

Hon. Brian McDonald  
Defendants' Reply ISO Motion for Summary Judgment  
Noted for Hearing: Friday, August 14, 2020  
With Oral Argument 10:00 AM

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GALANDA BROADMAN, PLLC, a  
Washington professional limited liability  
company,

Plaintiff,

v.

KILPATRICK TOWNSEND &  
STOCKTON LLP, a foreign limited  
liability company; ROB ROY EDWARD  
STUART SMITH, an individual; and  
RACHEL SAIMONS, an individual,

Defendants.

No. 19-2-16870-6 SEA

DEFENDANTS' REPLY IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT

1 GB's response ignores the elephant in the room: it was Colegrove who told the  
2 Tribe that GB drafted her severance agreement before KTS was involved, and it was the  
3 Tribe who quoted that statement in its bar complaint against her. GB's ire against KTS is  
4 misdirected and its claims are based entirely on speculation, inadmissible hearsay,  
5 misrepresentations of KTS's testimony, and conclusory statements that contradict  
6 undisputed facts. GB also ignores the following facts that are fatal to its claims, among  
7 others:

- 8 • The Tribe already confirmed that KTS had nothing to do with GB's  
9 termination (**Ex. U**);
- 10 • The Tribe's bar complaint against Colegrove simply and accurately quotes her  
11 statement and the remaining statements relating to GB are accurate, describing  
12 the nature of the relationship between Colegrove and Galanda (**Ex. A**); and
- 13 • Two of the three statements on which GB bases its complaint (KTS's oral  
14 presentation and the bar complaint) were made *after* the Tribe terminated GB  
15 and therefore could not have caused the termination.

16 Even if the Court considers the inadmissible hearsay statements on which GB  
17 relies, there is no evidence that KTS intentionally interfered or violated the CPA and there  
18 is no dispute of material fact sufficient to defeat summary judgment. KTS respectfully  
19 requests that the Court grant summary judgment.

#### 18 **A. Inadmissible Hearsay**

19 GB "cannot rely on inadmissible hearsay." *Lynn v. Labor Ready, Inc.*, 136 Wn.  
20 App. 295, 309, 151 P.3d 201 (2006). Pursuant to LCR 56(c), KTS objects and moves to  
21 strike the following statements and exhibits in Galanda's declaration which are all hearsay  
22 and do not fall within any exception (ER 801-02, 804):

- 23 • Ex. K (Frank declaration) and references to it in ¶¶ 17 and 23;
- 24 • Ex. L (McCloud declaration) and references to it in ¶ 24;
- 25 • Ex. M (Squally declaration) and references to it in ¶ 26;
- 26 • Statements in ¶ 32 about what Joshua Clause heard/said;

- Statements in ¶ 36 about what Tom Nedderman heard/said;
- Ex. W (letter regarding a different lawsuit).

**B. GB Failed to Meet its Burden on Intentional Interference**

GB has not presented any admissible evidence to support its interference claim. Instead, it relies on speculation and unreasonable inferences, neither of which satisfy its burden. *Lynn*, 136 Wn. App. at 306, 310. GB argues the bar complaint against Colegrove is circumstantial evidence that KTS intentionally interfered with GB's relationship. It is not. The complaint is the Tribe's statement (not KTS's); there is no evidence that KTS drafted the sentences at issue; even if it did, neither KTS nor the Tribe had reason to believe Colegrove's quoted statement that Galanda drafted the severance agreement was false; and the other statements about GB (e.g., Galanda had a longstanding relationship with Colegrove) were true (**Ex. B** at 14:10–19:12). GB's attempt to create a dispute of material fact about who drafted the agreement does not preclude summary judgment. To create a material dispute, GB would need to show that KTS drafted that statement *and* knew it was false. There is no evidence, direct or circumstantial, of either.

Moreover, even if GB could prove those things, it would still be unreasonable to infer based on that alone that the quote of Colegrove's statement in the complaint caused GB's termination or was even part of the Tribe's consideration. GB presented no evidence to support its accusation that KTS was motivated to harm GB. Indeed, the Tribe already confirmed KTS had nothing to do with its decision and GB was fired because of the quality of its work. **Ex. U.**<sup>1</sup> And contrary to GB's claim, nothing in the councilmember declarations, even if true and admissible, shows intentional interference. Squally was not even on the Council when GB was terminated and has no direct

---

<sup>1</sup> Because hearsay cannot be used to defeat summary judgment, GB's attempt to create a dispute of material fact about the validity of the Tribe's statement by pointing to hearsay statements in the Squally Declaration fails.

1 knowledge of anything KTS did or said. Moreover, turnover is common when key  
2 members of an organization, such as in-house counsel, change.

