

June 12, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

GEOFFREY A. PARKER, as an individual and
on behalf of his marital community,

Respondent,

v.

PARKVIEW TRAILS, LLC, a dissolved
limited liability company,

Appellant,

v.

EDWARD B. GREER, as an individual and on
behalf of his marital community, and
PHUONG MINH PARKER, as an individual
and on behalf of her marital community,

Respondents.

No. 50007-8-II

UNPUBLISHED OPINION

MELNICK, J. — Geoffrey Parker brought a quiet title action against Parkview Trails, LLC, related to land (the Property) that was subject to a deed of trust in Parkview's favor. Parkview counterclaimed for judicial foreclosure of the deed of trust and also brought third party claims against the deed of trust's grantor, Edward Greer, and Parker's wife, Phuong.¹ Parkview argues that the superior court erred by granting Parker's summary judgment motion on the basis that the statute of limitations had run on a claim to enforce the obligation secured by the deed of trust and by dismissing Parkview's third party claims. Parkview also argues that the superior court should

¹ Because Geoffrey and Phuong Parker share the same last name, we refer to Phuong Parker by her first name.

have granted its request to continue the summary judgment motion and to compel responses to its discovery requests. We affirm.

FACTS

I. BACKGROUND²

A. Agreement and Deed of Trust

In 2001, Greer and Parkview's predecessor in interest³ entered into a contract (the Agreement) involving Greer selling property (the Transaction Property) to Parkview for \$2,900,000. Greer had multiple obligations under the Agreement. One of these obligations required Greer to obtain written consents from federal agencies.

The Agreement set forth detailed requirements for Greer's obligation regarding federal agency consents. The Agreement anticipated that obtaining the consents could take up to two years and cost Parkview up to \$580,000. In addition to a \$320,000 holdback from the Transaction Property's purchase price, Greer had to execute a deed of trust in Parkview's favor on the Property, a piece of land distinct from the Transaction Property. The deed of trust secured Greer's obligation to pay Parkview up to \$260,000. The \$320,000 holdback and \$260,000 secured by the deed of trust on the Property represented the maximum amount of costs Parkview would incur for federal agency consents. In no event would Greer be liable for more than \$260,000 cash.

Under the Agreement, Greer had until July 2002 to obtain the federal agency consents. Then, if he did not, Parkview could incur expenses pursuing the consents itself. If Parkview's expenses exceeded the \$320,000 holdback, Parkview had to provide "an accounting" to Greer of

² The background facts are undisputed and are taken from the evidence in support of the parties' summary judgment pleadings.

³ Parkview's predecessor in interest, Columbia Rim Construction, Inc., and Parkview will be collectively referred to as "Parkview."

its costs and fees to obtain the consents. Clerk's Papers (CP) at 122. Greer then had two weeks to pay the amount up to \$260,000 over the \$320,000 holdback. If Greer failed to do so, he was in default and Parkview could foreclose on the deed of trust.

The "1991 Lee Edna Germain Trust" later granted Parkview a deed of trust on the Property. CP at 49. The deed of trust stated that it secured the performance of Greer's obligations under the Agreement. One of Greer's agreements under the deed of trust was also to timely pay "all taxes" on the Property. CP at 130.

A "default" under the deed of trust occurred if, among other events, Greer "default[ed] in the performance of any covenant or agreement contained in the [Agreement] . . . or any other agreement securing the obligations in the" Agreement. CP at 131. Upon occurrence of an event of default and Parkview's provision of written notice to Greer, Parkview could declare all secured obligations immediately due and payable or foreclose on the Property.

B. Performance under the Agreement

In 2002, Greer and Parkview exchanged letters about Greer's obligations under the Agreement. In April, Greer asserted that he had satisfied his federal agency consent obligation, and he requested a release of responsibility. In October, Parkview disputed Greer's assertion. Referring to the Agreement, Parkview stated that it would take over responsibility for acquiring the remaining federal agency consents.

