

63427-5

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No. 63427-5

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JKR, LLC, a Washington domestic limited liability company,

Appellant,

vs.

LINEN RENTAL SUPPLY, INC., a Washington domestic corporation, d/b/a Tomlinson Linen, d/b/a Tomlinson Linen Services; GARY TOMLINSON and JANE DOE TOMLINSON, and the marital community composed thereof; and TIMOTHY TOMLINSON and JANE DOE TOMLINSON, and the marital community composed thereof,

Respondents.

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE ROBERT EADIE

BRIEF OF APPELLANT

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& GOODFRIEND, P.S.

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I. INTRODUCTION

JKR, LLC, d/b/a Service Linen Supply (hereafter “Service Linen”) appeals the trial court’s summary judgment dismissal of its claims against Linen Rental Supply, Inc., d/b/a Tomlinson Linen, and its owners Tim and Gary Tomlinson (hereafter “Tomlinson”) for tortious interference with JKR’s customer contracts. The trial court erred in holding that knowing interference with an existing contract requires additional proof of improper means or improper motive. At a minimum, the trial court impermissibly weighed the evidence on summary judgment.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering summary judgment dismissing plaintiff’s claims for tortious interference with contract.

2. The trial court erred in entering and relying on findings of fact in granting summary judgment.

The trial court’s Order re: Defendants’ Motion for Summary Judgment (CP 515-522) is the Appendix to this brief.

III. ISSUE RELATED TO ASSIGNMENTS OF ERROR

Whether a plaintiff claiming tortious interference with existing contractual relationships must prove an additional improper motive or improper means of competition?

IV. STATEMENT OF FACTS

This matter was decided on summary judgment, and the facts must be considered in a light most favorable to the appellant. ***Lesley v. State***, 83 Wn. App. 263, 266, 921 P.2d 1066 (1996), *rev. denied*, 131 Wn.2d 1026 (1997). The trial court weighed the evidence and made factual findings in its Order granting summary judgment. See Argument § C, *infra*. This statement of facts is based on the pleadings considered on summary judgment, and relies upon reasonable inferences taken in the light most favorable to the appellant, the nonmoving party.

A. The Parties Are Competitors In The Restaurant Linen Supply Business. Appellant Purchased Respondent's Business In 2000, And In March 2005 Permanently Purchased Respondent's Previous Business Name.

Service Linen is a family-owned business that has provided commercial linen service to restaurants for two generations, entering into written contracts to rent linens to restaurants. (CP 459-460) Tomlinson is a competing linen supply service owned by Gary and Tim Tomlinson, the individual defendants in this case. (CP 461) Prior to 2000, Gary and Tim Tomlinson owned and operated New Richmond Supply Laundries, Inc. ("New Richmond"). (CP 460) In February 2000, Service Linen bought the assets of

New Richmond. (CP 460) By far the most valuable of the assets were New Richmond's customer contracts, which were assigned a value of \$3,389,841, representing 85% of the total sales price of \$3,999,841. (CP 460, 469)

The Service Linen/New Richmond Purchase and Sale Agreement gave Service Linen the exclusive license of the right to use the New Richmond name and logo for five years, and to thereafter permanently purchase the right to use the New Richmond name for \$25,000. (CP 461) In March 2005, Service Linen paid \$25,000 to Gary Tomlinson to purchase the name "New Richmond and all use of words in connection with 'New Richmond.'" (CP 461)

B. After Respondent Re-entered The Linen Business Later In 2005, It Hired Respondent's Customer Representative And Solicited Business Using Its Previous Name.

In summer 2005, the Tomlinsons purchased the assets of Peerless Laundry, another restaurant linen supplier, and began doing business as Tomlinson Linen. (CP 461) Tomlinson sought out and hired Ken Bowman, who had been a customer service representative for New Richmond for 15 years before the sale to Service Linen, and who had left Service Linen in September 2004.

(CP 463) Tomlinson did a mass mailing to all restaurants in the I-5 corridor, from Bellingham to Olympia, including 163 restaurants whose accounts had been sold to Service Linen, using the New Richmond name:

We used to be New Richmond Supply Laundries. Tomlinson Linen Service is bringing back the high levels of service and product quality that many of you remember when we were New Richmond.

(CP 270, 462)

In July 2005, Bob Raphael of Service Linen sent a letter to Gary Tomlinson welcoming him back to the business, but warning him that Service Linen “has current contacts with virtually all our customers”:

We have no objection to competing for business when the contract comes up for renewal, but we do take the position that interfering with an existing contract is the basis for a legal claim against a competitor.

(CP 479) Service Linen separately notified Tomlinson of its existing contracts with Le Pichet in December 2006, 13 Coins in September 2007, and the Pink Door in November 2007, after learning of Tomlinson’s solicitation of these customers. (CP 464, 488, 491, 494)

C. Respondent Entered Into Contracts With At Least Eight Customers With Whom Appellant Had A Contract, Causing The Customers To Breach Or Terminate Their Contracts With Appellant.

Between 2006 and 2008, Tomlinson entered into contracts for linen services with at least eight restaurant companies, including Tom Douglas Restaurants, Celebrations Catering, 13 Coins, Le Pichet, The Pink Door, JAK'S Grill, Touchdown's, and Classic Catering, knowing that these restaurants had contracts with Service Linen and knowing that the effect of entering into a contract with the customer would be to cause that customer to breach an existing contract with Service Linen. (CP 464-465; CP 756-767)¹

Each of the Service Linen contracts with these restaurants was for a definite term. Unless either party terminated the contract more than 60 days prior the expiration of the then current term, each contract automatically renewed for additional terms of the same length. (CP 465) None of the restaurants subject to these contracts gave Service Linen notice of termination sixty days before

¹ Plaintiff's Evidence Demonstrating Factual Issues As To Each Element, (CP 756-767), summarizes the evidence on summary judgment and is Appendix B to this brief. Clerk's Paper citations have been added to the cited evidence in Appendix B.

the expiration of the contracts. (CP 22-23, 209-210, 464-465)

Most purported to terminate their contracts with Service Linen only after signing contracts with Tomlinson. (CP 226, 311, 320, 326)

Each of the Service Linen contracts could also terminate without liability if Service Linen failed to meet industry standards, and failed to correct an alleged deficiency in quality within a notice period. None of the restaurants effectively exercised its right to cancel its contract with Service Linen due to quality issues. (CP 209-210, 464-465) Le Pichet attempted to use the deficiency provision, but only after Le Pichet had signed a contract with Tomlinson. (CP 209)

Tomlinson knew of the contracts between Service Linen and the restaurants with which it entered service agreements. (CP 299; CP 756-767) Mr. Bowman, Service Linen's former employee who was instrumental in causing several restaurants to change providers to Tomlinson (CP 252, 255, 300-304), knew that these restaurants were Service Linen customers, could not identify a single Service Linen customer that was not under contract, and was familiar with Service Linen's contracts and their termination provisions. (CP 299, 301) Tomlinson often solicited the

restaurants' business by asking for a copy of Service Linen's current invoice and using that information to submit a lower "bid" for linen services. (CP 255; CP 757-760, 764) Since 2004, the invoices Service Linen sent to each restaurant with which it had a contract also provided notice that the service was provided under a contract. (CP 444-445)

One of the most significant contracts Service Linen lost to Tomlinson were those with the Tom Douglas Restaurants, which were among those accounts originally sold to Service Linen by New Richmond. (CP 983-934) Tim Tomlinson, knowing that Tom Douglas had a contract with Service Linen, called on the Tom Douglas Restaurants' general manager "constantly" for a year before they made the change to Tomlinson. (CP 274, 300) Classic Catering, another of the accounts that had been sold by New Richmond to Service Linen, responded to the mass mailing Tomlinson had sent out which said that its owners formerly owned New Richmond. (CP 270, 973) After receiving this mailing, Classic Catering called Tomlinson "Because we were back – were in the business." (CP 301)

D. Procedural History.

Service Linen brought this action to recover damages for tortious interference with existing customer contracts by Tomlinson in King County Superior Court on in February 2007. Tomlinson counterclaimed for commercial disparagement, tortious interference with business expectancies, and breach of contract. (CP 512) After discovery, Service Linen limited its complaint to the contracts discussed above.

