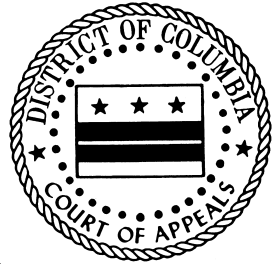


No. 23-CV-411 / No. 23-CV-412



IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Clerk of the Court
Received 11/13/2023 10:01 PM
Filed 11/13/2023 10:01 PM

MARILYN KUBICHEK,

Appellant,
2022-CAB-006101

DOROTHY BALDWIN

Appellant,
2022-CAB-006102-B

v.

UNLIMITED BIKING WASHINGTON, D.C., LLC, *et al.*,
Appellees.

On Appeal from a Final Order of the Superior Court of the District of Columbia,
Civil Division, Case Nos. 2022-CAB-006101 and 2022-CAB-006102-B,
Judge Hiram Puig-Lugo

BRIEF OF THE APPELLANTS

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LIST OF PARTIES

In compliance with District of Columbia Court of Appeals Rule 28(a)(2)(A), the Appellants certify that Marilyn Kubichek and Dorothy Baldwin were Plaintiffs in the District of Columbia Superior Court (Case Nos. 2022-CAB-006101 and 2022-CAB-006102-B) and are represented by D. Cory Bilton of Bilton Law Firm, PLLC. In compliance with Rule 28(a)(2)(B), the Appellants certify that no disclosure statement pursuant to Rule 26.1 is required.

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ASSERTION

In compliance with District of Columbia Court of Appeals Rule 28(a)(5), the Appellants assert that this appeal is from a final order of Judge Puig-Lugo of the DC Superior Court that disposed of all of their claims.

ISSUES PRESENTED

Whether Judge Puig-Lugo erred in granting Appellee Samonte's Motion to Dismiss, by ruling DC Superior Court's Emergency Covid Orders did not toll the statute of limitations for Appellants' claims.

Whether Judge Puig-Lugo erred by dismissing Appellants' claims against Defendant Unlimited Biking Washington DC, LLC when it had not moved the Court to do anything at all.

STATEMENT OF THE CASE

This case arises out of an October 11, 2019 incident where Appellants were physically injured by Appellee Samonte while he rode a Segway scooter, as part of a Segway tour run by Defendant Unlimited Biking Washington DC, LLC. App'x at 2-3, 39-40.

In March 2020, the Covid pandemic abruptly altered all our lives. In response to the Covid pandemic, starting on March 15, 2020 the DC Superior Court issued a total of 16 Orders, which, among other things, tolled the statute of limitations on claims in DC.

On December 30, 2022, Appellants filed their claims against Appellee Samonte and Defendant Unlimited Biking Washington DC, LLC in the DC Superior Court—3 years and 80 days after the incident occurred. App’x at 1, 38. At the time, Appellants’ injuries had not yet healed.

On March 8, 2023, Appellee Samonte filed his Motion to Dismiss, arguing that Appellants’ claims were time-barred by the statute of limitations. App’x at 6, 43. On March 22, 2023, Appellants filed their oppositions to Appellee Samonte’s Motion to Dismiss. App’x at 9, 45. Appellee Samonte filed a Reply on March 29, 2023. App’x at 20, 56. Defendant Unlimited Biking Washington DC, LLC was served, but never filed an Answer or a Motion of any type, nor did an attorney enter an appearance for the entity.

On April 12, 2023, Judge Puig-Lugo entered an Order granting Appellee Samonte’s Motion to Dismiss, without holding a hearing, by concluding that the tolling provided in the DC Superior Court’s Covid Orders did not apply to Appellants’ claims. App’x at 76. On May 11, 2023, Appellants noted this appeal. App’x at 36, 71.

STATEMENT OF FACTS

On the afternoon of October 11, 2019, Appellants were walking northbound on the sidewalk of 12th Street NW near the National Mall. App’x at 2, 39. Headed southbound on the same sidewalk was Appellee Samonte riding a Segway scooter

as part of a group tour operated by Defendant Unlimited Biking Washington DC, LLC. App'x at 2, 39. Appellee Samonte was unable to control his Segway scooter and physically collided with Appellants, causing them to suffer injuries, including severe burns. App'x at 3, 40.

