



FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.
The Honorable Carol Murphy
18 MAR 30 PM 3:43
Linda Myhre Enlow
Thurston County Clerk

EXPEDITE
 No hearing set
 Hearing is set
Date: March 9, 2018
Time: 9:00 a.m.
Judge/Calendar: Hon. Carol Murphy

EX PARTE

SUPERIOR COURT OF THE STATE OF WASHINGTON
THURSTON COUNTY

KENT L. and LINDA DAVIS; and SUSAN
MAYER, derivatively on behalf of
OLYMPIA FOOD COOPERATIVE,

Plaintiffs,

v.

GRACE COX, ROCHELLE GAUSE, ERIN
GENIA, T.J. JOHNSON, JAYNE KASZYNSKI,
JACKIE KRZYZEK, JESSICA LAING, RON
LAVIGNE, HARRY LEVINE, ERIC MAPES,
JOHN NASON, JOHN REGAN, ROB
RICHARDS, JULIA SOKOLOFF, and
JOELLEN REINECK WILHELM,

Defendants.

No. 11-2-01925-7

ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT



1 This matter came before the Court on Defendants' Motion for Summary Judgment and
2 Plaintiffs' Motion for Partial Summary Judgment. In connection with this motion, the Court
3 has reviewed the following materials:

- 4 1. Defendants' Motion for Summary Judgment;
- 5 2. Declaration of Brooke Howlett in Support of Defendants' Motion for Summary
6 Judgment with Exhibits A-L attached thereto;
- 7 3. Declaration of James Hutcheon in Support of Defendants' Motion for Summary
8 Judgment with Attachment thereto;
- 9 4. Declaration of Harry Levine in Support of Defendants' Motion for Summary
10 Judgment with Exhibits A-M attached thereto;
- 11 5. Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;
- 12 6. Declaration of Avi Lipman in Support of Plaintiffs' Opposition to Defendants'
13 Motion for Summary Judgment with Exhibits DD-GG attached thereto.
- 14 7. Defendants' Reply in Support of Defendants' Motion for Summary Judgment;
- 15 8. Declaration of Brooke Howlett in Support of Defendants' Reply in Support of
16 Defendants' Motion for Summary Judgment with Exhibits A-B attached thereto;
- 17 9. Plaintiffs' Motion for Partial Summary Judgment;
- 18 10. Declaration of Avi Lipman in Support of Plaintiffs' Partial Motion for Summary
19 Judgment with Exhibits A-CC attached thereto;
- 20 11. Defendants' Opposition to Plaintiffs' Partial Motion for Summary Judgment;
- 21 12. Declaration of Rochelle Gause in Support of Defendants' Opposition to
22 Plaintiffs' Partial Motion for Summary Judgment;
- 23 13. Declaration of Brooke Howlett in Support of Defendants' Opposition to
24 Plaintiffs' Partial Motion for Summary Judgment with Exhibits A-M attached thereto; and
25
26
27

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT - 1

4820-5163-5807v.1 0200353-000002

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1201 Third Avenue, Suite 2200
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1 14. Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary
2 Judgment.

3 Having heard oral argument in relation to these motions, and consistent with this
4 Court's Oral Ruling of March 9, 2018—a copy of which is attached hereto and is incorporated
5 by reference—the Court hereby **ORDERS as follows:**

- 6 1. Defendants' Motion for Summary Judgment is GRANTED.
7
8 2. Plaintiffs' Motion for Partial Summary Judgment is DENIED.
9
10 3. Plaintiffs' Amended Complaint is DISMISSED WITH PREJUDICE.

11 DATED this 29th day of March, 2018.

12
13 
14 Hon. Carol Murphy

15 Presented by:

16 DAVIS WRIGHT TREMAINE LLP

CAROL MURPHY

17 *Attorneys for Defendants*

18
19
20 By: 
21 Bruce E.H. Johnson, WSBA#7667

22 Approved as to form:

23 McNAUL EBEL NAWROT & HELGREN PLLC

24 *Attorneys for Plaintiffs*

25
26 By: 
27 Robert M. Sulkin, WSBA #15425

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT - 2

4820-5163-5807v.1 0200353-000002

2822-001 hc223e142d 2018-03-23

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

KENT L. AND LINDA DAVIS, ET AL.,)	THURSTON COUNTY
)	CAUSE NO.
Plaintiff,)	11-2-01925-7
)	
vs.)	MOTION FOR
)	SUMMARY
GRACE COX, ET AL.,)	JUDGMENT/MOTION
)	FOR PARTIAL
Defendant.)	SUMMARY JUDGMENT
)	
)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on March 9, 2018, the above-entitled matter came on for hearing before the Honorable CAROL MURPHY, Judge of Thurston County Superior Court.

