Court of Appeal No. 51770-1-II

Thurston County Superior Court No. 11-2-01925-7

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

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

Appellants,

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,

Respondents.

APPELLANTS' BRIEF

Robert M. Sulkin, WSBA No. 15425
Avi J. Lipman, WSBA No. 37661
Curt C. Isacke, WSBA No. 49303
McNAUL EBEL NAWROT & HELGREN PLLC
One Union Square
600 University Street, Suite 2700
Seattle, WA 98101
(206) 467-1816
Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

This appeal presents a straightforward question of law: On summary judgment, may a trial court weigh evidence regarding "particularized harm" to negate standing? The answer is no.

The standing requirement of "particularized harm" is not a balancing test under which, for example, a plaintiff's showing that a business suffered harm can be rebutted as a matter of law by a defendant's allegation that the business has nonetheless continued to grow. If the situation were otherwise, trial courts would be permitted to weigh evidence every time a defendant challenged standing based on the sufficiency of harm alleged by a plaintiff. That is not the law, and trial courts may not weigh evidence on summary judgment.

The Washington Supreme Court affirmed that basic principle in this very litigation when it reversed the trial court's 2012 dismissal of Appellants' (collectively "Plaintiffs") claims. *Davis v. Cox*, 183 Wn.2d 269, 281, 351 P.3d 862 (2015), *abrogated on other grounds by Maytown Sand & Gravel, LLC v. Thurston Cty.*, 94452-1, 2018 WL 3765517 (Wash. Aug. 9, 2018) ("[S]ummary judgment does not concern degrees of likelihood or probability. Summary judgment requires a legal certainty: the material facts must be undisputed, and one side wins as a matter of law."). Once a trial court weighs the strength of competing evidence,

summary judgment cannot properly be granted. Yet, that is precisely what happened here.

Plaintiffs presented uncontroverted evidence below that the Olympia Food Cooperative (the "Co-op") suffered tangible harm due to the enactment by Appellees (collectively, "Defendants") of a product boycott of Israel ("Israel Boycott") in violation of the Co-op's governing bylaws ("Bylaws"). Defendants did not dispute that the Co-op had suffered harm due to their actions; instead, they argued that "the Co-op's financial strength has only continued to improve . . . [m]embership rose after the Boycott, as did sales across the board." CP 42.

Based on these arguments, the trial court held that Plaintiffs lacked standing because "they fail to allege sufficiently that the Co-op suffered ***any*** injury as a result of the boycott . . . The plaintiffs only point to declarations . . . that indicate that a few individuals . . . no longer shop there." Appendix at 22 ("App."); CP 608. In so doing, the trial court confused the *measure* of damages with the question of *whether* the Co-op suffered a particularized harm. This was improper. On summary judgment, the trial court was not charged with determining whether the harm flowing from a particular course of action was outweighed by the benefits to the Co-op. Yet it did so, and weighed evidence in the process.

Compounding the error, the trial court also misapplied the standard for summary judgment. The trial court held that "[a]t summary judgment, the plaintiffs after the defendants moved for summary judgment, have a burden to put evidence into the record with regard to injury. They have not met that burden." App. 22; CP 608. As the non-moving party, Plaintiffs had no such burden, and in any event, satisfied the requirement for standing.

In considering a motion for summary judgment, the court must construe all facts and reasonable inferences in favor of the nonmoving party. *Turngren v. King Cty.*, 104 Wn.2d 293, 312, 705 P.2d 258 (1985). The trial court did the exact opposite by construing against Plaintiffs the evidence Defendants submitted of an increase in membership and sales after the Israel Boycott. In response, Plaintiffs argued, among other things, that but for Defendants' misconduct, membership and sales would have been even higher. Yet, the trial court simply ignored that argument, and improperly shifted the burden to Plaintiffs (the nonmoving party). This effectively required Plaintiffs to prove a negative. Moreover, the Washington Supreme Court has made clear that summary judgment cannot be granted when "different or conflicting inferences" may be drawn from the evidence presented. *Thompson v. Ezzell*, 61 Wn.2d 685, 696, 379 P.2d 983 (1963).