In March of 2020, the Covid Pandemic hit the United States in full force. For the lucky among us, we endured it. We have all been deeply impacted by it. On March 15, 2020, the Chief Judge of the DC Superior Court issued an Order suspending and altering the Court's operations due to Covid. Available at <https://www.dccourts.gov/sites/default/files/Order-3-15-20.pdf>. Three days later, on March 18, 2020, the Joint Committee on Judicial Administration for the District of Columbia Courts issued an order vesting the Chief Judge of the DC Superior Court with the authority to issue orders tolling or extending all deadlines, including statutory deadlines such as statutes of limitations. March 18, 2020 Order Regarding Operation of the DC Courts During the Coronavirus Emergency (available at <https://www.dccourts.gov/sites/default/files/divisionspdfs/committee%20on%20admissions%20pdf/Joint-Committee-on-Judicial-Administration-for-the-District-of-Columbia-Courts-March-18-2020-Order.pdf>).

A. First Order

On March 19, 2020, the Chief Judge of the DC Superior Court issued the first order (“First Order”) regarding tolling of deadlines and statutes of limitations. The relevant section stated:

Suspending, Tolling, and Extending Filing Deadlines:

Unless otherwise ordered by the court, **all** deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before May 15, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency. Such deadlines and time limits may be further suspended, tolled, and extended as circumstances change.

First Order at 2 (emphasis added) (available at <https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Order-3-19-20.pdf>).

B. Second Order

On May 14, 2020, the Chief Judge of DC Superior Court issued the second order (“Second Order”) regarding tolling of statutes of limitations. There are two sections relevant to statutes of limitations for civil cases like Appellants’ cases. The first section stated:

By order issued March 18, 2020 and amended March 19, 2020, the Chief Judge ordered that all deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before May 15, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency. As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change.

Second Order at 1 (available at https://www.dccourts.gov/sites/default/files/matters-docs/Amended_Order_5-14-20_FINAL.pdf).

The second relevant section stated:

CIVIL DIVISION

Unless otherwise ordered by the court, **all** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency, except in any Civil 1 or 2 case subject to Rule 12-I of the Superior Court Rules of Civil Procedure, any suspension, tolling, or extension of the time to file any response or reply concerning a motion ends on May 15, 2020 with respect to all counsel who registered for E-filing before March 18, 2020.

Id. at 2 (emphasis added).

C. Third Order

On June 19, 2020, the Chief Judge of DC Superior Court issued the third order (“Third Order”) regarding tolling of statutes of limitations. There are two sections relevant to statutes of limitations for civil cases like Appellants’ cases. The first section stated:

By Orders issued March 18, 2020, March 19, 2020, and most recently May 14, 2020, the Chief Judge ordered that (except as otherwise specified) all deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before June 19, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency. As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change.

Third Order at 1 (available at <https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Amended-Order-6-19-20-FINAL.pdf>).

The second relevant section stated:

CIVIL DIVISION

Unless otherwise ordered by the court, **all** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency.

Id. at 2 (emphasis added).

D. Fourth Order

On August 13, 2020, the Chief Judge of DC Superior Court issued the fourth order (“Fourth Order”) regarding tolling of statutes of limitations. There are two sections relevant to statutes of limitations for civil cases like Appellants’ cases. The first section stated:

By Orders issued March 18, 2020, March 19, 2020, May 14, 2020, and June 19, 2020 the Chief Judge ordered that (except as otherwise specified) all deadlines and time limits in statutes, court rules, and standing and other orders issued by the Court that would otherwise expire before June 19, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current judicial emergency. As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change. Suspension, tolling, and extension will continue to the extent specified in this Order until at least November 9, 2020. The Court will provide at least 60 days’ notice before ending all suspension, tolling, and extension of deadlines.

Fourth Order at 1 (available at <https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Amended-Order-8-13-20-FINAL.pdf>).

The second relevant section stated:

CIVIL DIVISION

Unless otherwise ordered by the Court, **all** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the Court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency.

Id. at 3 (emphasis added). So, the Fourth Order had new language in the second paragraph of the first page assuring that “suspension, tolling, and extension” would continue into the future, until at least November 9, 2020. Id. at 1.