Reported by: Sonya Wilcox, CCR # 2112
Registered Diplomate Reporter
Thurston County Superior Court
2000 Lakeridge Drive SW, Building 2
Olympia, WA 98502
wilcox@co.thurston.wa.us

APPEARANCES

For the Plaintiffs: ROBERT M. SULKIN
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Seattle, Washington 98101

For the Defendants: MARIA LAHOOD, Pro Hac Vice
Center for Constitutional Rights
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New York, New York 10012

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1 issued, your Honor. Appreciate it.

2 THE COURT: Thank you.

3 MS. LAHOOD: Thank you, your Honor.

4 THE COURT: The Court is going to take a
5 brief recess. I anticipate issuing a ruling today,
6 and I hope to do that within about 15 or 20 minutes.
7 I will be back on the bench. We are in recess.

8

9 (A recess was taken at 11:35 a.m.)

10

11 THE COURT: Please be seated. The Court is
12 prepared to issue a ruling at this time on the
13 motions before it. The motions before the Court are
14 the defendant's motion for summary judgment and the
15 plaintiff's motion for partial summary judgment. The
16 Court at this time grants the defendant's motion for
17 summary judgment and denies the plaintiff's motion
18 for partial summary judgment.

19 The defendants raised several issues: That the
20 boycott decision was not ultra vires; that the Board
21 did not breach a fiduciary duty; that the First
22 Amendment restricts tort liability here; that the
23 plaintiffs lacked standing; that the Court cannot
24 provide an injunctive remedy, because the defendants
25 are not current board members; that the plaintiffs

1 cannot maintain this suit, because the current Board
2 of Directors has rejected it; and that the plaintiffs
3 have failed to diligently prosecute this case.

4 The Court determines that as to many of these
5 arguments there are material issues of fact that
6 preclude the Court from ruling on them today.
7 Because of that, the Court is granting the motion for
8 on summary judgment only on specific bases.

9 The Court has determined that the plaintiffs lack
10 standing, because they fail to allege sufficiently
11 that the Co-op suffered any injury as a result of the
12 boycott. The defendants put into the record a
13 declaration indicating that there has been no
14 financial harm. The plaintiffs only point to
15 declarations in the record that were filed in 2010
16 that indicate that a few individuals, I believe
17 three, no longer shop there, but they do not in any
18 way contest the Levine declaration with regard to a
19 lack of injury. At summary judgment, the plaintiffs,
20 after the defendants moved for summary judgment, have
21 a burden to put evidence into the record with regard
22 to injury. They have not met that burden.

23 Additionally, the Court cannot provide an
24 injunctive remedy, because the defendants are not
25 current board members. This is true. The Court is

1 dealing with the current complaint. The Court does
2 not address this argument in the context of any
3 possible future amendment of the complaint.

4 With regard to the other arguments, the Court
5 finds that the Court either need not reach those
6 arguments or that there are factual issues that
7 preclude summary judgment.

8 With regard to the plaintiff's motion for partial
9 summary judgment, the plaintiffs argue that the
10 defendants breached their duty to the cooperative,
11 that the Court should declare the improper boycott
12 null and void, and the Court should permanently
13 enjoin the improper boycott.

14 This Court does not agree with the argument that
15 the Washington Supreme Court has addressed each of
16 the issues before this Court. With regard to the
17 plaintiff's first argument, the breach of the
18 director's duty requires harm or injury, and the
19 plaintiffs have not shown that.

20 Second, with regard to injunctive relief, the
21 defendants are not current board members, and the
22 Court finds that it cannot issue effective relief
23 even if the plaintiffs could prove their case.

24 Do the parties require clarification of the
25 Court's rulings today?

1 MR. SULKIN: No, your Honor.

2 MS. LAHOOD: No. Thank you, your Honor.

3 THE COURT: Thank you. The Court will sign
4 an order that is agreed as to form or it can be
5 presented at a future time. The Court has an ex
6 parte process for submitting an agreed order, or the
7 parties can note up a hearing at which time the Court
8 can approve an order, if the parties need to argue as
9 to the form of that order.

10 MR. SULKIN: I suggest we try and work
11 together to try to come to some agreement.

12 MS. LAHOOD: Thank you, your Honor.

13 THE COURT: Certainly, and I appreciate the
14 parties doing that. Thank you for excellent briefing
15 in this case, excellent argument, and I believe this
16 concludes this matter.

17 MR. SULKIN: Thank you.

18 MS. LAHOOD: Thank you, your Honor.

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20 (PROCEEDINGS ADJOURNED)

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
COUNTY OF THURSTON)

I, SONYA L. WILCOX, RDR, Official Reporter
of the Superior Court of the State of Washington in and
for the County of Thurston hereby certify:

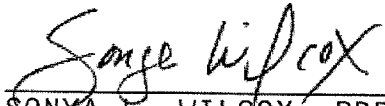
1. I reported the proceedings stenographically;

2. This transcript is a true and correct record of
the proceedings to the best of my ability, except for any
changes made by the trial judge reviewing the transcript;

3. I am in no way related to or employed by any
party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this day, March 21, 2018.



SONYA L. WILCOX, RDR
Official Court Reporter
Certificate No. 2112