In August 2005, Greer sent Parkview another letter, requesting "the balance of funds" owed to Greer under the Agreement and demanding an accounting and release of the deed of trust. CP at 139. Parkview responded by requesting reimbursement "as soon as possible" for a total of over

\$1 million in costs. CP at 67. This amount included \$610,000 for costs related to the federal agency consents.⁴

In 2014, Greer sold the Property to Parker for \$30,000, substantially less than its tax-assessed value. The title company removed the deed of trust and “insured over it.” CP at 70. However, when Parker tried to sell the Property in 2015, the deed of trust resurfaced as an obligation on the Property, and the title company refused to “insure over” it. CP at 70.

II. LEGAL PROCEEDINGS

A. Complaint, Answers, and Discovery

In March 2016, Parker filed suit to quiet title to the Property against Parkview Trails, claiming that Greer’s obligations secured by the deed of trust had “expired.”⁵ CP at 2. Parkview answered and both alleged affirmative defenses including laches, equitable estoppel, waiver, and unclean hands and asserted counterclaims and third party claims for judicial foreclosure against Parker, Phoung, and Greer. Parkview also asserted a breach of contract claim against Greer. Parker replied by asserting the statute of limitations as an affirmative defense.

In September, Parkview served Parker with discovery requests. In October, Parker responded, stating for each request that he would not provide a substantive response because he had filed a pending summary judgment motion and a decision on his motion “could moot these discovery requests.” CP at 179-86. Also in October, Phoung and Greer filed their answers to

⁴ Parkview continued to issue billings from 2006 to 2016 to Greer with current costs and fees, although at some point Parkview was dissolved and reinstated only in 2015. The last billing was dated March 31, 2016 and totaled approximately \$1.2 million.

⁵ Parker also brought claims for slander of title and tortious interference with business relationships. He requested summary judgment only of his quiet title claim.

Parkview's third party claims. They asserted that the statute of limitations barred Parkview's claims.

B. Summary Judgment Motion and Response

A day after Parkview served Parker with discovery requests, Parker filed a summary judgment motion and argued that the deed of trust could no longer be foreclosed upon. Thus, Parker requested summary judgment quieting title to the Property and dismissing Parkview's judicial foreclosure claims against Parker and Phuong.

Parker provided his and Greer's declarations, the Agreement, and correspondence between Greer and Parkview, including the 2002 and 2005 letters from Parkview to Greer. Parker relied on the 2005 letter from Parkview to Greer as evidence that Parkview had notified Greer of his breach, so that the statute of limitations began to run no later than 2005. Because the statute of limitations had run, the deed of trust could no longer be foreclosed upon, and Parker sought a judgment quieting title against Parkview.⁶

In October, Parkview responded to Parker's summary judgment motion by arguing that under the Agreement's terms, default did not occur until Greer failed to pay a final accounting and that the final accounting had not issued until March 2016. Accordingly, Parkview argued that the statute of limitations had not run.

⁶ Parker acknowledged in his summary judgment motion that Greer and Parkview disagreed over whether Greer had satisfied his federal agency consent obligation. However, Parker argued that the dispute over whether Greer had actually breached the Agreement was immaterial to whether the statute of limitations had run. Indeed, for purposes of summary judgment only, Parker assumed that Greer had breached the Agreement.

Parkview alternatively requested a continuance of summary judgment because Parker had yet to respond to Parkview's September discovery requests.⁷ Parkview alleged that Parker might provide evidence validating Parkview's affirmative defenses.

C. Additional Motions Filed after Summary Judgment Response

Between October 5, when Parkview responded to Parker's summary judgment motion, and December 16, when the superior court entered a written order granting Parker's summary judgment motion, Parkview filed additional motions.

On October 19, Parkview filed a motion to compel Parker to produce documents and responses to Parkview's discovery requests. Parkview claimed that discovery was likely to produce evidence raising material issues of fact in support of its affirmative defenses. It alleged that Parker "purchased the Property subject to the Trust Deed or otherwise made representations or assurances at the time of the purchase [that] would bar his ability to now challenge the validity of the Trust Deed." CP at 171. And Parkview renewed its request for a CR 56(f) continuance.

