

69548-7

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No. 695487

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JESSICA MACLEAN,

Plaintiff/Appellant,

v.

KATE CHASE RYAN, a married individual, and
ADVANCED EDUCATORS, LLC,
a Washington Limited Liability Company

Defendants/Respondents.

BRIEF OF APPELLANT

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COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

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I. ASSIGNMENTS OF ERROR

A. The trial court erred in entering the order granting in part defendants' motion for summary judgment filed on January 13, 2012. CP 154-155.

B. The trial court erred in entering the order partially granting defendants' motion for summary judgment re Chase Ryan's individual liability filed February 6, 2012. CP 156-160.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Did the trial court err when it granted summary judgment dismissing plaintiff's claim for intentional interference with business expectancies when material questions of fact exist regarding defendants' improper motive and/or wrongful means of interfering with plaintiff's existing and prospective customers with pecuniary value? (Assignment of Error 1).

B. Did the trial court err when it granted summary judgment dismissing the individual defendant Kate Chase Ryan (and her marital community) when, as a matter of law, an LLC member is liable for her own tortuous actions and defendant Ryan is the individual who wrote the letters and took the action of terminating the Continuing Education Units ("CEU") accreditation for plaintiff's massage training classes? (Assignment of Error 2).

C. Did the trial court err when it granted summary judgment dismissing Kate Chase Ryan (and her marital community) as an individual defendant for purposes of plaintiff's Consumer Protection Act claim, when, as a matter of law, a corporate officer is liable for her own wrongful conduct under the Consumer Protection Act and defendant Ryan is the individual who wrote the letters and took the action of terminating the Continuing Education Units ("CEU") accreditation for plaintiff's massage training classes? (Assignment of Error 2).

The answer to each question is YES. Under the applicable standard for summary judgment, when all facts are construed in the light most favorable to the non-moving party – plaintiff -- summary judgment dismissing the intentional interference claim and the individual defendant was improper.

III. STATEMENT OF THE CASE

Plaintiff filed claims against defendant Advanced Educators, LLC and against Kate Chase Ryan individually (and on behalf of her marital community), for breach of an oral agreement, intentional interference with business expectancies, and violations of the Consumer Protection Act. The breach of contract claim proceeded to trial, against the LLC only, based on the breach of an oral agreement between the parties whereby plaintiff agreed to provide certain graphic design work in exchange for defendants

providing advertising on their website for plaintiff's massage cupping courses. CP 2-3; CP 162. The jury unanimously decided in favor of the plaintiff on the breach of contract claim and awarded plaintiff \$49,223.00 in damages. CP 161-163. This appeal follows to reinstate plaintiff's tort claim of intentional interference with business expectancies against the individual defendant Kate Chase Ryan (Ryan). The trial court also dismissed, but without prejudice, plaintiff's claim against defendants for violation of the Consumer Protection Act. Plaintiff seeks to reinstate defendant Ryan as an individual defendant for purposes of the CPA claim.

Plaintiff MacLean does business as a provider of therapeutic massage training seminars for medical professionals. She organizes training workshops around the world and has other instructors who work with her. CP 91. These training workshops are intended to serve as continuing education courses for state licensing requirements and for certification through the National Certification Board of Therapeutic Massage & Bodywork ("National Board"). Id.

MacLean began teaching and selling equipment in 2006 after having her courses approved, and CEU certified, by the National Board under the Approved Provider number of the North West Coalition of Massage Educators ("NWCME"). Instructors join such coalitions to get their curriculum approved for continuing education units ("CEU") under the

umbrella of the coalition's Approved Provider number. MacLean's business and number of classes grew steadily from 10 in 2006, to 14 in 2007, and 24 in 2008. CP 91-92.