Finally, the trial court improperly held that it could not provide injunctive relief because Defendants are no longer members of the Co-op's board of directors (the "Board"). This, too, was error. The Washington Uniform Declaratory Judgment Act provides Plaintiffs with the right to obtain a declaration as to whether the Board properly followed the Bylaws in enacting the Israel Boycott. The Co-op, as a derivative plaintiff, would be bound by such a declaration. It is indisputable that trial courts have equitable power to effectuate their orders. *Allen v. Am. Land Research*, 95 Wn.2d 841, 852, 631 P.2d 930 (1981) ("The superior court's inherent authority to enforce orders and fashion judgments is not dependent on the statutory grant."). To find otherwise here would provide Plaintiffs with a right, but no remedy. *McCandlish Elec., Inc. v. Will Const. Co., Inc.*, 107 Wn. App. 85, 97, 25 P.3d 1057 (2001) ("Where a statute creates a new right but no remedy, the common law will provide that remedy.").

II. ASSIGNMENTS OF ERROR

Assignment of Error 1: The trial court erred in granting Defendants' Motion for Summary Judgment on the basis that Plaintiffs lacked standing.

Issues Pertaining to Assignment of Error

a. Is it error to grant a motion for summary judgment on the grounds that derivative Plaintiffs lacked standing because the

nominal plaintiff corporation did not suffer an injury, after weighing evidence submitted by both parties and despite a showing that the corporation suffered particularized economic harm?

b. Does a trial court granting a motion for summary judgment commit reversible error by comparing material evidence submitted by both parties and drawing inferences in the moving party's favor?

Assignment of Error 2: The trial court erred in holding that it could not provide injunctive relief.

Issue Pertaining to Error

a. Is it error to grant a motion for summary judgment on the grounds that injunctive relief cannot be provided because Defendants are no longer board members of the corporation?

III. STATEMENT OF THE CASE

A. The Structure and Composition of the Co-Op

The Co-op operates two retail grocery stores in Olympia, Washington. CP 251. The Co-op defines itself as "collectively managed," relying "on consensus decision making." CP 251. "The Cooperative works to serve a diverse population by incorporating procedures and practices that remove barriers . . . ." CP 253, § II.2. The Co-op maintains an "open membership" policy. *Id.* I.3. To become an "active member" of the Co-op, an applicant must pay a membership fee and membership "dues," and maintain a current address on file with OFC. *Id.* Co-op members are

entitled to vote on certain issues, and in such instances each member has one vote. CP 254, § II.7.

The Co-Op operates according to certain governing rules, procedures, and principles in publicly available documents. Among these documents are the Co-Op's Mission Statement and Bylaws. As relevant here, the Bylaws empower the Board to:

> 7. adopt, review, and revise Cooperative plans;
>
> . . .
>
> 9. adopt major policy changes;
>
> 10. adopt policies to foster member involvement;
>
> . . .
>
> 12. ensure compliance with all corporate obligations, including the keeping of corporate records and filing all necessary documents;
>
> . . .
>
> 14. maintain free-flowing communication between the Board, Staff, committees, and the membership;
>
> 15. adopt policies which promote achievement of the mission statement and goals of the Cooperative.
>
> 16. resolve organizational conflicts after all other avenues of resolution have been exhausted; and
>
> 17. establish and review the Cooperative's goals and objectives.

CP 255, § III.13.

Separately, the Co-op employs certain professional staff members, who are paid for the time they spend working at the Co-op. CP 261. These

individuals are known collectively as the "Staff." The Staff publicly describes itself as a non-hierarchical collective that makes decisions through a consensus process. *Id.* According to the Board's governing rules, "consensus" means unanimous agreement. *Id.*

The Bylaws vest the Staff with, among other things, the responsibilities to "carry out Board decisions and/or membership decisions made in compliance with these bylaws" and "carry out all activities and act in accordance with applicable law, the articles of incorporation, and the bylaws of the cooperative." CP 256 § IV. In other words, to the extent the Board vests the Staff with duties, the Bylaws allocate to the Staff the responsibility to effectuate those duties. *Id.*

B. The Board Enacts the Boycott Policy

In May 1993, consistent with its role in the Bylaws, the Board adopted and announced a policy to govern the Co-op's participation in product boycotts (the "Boycott Policy"). CP 280. It provides:

> **BOYCOTT POLICY**
>
> Whenever possible, the Olympia Food Co-op will ***honor nationally recognized boycotts*** which are called for reasons that are compatible with our goals and mission statement . . .
>
> . . . .
>
> In the event that we decide not to honor a boycott, we will make an effort to publicize the issues surrounding the boycott . . . to allow our members to make the most educated decisions possible.

. . .

