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NO. 69548-7-I  
IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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JESSICA MACLEAN,  
APPELLANT,  
v.  
KATE CHASE RYAN AND ADVANCED EDUCATORS, LLC,  
RESPONDENTS.

---

ON APPEAL FROM THE SUPERIOR COURT OF  
KING COUNTY  
THE HONORABLE CAROL SCHAPIRA

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RESPONDENTS' KATE CHASE RYAN AND ADVANCED  
EDUCATORS, LLC BRIEF

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**I. Introduction**

Respondents, Advanced Educators, LLC (AE) and Kate Chase Ryan (Chase Ryan), request the Court affirm the grant of the summary judgment by the trial court as no genuine issues of material fact exist and judgment in Defendant's favor is appropriate.

**II. Assignments of Error**

Respondents contend no error exists in this matter.

**III. Motion to Strike**

Respondents respectfully request that briefing surrounding the result at trial, or the evidence adduced at trial, be stricken as it is not properly before the Court on an appeal following grant of a summary judgment.

Respondents request, pursuant to RAP 9.12, the Court strike the Appellant's designation of the following:

Exh. 75: 1/23/2009 E-mail

Exh. 85: NCBTMP Website (screenshot)

Exh. 86: Changes to Massage Monthly

Exh. 89: 07/29/2012 Denial of Application from NCBTCM.

Rule of Appeal Procedure (RAP) 9.12 provides:

On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and

issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.

The above exhibits were not before the Court when the summary judgment motion was heard. Thus these exhibits should be stricken.

#### **IV. Statement of the Case**

In July 2008, Defendant Advanced Educators, LLC, by and through Kate Chase Ryan asked Plaintiff Maclean to help her with developing marketing materials. CP 37. Plaintiff agreed to help with the marketing materials “in exchange for marketing services for 2009.” CP 37. Memorializing their agreement, Plaintiff signed a Contract. CP 39. The contract included provisions regarding the proper marketing and terminology for the contract:

Instructors agree to use very specific terminology to denote that only their CLASSES are NCBTMB approved. Advanced Educators will be the “Approved Provider” and at no time may an Instructor imply with they are the “Approved Provider.” Inappropriately representing AE, the NCBTMB or your status as a provider will result in immediate discontinuation of your relationship with AE as well as termination of your relationship with NCBTMB via Advanced Educators. CP 39

Plaintiff was required to provide Advanced Educators with a list of its courses for Advanced Educators to market. CP 40. In September 2008, Defendant requested the class schedule from Plaintiff, "It's imperative that I get your current class schedule and the supporting info for confirmation letters." CP 42. At the bottom of the e-mail, Defendant instructs Plaintiff to invite her to the uploaded spreadsheet. CP 42. Plaintiff claims to have uploaded a document on October 22, 2008 to GoogleDocs, CP 44.

On December 1, 2008, Defendant acknowledged receipt of a schedule for Plaintiff's classes, and provides forms to Plaintiff to "submit, change, cancel classes." CP 47. On January 23, 2009, Defendant acknowledges that the three classes "put through AE" are approved. CP 49. Plaintiff identifies no classes that were properly submitted to Advanced Educators that were not marketed under the terms of the contract.

On June 29, 2009, Defendant e-mailed Plaintiff to touch base so Defendant could "get a status report on your use of Advanced Educator's NCB sponsorship." CP 51. On July 14, 2009, Defendant mailed a letter to Plaintiff terminating the contract under the provisions identified above. CP 53.

It was discovered that in April 2008 and September 2008, Plaintiff was informed by the NCBTMB that Plaintiff was misusing NCBTMB's Approved Provider Designation. CP 56. From October 2008 to the time the Advanced Educator contract was terminated, Plaintiff continued to use the NCBTMB Approved Provider designation. CP 56. In November 2009, Defendant notified NCBTMB of Plaintiff's improper actions. CP 53.

NCBTMB provides its own certification for its members. CP 68. Defendants Chase Ryan and Advanced Educators, LLC have no role in the issuance of NCBTMB certification. CP 69. The purpose of the Chase Ryan communication to NCBTMB was to ensure that Advanced Educators, LLC's certification would not be impacted by Plaintiff's improper actions. CP 69.

