraud, a

decision based on hypothetical and speculative facts and theories that have no factual basis or relationship to the pending case, the Camachos seek the issuance of an advisory opinion. See State vs. Murphy, 545 N.W.2d 909, 917 (Minn. 1996)(issues that are hypothetical are not justiciable); Seiz v. Citizens Pure Ice Co., 207 Minn. 277, 281, 290 N.W. 802, 804 (1940)(judicial function does not comprehend the giving of advisory opinions); Lipka v. Minnesota School Employees Ass'n Local 1980, 550 N.W.2d 618, 622 (Minn.1996)(declining to give advisory opinion on issues unnecessary to resolution of controversy in question). Moreover, the court should not impose rules that the Legislature did not in an area which is a creature of statute. See Stabs v. City of Tower, 40 N.W.2d 362, 371 (Minn. 1949).

TLH discontinued its business when one of its officers decided to retire and the other went into the seminary. (See Transcript of Proceedings from January 27, 2004 on file with the Court, at p. 3) TLH dissolved in accordance with Minnesota law in 1999 and has not continued to do business in any form or manner.¹¹

corporation should be able to rely on the promise” of the dissolution statute that adhering to the statutorily defined procedures for dissolution will protect against claims that arise years after dissolution. Onan, 770 F.Supp. at 495.

¹¹ In situations where the facts support such as argument (unlike here), there is a body of Minnesota law that sets forth the circumstances under which successor corporations may be held liable for actions of a

The Camachos urge this Court to reach a decision contrary to Minnesota law. If the Camachos believe that a law should be changed, the change must come from the Legislature. See Martinco v. Hastings, 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963); Tereault v. Palmer, 413 N.W.2d 283, 286 (Minn.Ct.App. 1987), rev. denied (Minn. Dec. 18, 1987). Therefore, the Camachos' public policy arguments are more appropriately addressed to the Legislature--not this Court.

For these reasons, this Court must affirm the decision of the Court of Appeals and dismiss the Camachos' claims in their entirety.

IV. THE EXISTENCE OF ANY POTENTIAL INSURANCE IS IRRELEVANT IN DECIDING WHETHER CAMACHOS HAVE A VIABLE CLAIM AGAINST A DISSOLVED CORPORATION.

It is undisputed that TLH was properly dissolved and can no longer be sued under Minnesota law. Nevertheless, the Camachos have argued in the lower courts that they should be entitled to proceed with a time-barred claim against the dissolved, non-existent corporation to the extent

predecessor corporation, including (1) where the purchaser expressly or impliedly agrees to assume such debts; (2) where the transaction amounts to a consolidation or merger of the corporation; (3) where the purchasing corporation is merely a continuation of the selling corporation; and (4) where the transaction is entered into fraudulently in order to escape liability for such debts. J.F. Anderson Lumber Co. v. Myers, 296 Minn. 33, 37-38, 206 N.W.2d 365, 368-69 (1973).

that there may have been insurance in effect at the time of the original construction of their home.¹²

Not only is any issue relating to potential insurance coverage irrelevant, but it is also inadmissible under Minn.R.Evid. 411.

In short, Camachos seek permission not only to pursue a void lawsuit against a dissolved corporation, but also permission to circumvent Minnesota's long-standing prohibition against direct action lawsuits against a third-party insurance company.

It is undisputed that the Camachos are not, and have never been, a named insured under any insurance policy that may have been issued to TLH. The Camachos are not even the original homeowners who contracted with TLH to build the home. They have no privity with any purported insurer for TLH and have no interest or claim, whether contractual or legal, to any policy that may have been previously issued to the now defunct corporation.

Minnesota courts have refused to recognize the type of direct action against a third-party's insurer as the Camachos request this Court to sanction. The Camachos possess no direct cause of action against any

¹² It should be noted that, contrary to the Camachos' statements to this Court and the Court of Appeals, the Camachos did not submit any discovery requesting insurance information prior to the trial court's Order relating to Todd and Leiser Homes, Inc.'s motion to dismiss. (See Respondents' Brief in Court of Appeals at p. 20, f.n. 5 and documents in Respondents' Appendix at RA024-RA031).

potential insurer for TLH prior to recovery of a judgment against TLH. See also Rinn v. Transit Casualty Co, 332 N.W.2d 357 (Minn. 1982); Davis v. Furlong, 328 N.W.2d 150 (Minn. 1983), and Anderson v. St. Paul Fire & Marine Ins., 414 N.W.2d 575 (Minn.Ct.App. 1987). The rule against "direct action" lawsuits was first articulated by this Court in Giovok v. Bemidji Local Bus Line, 223 Minn. 522, 523, 27 N.W.2d 273, 274 (1947). This Court rejected the idea of third party privity, stating that:

"[I]t is well settled in this state that an injured third party claimant is not privity to the insurance contract and cannot sue an insurer directly for failure to pay a claim but must first obtain a judgment against the insured."

Morris v. American Family Mut. Ins.Co., 386 N.W.2d 233, 237 (Minn. 1986). Here, the only defendant named by the Camachos is a non-existent, dissolved corporation that cannot be sued under Minnesota law. Any arguments relating to the existence of any insurance are irrelevant and inadmissible and are nothing more than an attempt by the Camachos to avoid the dismissal of their claims pursuant to the unambiguous provisions of Minnesota's corporate dissolution statutes.

CONCLUSION

Based on the foregoing, Todd and Leiser Homes, Inc. requests that this Court affirm the decision of the Court of Appeals dismissing all claims asserted against the dissolved corporation with prejudice.

Dated: 5/17, 2005 Respectfully submitted,

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CERTIFICATION OF BRIEF LENGTH

The undersigned counsel for Respondent certifies that this Brief complies with the requirements of Minn.R.Civ.App.P. 132.01 in that it is printed in proportionately spaced typeface utilizing Microsoft Word 2002 and contains 4,976 words, excluding the Table of Contents and Table of Authorities.

Dated: May 17, 2005



Michelle D. Christensen (#23476X)