On January 12, 2009, Judge Robert Eadie dismissed all Service Linen's claims for tortious interference with its contracts. The trial court characterized the legal issue governing its decision as "whether improper means or motive is an element of tortious interference with an existing contract." (CP 516) Concluding that it was, the trial court dismissed all plaintiff's claims in a 7-page Order, attached as Appendix A to this brief, discussing the evidence presented by both parties in connection with the termination of each of the eight accounts at issue. (CP 516-521) In dismissing the claims, the trial court found either that Service Linen had failed to produce evidence of improper motive or means, or that the

termination of the Service Linen contracts was not due to any action of Tomlinson Linen. (CP 515-522)

Tomlinson dismissed its counterclaims. (CP 512) Service Linen appealed. (CP 509) Tomlinson cross-appeals the denial of its requests for fees under CR 11 or RCW 4.84.185. (CP 523)

V. ARGUMENT

A. Standard of Review.

Summary judgment orders are reviewed de novo. *York v. Wahkiakum School Dist. No. 200*, 163 Wn.2d 297, 302, 178 P.3d 995 (2008). The court must consider all facts and all reasonable inferences from them in the light most favorable to the nonmoving party. A court may grant summary judgment only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

B. Tortious Interference With An Existing Contract Does Not Require Additional Evidence Of Improper Motive or Improper Means.

Taking the evidence in the light most favorable to appellant Service Linen, reasonable minds could conclude: (1) there were existing contracts between Service Linen and all the restaurants at issue; (2) Tomlinson knew of those contracts; (3) Tomlinson

intentionally interfered with the contracts, by actively encouraging these customers to end their contracts in order to enter into contracts to Tomlinson, and that Tomlinson's interference was the cause of termination of the customers' Service Linen service agreements; and (4) that Service Linen was damaged by loss of the contracts. The legal issue in this case is whether Service Linen was also required to prove additional improper motive or improper means before it could assert a claim for tortious interference. Although improper means or motive is a requirement for the tort of tortious interference with a business expectancy, it is not and should not be required for tortious interference with an existing contract. This court should reverse the summary judgment of dismissal and remand for trial under the proper legal standard.

The tort of interference with an existing contract was first defined by the Washington Supreme Court in ***Calbom v. Knudtzon***, 65 Wn.2d 157, 396 P.2d 148 (1964). There, the Court adopted the rule of the first Restatement of Torts, which requires no showing of any improper or wrongful motive or means, although under certain circumstances the interferor can avoid liability if it could establish the affirmative defense of privilege.

In *Island Air, Inc. v. LaBar*, 18 Wn. App. 129, 566 P.2d 972 (1977), this court confirmed that interference with an existing contract, even if terminable at will, was actionable. This court in *Island Air* quoted with approval California decisions that recognize that interference with an existing contract differs from interference with a mere business expectancy:

In determining this question we must observe an important distinction between interference with a contract and interference with relationships which can be disturbed without a breach of contract: In the latter situation, the law recognizes more extensive privileges to interfere for the sake of competition.

In *Imperial Ice Co. v. Rossier*, 18 Cal.2d 33, 36, 112 P.2d 631, 633, the court said: "Whatever interest society has in encouraging free and open competition by means not in themselves unlawful, contract stability is generally accepted as of greater importance than competitive freedom."

18 Wn. App. at 141, quoting *Tukuzo Shida v. Japan Food Corp.*, 251 Cal.App.2d 864, 866, 60 Cal.Rptr. 43, 45-46 (1967). Thus, this court in *Island Air* concluded that "a claim of completion *alone* does not justify interference by a stranger to a contract. *Island Air*, 18 Wn. App. at 142 (emphasis in original).

Although that case involved interference with a contract terminable at will, *Island Air* also recognized that liability for unjustifiable interference with another's commercial relations is not

dependent on the existence of an enforceable contract. *Island Air*, 18 Wn. App. at 140. The Supreme Court confirmed the existence of a cause of action for tortious interference with a business expectancy in *Pleas v. City of Seattle*, 112 Wn.2d 794, 774 P.2d 1158 (1989), holding that this tort requires a showing of some action that is “wrongful by some measure beyond the fact of the interference itself.” *Pleas*, 112 Wn.2d at 804.

The trial court relied upon *Pleas* and the citing case *Commodore v. University Mechanical Contractors, Inc.*, 120 Wn.2d 120, 137, 839 P.2d 314 (1992), in concluding that “improper means or motive is an element of tortious interference with an existing contractual relationship,” and in applying that standard on summary judgment. (CP 516) But both *Pleas* and *Commodore* discuss the requirements for tortious interference with business expectancy, not contract. Neither they nor any other Washington case addresses the issue here, and the trial court’s analysis ignores the public policy encouraging existing contracts that fulfills any requirement that improper means or motive be shown in a claim for tortious interference with an existing contract.

The law favors the enforcement of valid contracts, promoting certainty in commercial matters and discouraging litigation. ***Island Air***, 18 Wn. App. at 141. Interference with an existing contract does not require that the defendants' conduct be wrongful apart from the interference with the contract itself:

[I]t is necessary to distinguish the tort of interference with an existing contract because the exchange of promises which cements an economic relationship as a contract is worthy of protection from a stranger to the contract. *Intentionally inducing or causing a breach of an existing contract is therefore wrong in and of itself.*

Quelimane Co. v. Stewart Title Guaranty Co., 19 Cal.4th 26, 55-56, 960 P.2d 513, 530, 77 Cal.Rptr.2d 709 (1998) (emphasis added); see also ***Tuchscher Development Enterprises, Inc. v. San Diego Unified Port District***, 106 Cal.App.4th 1219, 132 Cal.Rptr.2d 57 (2003); ***Coastal Abstract Service, Inc. v. First American Title Insurance Co.***, 173 F.3d 725 (9th Cir. 1999).

“[G]reater protection is accorded to an interest in an existing contract (as to which respect for individual contract rights outweighs the public benefit to be derived from unfettered competition) than to the less substantive, more speculative interest in a prospective relationship (as to which liability will be imposed only on proof of

more culpable conduct on the part of the interferor).” ***White Plains Coat & Apron Co., Inc., v. Cintas Corp.***, 8 N.Y.3d 422, 867 N.E.2d 381, 835 N.Y.S.2d 530 (2007). The *Restatement (Second) Torts* also treats separately interference with an existing contract (Section 766) and interference with a business expectancy (Section 766B).

In holding that Service Linen was required to show additional improper motive or means to prove tortious interference with contract, the trial court held that there is no duty to refrain from interfering with others’ valid, existing contractual relationships. As a matter of Washington law and of public policy, this was wrong. This court should reverse and remand for trial.

C. Even If Improper Motive or Improper Means Is a Necessary Element of Tortious Interference With an Existing Contract, Genuine Issues of Fact Precluded Summary Judgment.

“Whether or not a course of conduct will be deemed ‘improper’ in an interference situation depends on the facts of each case.” ***Island Air***, 18 Wn. App. at 143. Factors the court should consider when determining whether the interference is improper include (1) the nature of the actor’s conduct; (2) the actor’s motive; (3) the interests of the other with which the actor’s conduct

interferes; (4) the interests sought to be advanced by the actor; (5) the social interests in protecting the freedom of action of the actor and the contractual interests of the other; (6) the proximity or remoteness of the actor's conduct to the interference; and (7) the relations between the parties. *Restatement (Second) of Torts*, § 767. "Here, 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) Torts*, § 767, Comment I. See also ***Quadra Enterprises, Inc. v. R.A. Hanson Co., Inc.***, 35 Wn. App. 523, 527, 667 P.2d 1120, 1122-23 (1983) (whether defendant's actions were justified in action for tortious interference with business relationship was question of fact).

In this case, the trial court improperly weighed the evidence in dismissing Service Linen's action even if additional improper means or motives were an element of tortious interference with contract. Tomlinson sold Service Linen a large number of accounts, including Classic Catering and the Tom Douglas

Restaurants. Once Tomlinson went back into business, they negotiated deals with these customers and signed service agreements with them, knowing that Service Linen had purchased those accounts, knowing that the contracts did not expire unless the customer gave notice, and knowing that if they signed agreements with these customers, the necessary and obvious result would be Service Linen's loss of those accounts.