## **V. Argument**

### **A. Standard of Review**

The appellate court reviews summary judgment decisions de novo. *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). RAP 9.12 requires that an order on summary judgment specifically set forth those documents presented to the trial court in support or opposition to the motion. Here, the Order specifically identifies the evidence considered by the superior court; all of this evidence relied on by the trial court as noted

in its Order is included in the record on review. In reviewing the superior court's Order in favor of Respondents and against Appellants, this Court's review is limited to the precise record on review, no more and no less, considered by the trial court. *Sinclair v. Betleach*, 1 Wn. App. 1033, 1034, 467 P.2d 344 (1970).

In a summary judgment, the moving party has the burden of proof to establish the absence of an issue of material fact. *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997). In so doing, a party resisting the motion may not rely on speculation or assertions not supported by the evidence to establish a material fact to defeat the motion for summary judgment. *Meyer v. University of Washington*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986). *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). In other words, the nonmoving party must set forth specific facts rebutting the moving party's contentions. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986) (citing *Dwinell's Cent. Neon v. Cosmopolitan Chinook Hotel*, 21 Wash.App. 929, 587 P.2d 191 (1978)).

Further, this Court has the inherent authority to affirm the trial court's ruling on any correct ground supported by the record. *Nast v.*

*Michels*, 107 Wn.2d 300,308,730 P.2d 54(1986) (citing *Reed v. Streib*, 65 Wn.2d 700,709,399 P.2d 338 (1965)).

### **B. Issues on Review Limited by Appellant**

The Appellant is required to identify the issues of error in its briefing. RAP 10.3(g). The Appellant has only identified two main issues for review (1) the dismissal of intentional interference claims, and (2) the dismissal of all claims pled against Respondent Kate Chase Ryan. As a result, the dismissal of Appellant's claims against AE for (1) quantum meruit, (1) Consumer Protection Act Claims, and (3) emotional distress damages are not at issue. An appellate court will not generally consider a claimed error to which no assignment of error has been made. *Painting & Decorating Contractors of America Inc. v. Ellensburg School Dist.*, 96 Wash. 2d 806, 638 P.2d 1220, 2 Ed. Law Rep. 271 (1982), cited in 3 Wash. Prac., Rules Practice RAP 10.3 (7th ed.).

### **C. Intentional Interference Claims**

A claim for tortious interference with a business expectancy requires five elements: (1) the existence of a valid contractual relationship or business expectancy, (2) that defendants had knowledge of that relationship, (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy, (4) that defendants interfered for an improper purpose or used improper means, and (5)

resultant damage. *Leingang v. Pierce County Med. Bur., Inc.*, 131 Wn.2d 133, 157, 930 P.2d 288 (1997). See also *Manna Funding, LLC v. Kittitas County*, 173 Wn.App. 879, 295 P.3d 1197, 1207 (2013). If these elements are established, the defendant must justify the interference or show the actions were privileged. *Pleas v. City of Seattle*, 112 Wn.2d 794, 800, 774 P.2d 1158 (1989).

### **1. Maclean Cannot Establish Business Expectancies**

A valid “business expectancy” includes any prospective contractual or business relationship that would be of pecuniary value. *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.*, 114 Wash.App. 151, 158, 52 P.3d 30 (2002) (citing RESTATEMENT (SECOND) OF TORTS § 766B, cmt. c (1979)). “All that is needed is a relationship between parties contemplating a contract, with at least a reasonable expectation of fruition. And this relationship must be known, or reasonably apparent, to the interferor.” *Scymanski v. Dufault*, 80 Wash.2d 77, 84–85, 491 P.2d 1050 (1971).

Maclean cannot establish any factual issue surrounding business expectancies. In *Hudson v. City of Wenatchee*, the Court granted summary judgment finding:

No contract existed between the Hudsons and the City. No contract existed between the Hudsons and any of the citizens helped by the police. The Hudsons complain that

had the City police not unlocked vehicle doors for citizens, those citizens would have hired them. However, the Hudsons demonstrated no facts supporting this mere allegation. *Hudson v. City of Wenatchee*, 94 Wn.App. 990, 998, 974 P.2d 342, 347 (1999).

Here, Maclean argues that she had business expectancies “with every student or potential student from whom plaintiff would earn income.” *Appellant’s Brief*, P. 12. This brings to issue two separate categories of business expectancies (1) the students who had completed the classes when the certification was revoked, and (2) potential students who did not sign up for Maclean’s classes.

With respect to prior students; they were not business expectancies, they were existing business. No evidence is presented that the students who previously paid for classes would have signed up for additional classes. The Maclean declaration does not identify any specific individual, or group of individuals, that cancelled. CP 96. As a result, these cannot be business expectancies for which Maclean can claim damages.