On November 2, the superior court orally granted Parker's summary judgment motion.⁸ The same day, Parkview supplemented its evidence in support of the motion to compel by including documents it had obtained from the title insurance company that had insured over the deed of trust when Parker acquired the Property. This evidence included a 2015 letter from the title insurance company stating that the deed of trust "remain[ed] an encumbrance" on the Property and paying the policy limits, \$30,000, to Parker. CP at 202.

On December 13, Parkview filed a motion for reconsideration of the superior court's oral ruling granting Parker's summary judgment motion. Parkview argued that in response to a

⁷ At the time it filed the response, Parkview had yet to serve Greer with discovery requests.

⁸ Greer subsequently filed a motion to dismiss Parkview's third party claims against him.

subpoena served on October 18, the title company had provided documentation showing Greer failed to pay property taxes between 2010 and 2013 and that this documentation constituted newly discovered evidence justifying reconsideration under CR 59(a).

D. Orders

On December 16, the superior court entered a written order granting Parker's summary judgment motion and dismissing Parkview's counterclaim against Parker and third party claim against Phuong on the basis that the statute of limitations had run.⁹ As to Parkview's claims that it was entitled to further discovery from Parker before summary judgment could be granted, the superior court found that "no actions taken by [Parker] surrounding his acquisition of the Property are relevant to Parkview Trails' opposition to summary judgment." CP at 383.

The superior court also denied Parkview's motion to compel. And it dismissed Parkview's third party claims against Greer with prejudice and issued a decree quieting title to the Property.

ANALYSIS

I. SUMMARY JUDGMENT

Parkview argues that the superior court erred when it granted summary judgment on the basis that the statute of limitations had run because genuine issues of material fact existed and because judgment was not appropriate as a matter of law. We disagree.

A. Legal Principles

We review summary judgment de novo. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). In addition, when a contract presents no ambiguity and no extrinsic evidence is required to make sense of its terms, contract interpretation is a question of law, which

⁹ The superior court did not enter an order on Parkview's motion for reconsideration.

we review de novo. *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 711-12, 334 P.3d 116 (2014).

To obtain summary judgment, the moving party must show that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Ranger Ins. Co.*, 164 Wn.2d at 552; CR 56(c). Under summary judgment's burden-shifting scheme, the nonmoving party may avoid summary judgment by providing specific facts that rebut the moving party's contentions and show that there is a genuine issue of material fact. *Ranger Ins. Co.*, 164 Wn.2d at 552. "A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation." *Ranger Ins. Co.*, 164 Wn.2d at 552. We construe all facts and inferences in favor of the nonmoving party. *Ranger Ins. Co.*, 164 Wn.2d at 552.

The statute of limitations for breach of a contract is six years. RCW 4.16.040(1). The statute of limitations begins to run when a cause of action accrues, that is, "when the party has the right to apply to a court for relief." *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 575, 146 P.3d 423 (2006). RCW 7.28.300 authorizes the record owner of property to bring a quiet title action against a deed of trust when it cannot be enforced because the statute of limitations on the underlying obligation has run.

B. Summary Judgment Properly Granted

The crucial issue in this case is whether at least six years passed between the time Parkview's cause of action against Greer for breach of contract accrued and the time Parkview actually sought to enforce Greer's obligation. *See 1000 Virginia Ltd. P'ship*, 158 Wn.2d at 575. We resolve the issue by interpreting the Agreement's terms and determining when Parkview could enforce Greer's obligation.

Greer and Parkview's Agreement unambiguously set forth that if Greer failed to obtain the federal agency consents by July 2002, Parkview could incur expenses pursuing the consents. Then, if Parkview's expenses exceeded the \$320,000 holdback, Parkview had to provide Greer with "an accounting" of its costs and fees to obtain the consents. CP at 122. Greer had two weeks to pay the amount up to \$260,000 over the \$320,000 holdback. If he failed to do so, he breached his obligation, and Parkview could foreclose upon the deed of trust. The Agreement provided for Parkview to recover a maximum of \$580,000: the \$320,000 holdback from the purchase price plus the \$260,000 cash, secured by the deed of trust.