On or about April 2006 defendant Kate Chase Ryan ("Ryan") began discussing with MacLean ways to improve internet marketing. In about 2007, Ryan began having meetings to form what she called the "Advanced Educators consortium" ("AE") -- a group of educators who needed marketing services. MacLean helped Ryan develop her cancellation policy, her registration process and other business matters. CP 92, ¶ 4. In the spring of 2008, they began monthly meetings in preparation for the 2008 American Massage Therapist Association ("AMTA) convention. CP 92, ¶ 5.

Also in about the spring of 2008, the local NWCME decided to get out of the coalition business. Id. This led MacLean to suggest to Ryan that her organization should obtain Approved Provider status from the National Board. The idea was this would help the instructors who did not have individual Approved Provider status and defendant Ryan could grow her marketing consortium by reaching out to such instructors. Id. By the end of 2008, the parties successfully obtained the necessary course accreditation from the National Certification Board of Therapeutic Massage & Bodywork ("National Board") per the parties' joint application for defendant AE's Approved Provider number. See CP116.

As part of her work with defendant Ryan to get the Advanced Educators consortium up and running, MacLean took the lead in getting both her business and defendant Ryan's business set up for the 2008 AMTA convention. MacLean acted as the point-of-contact between the AMTA Convention coordinators and AE. MacLean also transported all of the material and equipment for the convention booths, including defendant AE's, and arranged for additional services and supplies. CP 92, ¶ 6.

On or about July 17, 2008, during the monthly AE meeting at defendant Ryan's home, she asked MacLean to help her with marketing materials. CP 92, ¶ 7. Defendant Ryan said she could not possibly get her marketing materials done on her own before the September Convention because she was so busy with the National Board application and with her AE website. *Id.* MacLean told Ryan that MacLean was also up to her neck getting all of her own classes and educators ready for the convention in September. Ryan insisted she needed MacLean's help because she did not have a logo or business cards and she also needed letterhead, rack-cards, and a convention banner. MacLean finally told Ryan that she would help Ryan in exchange for marketing services for 2009. Ryan was thrilled and agreed. CP 92, ¶ 8. Defendants have never disputed the existence of the oral agreement. *See* RP pg. 7, lns. 8-12 and CP 100.

Between July and September 2008, plaintiff devoted time and energy she did not have to fulfilling defendant Ryan's request for graphic services. CP 93. Plaintiff MacLean successfully completed graphic designs defendant Ryan loves and uses to this day. CP 104-111 and CP 113.

Defendant Ryan promised to compensate MacLean by having AE represent all three of MacLean's new classes (Contemporary Cupping Methods, Eastern Traditional Cupping and Western Traditional Cupping), and the instructors in MacLean's organization (headshots, bios, links to their websites) on the AE website and in all AE's marketing and advertising. CP 93. Defendant Ryan admits all three of MacLean's classes have approved (certified) status with the National Board "as per our agreement". CP 94 and 116.

Even though MacLean had fulfilled the requested graphic services, defendant Ryan failed to list and market MacLean's classes. CP 94. MacLean tried repeatedly for many months to get defendant Ryan to cooperate and fulfill the marketing obligation, but Ryan would not follow through with her part of the deal. CP 94 and CP 118-123. Defendant Ryan's feet dragging and excuses for not marketing plaintiff's classes continued throughout the end of 2008 and the first six months of 2009.

Id.

Discovery disclosed that defendant Ryan had decided in November 2008, she did not plan to fulfill her marketing obligations. CP 84 and CP 87. Defendant Ryan instructed her website editor in November 2008, not to do any editing work on MacLean's course materials for the AE website because Ryan planned to "fire" MacLean anyway. CP 87.

Even though defendant Ryan had never provided the marketing services, Ryan wrote MacLean a letter, dated July 14, 2009, terminating the marketing services she never provided MacLean in the first place. CP 130-131. But the letter did not stop there. Defendant Ryan ended the letter by withdrawing the certification of all of plaintiff's classes back to January 12, 2009. CP 131. Defendant Ryan stated that she had notified the National Board that MacLean's classes were no longer certified through defendants' Approved Provider number. She retroactively terminated MacLean's course certification based on the allegation that MacLean had provided printed certificates to her class attendees that "were not issued by Advanced Educators and are not valid". *Id.*

Ryan, however, had previously confirmed the approved status of MacLean's classes and MacLean had marketed her classes to attendees as approved coursework. CP 116. In addition, defendant Ryan had previously sent MacLean the Advanced Educators' class certification form and authorized MacLean to issue the certificates. CP 95 and CP 125.