With respect to future students, no evidence has been presented that the future classes would have resulted in any profit for Maclean. CP 96 Maclean avers that “nearly half of my scheduled classes and all of my associate Dr. Bruce Bentley’s classes in 2009 were cancelled.” CP 96. However, the cause of these cancellations is not identified as AE/Chase

Ryan's failure to market; the Maclean declaration does not establish any specific cause for these cancellations. CP 96. As a result, Maclean has not established any business expectancies that AE or Chase Ryan actually interfered with.

As Maclean cannot establish any actual business expectancies that existed which the alleged interferences occurred, summary judgment is appropriate and the trial Court's grant of the same should be affirmed.

## **2. AE/Chase Ryan Admit Knowledge**

AE and Chase Ryan admit they knew Maclean was marketing to the general public to provide services. AE and Chase Ryan admit that they knew Maclean was attempting to obtain her own certification number.

## **3. Maclean Cannot Establish the Alleged Interference Induced Breach**

Maclean next argues that AE/Chase Ryan's acts in notifying NCBTMB of Maclean's breach of contract, and requesting removal of certification for classes is an intentional interference that induced the business expectancies to breach. *Appellant's Brief P. 14*. Further, Maclean argues the AE letter caused Maclean to be "unable to market her courses for CEU's for 18 months." *Id.* But this claim was not raised in the trial Court and is not supported by any factual materials in the record.

Nowhere in the Maclean declaration does she aver that Maclean's letter caused the NCBTCM, an independent business, to delay in granting Maclean certification. Arguments not supported by facts are not considered by the Court on de novo review. RAP 9.12; see also RAP 2.5(a).

In addition, no evidence was presented that AE's letter caused the alleged damage. Maclean's declaration avers that the "cancelling of certification by Ryan of my January-July 2009 paid-for course offerings caused attendees to call and cancel attendance to my clients." CP 96. Of note, AE/Chase Ryan did not cancel Maclean's certification; AE/Chase Ryan notified NCBTMB of Maclean's improper listing of classes as certified and provided a date as of which those classes were improper. CP 53.

#### **4. Maclean Cannot Establish Improper Purpose**

An essential element of intentional interference is intentional interference with an improper motive or by improper means. *Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship*, 158 Wn.App. 203, 225, 242 P.3d 1 (2010) (citing *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 157, 930 P.2d 288 (1997)), *review denied*, 171 Wn.2d 1014, 249 P.3d 1029 (2011) Exercising one's legal interest in good faith is not

improper interference. *Elcon Const., Inc. v. Eastern Washington University*, 174 Wn.2d 157, 168, 273 P.3d 965, 971 (2012).

In *Elcon*, the Court held that a letter written by the Defendant to the Plaintiff's surety advising of the breach was insufficient to establish an improper purpose. In so holding, the Court reasoned:

More importantly, by itself, the letter does not show improper purpose. And *Elcon*, by merely labeling the letter as "intentional and vindictive," has not met its burden of showing such a purpose. CP at 815–16. If Eastern was motivated by greed, retaliation, or hostility in sending a copy of the termination letter to *Elcon's* surety, *Elcon* has failed to show such a motive. Conclusory statements and speculation will not preclude a grant of summary judgment. *Greenhalgh v. Dep't of Corr.*, 160 Wash.App. 706, 714, 248 P.3d 150 (2011) (citing *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wash.2d 355, 360, 753 P.2d 517 (1988)). *Elcon* claimed to have suffered damage as a result of its surety having knowledge of Eastern's attempted conversion, but absent a showing that Eastern acted with an improper purpose, no genuine issues of material fact exist. *Elcon Const., Inc. v. Eastern Washington University*, 174 Wn.2d 157, 169-70, 273 P.3d 965, 971-72 (2012).

Here, as in *Elcon*, AE's contract with Maclean set forth a strict guideline:

Instructors agree to use very specific terminology to denote that only their **CLASSES** are NCBTMB approved. Advanced Educators will be the "Approved Provider" and **at no time** may an Instructor imply with they are the "Approved Provider."

Inappropriately representing AE, the NCBTMB or your status as a provider will result in immediate discontinuation of your relationship with AE as well as termination of your relationship with NCBTMB via Advanced Educators. CP 39.

Here, Maclean admitted to using AE's Approved Provider number improperly. CP 94. Maclean states the use was "inadvertent and non-material." CP 94. AE/Chase Ryan's letter to NCBTBM was authorized by the contract, thus no impermissible purpose exists and summary judgment was appropriate. Further, AE/Chase Ryan's letter was necessary to ensure that AE/Chase Ryan would not have AE's certification withdrawn by NCBTBM. CP 69.