3 GB likewise does not have evidence of improper purpose. GB claims KTS acted  
4 improperly by (1) continuing its investigation despite conflicts of interest, (2) not  
5 interviewing Colegrove and Galanda, and (3) representing the Tribe on other matters.  
6 First, there is no evidence KTS had a conflict or failed to disclose one. GB's fixation on  
7 this issue is perplexing given the lack of evidence and fact that even if KTS did fail to  
8 disclose a conflict, only the Tribe would have standing to challenge it. Indeed, the  
9 evidence merely shows that KTS and GB represented opposing parties in the *Rabang*  
10 Action and that Galanda believed it was "contentious." That is not evidence of any  
11 conflict. Next, it is unreasonable to infer impropriety based on GB's preferences for how  
12 KTS ought to have done its work or the fact of KTS's representation. GB has no firsthand  
13 knowledge of what KTS told the Tribe, how KTS performed its investigation, was not  
14 present when the Council discussed GB's termination, and never spoke to KTS about the  
15 investigation or statements KTS purportedly made about GB. **Ex. B** at 64:20–65:3,  
16 66:25–67:5, 69:4–9. Moreover, KTS has only worked on two small matters since the  
17 investigation and did not "essentially replace" GB as GB claims without support.

18 GB also failed to meet its burden on causation and damages. There is no evidence  
19 that the Tribe terminated GB based on any information supplied by KTS, much less  
20 "misinformation" supplied by KTS. GB's claim that "[w]ere it not for Defendants, GB  
21 would still be outside general counsel for Nisqually to this day" is an unsupported  
22 conclusory statement that does not establish causation. *Elcon Const., Inc. v. Eastern*  
23 *Wash. Univ.*, 174 Wn.2d 157, 169, 273 P.3d 965 (2012). Further, GB fails to explain how  
24 statements KTS purportedly made *after* the Tribe terminated GB (oral presentation and  
25 bar complaint) caused its termination. GB also continues to ignore the fact that the Tribe  
26 had a right to terminate GB at any time for any reason based on its contract and the RPCs.

1 In addition, GB has not established any monetary harm. The Tribe never  
2 guaranteed GB would get a certain amount of work or money and never guaranteed  
3 perpetual employment. There is no support for GB's position that it would have received  
4 additional work for the Tribe were it not for KTS. Ironically, GB may obtain a monetary  
5 windfall because of the lien it filed in the MDL Action despite not having to do any of the  
6 work. The cases GB cites on pages 16 and 17 for the proposition that interference claims  
7 arising from the termination of at-will contracts are permitted are inapposite. KTS never  
8 argued that GB has no right to bring the claim because its contract was at will. Rather, the  
9 fact that GB's contract was terminable at will means the monetary damages GB claims are  
10 speculative. *Bakotich v. Swanson*, 91 Wn. App. 311, 315, 957 P.2d 275 (1998) ("an  
11 employee cannot recover damages when terminated from at-will employment.")

12 GB likewise has no evidence supporting reputational harm. Galanda's opinion  
13 that he was harmed is not evidence and does not create a dispute of material fact. His  
14 claim that his reputation suffered with the Tribe is also belied by the fact that he is still in  
15 good standing with at least the three current councilmembers who provided supporting  
16 declarations. To the extent his reputation was harmed or he lost the opportunity to obtain  
17 future work from the Tribe, the only logical inference from the admissible evidence is that  
18 it was a direct result of his own actions and failures and/or Colegrove's statement that he  
19 drafted the severance agreement.

20 **C. GB Failed to Meet its Burden on its CPA Claim**

21 GB's claim that "these facts are tailor-made for CPA liability" is wrong. GB  
22 failed to present evidence of any of the required elements. GB claims KTS acted unfairly  
23 and deceptively because it "did not deal with the Tribal Council or GB with honesty or  
24 good faith," "ignored clear conflicts of interest and shared demonstrably false findings  
25 with the Tribal Council." Resp. at 19. There is no admissible evidence supporting those  
26

1 allegations. The substance of KTS's investigation is privileged and, as discussed above,  
2 GB's reliance on any alleged conflict of interest is misplaced.

3 GB has no evidence showing any act occurred in trade or commerce. GB claims  
4 this element is satisfied because "Defendants misused their position ... to bring about the  
5 unnecessary and unwarranted termination of GB's ... agreement, and then ... took over  
6 new assignments ... that would have flowed to GB." GB cites nothing for that statement  
7 because there is no evidence supporting it. Despite GB's effort to claim otherwise, GB's  
8 claim is clearly about GB's disagreement with how KTS performed its investigation. As  
9 described in KTS's motion, that is not actionable under the CPA.

10 GB also failed to satisfy the public interest element. There is no evidence that  
11 KTS committed an unfair or deceptive act much less that it was part of some "pattern or  
12 generalized course of conduct." GB has manufactured an interesting conspiracy theory  
13 that KTS obtains clients by improperly interfering with existing relationships between  
14 Tribes and their lawyers, but none of the evidence GB provided, even the inadmissible  
15 hearsay evidence, supports that conspiracy.<sup>2,3</sup> It is neither uncommon nor improper for a  
16 client to change counsel and the fact that KTS took over matters from prior counsel is not  
17 evidence of wrongdoing or a pattern that affects the public interest. Tribes are self-  
18 governing bodies that are capable of assessing their own legal needs and choosing their  
19 own lawyers. Galanda's extensive digging into KTS's other representations merely  
20 suggests a misguided fixation on KTS.