Defendant Ryan's July 14, 2009 letter also terminated the future approved status of MacLean's classes by terminating her right to use the "Advanced Educators Approved Provider #". CP 131. Defendant Ryan falsely claimed an inadvertent error in the Oregon Massage Monthly Newsletter, that incorrectly printed an ad submitted by one of MacLean's instructors, somehow implied MacLean was claiming to be the owner of the Approved Provider #. CP 94, CP 130 and CP 134. It was a typo by a small paper newsletter. CP 133. MacLean had worked carefully with defendant Ryan to reference the Advanced Educators' Approved Provider number precisely as Ryan desired and Ryan had expressly approved MacLean's website use – a display MacLean could completely control. CP 94-95 and CP 136-137. MacLean had submitted a correction sheet to the Oregon Massage Monthly, including seeking to have the letters "AE" added in front of the Approved Provider #. EX 86 That correction was not made by the newsletter editor/staff. CP 134.

Defendant Ryan, in previous years, had had her own problems or mistakes with the inaccurate use of an Approved Provider number. CP 95 ¶ 26 and CP 144, 2nd para. Defendant Kate Chase Ryan's website and ads failed to identify the North West Coalition (NWCME) with the Approved Provider number the parties were using at the time. *Id.* Defendant was given a chance to correct her errors. *Id.*

In November 2009, after receiving a letter from plaintiff's counsel, defendant Ryan again instructed the National Board to withdraw the credentialed and/or certified status back to January 12, 2009 by having the National Board list all three of MacLean's courses as "archived". CP 95, ¶ 23; CP 140. As a result of the decertified status, MacLean's class attendees could not get continuing education credit for attending.

Because attendees relied on the approved (or certified) status for CEU credit and licensing requirements, the retroactive decertification caused plaintiff serious difficulties. Plaintiff had attendees threatening her with litigation; she received threatening letters from attorneys; and at least one of her attendees failed to get licensed because of defendant Ryan's decertification. CP 95, ¶ 24.

Without the use of an Approved Provider number, which shows to the public that MacLean's classes are certified, her business collapsed. CP 96, ¶ 28. Even though plaintiff applied to the National Board for her own Approved Provider number -- for the same course curriculums previously approved through the joint application with Advanced Educators' -- her application was denied until December, 2010. CP 96, ¶ 27; CP 57; EX 89; and CP 146. MacLean had 74 classes scheduled for 2009. CP 96 ¶ 28. Nearly half of those classes were cancelled and all of her associate Dr. Bruce Bentley's classes in 2009 were cancelled. *Id.* Lost profits from

those classes and lost profits from the associated equipment sales exceeded \$58,000 for 2009 alone.

Even the trial court recognized, with regard to tortious interference, there are "some murky areas" and "some issues of fact." RP pg. 24, lns 7-13. The trial court expressed her difficulties in understanding the parties' "business structure". RP pg. 29, lns. 12-19. But she recognized "somebody's marketing boxes of fog". *Id.*, lns 22-25.

IV. ARGUMENT

A. STANDARD OF REVIEW.

The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court. Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The court considers the facts and the inferences from the facts in a light most favorable to the nonmoving party. Bremerton Pub. Safety Ass'n v. City of Bremerton, 104 Wn. App. 226, 230, 15 P.3d 688 (2001) (citing Reid v. Pierce County, 136 Wn.2d 195, 201, 961 P.2d 333 (1998)). The court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Lybbert, 141 Wn.2d at 34.

Jones v. Allstate Insurance Co., 146 Wn.2d 291, 301, 45 P.3d 1068 (2002).