Respondent Gary Tomlinson sold the "New Richmond" trade name just two months before reentering the linen service business, including former New Richmond clients. At least one, Classic Catering, received the New Richmond post card, called Tomlinson as a result, and became a Tomlinson Linen customer. (CP 270-271) By using the New Richmond name in their proposals, advertisements, and web site, and by otherwise seeking to recapture the New Richmond business, Tomlinson also engaged in "improper means" of competition. ***J.L. Cooper & Co. v. Anchor Securities Co.***, 9 Wn.2d 45, 53, 54, 113 P.2d 845 (1941) ("sale of good will of a business carries the implied covenant by the seller that he will not solicit the custom for which the purchasers paid,"

even though “[t]here is no question of restrictive covenants”); *Karsh v. Haiden*, 120 Cal.App.2d 75, 260 P.2d 633 (1953).

The trial court improperly weighed the evidence in determining that Tomlinson’s actions were not the reason for termination of Service Linen contracts. For example, the trial court dismissed Service Linen’s claims regarding the Pink Door contract after finding that because “Jacqueline Roberts . . . was unhappy with the product from P. that she initiated contact with Tomlinson and that she terminated the relationship with P., because of her own reasons, not influenced by T.” (CP 519) Service Linen, however, had produced evidence of Tomlinson’s active efforts to obtain the Pink Door account despite knowledge of the Service Linen contract. (CP 762-63) The trial court either disregarded these facts, or impermissibly weighed the evidence and determined which Service Linen customers would have terminated their contracts without regard to Tomlinson’s efforts to obtain their business.

Causation is a question for the fact finder not properly determined at summary judgment except in the rarest of

circumstances. *Joyce v. Dept. of Corrections*, 155 Wn.2d 306, 320, ¶¶39, 119 P.3d 825 (2005). In this case, the facts are in dispute, subject to differences of opinion and reasonable doubts, and their determination is thus properly reserved for trial. In weighing the facts on summary judgment, the trial court erred, depriving Service Linen of the opportunity to have the fact-finder determine the credibility of the witnesses and the facts in light of all the evidence presented at trial. Even if improper motive or improper means is a necessary element of tortious interference with an existing contract, genuine issues of fact precluded summary judgment.

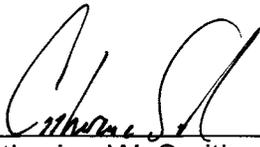
VI. CONCLUSION

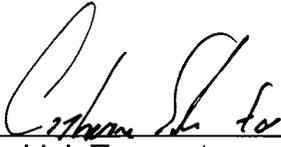
Tomlinson knew of Service Linen's existing contracts, actively solicited its customers, and aided Service Linen customers in terminating their existing Service Linen contracts in order to become customers of Tomlinson. Nothing more is required to prove tortious interference with existing contracts. This court should reverse and remand for trial.

Dated this 25th day of August, 2009.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 25, 2009, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

| | |
|---|--|
| Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101 | <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail |
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DATED at Seattle, Washington this 25th day of August, 2009.


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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

JKR, LLC,
Plaintiff,
v.
LINEN RENTAL SUPPLY, Inc., et al.,
Defendants.

NO. 07-2-05491-0SEA

ORDER RE: DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

Plaintiff alleges tortious interference by Defendants with their contracts to provide linen services to a number of catering companies and restaurants. Defendant brought this motion for summary judgment to dismiss all of Plaintiff's claims. The parties filed briefs and presented oral argument. Plaintiff's alleges Tortious Interference by Defendant with several restaurants and catering companies, each of which was addressed separately in the motion hearings and will be addressed separately here.

Plaintiff's claims with respect to Carlis, Al Bocallino, Salvatore Lembo Restaurants and Kells were withdrawn and those claims are DISMISSED.

Defendant (Tomlinson) was the previous owner of Plaintiff's linen supply company. The sale agreement by which Plaintiff purchased its business prohibited Tomlinson from competing with Plaintiff for a period of two years. Plaintiff does not claim Tomlinson violated the non-compete agreement. The acts that constitute the basis of Plaintiff's

ORIGINAL

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1 complaint did not occur until approximately five years after the sale of the business to
2 Plaintiff, and nearly three years after the expiration of the non-compete agreement.

3 The elements of the tort of interference with a contract relationship are not in
4 dispute, with one exception. Plaintiff contends that interference alleged with respect to an
5 existing contractual relationship does not require a showing of improper means or motive,
6 while interference with contract expectancies does require such a showing. Plaintiff
7 conceded that there was no evidence of improper motive. The legal issue in this motion is
8 whether improper means or motive is an element of tortious interference with an existing
9 contract. The factual issue presented in this motion is whether there is evidence to support
10 a finding that Defendant interfered with Plaintiff's contracts or contractual expectancies by
11 the use^{of} improper means.

12 Based on *Pleas v. Seattle*, 112 Wn.2d 794, 804 (1989) and the cases following,
13 particularly the references to the *Pleas* standards found in *Commodore v. University*
14 *Mechanical*, 120 Wn.2d 120, 137 (1992) this court concludes that improper means or
15 motive is an element of tortious interference with an existing contractual relationship and
16 will apply that standard in this motion for summary judgment.

17 The parties agree and the court concludes as a matter of law that since there are
18 no contractual limitations on Tomlinson's competition with Plaintiff he may compete in the
19 same manner as any other competitor of Plaintiff.

20 **Tom Douglas Restaurants:**

21 The un rebutted evidence presented at this hearing is that Tomlinson contacted Tom
22 Douglas Restaurants (Pam Leydon) and was told that they were under contract to P.
23 and to check back closer to the end of the contract. T. did so, and made a proposal to
TD which was accepted. TD believed, and told T that they were no longer under
contract to P. There was a reasonable basis to believe that the contract had been
terminated, though there may be a dispute about the timeliness of the notice to
terminate. In either case P. withdrew service from TD. TD testified that price was the
reason for the change, but also testified they wanted to look at another provider at the
end of their contract with P. because of their dissatisfaction with P.s product or service.

1 There is no evidence before the court that would support a finding that T. engaged in a
2 improper act that caused TD to breach or terminate P's contract. Nothing was offered
3 to TD by T to induce TD to terminate its contract with P, other than prices and a promise
4 of good service (L.Dep 71) nor did TD ask for any other consideration.

5 Pam Leydon: (Dep. 45): at the time we were first approached by Tim we still had some
6 time left on our contract, so it wasn't until another year I think that he approached me
7 again." "We're under contract, and contact us later ... closer to the time it expires."
8 (108) and she understood T. would not enter into a contract with her until the P. contract
9 had expired, and he did not until after the date she believed the contract had expired.
10 (T actually started earlier but that was because P. pulled out before TD believed he was
11 required to). She clearly believed that after meeting with the executive chef she had
12 terminated the contract (July 8) by written notice to P (Dep. 49-51). While there is an
13 issue whether she gave proper notice of termination the un rebutted evidence before the
14 court is that she believed she had terminated the contract and communicated that belief
15 to T.

16 Under the law as applied by this court by which an improper act causing breach or
17 termination is a necessary element of Plaintiff's claim, and in the absence of evidence to
18 support such a finding, Summary judgment is GRANTED to defendants on the Tom
19 Douglas Restaurants claim.

20 **Celebrations Catering**

21 The evidence supports T's assertion that while they knew P. was the current supplier to
22 Celebrations Catering, they were told by Celebrations Catering that they were not under
23 a current contract and that they (Celebrations) were dissatisfied with the service or
product provided by P. and were going to change providers, and that Celebrations
initiated contact with T. for a price quote. There is a conflict in the evidence on the
question of whether P. told Celebrations that they could go ahead and sign with a new
provider, but that conflict does not change the fact that Celebrations believed they were

1 not under contract, that they so advised T., that they had initially sought out T. and
2 further that they were making a change because they were not satisfied with the service
3 or product of P. Under these circumstances there is no evidence that would support a
4 finding of wrongful act by T and Defendants are entitled to Summary Judgment
5 dismissing Plaintiff's claims with respect to Celebrations Catering.

6 **Thirteen Coins**

7 The un rebutted evidence is that Thirteen Coins initiated contact with T. to obtain a
8 proposal for linen service. Thirteen Coins was dissatisfied with the service
9 provided by P; they had interviewed other linen providers before asking T for a
10 bid. Thirteen coins believed that their contract with P. had expired. While P. may
11 have disagreed, there is not sufficient evidence to find that Thirteen Coins either
12 breached or terminated their contract with P. because of any wrongful act by T.
13 Summary judgment for Defendant is GRANTED as to the Thirteen Coins account.