The undisputed facts show that Parkview assumed the responsibility for obtaining the federal agency consents by October 2002. At this point, Parkview acknowledged that Greer had failed to perform his federal agency consent obligation and exercised its option to incur expenses to obtain the consents.

In 2005, Parkview informed Greer that its costs to obtain the consents exceeded \$580,000: \$480,000 for interest carry costs plus over \$133,000 for consultants. Thus, in 2005, Parkview provided an accounting of agency consent-related costs and fees over the maximum consent-related amount recoverable under the Agreement. Within two weeks of Parkview's accounting to Greer, Parkview could have brought suit to foreclose upon the deed of trust if Greer failed to pay the amount in excess of \$320,000 but in no event more than \$260,000.

Because Greer failed to pay Parkview within two weeks of its 2005 accounting, by October 14, 2005, Parkview could have sought judicial foreclosure of the deed of trust.¹⁰ Accordingly, even viewed in the light most favorable to Parkview, the statute of limitations on Parkview's claim

¹⁰ We note that if Greer had been in compliance, then no cause of action would have arisen under the contract, and Parkview could not have sued to foreclose upon the deed of trust. And if Greer had been in compliance, then the deed of trust as security should have been released.

for judicial foreclosure on the deed of trust ran in October 2011. The superior court properly granted Parker's summary judgment motion.

C. Parkview's "Final Accounting" and Factual Issue Arguments

Parkview argues that Greer did not breach the Agreement until Parkview sent Greer a "final" accounting and had finished accruing federal agency consent-related costs and fees. Br. of Appellant at 23. Contrary to Parkview's argument, the Agreement did not require a "final" accounting. Rather, it unambiguously provided that the deed of trust on the Property secured "Greer's obligation to reimburse [Parkview] up to an amount of \$260,000.00" over the \$320,000 holdback from the purchase price. CP at 121. The Agreement stated that once Parkview incurred agency-related costs over \$320,000 and once Greer failed to pay within 14 days after Parkview provided him with an accounting, Greer breached the Agreement. The Agreement authorized Parkview to foreclose on the deed of trust if Greer did not pay within 14 days. Thus, Parkview's argument based upon the Agreement's language fails.

Parkview also asserts that there is a genuine issue of material fact barring summary judgment because the parties disagree over whether Greer met his federal agency consent obligation under the Agreement. But whether or not Greer actually met his federal agency consent obligation is immaterial to whether the statute of limitations ran, as outlined above. Indeed, Parker assumed for the purposes of summary judgment that Greer *had* breached the Agreement. We note that if Greer had not been in breach, then Parkview would have had to release the deed of trust because it would be owed nothing by Greer. Additionally, if Greer was in compliance with the agreement, Parkview would not have any cause of action against him for breach. Whether or not Greer in fact breached his obligation does not control whether and when the statute of limitations began running. Rather, the material facts are that Parkview thought that Greer had not met his

obligation and by October 2005, had required him to pay an amount greater than the \$260,000 secured by the deed of trust on the Property.

D. Acceleration Does Not Apply

Relying on case law about obligations to be repaid in installments, Parkview asserts that its 2005 letter was not an acceleration, so that the statute of limitations did not begin running in 2005. Greer, but not Parker, argues that Parkview accelerated Greer's obligations in 2005, such that payment in full under the deed of trust then became due. Neither party is correct: acceleration does not apply here because the deed of trust did not secure an obligation to be repaid in installments.

Acceleration applies to obligations to be repaid in installments and results in the entire remaining balance becoming due. *4518 S. 256th, LLC, v. Karen L. Gibbons, PS*, 195 Wn. App. 423, 434-35, 382 P.3d 1 (2016). When the obligee accelerates an obligation, the statute of limitations is triggered for all installments that had not previously become due. *4518 S. 256th*, 195 Wn. App. at 435.