A material fact is one of such nature that it affects the outcome of the litigation. The burden of showing there is no issue of material fact falls upon the party moving for summary judgment. Only after the moving party has met its burden of producing factual evidence showing it is entitled to judgment as a matter of law does the burden shift to the nonmoving party to set forth facts showing that there is a genuine issue of material fact.

Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

B. GENUINE ISSUES OF MATERIAL FACT EXIST.

The elements of tortious interference are: (1) a valid contractual relationship or business expectancy; (2) the defendant's knowledge of and intentional interference with that relationship; (3) a breach or termination of that relationship induced or caused by the interference; (4) interference by an improper purpose or improper means; and (5) damages. Interference is improper if it is wrongful by some means beyond the interference itself. Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 157 P.2d 288 (1997); Pleas v. City of Seattle, 112 Wn.2d 794, 814, 774 P.2d 1158 (1989).

In the instant case, the first three elements of this tort claim are established by the undisputed facts. It is expected that defendants will dispute the inferences to draw from the undisputed facts. But given that the standard on summary judgment is to view the facts in the light most favorable to the nonmoving party, plaintiff submits the first three elements are established.

1) Valid Contractual Relationship.

"A valid business expectancy includes any prospective contractual or business relationship that would be of pecuniary value," including a party's prospective customers. Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc., 114 Wn. App. 151, 158, 52 P.3d 30 (2002) (citing Restatement (Second) of Torts 766B cmt. c (1979)). In Newton,

the court explained that the Newton Ins. Agency had a valid “business expectancy in all of its customers, including those it purchased” and those serviced by the seller as Newton’s employee. Id. The defendant knew of the employee’s non-competition agreement but “still offered Lynch a job expecting his former clients to follow him from Newton”. Id.

Like Newton, in this case, plaintiff had business expectancies with all of her customers -- every student or potential student from whom plaintiff would earn income. Defendant Ryan’s retroactive decertification of all of plaintiff’s courses meant those students who took her accredited massage courses between January 1, 2009 and July 14, 2009 lost their CEU credits. Plaintiff had to refund class tuitions and respond to threats of litigation.

Plaintiff had valid contractual relationships and/or business expectancies with those students who had signed up, or intended to sign up, for future coursework with plaintiff. Plaintiff could not represent her courses as certified and lost business income as a result. Defendant Ryan’s letter withdrew the certification and use of the Approved Provider number for plaintiff’s classes for the future.

By repeatedly contacting the National Board, specifically to attack MacLean, defendant Ryan interfered with plaintiff’s ability to get a National Board Approved Provider number. The parties had spent much

of 2008 working together to apply for and obtain an Approved Provider number under the umbrella of Advanced Educators. The approval of plaintiff's classes through the application to the National Board gave plaintiff a business expectancy that her courses would remain certified for the three-year approved term. Like the plaintiff in Newton, plaintiff had a valid business expectancy in present and future customers looking for CEU course work.

2) Defendant Ryan's Knowledge.

Interference is intentional where the actor actually desired to bring about the interference or the actor knew that interference is certain or substantially certain to occur as a result of his or her actions. Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc., supra.

Defendant Ryan had personal knowledge of those business relationships between plaintiff and her students/potential students because MacLean and Ryan worked together throughout 2008 to obtain their course certification through the joint application to the National Board, under the umbrella of Defendant Ryan's LLC, Advanced Educators. In addition, defendants had the contractual obligation to provide marketing for those same certified courses throughout 2009. Defendant Ryan had received, multiple times, plaintiff's class schedules for listing on the Advanced Educators' website. Defendant Ryan had intimate knowledge of plaintiff's planned 2009

course schedules. Accordingly, defendant Ryan had detailed knowledge of plaintiff's contractual relationships and business expectancies with the enrollees and future attendees in her classes.