> A request to honor a boycott . . . will be referred … to determine which products and departments are affected. . . The [affected] ***department manager will make a written recommendation to the staff who will decide by consensus whether or not to honor a boycott….***
>
> . . .
>
> The department manager will post a sign informing customers ***of the staff's decision*** … regarding the boycott. ***If the staff decides to honor a boycott, the M.C. will notify the boycotted company or body of our decision …***

CP 280 (emphases added). The Boycott Policy has remained in effect at all relevant times.

C. The Board Ignores the Bylaws and Boycott Policy and Enacts the Israel Boycott

Under the Bylaws, following due procedure, the Board retained authority to repeal the Boycott Policy any time after it was enacted. CP 254-55, § III.13-9, -15. Yet, the Board has not done so: Since May 1993, the Boycott Policy has not been amended or repealed. CP 385 at 33:13-15.

Accordingly, if the Board wished to enact a proposed boycott, it was required to do so subject to the Boycott Policy—including the requirements of Staff "consensus" and an existing "nationally recognized" boycott. CP 280; *see* CP 376 at 35:17-36:12. There is no evidence in the record that the Board, prior to or in conjunction with enacting the Israel

Boycott, made any changes to the Boycott Policy or followed the procedures laid out therein. *See id.*

1. The Board Enacts the Israel Boycott

In spring 2010, a member of the Co-op proposed that the Co-op boycott products produced in Israel and divest from investment in Israel. App. 13, ¶ 4.[1] The proposal was discussed among Staff members, whom failed to reach consensus regarding their position on the proposal. *Id.* ¶ 5.

After the Staff initially failed to reach consensus, Defendant Levine (at the time, Staff representative to the Board) took an unprecedented step: He submitted a Board-sponsored version of the proposal to the Staff. *Id.* ¶ 4. The Board's involvement in such a boycott proposal was inconsistent with prior boycotts, the text of the Boycott Policy, and the Staff's understanding thereof. *Id.* The Staff was given three options with regard to the proposal: (a) "consent"; (b) "stand aside"; or (c) "take to meeting." *Id.* After at least one Staff member selected "take to meeting," the proposal was sent to Staff "work group meetings" (where the Staff collective makes decisions). *Id.* ¶ 5. There were approximately

---

[1] The attached Appendix contains Declarations of Tibor Breuer, Kent Davis, Linda Davis, Michael Lowsky, and Susan Mayer (the "Declarations"). The trial court below considered the Declarations in evaluating the parties' motions for summary judgment. *See* App. 22; CP 608. On August 13, 2018, Plaintiffs filed a Supplemental Designation of Clerks Papers with the trial court requesting transmission of the Declarations to this Court.

10–15 Staff members at each meeting, which took place in or around the beginning of July 2010. *Id.* Among the Staff who attended the work group meetings, there were a number of "firm blocks," meaning certain members were clearly against the proposal. *Id.* Because it only takes one Staff member to block consensus, it was clear that the Staff did not support the Israel Boycott proposal. *Id.*; *see* CP 392 at 28:17-29:1; CP 393 at 35:2-14.

Under the Boycott Policy, the Staff's failure to reach consensus constituted a rejection of the Israel Boycott. CP 280. Indeed, the Staff notified the Board of the lack of consensus among the Staff. App. 14, ¶ 6. In response, the Board made no additional effort to revise the proposal in response to Staff objections. They did not even consider the Staff's resolution. *See* CP 374 at 24:12-25:15; *see also* CP 375 at 32:11-33:3.

Instead, at a Board meeting in July 2010 attended by a large group of activists from an organization known as "Boycott Divestment Sanctions" ("BDS"), without due authority, in violation of the Bylaws, Boycott Policy, and other rules, the Board decided to adopt the Israel Boycott. App. 14, ¶ 6. The Staff never consented to this action. *Id.* ¶ 7.

2. The Board Violated the Boycott Policy's Staff Consensus Rule

As described above, at the heart of the Co-op's system of governance and Bylaws is the principle of "consensus decision making."

CP 251. Indeed, the Co-op explicitly relies on "consensus decision making" at all levels of its operations. *See, e.g.*, *id.* ¶¶ I(2), III(6), III(11), and III(12); CP 261; CP 280-81. In the words of a former Board Member:

> The Co-op staff collective uses a consensus-based decision-making process. No group decision is made until it has the support of all members of the collective. ***Any individual collective member may block consensus at any time. In fact, if an individual staff member cannot live with a decision that is about to be made, it is his/her responsibility to block consensus***...

CP 308 (emphasis added).