21 Finally, for the reasons stated above, GB has not identified any proximate cause or  
22 damage supporting its CPA claim. Because the councilmember declarations are

---

23 <sup>2</sup> Public records show KTS did not "poach" any SixKiller clients. *See*  
24 <https://www.opensecrets.org/federal-lobbying/clients/hired-firms?cycle=2019&id=D000052655>  
25 (Clause Law is the lobbyist for each Tribe GB identifies).

26 <sup>3</sup> GB misrepresents the Northern Arapaho litigation. The Tribe did not sue KTS—  
minority members on the Tribe's governing body who were upset the Tribe voted to continue  
using KTS, among other things, did. *See* Ex. X at 2–3, 5–7, 30–31.

1 inadmissible hearsay, GB's effort to create a dispute of material fact on the causation issue  
2 fails.

3 \* \* \*

4 Because GB failed to meet its burden on multiple elements of each claim, KTS  
5 respectfully requests the Court dismiss GB's frivolous lawsuit.

6 I certify that this Motion contains 1,749 words in compliance with the Local Civil  
7 Rules.

8 DATED this 10<sup>th</sup> day of August, 2020.

9 McNAUL EBEL NAWROT & HELGREN PLLC

10 By: s/Leslie E. Barron

11 Malaika M. Eaton, WSBA No. 32837

12 Leslie E. Barron, WSBA No. 50792

13 600 University Street, Suite 2700

14 Seattle, Washington 98101

(206) 467-1816

15 [meaton@mcnaul.com](mailto:meaton@mcnaul.com)

16 [lbarron@mcnaul.com](mailto:lbarron@mcnaul.com)

17 Attorneys for Defendants  
18  
19  
20  
21  
22  
23  
24  
25  
26

# **Proposed Order**



SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GALANDA BROADMAN, PLLC, a  
Washington professional limited liability  
company,

Plaintiff,

v.

KILPATRICK TOWNSEND &  
STOCKTON LLP, a foreign limited  
liability company; ROB ROY EDWARD  
STUART SMITH, an individual; and  
RACHEL SAIMONS, an individual,

Defendants.

No. 19-2-16870-6 SEA

ORDER ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

[PROPOSED]

This matter came on for hearing before the Court on Defendants' Motion for Summary Judgment. In connection with Defendants' Motion, the Court heard oral argument of counsel for the parties and reviewed and considered the following:

- (1) Defendants' Motion for Summary Judgment;
- (2) Declaration of Leslie E. Barron in Support of Defendants' Motion for Summary Judgment and Exhibits A thru W attached thereto;
- (3) Declaration of Rob Roy Edward Stuart Smith in Support of Defendants' Motion for Summary Judgment;
- (4) Plaintiff's Opposition to Defendants' Motion for Summary Judgment;
- (5) Declaration of Gabriel S. Galanda in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment and Exhibits A–W attached;
- (6) Declaration of Charles P. Rullman in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment and Exhibits A–B attached;

- 1 (7) Defendants' Reply in Support of Motion for Summary Judgment; and  
2  
3 (8) Second Declaration of Leslie E. Barron in Support of Defendants' Motion  
4 for Summary Judgment and Exhibit X attached thereto.

5 The Court has also reviewed the records on file herein. And being otherwise fully  
6 advised, now, therefore,

7 HEREBY ORDERS, ADJUDGES, AND DECREES that Defendants' Motion for  
8 Summary Judgment is GRANTED. Plaintiff's claims against Defendants are dismissed in  
9 their entirety, with prejudice.

10 IT IS SO ORDERED.

11 DATED this \_\_\_\_ day of August, 2020.

12 \_\_\_\_\_  
13 Honorable Brian McDonald  
King County Superior Court

14 Presented by:

15 McNAUL EBEL NAWROT & HELGREN PLLC

16 By: s/Leslie E. Barron

17 Malaika M. Eaton, WSBA No. 32837

18 Leslie E. Barron, WSBA No. 50792

19 [meaton@mcnaul.com](mailto:meaton@mcnaul.com)

[lbarron@mcnaul.com](mailto:lbarron@mcnaul.com)

20 With a copy to Attorneys for Plaintiff:

21 Charles P. Rullman, WSBA No. 42733

22 Jacob M. Downs, WSBA No. 37982

23 Gretchen J. Hoog, WSBA No. 43248

[crullman@corrdowns.com](mailto:crullman@corrdowns.com)

[jdowns@corrdowns.com](mailto:jdowns@corrdowns.com)

24 [ghoog@corrdowns.com](mailto:ghoog@corrdowns.com)