Defendant Ryan knew the consequences of her actions when she wrote the July 14, 2009 letter withdrawing, both retroactively and for the future, certification of plaintiff's classes. Defendant Ryan, individually, had been in the same business as plaintiff – teaching massage courses. Defendant Ryan knows that the marketing potential for massage training classes comes from the accredited standing; that is why the parties put initial efforts into their joint application to the National Board for their course work approval and certification. Defendant Ryan's acts were done intentionally and with full knowledge of the consequences of her acts.

3) Defendant Ryan's Interference Induced the Breach.

Like lawyers, massage therapists and other medical professionals need these continuing education units (CEUs) for licensing purposes. Defendant Ryan's letters to the National Board and her act of decertifying plaintiff's courses (retroactively no less), also interfered with plaintiff's ability to get her own Approved Provider number. Plaintiff was without the ability to market her courses for CEU's for 18 months following the defendant's letter. Defendant Ryan's false allegations shared with the

National Board directly interfered with plaintiff's ability to obtain her own Approved Provider number.

Similarly, defendant Ryan's interference with plaintiff's certified course status directly terminated her business relationships with students who paid for classes approved for CEUs and with potential students seeking accredited coursework.

4) Improper Interference.

This fourth element raises the genuine issues of material fact involved in this claim. Even the trial court recognized, with regard to tortious interference, there are "some murky areas" and "some issues of fact. Whether interference is improper is generally a question of fact that depends on the circumstances of the case. Quadra Enterprises, Inc. v. R. A. Hanson Company, Inc , 35 Wn. App. 523, 527, 667 P.2d 1120 (1983); Restatement (Second) of Torts 767, cmt. 1 (1979). "As with negligence, when there is room for different views, the determination of whether the interference was improper or not is ordinarily left to the [trier of fact]".

Restatement (Second) of Torts 767, cmt. 1, (1979). Similarly, whether a party has acted in bad faith or dishonestly will generally be an issue of fact. Koch v. Mutual of Enumclaw Insurance Company, 108 Wn. App. 500, 504, 31 P.3d 698 (2001) rev. denied 145 Wn.2d 1028, 42 P.3d 974 (2002).

Interference may be wrongful by reason of a statute or other regulation, or a recognized rule of common law, or an established standard of profession. Pleas v. City of Seattle, 112 Wn.2d 794, 804, 774 P.2d 1158 (1989). Intentional interference requires an improper objective or the use of wrongful means that in fact cause injury to the person's contractual relationship. Schmerer v. Darcy, 80 Wn. App. 499, 505, 910 P.2d 498 (1996). As with negligence, when there is room for different views, the determination of whether the interference was improper or not is ordinarily left to the jury, to obtain its common feel for the state of community mores and for the manner in which they would operate upon the facts in question. Restatement (Second) of Torts 767 cmt. 1. Under certain circumstances, however, "identifiable standards of business ethics or recognized community customs as to acceptable conduct" have developed, such that "the determination of whether the interference was improper should be made as a matter of law, similar to negligence per se." Id.

For example, in Pleas v. Seattle, *supra*, the court concluded that the City's action of delaying development of an apartment building for politically expedient reasons was not only intentional but wrongful. "A cause of action for tortious interference arises from either the defendant's pursuit of an improper objective of harming the plaintiff or the use of

wrongful means that in fact causes injury to plaintiff's contractual or business relationships." Pleas, 112 Wn.2d at 803-804. In Pleas, the efforts made by employees in the Mayor's office, and in the building department, to block legitimate construction were an improper means of interference. Id. at 806.

Similarly, in the instant case, as the person with control of the Advanced Educators' Approved Provider number, defendant Ryan decertified, retroactively, all of plaintiff's courses for the first half of 2008. Defendant Ryan did so on the false premise that plaintiff was not authorized to distribute to her class attendees the paper certificates showing completion of the CEU coursework. Yet, in emails, defendant Ryan admits plaintiff's courses were CEU accredited under the AE Approved Provider number and defendant Ryan personally authorized plaintiff to issue the paper certificates. Defendant Ryan's termination of plaintiff's CEU approved course status was fraudulent and wrongful.