In this case, multiple members of the Staff objected to the Israel Boycott and other divestment resolution/policies. *E.g.*, App. 2 ¶ 5. Discovery in this litigation confirmed not only that Staff objected, but that at least one of their objections was "removed from our [Staff] journal," presumably in effort to hide it. CP 310. In response to a Staff survey, another employee wrote:

> [A] lot of trust in the BOD was lost when it decided to force it's [sic] personal political beliefs onto the co-op staff, and ***strong-armed the staff into participating in a boycott that it did not consent to*** ... No matter the rationalization used, the action of the BOD strongly resembled that of the BOD of any large corporation ... ***the BOD decided to use the Co-op for their own strongly held personal political agendas and to ignore the precepts of cooperation and collectivity***.

CP 313 (emphases added). Another Staff member asked the Board to "suspend" the Israel Boycott "in acknowledgment of the ***mistake in process*** which occurred." CP 315 (emphasis added); CP 322 (identifying Staff members). The Board enacted the Israel Boycott anyway.

3. The Board Violated the "Nationally Recognized" Requirement

At the same time, the unrebutted record is that no one on the Board at the time the Israel Boycott was enacted believed there was—or even considered whether there was—a nationally recognized boycott of Israel, as required by the Boycott Policy. All evidence in the record is that the Israel Boycott was to be "the first boycott of Israeli goods by a US grocery store." CP 289. And, Staff and Defendants alike have testified in this action that the Board did not even consider the "nationally recognized" standard in enacting the Israel Boycott. *Id.*; *see also* CP 385 at 32:11-20.

4. The Board Did Not Have the Authority to Ignore Co-op Rules and Policies

The Bylaws vest the Board with a list of "major duties," including the authority to adopt and review policies. CP 255, § III.13. Nothing in the Bylaws authorizes the Board to ignore duly enacted policies. Indeed, the plain text of the Bylaws requires the contrary conclusion: The list of Board powers is phrased ***exclusively***, meaning anything unlisted is ***not*** a major power of the Board in managing the affairs of the Co-Op.

Defendants argued below that their violation of the Boycott Policy was authorized by a Bylaw provision providing that the Board may "resolve organization conflicts." Yet, corporate directors cannot formulate a policy that requires Staff consensus, enact the policy unanimously, and

then justify their violation of it by claiming a lack of Staff consensus constitutes a "conflict." The position defies logic. It is also flatly contradicted by the fact that Defendant Levine admitted in writing before enactment "the decision making process" would need to "change" to allow the Board to enact the Israel Boycott on its own. *See* CP 376 at 36:6-38; CP 391 at 22:2-16.

D. Fallout and Damage to the Co-op

After the Board approved the Israel Boycott, several long-time Co-op members urged the Board to honor the Boycott Policy, as well as the Bylaws and Mission Statement, by reversing their decision and returning the issue to the Staff. *E.g.*, CP 350-52. Again, the Board refused. CP 354.

Instead, the Board (unsuccessfully) attempted to amend the Boycott Policy to retroactively legitimize its misconduct. *E.g.*, CP 356-59; *see also* CP 325-27, 329 (Defendants Cox and Levine recommending after the Israel Boycott was enacted that Staff consensus be abandoned with respect to boycotts). This strongly suggests the Board knowingly violated the Boycott Policy and Bylaws in enacting the Israel Boycott. Why else would they promptly try to "fix" the Boycott Policy after the fact?

In the wake of the Board's unlawful enactment of the Israel Boycott, it is undisputed that a number of members either cancelled their memberships or otherwise stopped shopping at the Co-op in protest. *See,*

e.g., App. 6 ¶ 13; App. 10 ¶ 13; App. 17 ¶ 12. Plaintiffs Linda and Kent Davis, who previously and routinely shopped at the Co-op have not done so since the summer of 2010. *Id.* Likewise, Plaintiff Susan Mayer, who previously and routinely shopped at the Co-op, has not done so since the summer of 2010. Others have followed suit or resigned. *E.g.*, App. 2 ¶ 3.

Further, the Co-op has indisputably lost revenue as a result of failing to offer Israeli-made products to customers who wish to purchase them. In 2010, the Co-op refrained from expanding to a new facility in part because of "the uncertain impact of the recently adopted boycott of Israeli products." CP 364-65. Accordingly, there is ample, undisputed evidence that business has been lost as a result of the Board's failure to follow the Co-op's governing rules and procedures.