E. Fifth Order

On November 5, 2020, the Chief Judge of DC Superior Court issued the fifth order (“Fifth Order”) regarding tolling of statutes of limitations. There are two sections relevant to statutes of limitations for civil cases like Appellants’ cases. The first section stated:

By Orders issued March 18, 2020, March 19, 2020, May 14, 2020, June 19, 2020, and August 13, 2020, the Chief Judge ordered that (except as otherwise specified) all deadlines and time limits in statutes, court rules, and standing and other orders issued by the Court that would otherwise expire before June 19, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current judicial emergency. As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change. Suspension, tolling, and extension will continue to the extent specified in this Order until at least January 15, 2021. The Court will provide at

least 60 days' notice before ending all suspension, tolling, and extension of deadlines.

Fifth Order at 1 (available at https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Amended-Order-11-5-20_FINAL.PDF).

The second relevant section stated:

CIVIL DIVISION

Unless otherwise ordered by the Court, **all** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the Court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency.

Id. at 3 (emphasis added). The Fifth Order again assures that “suspension, tolling, and extension” will continue into the future, at least to January 15, 2021. Id. at 1.

F. Sixth Order

On January 13, 2021, the Chief Judge of DC Superior Court issued the sixth order (“Sixth Order”) regarding tolling of statutes of limitations. There are two sections relevant to statutes of limitations for civil cases like Appellants’ cases. The first section stated:

By Orders issued March 18, 2020, March 19, 2020, May 14, 2020, June 19, 2020, August 13, 2020, and November 5, 2020, the Chief Judge ordered that (except as otherwise specified) all deadlines and time limits in statutes, court rules, and standing and other orders issued by the Court that would otherwise expire before June 19, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current judicial emergency. As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change. Suspension, tolling, and extension will continue to the extent specified in this Order until at least March

31, 2021. The Court will provide at least 60 days' notice before ending all suspension, tolling, and extension of deadlines.

Sixth Order at 1 (available at https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Amended-Order-1-13-21_FINAL.PDF).

The second relevant section stated:

CIVIL DIVISION

Unless otherwise ordered by the Court, **all** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the Court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency.

Id. at 3 (emphasis added). The Sixth Order again assures that “suspension, tolling, and extension” will continue into the future, at least to January 15, 2021. Id. at 1.

Regarding the tolling of statutes of limitations, each Order is largely copying and pasting the language of the previous orders, with new dates. The importance of the repetition of these facts will become apparent in the next order.

G. Seventh Order

On March 30, 2021, the Chief Judge of DC Superior Court issued the seventh order (“Seventh Order”) regarding tolling of statutes of limitations. There are two sections relevant to statutes of limitations for civil cases like Appellants’ cases. The first section stated:

By Orders issued March 18, 2020, March 19, 2020, May 14, 2020, June 19, 2020, August 13, 2020, November 5, 2020, and January 13, 2021, the Chief Judge ordered that (except as otherwise specified) all deadlines and time limits in statutes, court rules, and standing and other

orders issued by the Court that would otherwise expire, including statutes of limitations, are suspended, tolled, and extended during the period of the current judicial emergency. As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change. Suspension, tolling, and extension will continue to the extent specified in this Order until at least May 20, 2021. The Court will provide at least 60 days' notice before ending all suspension, tolling, and extension of deadlines.

Seventh Order at 1 (available at https://www.dccourts.gov/sites/default/files/matters-docs/Amended_Order_3_30_21.pdf).

The second relevant section stated:

CIVIL DIVISION

Unless otherwise ordered by the Court, **no** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the Court are suspended, tolled or extended during the period of emergency.