An "installment" is a "periodic partial payment of a debt." BLACK'S LAW DICTIONARY at 916 (10th Ed. 2014). Thus an "installment debt" is one debt paid in a series of regular payments, BLACK'S LAW DICTIONARY at 489, and an "installment note" is one payable at regular intervals. BLACK'S LAW DICTIONARY at 1226. For example, in *4518 S. 256th*, the parties and the court agreed that a promissory note was an "installment" note. 195 Wn. App. at 436. That note provided for a residential loan to be repaid "in monthly installment payments" and was secured by a deed of trust that stated the borrower would repay the debt in regular periodic payments. *4518 S. 256th*, 195 Wn. App. at 428, 436.

Here, in contrast, the Agreement provided for Greer to make a one-time payment of “*the amount* that exceeds \$320,000.00 up to a maximum of \$260,000.00” to Parkview within 14 days of Parkview’s accounting of costs between \$320,000 and \$580,000. CP at 123 (emphasis added). The Agreement did not provide for Greer to make regular periodic payments to Parkview related to the federal agency consents, and accordingly, the deed of trust did not secure an obligation to be repaid in installments. Greer’s and Parkview’s discussions of acceleration are inapposite here, as is their reliance on *Weinberg v. Naher*, a case involving regular installment payments on a debt. *See* 51 Wash. 591, 591-92, 99 P.3d 736 (1909).

Parker’s arguments in support of his summary judgment motion established that there was no genuine issue of material fact and that he was entitled to judgment as a matter of law. Parkview fails to provide facts to rebut Parker’s contentions and show that there is a genuine issue of material fact or that Parker was not entitled to judgment as a matter of law. *See Ranger Ins. Co.*, 164 Wn.2d at 552. Accordingly, the superior court properly granted Parker’s summary judgment motion.

II. DENIAL OF RECONSIDERATION OF SUMMARY JUDGMENT ORDER

Parkview argues that the superior court abused its discretion when it denied Parkview’s CR 59(a)(4) motion for reconsideration¹¹ on the basis of newly discovered evidence—evidence that Greer had not paid property taxes on the Property from 2010 to 2013. We disagree.

¹¹ The superior court did not issue a separate order on reconsideration. Rather, Parkview filed its reconsideration motion after the superior court pronounced its oral ruling, and the superior court then entered a written order granting Parker’s summary judgment motion. We treat the written order granting summary judgment as an order denying reconsideration.

A. Legal Principles

We review an order on reconsideration for an abuse of discretion. *Sligar v. Odell*, 156 Wn. App. 720, 734, 233 P.3d 914 (2010). A reconsideration motion may be granted for causes “materially affecting the substantial rights” of the moving party, including “[n]ewly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced” at summary judgment. CR 59(a)(4).

As set forth above, it is well-settled that “when recovery is sought on an obligation payable by installments, the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it.” *Edmundson v. Bank of Am.*, 194 Wn. App. 920, 930, 378 P.3d 272 (2016) (quoting *Herzog v. Herzog*, 23 Wn.2d 382, 388, 161 P.2d 142 (1945)).

B. Not Material

The deed of trust obligated Greer to pay when due all taxes on the Property. Failure to perform a deed of trust obligation was an event of default. And upon occurrence of any event of default and after providing written notice, Parkview could declare all deed of trust-secured obligations immediately due and payable.

Relying on the rule that the statute of limitations runs against each installment from the time it becomes due, Parkview argues that the obligation to pay property taxes was an obligation to be repaid in installments, so that the statute of limitations to enforce the deed of trust restarted each time Greer failed to pay property taxes. Parkview’s argument fails for two reasons. First, the requirement that Greer pay property taxes on the Property was not an obligation payable in installments. Each property tax payment had to be paid as it became due; the deed of trust did not provide for any individual property tax amounts to be repaid in multiple “installments.”