14 **Le Pichet**

15 The evidence is un rebutted that Le Pichet was dissatisfied with the service
16 provided by P., believed it was not under contract to P. and was seeking a new
17 linen provider before they initiated contact with T. When P. informed Le Pichet
18 that they were under contract Le Pichet told T. they could not go forward with a
19 contract with T. A T. employee told Le Pichet, that he would be surprised if P.
20 enforced their contract. This statement could have supplied the basis for a tortious
21 interference claim if there was evidence that it was a cause of Le Pichet breaching
22 or terminating its contract with P., but there is no evidence to support such a
23 finding. It is un rebutted that Le Pichet independently determined to end service
from P. and that upon learning that they had a contract with P. proceeded to
terminate the contract pursuant to the cancellation provisions in the contract and

1 then entered their contract with T. Other than the unfortunate comment by a T.
2 employee there is no evidence of a wrongful act by T. and there is no evidence to
3 support a finding that any act by T. or its employee was a cause of the termination
4 of the contract by Le Pichet. Summary judgment is GRANTED to Defendants on
5 the LePichet claim.

6 **The Pink Door**

7 Jacqueline Roberts testified that she was unhappy with the product from P., that
8 she initiated contact with Tomlinson and that she terminated the relationship with
9 P. because of her own reasons, not influenced by T. Her testimony is clear and
10 direct and remains unrebutted. There is no evidence in this record to sustain a
11 finding that T. took any wrongful action with respect to the Pink Door account, nor
12 that Pink Door terminated their contract with P. for any reason other than their
13 own. P. has proffered a declaration by David Leggett attributing comments to a
14 Pink Door employee that a T. employee told Pink Door that P. would not take legal
15 action to enforce their agreement. This testimony is offered to show improper
16 interference. It is, however, inadmissible hearsay and will not be considered in this
17 motion. Summary judgment is GRANTED to Defendant on the Pink Door claim.

18 **JAK'S GRILL**

19 There is no evidence that would support a finding that T. engaged in wrongful
20 conduct leading JAK's Grill to breach or terminate their contract with P. JAK's
21 initiated the contact with T., and the testimony of Kenneth Hughes, which is
22 unrebutted, describes T. as being respectful of the contract relationship between
23 JAK's and P. He also testified that JAK's had decided to terminate their contract
with P. due to service and communication issues, and they were going to contract

1 with a different linen supplier whether it turned out to be T. or another company.
2 There is no evidence in the record that would support a finding of an improper act
3 by T. with respect to JAK's and no evidence to support a finding that any act of T.
4 led to a breach or termination of JAK's contract with P. Defendant's motion for
5 Summary judgment as to Plaintiff's claim relating to JAK's is GRANTED.

6 **Touchdowns**

7 Touchdowns initiated contact with T. through a networking organization. T. called
8 on Touchdowns after being informed of Touchdowns' interest and was told that
9 while Touchdowns was obtaining their linen service from P. they were not under
10 contract to them. The existence of a contract was questioned by T., but
11 Touchdowns asserted their belief that they were not under contract. T. entered into
12 a contract with Touchdowns and agreed that if it turned out that Touchdowns was
13 under contract with P. T would release them from their contract. As a matter of
14 fact Touchdowns was under contract with P. and when threatened with suit by P.
15 Touchdowns asked to be released from T. contract, and they were. While there
16 might be some question as to the accuracy of Touchdowns' representation that they
17 were not under contract with P., T's acceptance of Touchdowns' representation
18 does not constitute improper means, and the breach of Touchdown's contract with
19 P. was not, by the evidence presented in this motion, caused by T. Touchdowns
20 was looking for a new provider and selected T because they were dissatisfied with
21 P., not because of any wrongful act of T. Defendant's motion for Summary
22 judgment as to Plaintiff's claim relating to Touchdowns is GRANTED.

23 **Classic Catering**

1 T. employee Ken Bowman testified that Classic Catering initiated contact and said
2 they heard T. was back in business (D-69). Bowman (Classic Catering) believed
3 that he was able to change linen providers any time that he wished by giving notice
4 of termination. He may have been wrong in this regard, but there is no evidence to
5 support a finding that T. used any improper means to get CC to change their
6 provider. There is simply not sufficient evidence in this record to support a finding
7 that would lead to liability by T. for tortious interference, and Summary judgment
8 is GRANTED to T. on the Classic Catering claim.

9 The law protects from interference with existing contracts; but does not prohibit
10 competition. The cases cited, *Pleas* and others, establish standards to
11 differentiate competition from interference. Calling on a potential customer, or
12 examining the prices of a competitor are not, of themselves improper acts.
13 Knowledge of the current provider and that many providers use long-term
14 contracts does not preclude a sales call. At oral argument the parties expressed
15 their agreement to these principles. Plaintiff argues that a different, stronger
16 protection against competition, not requiring improper means or motive, applies
17 to contracts that were part of the company when Plaintiff purchased his business
18 from T. several years previously. However there is no authority cited for such a
19 distinction.

20 It is apparent from the record that many restaurants and caterers have linen
21 supply contracts, but those contracts expire and some don't have contracts, and
22 sometimes the customer will tell a salesperson that they are not under contract
23 when they are. T. testified that when they are told that a potential customer is

1 under contract they do not pursue the matter – it is not in their interest to invest
2 in linen for a customer under contract when they may have to pull out. This
3 record supports that the defendants do follow that principle. The record does not
4 contain evidence that would support a finding that there has been tortious
5 interference with any of the customers regarding which Plaintiff has made claim
6 in this lawsuit.

7
8 Summary judgment of dismissal is GRANTED as to all claims.

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10 DATED this 6th day of January, 2009.

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13 Richard D. Eadie

14 RICHARD D. EADIE, JUDGE
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HONORABLE RICHARD EADIE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JKR, LLC, a Washington domestic limited liability company,

Plaintiff,

NO. 07-2-05491-0 SEA

vs.

**PLAINTIFF'S EVIDENCE
DEMONSTRATING FACTUAL
ISSUES AS TO EACH ELEMENT**

LINEN RENTAL SUPPLY, INC., a Washington domestic corporation, d/b/a Tomlinson Linen, d/b/a Tomlinson Linen Services; GARY TOMLINSON and "JANE DOE" TOMLINSON, and the marital community composed thereof; and TIMOTHY TOMLINSON and "JANE DOE" TOMLINSON and the marital community composed thereof,

Defendants.

**Filed Under Seal Pursuant to
Stipulation and Order to Seal the Court
Record dated November 26, 2008**

SEE ATTACHED

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ISSUES AS TO EACH ELEMENT

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**JKR, LLC v. LINEN RENTAL SUPPLY, INC., ET AL.
(King County Superior Court Cause No. 07-2-05491-0 SEA)**

PLAINTIFF'S EVIDENCE DEMONSTRATING FACTUAL ISSUES AS TO EACH ELEMENT

| CUSTOMER | KNOWLEDGE OF EXISTING CONTRACT | INTERFERENCE CAUSE/INDUCE BREACH | IMPROPER PURPOSE/IMPROPER MEANS |
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| <p>Facts that apply to all customers</p> | <p>Everyone in the industry knows and understands that virtually all restaurants have existing service agreements with their current linen service providers. Raphael Declaration, ¶ 4; Gary Tomlinson Deposition, p. 50, lines 7-11; Bowman Deposition, p. 35, line 10 – p. 36 line 3. See also Tim Tomlinson Deposition, p. 45, lines 8-10; 13 Coins Deposition, p. 35 line 22 – p. 36 line 5. <i>CP 460; CP 339; CP 299; CP 271; CP 31.</i> When Tomlinson sales people meet with a prospective customer, they often can tell who the current supplier is because of the distinctive nature of the competitor's products. Deposition of Reginald Knox, p. 14, line 16-21; p. 15, line 1-3; Deposition of Gary Tomlinson, p. 48, lines 8-11; Deposition of Tim Tomlinson, p. 68, line 20. <i>CP 282; CP 333; CP 274</i> In July of 2005, when Service Linen learned that the Tomlinsons were getting back into the business, Robert Raphael sent a letter to Gary Tomlinson in which he stated: "We want you to be aware that Service Linen has current contracts with virtually all our customers." Declaration of Robert Raphael in Opposition to Defendants Second Motion for Summary Judgment ("Raphael Declaration"), ¶ 10 and Exhibit E to that declaration. <i>CP 461; 479-80</i> Ken Bowman testified that during his time with Service Linen he did not know of a single Service</p> | <p>Tomlinson's service agreements required the customers to warrant that no other agreement for linen service would be in place on the date Tomlinson commenced service, effectively requiring the customers to terminate their pre-existing linen contracts.</p> | <p>Improper purpose or improper means need not be shown when a defendant interferes with an existing contract. The interference in and of itself is wrongful. Please see authorities cited in Plaintiff's Opposition, pp. 17-19. <i>CP 176-78</i> If improper purpose or improper means is required, the court is to consider seven factors: (1) the nature of the actor's conduct; (2) the actor's motive; (3) the interests of the other with which the actor's conduct interferes; (4) the interests sought to be advanced by the actor; (5) the social interests in protecting the freedom of action of the actor and the contractual interests of the other; (6) the proximity or remoteness of the actor's conduct to the interference; and (7) the relations between the parties.</p> |