Id. at 3 (emphasis added). So, the phrase “**all** deadlines and time limits in statutes (including statutes of limitations)” switched to “**no** deadlines and time limits in statutes (including statutes of limitations)” in the Seventh Order. Id. (emphasis added). This small change was intentional, because the “no” is repeated this way in subsequent Covid orders dated May 19, 2021 (“Eighth Order” at 2 (available at https://www.dccourts.gov/sites/default/files/matters-docs/Amended-General-Order-5_19_21.pdf)); July 14, 2021 (“Ninth Order” at 2 (available at https://www.dccourts.gov/sites/default/files/2021-07/amended_general_order_july_2021.pdf)); September 11, 2021 (“Tenth Order” at 2 (available at [10](https://www.dccourts.gov/sites/default/files/Amended-Chief-Judge-Order-9-1-</p></div><div data-bbox=)

21_FINAL_0.pdf)); November 21, 2021 (“Eleventh Order” at 2 (available at https://www.dccourts.gov/sites/default/files/Amended_Order_11-21-21_Final.pdf)); and April 8, 2022 (“Thirteenth Order” at 2 (available at https://www.dccourts.gov/sites/default/files/Amended_Order_of_Chief_Judge_4-8-22.pdf)).¹

Since the Sixth Order had said that “Suspension, tolling, and extension will continue to the extent specified in this Order until at least March 31, 2021” when **all** statutes of limitations were being tolled, Sixth Order at 1, 3; the period of tolling for civil cases like the Appellants’ might have ended on March 31, 2021 because the Seventh Order did not extend the tolling period further, Seventh Order at 3.

H. Subsequent Orders Say Tolling Continued

Orders issued after the Seventh Order, however, continued to state that tolling was ongoing. The Eighth Order, Ninth Order, Tenth Order, Eleventh Order, Thirteenth Order, and the order issued on July 29, 2022 (“Fourteenth Order”) all have a parallel structure to the second paragraph. An example of the relevant portion states:

By Orders issued March 18, 2020, March 19, 2020, May 14, 2020, June 19, 2020, August 13, 2020, November 5, 2020, January 13, 2021, March 30, 2021, May 12, 2021, July 14, 2021, September 11, 2021,

¹ The Chief Judge issued an order on December 30, 2021 with an entirely different structure with no information relevant to statutes of limitations in civil cases. (“Twelfth Order” available at https://www.dccourts.gov/sites/default/files/Amended_Superior_Court_Chief_Judge_Order_12312021.pdf).

November 21, 2021, and April 8, 2022, the Chief Judge **ordered that (except as otherwise specified) all deadlines and time limits in statutes, court rules, and standing and other orders issued by the Court that would otherwise expire before April 8, 2022, including statutes of limitations, are suspended, tolled, and extended during the period of the current judicial emergency.** As indicated in that order, the deadlines and time limits may be further suspended, tolled, and extended as circumstances change. **Except as specified in this order, suspension, tolling, and extension ends on June 10, 2022.**

Fourteenth Order at 1 (emphasis added) (available at https://www.dccourts.gov/sites/default/files/2022-07/Amended_Order_of_Chief_Judge_7-29-2022.pdf). It is unclear what effect, if any, this repeated language has on statutes of limitations for civil cases. The language continues to move dates forward into the future with each successive Order.

I. The Tolling Period for Civil Cases in DC

Tolling for civil cases such as Appellants' cases began on March 19, 2020 with the First Order. Tolling continued for civil cases such as Appellants' cases through at least the Sixth Order. For Orders after the Sixth Order, it is less clear whether tolling continues for civil cases. One interpretation is that tolling for civil cases was not renewed by the Seventh Order, and therefore the tolling period ended on March 31, 2021 according to the Sixth Order. Another interpretation of the orders as a whole is that tolling in civil cases continued through June 10, 2022, as stated in the Fourteenth Order at 1.

Taking the most conservative interpretation of the Chief Judge’s Orders—the interpretation that tolling of statutes of limitations for civil cases was not renewed by the Seventh Order—means that tolling for civil cases continued between March 19, 2020 and March 31, 2021 there are **377 days of tolling**. The more liberal interpretation—the interpretation that tolling continued to June 10, 2022—would mean that tolling for civil cases continued between March 19, 2020 and June 10, 2022, which is **814 days of tolling**.

J. Appellants’ Complaints

Appellants filed their respective Complaints in DC Superior Court on December 30, 2022—three years and 80 days after the incident. Appellants’ claims sounded in tort, which **without** any Covid, would have been subject to a 3-year statute of limitations. D.C. Code § 12–301(a)(3). Due to the Covid Orders—First Order through Fourteenth Order discussed above (“Covid Orders”)—Appellants believed they had more than adequate tolling so that their Complaints would be deemed timely filed.