Second, before Parkview could declare all Greer's obligations immediately due and payable or foreclose based upon Greer's default by failure to pay taxes, the deed of trust required that Parkview give Greer written notice of default. The record contains no evidence to support that Parkview gave Greer written notice of default under the deed of trust for failure to pay taxes, so that Parkview did not have the right to declare obligations immediately due and payable or foreclose on the deed of trust for failure to pay property taxes.¹²

For these reasons, the superior court did not abuse its discretion when it effectively denied Parkview's reconsideration motion. The superior court properly granted summary judgment; accordingly, Parkview's challenge to the superior court's order dismissing Parkview's claims against Greer also fails.¹³

III. DENIAL OF CONTINUANCE OF SUMMARY JUDGMENT

Parkview asserts that the superior court abused its discretion when it denied Parkview's CR 56(f) motion to continue summary judgment. Parkview claims that a continuance would have allowed it to obtain evidence raising material facts related to its affirmative defenses of estoppel and waiver. Parkview's arguments fail.

¹² In its reply brief, Parkview briefly asserts that Greer's sale of the property to Parker without Parkview's permission breached the deed of trust and "reinforced and confirmed" Parkview's right to foreclose on the deed of trust. Amend. Reply Br. of Appellant at 19. We do not reach this argument first raised in the reply. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(a)(6).

¹³ Parkview's argument about the dismissal of its third party claims against Greer relies entirely on its arguments that the superior court erred when it granted summary judgment in Parker's favor. Because we affirm the superior court's decision to grant summary judgment, we therefore also reject Parkview's argument and affirm the superior court's order dismissing Parkview's third party claims against Greer.

A. Legal Principles

We review denial of a CR 56(f) motion for an abuse of discretion. *Pitzer v. Union Bank of Cal.*, 141 Wn.2d 539, 556, 9 P.3d 805 (2000). Under CR 56(f), the superior court may order a continuance of summary judgment “[s]hould it appear from the affidavits of the [nonmoving party] that, for reasons stated, the party cannot present by affidavit facts essential to justify the party’s opposition.” The continuance may be “to permit affidavits to be obtained or depositions to be taken or discovery to be had.” CR 56(f). ““A court may deny a motion for a continuance when (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.”” *Pitzer*, 141 Wn.2d at 556 (quoting *Tellevik v. Real Prop.*, 120 Wn.2d 68, 90, 838 P.2d 111 (1992)).

Affirmative defenses may, in certain circumstances, be waived as a matter of law. *Teller v. APM Terminals Pac., Ltd.*, 134 Wn. App. 696, 714, 142 P.3d 179 (2006). Waiver of a defense can occur if a party’s assertion of the defense is inconsistent with that party’s previous behavior. *Teller*, 134 Wn. App. at 714. The waiver doctrine seeks to prevent the party asserting an affirmative defense from ambushing the other party during litigation either through delay in asserting a defense or misdirecting the other party away from a defense for tactical advantage. *King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002). Application of the waiver doctrine intends to prevent litigants from engaging in “trial by ambush” advocacy, including lying in wait and then obtaining a dismissal after the statute of limitations has run. *Lybbert v. Grant County*, 141 Wn.2d 29, 40, 1 P.3d 1124 (2000).

A party may be equitably estopped from asserting the statute of limitations, although Washington courts disfavor equitable estoppel. *Teller*, 134 Wn. App. at 712. The elements of equitable estoppel are

“(1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) an action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission.”

Teller, 134 Wn. App. at 712 (quoting *Peterson v. Groves*, 111 Wn. App. 306, 310, 44 P.3d 894 (2002)). “Estoppel is appropriate to prohibit a defendant from raising a statute of limitations defense when a defendant has fraudulently or inequitably invited a plaintiff to delay commencing suit until the applicable statute of limitations has expired.” *Teller*, 134 Wn. App. at 712 (quoting *Peterson*, 111 Wn. App. at 310-11). “The gravamen of equitable estoppel with respect to the statute of limitations is that the defendant made representations or promises to perform which lulled the plaintiff into delaying timely action.” *Teller*, 134 Wn. App. at 713 (quoting *Groves*, 111 Wn. App. at 311).

