

Colorado Court of Appeals

2 East 14<sup>th</sup> Avenue

Denver, CO 80203

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Appeal from:

Douglas County District Court

District Court Judge: The Hon. Andrew Baum

District Court Case Number: 2023CV030570

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In the Case of:

Plaintiff-Appellant: OBED RIVERA,

v.

Defendant-Appellee: PAUL FORT

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Filing Party: Furtado Law PC, on behalf of

Plaintiff/Appellant Obed Rivera

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Court of Appeals

Case No: 24CA000856

**REPLY BRIEF**

Plaintiff/Appellant, Obed Rivera, through his undersigned counsel, submits the following Reply Brief, and as grounds therefore states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with the applicable word limit set forth in C.A.R. 28(g).

It contains 801 words.

The brief complies with the standard of review requirements set forth in 28(c).

A Table of Contents is found on page 3. A Table of Authorities meeting the requirements set out in C.A.R. 28 (a) (3) is found on page 4.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Robert E. Roetzel  
Robert E. Roetzel

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**REPLY TO ARGUMENT**

Mr. Fort cites *Gunderson v. Weidner Holdings, LLC*, 2019 COA 186, ¶ 9, and argues that the “purpose of the statute of limitations is to promote justice, discourage unnecessary delay, and preclude the prosecution of stale claims.” The parties agree that promoting justice, and avoiding delay are important to the analysis of this Appeal. Mr. Fort successfully dodged 19 attempts at service, including those at an

address where he was successfully served by his brother's entity. Mr. Fort knew about, responded to, and was coordinating with his brother concerning the 2021 case. While equity demands flexibility in order to accomplish justice, Mr. Fort claims that the doctrine of equitable tolling should not be applied, although, the doctrine of equitable tolling is an established mechanism that ensures justice is served. *Dean Witter Reynolds, Inc.*, 911 P.2d at 1096, citing *Garrett v. Arrowhead Improvement Ass'n*, 826 P.2d 850, 853 (Colo.1992).

**I. Mr. Rivera did not “Sleep on his Rights.”**

Mr. Fort argues that Mr. Rivera “slept on his rights” in failing to achieve service. Answer Brief at 7. This is not the case. Mr. Rivera undertook 19 unsuccessful attempts to serve Mr. Fort. Mr. Fort avoided service. Taking 19 attempts to serve a defendant at multiple locations is not “sleeping” on one’s rights, but is indicative of a defendant actively avoiding service of process so that Mr. Rivera could not exercise his rights.

**II. Mr. Rivera Does not Ask for an “Infinite Amount of Time” to Achieve Service.**

The doctrine of equitable tolling exists to bridge the gap between the strict timeliness requirements imposed by statutes of limitations and “where flexibility is required to accomplish the goals of justice.” *Dean Witter Reynolds, Inc. v. Hartman*,

911 P.2d 1094, 1096 (Colo. 1996); *Garrett v. Arrowhead Imp. Ass'n*, 826 P.2d 850, 853 (Colo. 1992).

Mr. Rivera does not ask for the total removal of the time requirements set out in statutes of limitations, nor does he ask for the ability to infinitely toll the statute of limitations by filing suit after suit. Mr. Rivera asks for an “inquiry into the circumstances of the delay that prompted the statute of limitations to be invoked” under an established doctrine. *Shell W. E&P, Inc. v. Dolores Cnty. Bd. of Comm'rs*, 948 P.2d 1002, 1010 (Colo. 1997), as modified on denial of reh'g (Dec. 15, 1997).

### **III. The Doctrine of Equitable Tolling Should Apply.**

As Mr. Rivera argues in his Opening Brief, and is undisputed in Mr. Fort’s Answer Brief, Mr. Rivera attempted to serve Mr. Fort 19 times. As Mr. Fort points out in his Answer Brief, “the trial court considered and rejected both of Mr. Rivera’s arguments.” Answer Brief at 2.

The Court erred in denying the equitable tolling argument because the specific facts argued in the Response to Defendant’s Motion to Dismiss show that Mr. Fort was actively avoiding service. On March 28, 2023, the Court in the original action gave a deadline of April 18, 2023 to serve Mr. Fort. CF at 72. On March 31, 2023, Mr. Fort’s brother’s company filed a Motion for Summary Judgment which included an affidavit executed by Mr. Fort. *Id.*, and CF at 24 – 26. Mr. Fort was in contact

with opposing counsel's office and was clearly aware of the action, as he was cooperating with the same counsel that is now representing him in the this appeal. The fact that Mr. Fort's brother was able to serve Mr. Fort at the same address Mr. Rivera was attempting service shows that there was a coordinated effort to evade service of Mr. Rivera's complaint while allowing for the service of subpoenas which benefited Mr. Fort's brother.

The circumstances surrounding Mr. Fort's eventual service also point to his purposeful avoidance of service. Mr. Rivera attempted service at Mr. Fort's home but was never successful. However, Mr. Fort's brother was able to serve Mr. Fort at the same address.

#### **IV. Mr. Fort Should not be Awarded Attorney's Fees and Costs.**

It would be manifest injustice to allow Mr. Fort, a man who actively evaded 19 service attempts, and who only accepted service once the statute of limitations had passed, to not only avoid the consequences of burning Mr. Rivera's house down, but to impose the costs of his defense on Mr. Rivera. The district court's decision should be overturned, and Mr. Fort's request for attorney's fees should be denied.

#### **CONCLUSION**

For the foregoing reasons, the district court's order dismissing Appellant Rivera's claims should be reversed, and Mr. Fort's request for attorney's fees should

be denied. Appellant Rivera respectfully requests this Court to find that the doctrine of equitable tolling applies under the facts of this case, or in the alternative, to remand the matter to the district court for further proceedings consistent with the application of equitable tolling principles.

Dated this 22<sup>nd</sup> day of October, 2024

Respectfully submitted,

FURTADO LAW PC

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*Attorneys for Plaintiff/Appellant Obed  
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## CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2024, I served a true and correct copy of the foregoing on the Colorado Courts E-Filing system or email addressed to the following:

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