Defendant Ryan also claims she had a right to discontinue MacLean's class certification because of a typo in a listing in a small Oregon paper newsletter. That assertion was nothing more than a red herring. Defendants never performed the marketing they had agreed to do and used the typo as a fraudulent excuse to terminate MacLean's association with Advanced Educators.

A party may only abandon a contract if the other party commits a material breach. Jacks v Blazer, 39 Wn.2d 277, 235 P.2d 187 (1951). A “material breach” is one that “substantially defeats the purpose of the contract.” Mitchell v Straith, 40 Wn. App. 405, 410, 698 P.2d 609 (1985). An inadvertent error by a third-party newsletter publisher does not reach the level of plaintiff committing a material breach. Plaintiff’s class was properly certified under the Approved Provider number cited in the newsletter listing. Plaintiff attempted to have the publisher put the letters AE in front of the Approved Provider number as plaintiff stated in her correction sheet sent to the publisher. The absence of those 2 letters was not an intentional act by plaintiff. Such a minor, inadvertent error cannot be said to constitute a breach by plaintiff which substantially defeats the purpose of the contract.

In fact defendant Ryan in previous years had had her own problems or mistakes with the inaccurate use of an Approved Provider number. She knew mistakes happened. Defendant Ryan’s website and ads failed to identify the North West Coalition (NWCME) with the Approved Provider number the parties were using at the time. Id. Defendant was given a chance to correct her errors. Id. So defendant Ryan’s treatment of plaintiff and reliance on the typo as an excuse to eliminate plaintiff’s certification of all her classes utterly lacks good faith.

Defendant Ryan's motive to interfere is also established by her retaliatory contact with the National Board. That is, after receiving a demand letter from plaintiff's counsel in November 2009, defendant Ryan again contacted the National Board to reiterate her false allegations against plaintiff. Defendant Ryan's retaliatory letter underscores the wrongful motive, let alone the wrongful means, of the interference exercised by defendant Ryan. Like the City of Seattle, in Pleas, defendant Ryan's extensive efforts to block plaintiff's ability to use and market her CEU accredited course curriculums constitute improper interference.

Furthermore, presenting the false accusations to the National Board directly interfered with plaintiff's ability to mitigate her damages. Even though plaintiff applied to the National Board for her own Approved Provider number -- for the same course curriculums previously approved through the joint application with Advanced Educators' -- her application was denied because of defendant Ryan's false allegations. It took plaintiff another year of appeals to the National Board to obtain her own Approved Provider number for CEU accreditation. Plaintiff's ability to market her classes for attendees' licensing requirements was stalled until the end of 2010 by defendant Ryan's retaliatory interference.

In Newton v Caledonian, 114 Wn. App. at 158, the court concluded that, "identifiable standards of business ethics or recognized

community customs as to acceptable conduct" have developed, such that "the determination of whether the interference was improper should be made as a matter of law, similar to negligence per se." The court held that violation of a contract-not-to-compete constitutes "per se" intentional interference with a business expectancy. While the instant case does not arise from a non-compete contract, the instant case does arise from defendant Ryan's direct interference with plaintiff's customer base. By terminating plaintiff's CEU accreditation, defendant directly eliminated plaintiff's customer base – those students seeking CEU accredited classes. Defendant Ryan's actions should at least be subject to a trier of facts' determination of whether they reach the level of "acceptable conduct".

5) Damages.

The customer base eliminated by defendant Ryan's acts was the intended source of income to plaintiff's business. Plaintiff had spent much of 2008 working with defendant to obtain CEU accreditation of her classes and market her classes as such to her potential class attendees. Plaintiff had shared her class schedule with defendant for at least the first half of 2009. Defendant Ryan's withdrawal of the CEU accreditation and termination of MacLean's use of the Approved Provider number directly eliminated her customer base, directly damaging her business.