B. Failure To Show Desired Evidence Would Raise a Genuine Issue of Material Fact

Parkview requested a CR 56(f) continuance in order to obtain discovery on Parker’s low purchase price for the Property and the title company’s refusal to insure over the deed of trust when Parker sought to sell the Property. The superior court denied the request for a continuance, stating,

[b]ecause Mr. Parker purchased the Property in 2014, well after the statute of limitations expired, no actions taken by him surrounding his acquisition of the Property are relevant to Parkview[’s] opposition to summary judgment. There is no Washington law that an action taken several years after a statute of limitations has expired can operate, years after the fact, to remove the time bar. No additional discovery is needed.

CP at 383-84.

Related to waiver, Parkview fails to show that Parker's actions in purchasing the property for below tax-assessed value and later collecting from the title insurance company when the deed of trust resurfaced as an obligation constituted the type of ambush tactics that the waiver doctrine seeks to avoid. Parker did not lie in wait until after the statute of limitations had run and then assert the defense. The statute of limitations had already expired before Parker purchased the property from Greer. Moreover, in the letter from the title company to Parker that Parkview relies upon, it appears that Parker had argued to the title company that the deed of trust was unenforceable, consistent with his assertion that the statute of limitations had run.

As to Parkview's equitable estoppel defense, Parkview fails to point to any evidence that could show that Parkview reasonably relied on an act, statement, or admission by Parker that invited Parkview to delay commencing suit until the statute of limitations had expired. *See Teller*, 134 Wn. App at 712-13. Again, the statute of limitations had already expired before Parker purchased the Property from Greer. Further, Parkview makes no claim that Parker contacted Parkview at all until Parker initiated a lawsuit on the basis that the deed of trust was no longer enforceable.

Parkview fails to show that further discovery would allow it to obtain evidence creating a genuine issue of material fact as to whether waiver applied or that it acted in reasonable reliance on an act, statement, or admission of Parker that caused Parkview to delay bringing suit until the statute of limitations had expired. Accordingly, the superior court was within its discretion to deny Parkview's CR 56(f) continuance motion. *See Pitzer*, 141 Wn.2d at 556.

IV. DENIAL OF MOTION TO COMPEL

Parkview briefly argues that the superior court abused its discretion when it denied Parkview's motion to compel Parker to respond substantively to discovery requests. Parkview

argues that the superior court abused its discretion “for the same reasons the Superior Court erred in failing to” continue summary judgment. Br. of Appellant at 39. We disagree.

We review denial of a motion to compel for an abuse of discretion. *Lake Chelan Shores Homeowners Ass’n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn. App. 168, 183, 313 P.3d 408 (2013).

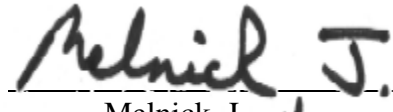
Parkview brought a motion to compel Parker to respond to its discovery requests on the basis that responses would likely lead to evidence that would support Parkview’s affirmative defenses. The superior court denied Parkview’s motion to compel. On appeal, Parkview relies upon its arguments related to denial of the motion to continue as a basis to reverse the denial of its motion to compel. Because Parkview’s continuance-related arguments fail, we reject Parkview’s challenge to the denial of its motion to compel. Parkview fails to show the superior court abused its discretion when it denied Parkview’s motion to compel.

V. CONCLUSION

The superior court properly granted Parker’s motion for summary judgment, including dismissing Parkview’s third party claim against Phuong, and effectively denied Parkview’s reconsideration motion. Accordingly, the superior court also properly dismissed Parkview’s third party claim against Greer. Further, the superior court did not abuse its discretion when it denied Parkview’s motion to compel or CR 56(f) continuance motion.

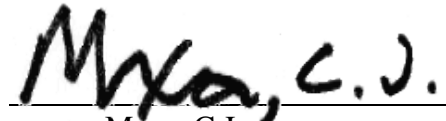
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

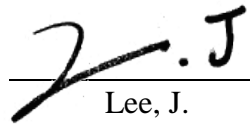


Melnick, J.

We concur:



Maxa, C.J.



Lee, J.