And, this harm was not unforeseen by the Board. Indeed, it expected losses and community discord when it voted to enact the Israel Boycott. CP 361. But for the Board's misconduct, these membership cancellations, reduced sales, and community upheaval would not have occurred.

In response to this indisputable showing of harm, Defendants made only one argument, unsupported by evidence: As it stands today, they claimed, the Co-op operates successful stores and has more members now than it had before the Board voted to enact the Israel Boycott. CP 52-53,

¶¶ 17-18. As explained further below, this is not (and cannot) be the relevant legal standard by which harm to the Co-op is measured.

Even on its own terms, the contention is not compelling. There are any number of reasons why a grocery store would be more successful today than it was in 2010, including an improving economy (2010 was a time of recession), and growth in Olympia's population. CP 426.

IV. PROCEDURAL HISTORY

A. Plaintiffs Sue to Vindicate the Co-Op Rules

On September 2, 2011, Plaintiffs—all long-time Co-op members and volunteers—filed a verified derivative complaint asserting on behalf of the Co-op that because the Israel Boycott was enacted in a way that violated Co-op rules and procedures, it was void and unenforceable. *See Davis v. Cox*, 183 Wn.2d 269, 278, 351 P.3d 862 (2015). The complaint also alleged that Defendants violated the fiduciary duties they owed to the Co-op. *Id.* Plaintiffs' complaint was later amended to clarify that Defendants violated those duties by, among other things, "put[ting] their own personal and/or political interests above the interests of [the Co-op], to the detriment of [the Co-Op]," and "put[ting] the interests of another organization above the interests of OFC, to the detriment of OFC." CP 10 ¶¶ 59-60. Plaintiffs have asked the trial court for declaratory and injunctive relief, as well as damages against Defendants. CP 12-13.

B. Defendants Move to Strike the Complaint; Plaintiffs Prevail on Appeal and the Case Is Remanded for Discovery

On November 1, 2011, Defendants filed a Special Motion to Strike Under Washington's Anti-SLAPP Act and Motion to Dismiss ("Motion to Strike"). *See Davis*, 183 Wn.2d at 278. Plaintiffs opposed the Motion to Strike, arguing, among other things, that the Complaint was not covered by the Anti-SLAPP Act and that the Act was unconstitutional on its face and as applied to the Plaintiffs. *See id.* At the same time, Plaintiffs cross-moved to allow discovery to proceed. *See id.*

On January 13, 2012, the trial court granted Defendants' Motion to Strike based on the Anti-SLAPP Act, denied Plaintiffs' discovery cross-motion, and awarded fees and sanctions against Plaintiffs. Plaintiffs appealed that ruling and the Court of Appeals affirmed (*Davis v. Cox*, 180 Wn. App. 514, 325 P.3d 255 (2014)), "on the theory that the Cooperative's board is not bound by its adopted policies." *Davis*, 183 Wn.2d at 282 n.2.

On May 28, 2015, the Washington Supreme Court reversed and held that the Washington Anti-SLAPP Act is unconstitutional. *Id.* at 295-96. In doing so, the Court also found that "[o]ne ***disputed material fact*** in this case is whether a boycott of Israel-based companies is a 'nationally recognized boycott[ ],' as the Cooperative's boycott policy requires for the board to adopt a boycott." *Id.* at 282 n.2. In finding this fact "material,"

the Washington Supreme Court necessarily rejected Division One's conclusion that the Board was not bound by the terms of the Boycott Policy while it remains in effect. On June 19, 2015, the Supreme Court issued its mandate directing the trial court to proceed consistent with its opinion.

C. The Trial Court Grants Summary Judgment in Favor of Defendants

Subsequently, Plaintiffs and Defendants field cross-motions for summary judgment. CP 15-47; CP 214-245. After argument, the trial court issued an oral ruling. CP 601-11. The court first found that "material issues of fact" existed as to many of the issues presented by the parties' motions. App. 22; CP 608. However, the court granted summary judgment in Defendants' favor on two grounds. First, the court "determined that the plaintiffs lack standing, because they fail to allege sufficiently that the Co-op suffered any injury as a result of the boycott." *Id.* Second, the court held that it could not "provide an injunctive remedy, because the defendants are not current board members." *Id.* This appeal followed.