K. Appellee Samonte’s Motion to Dismiss and Order Granting It

On March 8, 2023, Appellee Samonte filed his Motion to Dismiss, arguing that Appellants did not have any tolling provided by any of the Court’s Covid Orders. App’x at 6, 43. Appellants filed oppositions to Appellee Samonte’s Motion to Dismiss on March 22, 2023. App’x at 9, 45. Defendant Unlimited Biking

Washington DC, LLC was served, but never filed an Answer or a Motion of any type, nor did an attorney enter an appearance for the entity.

On April 12, 2023, Judge Puig-Lugo entered an Order granting Appellee Samonte's Motion to Dismiss, without holding a hearing, by concluding that the tolling provided in the DC Superior Court's Covid Orders did not apply to Appellants' claims. App'x at 76. On May 11, 2023, Appellants noted this appeal. App'x at 36, 71.

SUMMARY OF THE ARGUMENT

The Chief Judge's Covid Orders tolled the statute of limitations for all civil cases in DC for at **least** 377 days, including Appellants' claims, which were filed 80 days after the normal, pre-Covid, 3-year statute of limitations. Appellants thus filed their Complaints within the applicable statute of limitations tolled by the Covid Orders. It was error for Judge Puig-Lugo to grant Appellee Samonte's Motion to Dismiss. The decision should be reversed and the case remanded to DC Superior Court for it to be resolved on the merits.

ARGUMENT

A. Standard of Review

In reviewing the granting of a motion to dismiss on statute of limitations grounds, the appropriate appellate review is de novo. "We decide de novo the legal question of whether the affirmative defense of statutory limitation can be raised in a

pre-answer motion under the proper construction of Rules 12(b) and 8(c)." *Smith-Haynie v. District of Columbia*, 155 F.3d 575, 577 (D.C. Cir. 1998) (citing *Harris v. Secretary, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 342 (D.C. Cir. 1997)).

B. Appellants Complaints Were Not Barred by the Statute of Limitations Because of the Tolling Provisions of the Covid Orders

a. The definition of “Suspended, Tolloed and Extended” in the Covid Orders means the clock stops.

The Covid Orders—First Order through Fourteenth Order—consistently and repetitively used the phrase “suspended, tolled, and extended during the period of emergency” when referring to deadlines and statutes of limitations. First Order at 2, Second Order at 1-2. Third Order at 1, 3. Fourth Order at 1, 3. Fifth Order at 1, 3. Sixth Order at 1, 3. Seventh Order at 1, 3. Eighth Order at 1, 3. Ninth Order at 1, 3. Tenth Order at 1, 3. Eleventh Order at 1, 3. Thirteenth Order at 1, 3. Fourteenth Order at 1, 3. In determining the meaning of a court order, especially an emergency order issued to the public at-large, words should be given their ordinary meaning. See *Moskal v. United States*, 498 U.S. 103, 108 (1990) (“We first look to its language, giving the words their ordinary meaning” for interpreting a statute.).

The word “toll” when paired with the grammatical object “statute of limitations,” means to “suspend or stop temporarily.” *Black's Law Dictionary* 1488 (6th ed. 1990). Likewise, the words “suspend” and “extend” have similar plain meanings to “toll” when paired with “statute of limitations.”

In Artis v. District of Columbia, 135 A.3d 334 (DC 2016), this Court took the position that the word “tolling” with respect to a federal statute meant only a “grace period,” instead of meaning “stopping the clock.” The Supreme Court reversed this Court on this issue, ruling that “toll” or “tolling” means to suspend, stop the clock, pause, or stop. Artis v. District of Columbia, 138 S. Ct. 594, 601-02 (2018). Any other interpretation, the Supreme Court reasoned, strains the interpretation of period of limitations, can make the tolling period superfluous, and yields absurd legal results. See Artis, 138 S. Ct. at 604.

The Covid Orders “suspended, tolled, and extended” the statute of limitations in civil cases like Appellants—meaning that the clock stopped running on Appellants’ claims on March 19, 2020 with the First Order. Once the tolling period ended, the clock would start running again on Appellants’ claims. For the duration of the tolling period, no time elapsed on Appellants’ claims.

b. Tolling of the Statute of Limitations is immediate; it cannot be conferred and then rescinded.