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| | <p>Linens customer that was not under contract. Bowman Deposition, p. 35, lines 10-13.</p> <p>CP 299</p> <p>Mr. Bowman had previously read Service Linen agreements and was familiar with their terms. Bowman Deposition, p. 34, lines 3-5.</p> <p>CP 299</p> | | |
| <p>Tom Douglas Restaurants ("TDR")</p> | <p>The Tom Douglas restaurants were among the accounts sold by New Richmond, owned by Gary Tomlinson, to Service Linen. See Declaration of Robert Raphael filed June 2, 2008, Exh. A, pages RS&C 139-140.</p> <p>CP 983-84</p> <p>Tim Tomlinson requested and received Service Linen invoices which were then used by the defendants to provide a price quote that expressly identified Service Linens and its charges. Deposition of Tom Douglas Restaurants, p. 72, line 7 - p. 73, line 5, p. 86, line 24-p. 87 line 21; Corrected Declaration of Timothy E. Steen ("Steen Declaration"), Exh. B.</p> <p>CP 292-93; CP 607-10</p> <p>The invoices state on their faces that TDR was under contract with Service Linen. Declaration of Ken Stewart ("Stewart Declaration"), ¶¶3-5, Exhs. E-H.</p> <p>CP 444-45, 845-63</p> <p>Tim Tomlinson testified that they knew Tom Douglas Restaurants were customers of Service linen. Tim Tomlinson Deposition, p. 65 l. 11-15.</p> <p>CP 273</p> <p>Ken Bowman, defendants' Customer Service Manager, confirmed that he knew that Tom Douglas Restaurants to be a Service Linen Customer. Bowman Deposition, p. 61, line 5</p> <p>CP 300</p> <p>When Tim Tomlinson met with Pam Leydon, the Executive General Manager for TDR, during one of his sales calls they expressly discussed the fact that there was a contract with Service Linen in place.</p> | <p>Tim Tomlinson "constantly" called on Tom Douglas Restaurants for a year before TDR signed an agreement with Tomlinson. Tim Tomlinson Deposition, p. 65, ln. 11-15, p. 66, ln. 25-p. 67 ln. 5; deposition of Tom Douglas Restaurants, p. 40, ln. 10-17.</p> <p>CP 273; 274; CP 289</p> <p>Mr. Tomlinson requested and received Service Linen Invoices which were then used by the defendants to provide a price quote and a price comparison with Service Linen's charges. Deposition of Tom Douglas Restaurants, p. 72, line 7 - p. 73, line 6, p. 86, line 24-p. 87 line 21; Steen Declaration, Exh. B.</p> <p>CP 292-93; CP 607-10</p> <p>To induce TDR to leave Service Linen and become a Tomlinson customer, Mr. Tomlinson quoted a rate of \$0.03 per napkin, a price at which a company cannot operate profitably without established minimums. Steen Declaration, Exhs. F-J. Deposition of Greg Horn, p. 155, line 16 - p. 157 line 16.</p> <p>CP 566-84; CP 278</p> <p>As further inducement to TDR, Mr. Tomlinson represented to TDR that there would be no minimums. Deposition of Tom Douglas Restaurants, p. 38, lines 15-17.</p> <p>CP 289</p> <p>This in spite of the fact that Tim Tomlinson had testified that Tomlinson Linen "had to have minimums" to assure it would recoup its</p> | <p>(1) Tomlinson constantly called on TDR for a year before succeeding in taking over the business. Tomlinson requested and obtained Service Linen invoices. Tomlinson's success was due to the price, which according to Pam Leydon, was the only factor considered in making the switch. Initial price was at a level that was not profitable to Tomlinson. (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5) Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. On July 3, 2006 TDR signed four service agreements with Tomlinson; just five days later TDR sent a letter purporting to cancel the Service Linen contract. (7) The relationship between plaintiff and defendants is that of a competitor, but in the case</p> |

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| | <p>Deposition of Tom Douglas Restaurants, p. 40 lines 10-17. CP 289</p> <p>Ms. Leydon of TDR and Tim Tomlinson discussed the fact that TDR had a contract with Service Linen. Deposition of Tom Douglas Restaurants, p. 40, ln. 10-17. CP 289</p> <p>The defendants proceeded with a price quote despite the fact that these invoices stated on their face that TDR was under contract and included the signature of TDR employees affirming this fact. Deposition of Tom Douglas Restaurants, p. 96 lines 6-20, e.g. Exhs. 31-32 thereto; Declaration of Ken Stewart, ¶¶3-5, Exhs. E-H</p> <p>CP 294; CP 445, 845-63</p> | <p>investment in linens." Deposition of Tim Tomlinson, p. 32, lines 5-17.</p> <p>CP 269</p> <p>Pam Leydon, the representative of TDR, testified that the prices quoted by Tomlinson were very good prices that would result in a substantial cost saving to TDR. Deposition of Tom Douglas Restaurants, p. 43, lines 13-18.</p> <p>CP 290</p> <p>Ms. Leydon testified that price was the only factor considered in making the change from Service Linen to Tomlinson. Deposition of Tom Douglas Restaurants, p. 43, lines 5-12.</p> <p>CP 290</p> <p>On July 3, 2006, TDR signed four service agreements with Tomlinson. Steen Declaration, Exhs. F-J. CP 566-84</p> <p>Just five days later, on July 8, 2006, Ms. Leydon sent a letter to Service Linen purporting to cancel TDR's contract with Service Linen. Transcript of Deposition of Pam Leydon, p. 60, line 1 and Exhibit 7 to that deposition.</p> <p>CP 291, 217</p> <p>Later, due to the billing from Tomlinson to TDR being "too complicated," TDR agreed to pay minimum charges. Deposition of Tom Douglas Restaurants, p. 91, line 1 - p. 94, line 6.</p> <p>CP 294-95</p> | <p>of TDR, an additional component exists by virtue of the purchase of the assets of New Richmond (owned by Gary Tomlinson) by Service Linen in 2000 and the purchase of the Trade Names of New Richmond from Gary Tomlinson for \$25,000 in March of 2005. Among the assets purchased by Service Linen were the accounts of New Richmond, including Tom Douglas Restaurants. Declaration of Robert Raphael dated May 29, 2008, Exh. A. Solicitation of an account previously sold to Service Linen violated the duty of good faith and fair dealing inherent in the sale agreement because it was intended to deprive Service Linen of the benefit of its bargain.</p> <p>CP 942-1016</p> |
| <p>Celebrations Catering</p> | <p>During an initial sales call, Tomlinson's salesman Reginald Knox met with the owner of Celebrations and was told that Service Linen was that company's current linen supplier. Deposition of Reginald Knox, Jr., p. 32 lines 13-14. CP 283</p> <p>During that meeting, Mr. Knox was given a current Service Linen invoice which he and the owner</p> | <p>Tomlinson requested and received from Celebrations Catering at least one Service Linen invoice. Deposition of Celebrations Catering, p. 41, line 14-17. CP 325</p> <p>Tomlinson Linen's Service Agreements stated that Tomlinson was to be the exclusive provider of linen service, effectively requiring that the</p> | <p>(1) Tomlinson requested and obtained Service Linen invoices. (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by</p> |