The Court should affirm the trial court's granting of the summary judgment.

#### **5. The Alleged Interference was Contractually Privileged**

Washington has long held that some interference may be 'privileged' and therefore not a basis for tort recovery. *Calbom v. Knudtzon*, *supra*; *Scymanski v. Dufault*, 80 Wn.2d 77, 491 P.2d 1050 (1971). A privilege to interfere may be established if the interferor's conduct is deemed justifiable, considering such factors as: the nature of the interferor's conduct; the character of the expectancy with which the conduct interferes; the relationship between the various parties; the interest sought to be advanced by the interferor; and the social desirability of protecting the expectancy or the interferor's freedom of action. *Calbom v. Knudtzon*, *supra*; *Scymanski v. Dufault*, *supra*. See also *Restatement of*

*Torts s 767 (1939). Cherberg v. Peoples Nat. Bank of Washington, 88 Wash.2d 595, 604-05, 564 P.2d 1137, 1143-44 (1977).*

Here, the contract directly allows AE to contact NCBTCM if the provider number is improperly used. CP 39. AE's contact with the NCBTCM was a written communication advising them of the last date where Maclean had credentialed classes through AE. CP 69. Maclean knew the provider number issue was important to both AE and the NCBTCM as the contract specified the terms of use. CP 52. As a result, Maclean could not have had a substantial expectancy in any work when she violated the terms of her agreement with AE. AE had a legitimate interest in protecting itself from sanctions from the NCBTCM for allowing Maclean's improper conduct. CP 69. Finally, the NCBTCM is a national authority that credentials alternative therapy classes. It is important that they be advised of false and/or misleading class offerings. Not only is there a contractual privilege allowing AE to notify NCBTCM of Maclean's actions, but also a social interest in ensuring credentialed classes for continuing education. As a result, summary judgment was appropriate and should be affirmed.

**D. The Independent Duty Doctrine Bars Maclean's Tort  
Claims**

The law surrounding the economic loss doctrine and the independent duty doctrine was in flux when this summary judgment motion was heard. But even the rationale in *Jackowski v. Borchelt*, 174 Wn.2d 720, 730-31, 278 P.3d 1100, 1105 (2012) supports summary judgment. Under the independent duty doctrine, parties to a contract are prohibited from recovering “economic losses” in a tort action arising out of the contract because “tort law is not intended to compensate parties for losses suffered as a result of a breach of duties assumed only by agreement.” *Borish v. Russell*, 155 Wn. App. 892, 230 P.3d 646 (2010) (citing *Alejandre v. Bull*, 159 Wn.2d at 682, 153 P.3d 864 (2007)). In *Jockowski*, the Court held that “[a]n injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract.” *Jackowski v. Borchelt*, 174 Wn.2d 720, 730-31, 278 P.3d 1100, 1105 (2012), citing *Eastwood v. Horse Harbor Found., Inc.*, 170 Wash.2d 380, 241 P.3d 1256 (2010).

The independent duty exception to the economic loss rule does not apply in this case; Plaintiff cannot establish *any* independent duty existed apart from the terms of the contract. In fact, the terms of the contract expressly authorized AE/Chase Ryan to notify NCBTMB about Maclean’s improper actions. CP 39. Accordingly, Maclean’s tort claims surrounding AE/Chase Ryan’s letter to NCBTMB are barred by the independent duty

doctrine; summary judgment was appropriate. The Court of Appeals should affirm the summary judgment.

#### **E. Personal Liability Claims**

Not only was summary judgment on Plaintiff's claims against AE appropriate, the claims against Chase Ryan in her individual capacity were also properly dismissed. Plaintiff's complaint identifies defendant Kate and John Doe Chase Ryan as defendants in their individual capacities. CP 1-5. The Complaint further alleges that Kate Chase Ryan owned Advanced Educators, LLC and contracted with the Plaintiff. CP 1-2. Advanced Educators, LLC is a Washington Limited Liability Company, duly formed under RCW 25.15. CP 67.

RCW 25.15.125 provides:

Liability of members and managers to third parties(1)  
Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.(2) A member or manager of a limited liability company is personally liable for his or her own torts.

The purpose of the corporate form is to limit shareholder liability.

*Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 411, 645

P.2d 689 (1982). Disregarding the corporate form or “Piercing the corporate veil,” is an equitable remedy imposed only in exceptional circumstances. *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 643-44, 618 P.2d 1017 (1980). A plaintiff seeking to impose direct shareholder liability must demonstrate that: (1) the corporate form has been intentionally used to violate or to evade a duty; and (2) disregard of the corporate form is necessary to prevent an unjustified loss to the creditor. *Meisel*, 97 Wn. 2d at 409-410, 645 P.2d 689. *Eagle Pacific Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn.App. 695, 708, 934 P.2d 715 (1997).

Piercing the corporate veil requires a showing of fraud or abuse. *Truckweld v. Olson*, 26 Wn. App. 638, 644-45, 618 P.2d 1017 (1980); *Rogerson Hiller Corp. v. Port Angeles*, 96 Wn. App. 918, 924, 982 P.2d 131 (1994). Piercing the corporate veil also requires an “overt intention to disregard the corporate entity by using it for an improper purpose.” *Culinary Workers Trust v. Gateway Café, Inc.*, 91 Wn.2d 353, 366, 588 P.2d 1334 (1979).

Because Advanced Educators, LLC is a Limited Liability Company owned by Kate Chase Ryan, Mr. and Mrs Chase Ryan cannot be held personally liable for the alleged breach of contract. One of the primary reasons an individual forms an LLC is to shield himself/herself

from personal liability. *See Jessica A. Eaves, A Step in the Right Direction: Washington Passes the Limited Liability Company Act*, 18 Seattle U. L. Rev. 197, 206 (1994) (“Limited Liability” means that LLC members are generally not liable for the LLC's obligations and liabilities to third parties.”) The only exception for personal liability under RCW 25.15.125 is for a person's “own torts.” *See Dickens v. Alliance Analytical Labs., L.L.C.*, 127 Wn. App. 433, 440-41, 111 P.3d 889 (2005):

Piercing the corporate veil is an equitable remedy imposed to rectify an abuse of the corporate privilege. [citation omitted] In general, a corporation is considered a separate entity, even if owned by a single shareholder. [citation omitted] To pierce the corporate veil, two separate, essential factors must be established. “First, the corporate form must be intentionally used to avoid or evade a duty.” [citation omitted] Second, the fact finder must establish that disregarding the corporate veil is necessary and required to prevent an unjustified loss to the injured party. This is the same type of protection from liability provided by the corporate form.

*See Also Egipto Div. Aurora Eguip. Co. v. Yarmouth*, 134 Wn.2d 356, 375, 950 P.2d 451 (1998) (“Existence of the corporation shields an individual from personal liability. Limited liability has been regarded as ‘the corporation's most precious characteristic’”). Unless a party has facts that would support “piercing the corporate veil,” it is improper to name the corporate officer as an individual defendant. *See Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 409, 645 P.2d 689 (1982) (“The

corporate entity is disregarded and liability assessed against shareholders in the corporation when the corporation has been intentionally used to violate or evade a duty owed to another”).

Plaintiff has no facts that would justify imposing individual liability against the Chase Ryans. First, the LLC was formed to act as an independent business providing marketing services; Plaintiff has no evidence to the contrary, thus no evidence exists the LLC was formed to evade any duty to Plaintiff. Second, the disregarding the corporate veil is not necessary to prevent an unjustified loss to Plaintiff. Even if she was able to establish that the contract was breached (which she cannot), the LLC would be the proper target, not the Chase Ryans in their individual capacities. They formed the LLC for the protections provided thereby. CP 68. If protections afforded by an LLC could be so easily disregarded, the intent of the legislature when it enacted RCW 25.15.125 would be thwarted, and the words “limited liability” in “limited liability company” would be nothing but an illusion. For these reasons Plaintiff’s claims against the Chase Ryans, in their individual capacities, should be dismissed.

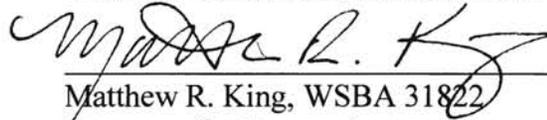
## **VI. Conclusion**

The trial Court properly granted summary judgment. Even though the independent duty doctrine was developed after the summary judgment,

dismissal was proper. Maclean cannot establish a genuine issue of material fact existed. AE and Chase Ryan established the absence of material facts in dispute and they were entitled to judgment as a matter of law.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of June, 2013.

**The Law Offices of Matthew R. King, PLLC**

A handwritten signature in cursive script, appearing to read "Matthew R. King", is written over a horizontal line.

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