By suspending, tolling, and extending the statute of limitations for civil cases, the Covid Orders conveyed an immediate benefit for all civil cases by stopping the clock on the statute of limitations for claims that had accrued before March 18, 2020, which happened with the First Order. Later Covid Orders that changed or altered the duration of the tolling period, or the duration of the period of emergency did not

rescind the tolling. No matter how they are interpreted, the Covid Orders after the First Order merely, at some point, “started the clock” again.

c. The Covid Orders tolled Statutes of Limitations in civil cases until at least March 31, 2021.

The Second Order through the Sixth Order continued to state “**all** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders that would otherwise expire during the period of emergency are suspended, tolled, and extended during the period of emergency.” Second Order at 2, Third Order at 3, Fourth Order at 3, Fifth Order at 3, Sixth Order at 3. With each new Order, the period of emergency was extended as the Covid Pandemic continued.

As noted above, this language changed slightly in the Seventh Order, to “**no** deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders that would otherwise expire during the period of emergency are suspended, tolled, and extended during the period of emergency.” Seventh Order at 3. Since tolling stopped the clock on March 19, 2020 with the First Order, and the Sixth Order stated that tolling would continue until at least March 31, 2021, arguably the Seventh Order ended the tolling period for civil cases like Appellants’—making the tolling period 377 days. Under this interpretation of the Covid Orders, the clock began to run again on Appellants’ claims on April 1, 2021.

d. The Covid Orders are ambiguous about the exact duration of tolling for civil cases.

There are other ways to interpret the Covid Orders to argue that the duration of tolling for civil cases is longer than 377 days. There are some references to the Court's initial March 15, 2020 order. If tolling started then, the tolling period would be 380 days. The Covid Orders that came after the Seventh Order continued to reference "all deadlines and time limits . . . are suspended, tolled, and extended." Eighth Order at 1, Ninth Order at 1, Tenth Order at 1, Eleventh Order at 1, Thirteenth Order at 1, Fourteenth Order at 1. Each of these interpretations would mean that the tolling period was significantly longer than 377 days for civil claims that accrued before March 18, 2020. There is no reasonable interpretation of the Covid Orders that the tolling period is less than 377 days. Appellants Complaints were filed only 80 days beyond the un-tolled 3-year statute of limitations for torts in DC. Therefore, it is not necessary for this Court to decide which interpretation, among these many, sets the precise duration of tolling in the Covid Orders.

C. Defendant Unlimited Biking Washington DC, LLC Did Not Move for Dismissal, But was Also Dismissed by Judge Puig-Lugo's April 12, 2023 Order

Defendant Unlimited Biking Washington DC, LLC was served, but never filed an Answer or a Motion of any type, nor did an attorney enter an appearance for the entity. Technically, it was in default at the time of Judge Puig-Lugo's decision, though no ruling had been made to that effect. It is unclear to Appellants whether

Defendant Unlimited Biking Washington DC, LLC is able to participate in this appeal, since no appearance or record was made in the court below.

CONCLUSION

For the facts and arguments stated above, Appellants Complaints were not barred by the statute of limitations, due to the tolling provided by the Covid Orders. The April 12, 2023 Order erred in its application of the Covid Orders to the cases here. The decision should be reversed and Appellants cases should be remanded to DC Superior Court for further proceedings so that the claims can be heard on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 13, 2023 I sent a copy of the Brief of the Appellants, and the Appendix to the Briefs, via the Court's e-filing system to:

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/s/ D. Cory Bilton

D. Cory Bilton

District of Columbia Court of Appeals

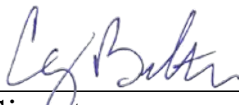
REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual’s social-security number
 - Taxpayer-identification number
 - Driver’s license or non-driver’s’ license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym “SS#” where the individual’s social-security number would have been included;
 - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
 - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
 - (4) the year of the individual’s birth;
 - (5) the minor’s initials; and
 - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

D. Cory Bilton

Name

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Email Address

Nos. 23-CV-411 & 23-CV-412

Case Number(s)

11/13/2023

Date