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| | <p>analyzed together to determine pricing and quantities. Deposition of Celebrations Catering, p. 41 line 14 -17; p. 58 line 18-23; p. 40 line 21 - p. 41 line 3.</p> <p><i>CP 325; 326; 325</i></p> <p>The invoice showed on its face that Celebrations had a service agreement with Service Line. Declaration of Ken Stewart ("Stewart Declaration"), ¶¶3-5, Exh. B.</p> <p><i>CP 444-45, 821-25</i></p> <p>Gary Tomlinson tracked Celebrations as an account taken from Service Linen. Steen Declaration, Ex. A, p. 12.</p> <p><i>CP 350</i></p> | <p>customer terminate any service agreement with Service Linen. See Steen Declaration, Exhs.</p> <p>The date of the service agreement between Tomlinson and Celebrations was 2/13/08; the date of the termination of service by Service Linen was 2/17/08. Steen Declaration, Exh. R.</p> <p><i>CP 224</i></p> | <p>Tomlinson. (5) Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. The date of the service agreement between Tomlinson and Celebrations was 2/13/08; the date of the termination of service by Service Linen was 2/17/08. (7) The relationship between plaintiff and defendants is that of a competitor.</p> |
| <p>13 Coins</p> | <p>Ken Bowman, defendants' Customer Service Manager, confirmed that he knew 13 Coins to be a Service Linen Customer. Bowman Deposition, p. 76 ln. 11.</p> <p><i>CP 302</i></p> <p>During one of the initial sales meetings with Tomlinson's managers, Joel McAlister and Richard Bryant, 13 Coins' Mark Nesheim informed them that Service Linen was the current linen provider for 13 Coins. Deposition of 13 Coins, p. 35 line 6-8. Mr. Nesheim told Messrs. McAlister and Bryant that there was a contract between 13 Coins and Service Linen, but 13 Coins did not feel it had a valid contract based on the fact that the contract was signed by an individual who was not authorized to sign contracts on behalf of 13 Coins. Deposition of 13 Coins, p. 35, line 21 - p. 36, line 15.</p> <p><i>CP 31</i></p> <p>13 Coins and Service Linen had ratified their written contracts by performing under the contracts for 18 months. Deposition of 13 Coins, p. 52, line 1 - p. 54 line 7; p. 55 line 12 - p. 56 line 9.</p> | <p>Tomlinson obtained 50-60 Service Linen invoices from 13 Coins. Deposition of 13 Coins, p. 38, lines 6-10.</p> <p><i>CP 232</i></p> <p>Tomlinson then submitted a bid to 13 Coins which would save 13 Coins at least \$2,000 per month. Deposition of 13 Coins, p. 45, lines 3-8.</p> <p><i>CP 233</i></p> <p>The decision to change linen providers was partly because of these savings. Deposition of 13 Coins, p. 44, lines 5-7.</p> <p><i>CP 233</i></p> <p>An email from 13 Coins' Mr. Nesheim and Tomlinson's Mr. Bryant states that 13 Coins' owner is "adamant" about price being 1% of sales rather than 1.1%. Steen Declaration, Exh. T. States "I really want to get this deal done."</p> <p><i>CP 1548</i></p> <p>13 Coins' Mark Nesheim and Tomlinson's sales representative coordinated Tomlinson's taking over the business from Service Linen. Deposition of 13 Coins, p. 67, lines 8-20.</p> | <p>(1) Tomlinson requested and obtained 50-60 Service Linen invoices. Tim Tomlinson testified that they knew Tom Douglas Restaurants were customers of Service linen. Tim Tomlinson Deposition, p. 65 l. 11-15. <i>CP 273</i></p> <p>Tomlinson's success in taking over the account was at least partly due to the price. Deposition of 13 Coins, p. 44, lines 5-7. See Steen Declaration, Exh. S. Tomlinson ignored the letter from Service Linen informing Tomlinson of the existing contract between Service Linen and 13 Coins. (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5)</p> |

CP 234; CP 235

CP 236

CP 233

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| | <p>Tomlinson's Richard Bryant asked to see recent Service Linen invoices. Steen Declaration, Exh. D. He received 50-60 such invoices, each of which stated on its face that the customer was under contract with Service Linen. Deposition of 13 Coins, p. 38 lines 6-10. Declaration of Ken Stewart ("Stewart Declaration"), ¶¶3-5, Exhs. J-K. <i>CP 545; CP 232; CP 444-45, 861-84</i> Mr. Neshiem (13 Coins) was concerned after reviewing the contracts that Service Linen would hold 13 Coins to the contract if attempted to switch to Tomlinson. Deposition of 13 Coins, p. 55 line 12 - p. 56 line 9. <i>CP 235</i></p> <p>Mr. Neshiem probably discussed his concerns with Tomlinson's representatives. Deposition of 13 Coins, p. 56, lines 5-11. <i>CP 235</i></p> <p>Mr. Neshiem knew that Service Linen felt there was a valid agreement in place. Deposition of 13 Coins, p. 72 lines 19-24. <i>CP 237</i></p> <p>When Service Linen learned of Tomlinson's interference with 13 Coins, on September 4, 2007, Service Linen sent a letter to Tomlinson informing Tomlinson that 13 Coins was under contract with Service Linen. Raphael Declaration, Ex. I. That letter was received on September 7, 2007, the same day that 13 Coins switched service providers from Service Linen to Tomlinson. See return receipt attached to Exhibit I and Deposition of 13 Coins, p. 52, lines 5-9. <i>CP 491; CP 492, 239</i></p> | <p>The date of the service agreement between Tomlinson and 13 Coins was 8/23/07; the date of the termination of service by Service Linen was 9/9/07. Steen Declaration, Exh. R. <i>CP 226</i> In an internal email exchange dated July 29, 2008, Mark Nesheim of 13 Coins informed his superiors that Tomlinson had saved 13 Coins \$2,455 per month. Steen Declaration, Exh. S. <i>CP 550</i></p> | <p>Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. The date of the service agreement between Tomlinson and 13 Coins was 8/23/07; the date of the termination of service by Service Linen was 9/9/07. (7) The relationship between plaintiff and defendants is that of a competitor.</p> |
| Le Pichet | <p>Ken Bowman, defendants' Customer Service Manager, confirmed that he knew Le Pichet to be a Service Linen Customer. Bowman Deposition, p. 66, ln. 6-8. <i>CP 381</i></p> | <p>Tomlinson obtained from Le Pichet a Service Linen invoice. Deposition of Le Pichet, p. 99, line 24- p. 100 line 4. <i>CP 255</i> Le Pichet received a price proposal from</p> | <p>(1) Tomlinson obtained a Service Linen invoice from Le Pichet and quoted Le Pichet a price that was cheaper than that charged by Service Linen. Tomlinson's</p> |

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Tomlinson's sales representative, Ken Bowman, asked to see and received recent Service Linen invoices, a document that on its face stated that the customer was under contract with Service Linen. Deposition of Le Pichet, p. 99 line 24 – p. 100 line 4. Declaration of Ken Stewart ("Stewart Declaration"), ¶¶3-5, Exh. A.

CP 255; CP 444-45, 812-19
When Service Linen objected to Le Pichet's efforts to terminate its contract, Mr. Drohman immediately called Mr. Bowman and told him "I can't start service with you because I've just been informed by Service Linen that I still have a contract in force due to this automatic reenrollment in the contract..." Declaration of Le Pichet, p. 131 line 15 – 24.

CP 259
In response, Mr. Bowman acknowledged the existence of the contract and stated "I can't believe that anyone is going to enforce that." Declaration of Le Pichet, p. 131 line 15 – 24. CP 259

When Service Linen learned of Tomlinson's interference with Le Pichet, Service Linen sent a letter on December 12, 2006 to Tomlinson informing Tomlinson that Le Pichet was under contract with Service Linen. Raphael Declaration, Ex. H.

CP 488
Despite this knowledge, Tomlinson proceeded to take over the account and installed its goods at Le Pichet on February 7, 2007. Having coordinated the switch with Tomlinson, Le Pichet quit using Service Linen's product on the same day. Deposition of Le Pichet, p. 138, line 6 – p. 139, line 1.

CP 260

Tomlinson. In general, Tomlinson's prices were cheaper. Deposition of Le Pichet, p. 78, lines 4-12; p. 98, lines 6-10. CP 254

After receiving that price quote from Tomlinson, owner of Le Pichet, James Drohman, informed Mr. Bowman that he intended to sever his ties with Service Linen and coordinate beginning of service with Tomlinson. Deposition of Le Pichet p. 101 line 24 – p. 102 line 4; p. 98 line 6-10; p. 108 lines 1-15.