Without the use of an Approved Provider number, which shows to the public that MacLean's classes are certified, her business collapsed. CP 96, ¶28. Even though plaintiff applied to the National Board for her own Approved Provider number -- for the same course curriculums previously approved through the joint application with Advanced Educators' -- her application was denied until December, 2010.

MacLean had 74 classes scheduled for 2009. Nearly half of those classes were cancelled and all of her associate Dr. Bruce Bentley's classes in 2009 were cancelled. Lost profits from those classes and lost profits from the associated equipment sales exceeded \$58,000 for 2009 alone. Plaintiff is entitled to her business losses from defendants' intentional and wrongful interference with MacLean's ability to serve, and market to, her intended customer base.

C. DEFENDANT RYAN SHOULD BE INDIVIDUALLY LIABLE FOR HER INTENTIONAL TORT.

RCW 25.15.125 provides in relevant part:

... (2) A member or manager of a limited liability company is personally liable for his or her own torts.

It is undisputed that defendant Ryan personally drafted the letters containing the false allegations. It is undisputed that defendant Ryan

wrote and sent the second letter, 4-months after the first, to the National Board, immediately after receiving a demand letter from plaintiff's counsel. Plaintiff's intentional interference claim is a tort. Defendant Ryan is the sole member of Advanced Educators LLC and no one but her made the decision to intentionally and wrongfully interfere with plaintiff's business expectancies. Because plaintiff's intentional interference claim turns on the conduct of defendant Ryan personally, (and on behalf of her marital community), defendant Ryan is not protected by RCW 25.15.125. Defendant Ryan should be reinstated as an individual defendant subject to individual liability.

D. DEFENDANT RYAN CAN BE HELD INDIVIDUALLY LIABLE FOR CPA VIOLATIONS.

It is a well-settled principle that under the CPA, "[i]f a corporate officer participates in the wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as the corporation, is liable for the penalties." State v. Ralph Williams' N. W. Chrysler Plymouth, Inc., 87 Wn.2d 298, 322, 553 P.2d 423 (1976). In Ralph Williams, the court considered a deceptive practice in violation of the consumer protection act to be a type of wrongful conduct that justified imposing personal liability on a participating corporate officer. See also Grayson v. Nordic Constr. Co., 92 Wn.2d 548, 599 P.2d 1271 (1979) (imposing personal

liability on contractor who affirmatively misrepresented his ability to provide financing in order to win business).

In the instant case, defendant Ryan is personally responsible for the deceptive acts. She personally wrote the untrue statements in the letters, designed to damage plaintiff's ability to market her massage training classes. Consistent with the court's holding in Ralph Williams, defendant Ryan cannot escape personal liability because she participated in it, had knowledge of it and approved it. Defendant Ryan should be reinstated as an individual defendant for purposes of plaintiff's CPA claim.

V. CONCLUSION

In sum, genuine issues of material fact exist regarding defendants' improper motive and wrongful means of interfering with plaintiff's existing and prospective customers, precluding summary judgment. Reasonable minds could differ and the factual questions should be decided by a jury. As a matter of law, defendant Kate Chase Ryan should be reinstated as an individual defendant subject to personal liability for the intentional interference with business expectancies claim because an LLC member is not shielded from liability for her own torts. And, under the CPA, as the corporate officer that performed the wrongful conduct,

defendant Ryan is personally liable for her actions and should be reinstated as an individual defendant.

Plaintiff requests that the trial court's rulings on summary judgment dismissing the intentional interference with business expectancies claim, and dismissing defendant Kate Chase Ryan as an individual defendant be reversed and the matters remanded for trial.

RESPECTFULLY submitted this 25th day of April, 2013.



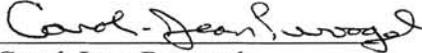
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WSBA 20457

CERTIFICATE OF SERVICE

I certify that I caused to be served via e-mail a copy of the foregoing BRIEF OF APPELLANT this 25th day of April, 2013, to the following counsel of record at the following addresses:

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