CP 255-56; CP 255; CP 257
Mr. Drohman sent to Service Linen a letter in which he informed Service Linen that as of December 7, 2006, Le Pichet would no longer be using Service Linen's services. He explained that his decision was motivated by both services and finances and expressed thanks for the six years of service by Service Linen. Steen Declaration, Exh. M. In his deposition, Mr. Drohman confirmed that the financial aspect was part of his motivation in changing providers. Deposition of Le Pichet, p. 81, lines 9-14. CP 254

Upon receipt of this letter, Service-Linen responded with a letter asking for a meeting and forwarding a copy of the service agreement between Service Linen and Le Pichet. Steen Declaration, Exh. N. CP 221

Mr. Drohman immediately called Mr. Bowman and told him "I can't start service with you because I've just been informed by Service Linen that I still have a contract in force due to this automatic reenrollment in the contract." Declaration of Le Pichet, p. 131 line 15 – 24.

CP 259
In response, Mr. Bowman acknowledged the existence of the contract and stated "I can't

success was due in part to the price. When Service Linen informed Le Pichet of the existence of the contract, Tomlinson's Ken Bowman stated: "I can't believe anyone is going to enforce that." Tomlinson took over account after Le Pichet made ineffective attempt to terminate Service Linen agreement under quality assurance provision in provision. (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5) Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. After signing the Tomlinson agreement on 9/28/06, Le Pichet sent a letter purporting to terminate the Service Linen agreement. Steen Declaration, Exhs. J, M, N and O. Tomlinson's installation was delayed to provide time to Le Pichet to go through the motions of terminating Service Linen agreement under quality control provisions. (7) The relationship between plaintiff and defendants is that of a competitor.

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| | | <p>believe that anyone is going to enforce that.” Declaration of Le Pichet, p. 131 line 15 – 24. CP 259 Mr. Drohman then went through the motions of invoking the quality control provisions of the Service Linen service agreement by sending to Service Linen a letter raising various quality issues. See Steen Declaration, Exh. O. In spite of the fact that Service Linen addressed the issues, in accordance with the contract, Mr. Drohman terminated service with Service Linen and switched to Tomlinson. Deposition of Le Pichet, p. 119, lines 5-p. 120, line 5; Declaration of David Leggett (“Leggett Declaration”), ¶ 4; Steen Declaration, Exh. O. CP 225-24; CP 258; CP 269; CP 223-24 Mr. Drohman expressly discussed and coordinated with Mr. Bowman the date Le Pichet would sever its ties with Service Linen and begin using Tomlinson as its linen service provider. Deposition of Le Pichet, p. 101 line 24 - p. 102 line 4; 98 line 6-10; p. 108 lines 1-15. CP 255-56; CP 255; CP 257</p> | |
| <p>The Pink Door</p> | <p>Ken Bowman, Tomlinson’s Customer Service Manager, confirmed that he knew that Pink Door was a Service Linen Customer. Bowman Deposition, p. 77, linen 21-24. Tomlinson’s Richard Bryant also knew that Pink Door was a Service Linen Customer. Bryant Deposition, p. 85 lines 8-10. CP 302; CP 330 Ken Bowman was again instrumental in causing Le Pichet to change providers. When Mr. Bowman visited the Pink Door on a sales call, he expressly asked to see the Pink Door’s invoices from “Service Linen.” Deposition of Pink Door, p. 33 lines 5-6. CP 263</p> | <p>Tim Tomlinson solicited the business of The Pink Door. Deposition of Timothy Tomlinson, p. 52, lines 17-29. CP 272 Although the quality of the napkins was part of the reason for the switch to Tomlinson, price was also a contributing factor. Deposition of The Pink Door, p. 40, lines 3-4. If the quality was the same but the price had been higher, Jackie Roberts, the owner of The Pink Door, would have had to think about whether to make the change. Deposition of The Pink Door, p. 40 lines 16-19. CP 264 Ms. Roberts discussed with Tomlinson’s Ken Bowman the fact that Service Linen had stated to</p> | <p>(1) Tomlinson solicited the business of The Pink Door. Ms. Roberts called Tomlinson to inquire about the napkins she saw at Chinooks. Her decision to change to Tomlinson was due in part to the price. (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5) Contractual interest to be protected was the stability in the industry;</p> |

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| | <p>Although initially refused, Mr. Bowman was provided a Service Linen invoice with numbers blacked out, but still showing Service Linen as the vendor. Deposition of Pink Door, p. 70, line 24 - p. 71 line 8.</p> <p><i>CP 265</i> The invoice stated on its face that the Pink Door was under contract with Service Linen. Stewart Declaration ¶¶ 3-5; Exh. D.</p> <p><i>CP 444-45, 837-44</i> When Service Linen learned of Tomlinson's interference and informed Pink Door of the existence of its contract and the possibility of its enforcing that agreement, The Pink Door's owner discussed that subject with Mr. Bowman prior to The Pink Door's signing a contract with Tomlinson. Deposition of Pink Door, p. 79, line 9 - p. 81, line 3; Steen Declaration, Exh. Q.</p> <p><i>CP 266; 563</i> The Pink Door's contract with Service Linen, like all other Service Linen agreements, contained the standard clause that the contract renewed automatically and therefore did not expire. Raphael Declaration, Exh. N (Pink Door Contract, see p. 2 "Term").</p> <p><i>CP 779-82</i> Gary Tomlinson tracked the Pink Door as a customer that Tomlinson had taken from Service Linen. Declaration of Timothy E. Steen Ex. A, pp. 4-19, 12.</p> <p><i>CP 342-47, 358</i> When Service Linen learned of Tomlinson's interference with the Pink Door, on November 5, 2007, Service Linen sent a letter to Tomlinson informing Tomlinson that the Pink Door was under contract with Service Linen. Raphael Declaration, Ex. J.</p> <p><i>CP 499</i></p> | <p>Ms. Roberts that if Pink Door breached its agreement, a lawsuit might result. Deposition of Pink Door, p. 79 line 9 - p. 81, line 3.</p> <p><i>CP 266</i> The date of the service agreement between Tomlinson and the Pink Door was 10/22/07; the date of the termination of service by Service Linen was 10/28/07. Steen Declaration, Exh. R.</p> <p><i>CP 226</i></p> | <p>contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. The date of the service agreement between Tomlinson and the Pink Door was 10/22/07; the date of the termination of service by Service Linen was 10/28/07. (7) The relationship between plaintiff and defendants is that of a competitor.</p> |
| <p>Jak's Grill ("Jak's")</p> | <p>Jak's Grill, through Ken Hughes, testified that during the sales call with the defendants' district manager and route manager that he expressly told them that his companies were under contract with Service Linen,</p> | <p>Jak's new Chef O'Day told his boss, Ken Hughes, that although he had service and communication issues with Service Linen, he intended to give Service Linen an opportunity to bid for new items,</p> | <p>(1) Tomlinson installed its service in spite of its knowledge of the pre-existing contract with Service Linen and after a discussion with the</p> |

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| | <p>that there would be financial consequences if Jak's Grills terminated its contracts with Service Linen early, and that he wanted the defendants to compensate his companies for terminating the contracts early. Deposition of Jak's Grills, p. 39 lines 11-19. CP 317</p> <p>Hughes made it clear that Jak's was under contract with service linen and there's a very good chance it would cost Jak's money to get out of that contract. Deposition of Jak's Grills, p. 55, lines 15-23. CP 319</p> | <p>as well as rectify those service issues. Deposition of Jak's Grill, p. 95, lines 5-9. Once Jak's Grill received the Tomlinson bid, Jak's decided to switch to Tomlinson. Deposition of Jak's Grill, p. 95, lines 13-16. (Attached to Declaration of Thomas F. Peterson, Exh. G.) CP 63</p> <p>Jak's Grill's Kenneth Hughes told Tomlinson's reps that Jak's was under contract with Service Linen and if that contract were terminated, there was a very good chance that it might cost Jak's Grill. Mr. Hughes asked if Tomlinson would be willing to bear part of the burden, but Tomlinson declined, citing this lawsuit as a reason. Deposition of Jak's Grills, p. 54 line 12 - p. 55 line 1, p. 42 lines 17-21. CP 319; 318</p> <p>Tomlinson representatives "absolutely" wanted Jak's to terminate Service Linen agreement. Deposition of Jak's Grill, p. 42, ln. 17-19. CP 318</p> <p>Jak's terminated service with Service Linen on 7/15/07. Tomlinson installed its linens on July 2, 2007. Steen Declaration, Exh. R. Jaks's did not sign a service agreement with Tomlinson. Deposition of Jak's Grill, p. 56, lines 3-22. CP 226; CP 319</p> | <p>owner of Jak's Grill in which he stated there was a "good chance" that it might cost Jak's Grill if it terminated the Service Linen service agreement. Tomlinson installed its linen before Jak's took action to notify Service Linen that it was terminating its relationship with Service Linen (see (6) below). (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5) Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. Tomlinson installed its linen in its three locations on or before July 2, 2007. Deposition of Jak's Grill, p. 67, ln. 3-25. Jak's terminated service with Service Linen on July 15, 2007, two weeks later. Steen Declaration, Exh. R. (7) The relationship between plaintiff and defendants is that of a competitor. CP 320; CP 226</p> |
| Touchdown's | <p>Tomlinson's Richard Bryant contacted Touchdowns by phoning its owner, Andy Alberts, who told him Service Linen was Touchdown's current provider. Deposition of Touchdowns, p. 33, ln. 16-21. CP 241</p> | <p>Tomlinson obtained from Touchdowns a Service Linen invoice showing Service Linen pricing. Deposition of Touchdowns, p. 40, line 24 - p. 41, line 6. CP 242</p> | <p>(1) Tomlinson installed its service in spite of its knowledge of the pre-existing contract with Service Linen and after a discussion with the owner of Touchdown's, Andrew</p> |

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| | <p>Bryant asked to see and received recent Service Linen invoices, a document that on its face stated that the customer was under contract with Service Linen. Deposition of Touchdowns, p. 40 line 23-p.41, line 6; Declaration of Ken Stewart ("Stewart Declaration"), ¶¶3-5, Exh. L. CP 242; CP 444-45, 886, 90</p> <p>After analyzing the invoices, Tomlinson's Richard Bryant doubted Mr. Alberts' representations about the status of Touchdown's contract with Service Linen, particularly in light of Mr. Alberts' uncertainty on the subject. Deposition of Touchdowns, p. 54 line 16 - p. 55 line 8; p. 58 lines 6-13.</p> <p>CP 245; CP 246</p> | <p>Tomlinson used the pricing on those invoices to formulate a cost comparison showing a proposed 19% savings to induce Touchdowns to breach its agreement with Service Linen. See Exhibit P to Steen Declaration. CP 559</p> <p>Touchdowns' Andrew Alberts was concerned about whether Touchdown's contract with Service Linen would be strictly enforced if he attempted to change linen providers. Deposition of Touchdowns, p. 71 line 19 - p. 72 line 14. CP 248</p> <p>As an additional inducement, Touchdown's Alberts and Tomlinson's Bryant agreed that if Service Linen enforced its contract, Touchdowns would be released from its new contract with Tomlinson, an agreement Mr. Alberts later confirmed in writing. Deposition of Touchdowns, p. 64 line 13-22. CP 247</p> <p>Touchdowns entered into an agreement with Tomlinson on April 2, 2007. Service with Service Linen was terminated on April 8, 2007. Steen Declaration, Exh. R. CP 226</p> <p>After breaching its agreement with Service Linen, Touchdowns was served with a summons in a collection case brought by Service Linen. Mr. Alberts asked Tomlinson's Richard Bryant if Tomlinson's would let Touchdowns exit its contract with Tomlinson's, to which Mr. Bryant responded affirmatively. Deposition of Touchdowns, p. 64, lines 13-22, Steen Declaration, Exh. C. CP 247, 561</p> | <p>Alberts, in which he expressed concern that Touchdown's contract with Service Linen would be strictly enforced if he attempted to change linen providers. (2) Motive was self-enrichment. (3) Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5) Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time. Touchdowns entered into an agreement with Tomlinson on April 2, 2007. Service with Service Linen was terminated on April 8, 2007. (7) The relationship between plaintiff and defendants is that of a competitor.</p> |
| <p>Classic Catering</p> | <p>Classic Catering was among the accounts sold by New Richmond, owned by Gary Tomlinson, to Service Linen. See Declaration of Robert Raphael filed <u>June 2, 2008</u>, Exh. A, page RS&C 753. CP 973</p> | <p>According to Tim Tomlinson, Classic Catering responded to the mass mailing. Deposition of Tim Tomlinson, p. 42, line 2. CP 271</p> <p>According to Classic Catering's Ken Moriarty,</p> | <p>(1) Tomlinson sent its mass mailing referencing New Richmond to Classic Catering and solicited the business of Classic catering. (2) Motive was self-enrichment. (3)</p> |

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Ken Bowman, defendants' Customer Service Manager, confirmed that he knew Classic Catering to be a Service Linen Customer. Bowman Deposition, p. 69, ln. 9-11. In fact, Mr. Bowman had serviced the Classic Catering account when he was with Service Linen. Deposition of Classic Catering, p. 83, lines 19-23. CP 301; CP 310

Mr. Bowman had previously read Service Linen agreements and was familiar with their terms. Bowman Deposition, p. 34 line 3-5.

CP 299
Classic's contract with Service Linen, like all other Service Linen agreements, contained the standard clause that the contract renewed automatically and therefore did not expire. Raphael Declaration, Exh. M (Classic Catering Contract, see p. 3 "Term").

CP 775-77
When Classic Catering's Mr. Moriarty and Mr. Bowman met on a sales call, Tomlinson was fully aware that Service Linen was Classic's current linen provider. Deposition of Classic Catering, p. 83 lines 17-19. CP 310

Prior to the time Classic entered into its contract with Tomlinson, Service Linen reminded Mr. Moriarty that Classic had signed a five-year contract with Service Linen and that contract had over a year to run. Deposition of Classic Catering, p. 69 line 15-24; see Raphael Declaration, Exh. M (Classic Catering Contract, see p. 3 "Term").

CP 309; CP 775-77
When Messrs. Moriarty and Bowman met to sign Tomlinson's contract, Mr. Moriarty told Mr. Bowman that Service Linen was not happy that Classic was terminating its Service Linen contract and that Service Linen was going to "come after" Classic. Deposition of Classic Catering, p. 85 line 17 - 86 line 14; p. 89 line 13 - p. 90 line 2. CP 310; CP 311

Ken Bowman solicited the business of Classic Catering by calling Mr. Moriarty to inform him that Mr. Bowman was back in the linen business and to ask if Classic Catering would do business with Mr. Bowman's new employer, Tomlinson. Declaration of Classic Catering, p. 22, line 24 - p. 23, line 7. CP 76

Classic Catering's Ken Moriarty discussed with Ken Bowman the ending of the contract with Service Linen and the fact that Service Linen may come after Classic catering if the contract were ended. Deposition of Classic Catering, p. 85 line 17-p. 86, line 14; p. 89 line 13-p. 90, line 2.

CP 310+311; CP 311-312
In spite of the fact that Tomlinson knew of the contract with Service Linen, Tomlinson entered into a contract with Classic Catering on March 1, 2007 and installed its products on or about March 2, 2007. Deposition of Classic Catering, p. 86, line 15 - p. 87 line 6; p. 66, line 22 - p. 67 line 7. Service Linen ended its service on or about March 4, 2007. Steen Declaration, Exh. R.

CP 311; CP 309; CP 226

Interest with which defendants interfered was existing contract, not mere expectancy. (4) No interest, other than self-enrichment, was sought to be advanced by Tomlinson. (5) Contractual interest to be protected was the stability in the industry; contracts necessary to assure return on investment in linens. (6) The actions of Tomlinson and the interference were close in time: on March 1, 2007, Tomlinson entered into a service agreement with Classic Catering. Classic Catering terminated its contract with Service Linen simultaneously. (7) The relationship between plaintiff and defendants is that of a competitor but in the case of Classic Catering, an additional component exists by virtue of the purchase of the assets of New Richmond (owned by Gary Tomlinson) by Service Linen in 2000 and the purchase of the Trade Names of New Richmond from Gary Tomlinson for \$25,000 in March of 2005. Among the assets purchased by Service Linen were the accounts of New Richmond, including Classic Catering Declaration of Robert Raphael dated May 29, 2008, Exh. A. Solicitation of an account previously sold to Service Linen violated the duty of good faith and fair dealing inherent in the sale agreement because it was intended to deprive Service Linen

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| | Gary Tomlinson tracked Classic as a New Richmond account taken from Service Linen. Steen Declaration, Exh. A, p. 6. CP 34A | | of the benefit of its bargain. |
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