V. ARGUMENT

A. Standard of Review

The standard of review is de novo. "Standing is reviewed de novo." *City of Burlington v. Washington State Liquor Control Bd.*, 187

Wn. App. 853, 861, 351 P.3d 875 (2015), *as amended* (June 17, 2015) (citing *In re Estate of Becker,* 177 Wn.2d 242, 246, 298 P.3d 720 (2013)). "When reviewing a party's standing, this court stands in the same position as the superior court." *Id.* (citing *Patterson v. Segale,* 171 Wn. App. 251, 257, 289 P.3d 657 (2012)). De novo review is employed when, as here, a trial court's ruling is based entirely on declarations and documentary evidence. *Danielson v. City of Seattle,* 45 Wn. App. 235, 240, 724 P.2d 1115 (1986) (citing *In re Reilly's Estate,* 78 Wn.2d 623, 654, 479 P.2d 1 (1970)). In such cases, that standard applies to evidentiary rulings as well as legal ones. *Momah v. Bharti,* 144 Wn. App. 731, 749, 182 P.3d 455 (2008) (de novo review applies to all summary judgment issues, including evidentiary rulings); *accord Rice v. Offshore Sys., Inc.,* 167 Wn. App. 77, 85, 272 P.3d 865 (2012).

B. Standing Exists because the Co-op Suffered Economic Injuries

The trial court erred in finding that Plaintiffs lacked standing by ignoring Plaintiffs' evidence and relying instead on Defendants' evidence. This error alone warrants reversal of the trial court's grant of summary judgment.

Plaintiffs' Amended Complaint asserts four claims on behalf of the Co-op: (1) damages for Defendants' breach of fiduciary duties (CP 9-10); (2) a finding that the Defendants' actions were void and unenforceable

ultra vires actions (CP 11); (3) declaratory judgment pursuant to RCW 7.24 *et seq.* regarding the enactment of the Boycott (CP11-12); and (4) permanent injunctive relief enjoining the Board from enforcing or abiding by the Israel Boycott and directing the Board to follow Co-op procedures in the future (CP 12). Plaintiffs submitted evidence on summary judgment sufficient to establish standing for each request for relief.

The standing inquiry differs only slightly among the claims asserted by Plaintiffs, but each requires a showing of a factual injury and that the Plaintiffs fall within the zone of interests to be protected.[2] Standing under Washington's Uniform Declaratory Judgments Act ("ACT") requires a "justiciable controversy," defined as

> (1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

---

[2] The same standing analysis—whether a party suffered a sufficient factual injury and whether the injury falls into the zone of interests—applies to the breach of fiduciary duty claims brought derivatively by Plaintiffs. *See, e.g. Jevne v. Pass, LLC*, 416 P.3d 1257, 1260 (Wash. Ct. App. 2018) (analyzing direct standing under zone of interests and injury in fact tests); *Branson v. Port of Seattle*, 152 Wn.2d 862, 875, 101 P.3d 67 (2004) ("This court has established a two-part test for determining whether a party has standing to bring a particular action."). Constitutional standing is established if a party shows that it "has suffered an injury in fact that is fairly traceable to [defendant's] conduct and that would likely be redressed by a favorable decision." *City of Spokane v. Monsanto Co.*, 2:15-CV-00201-SMJ, 2016 WL 6275164, at *4 (E.D. Wash. Oct. 26, 2016). Plaintiffs' arguments set forth herein apply with equal force in demonstrating standing as to the fiduciary duty claims.

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). These justiciability requirements overlap with the standing requirement. *Id.* at 411 n.5.

The trial court's oral ruling turned on the third requirement, that there the dispute "involve[] interests that must be direct and substantial, rather than potential, theoretical, abstract or academic." CP 607 ("The plaintiffs lack standing, because they fail to allege sufficiently that the Co-op suffered any injury as a result of the boycott."). This finding was clearly erroneous in light of the evidence proffered. Indeed, Plaintiffs easily satisfied each of the four requirements for standing.

1. Appellants Demonstrated that the Co-Op Suffered a Particularized Injury

As the Washington Supreme Court explained in *To-Ro*, the third justiciability prong requires a showing of direct harm. *To-Ro*, 144 Wn.2d at 412. "This third justiciability requirement . . . encompasses the doctrine of standing." *Id.* at 414. To demonstrate standing "a party must show, in addition to 'sufficient factual injury,' that '"the interest sought to be protected ... is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."' *Id.*

(quoting *Seattle Sch. Dist. No. 1 v. State,* 90 Wn.2d 476, 493-94, 585 P.2d 71 (1978)).

a. Plaintiffs Demonstrated an Injury in Fact

As the trial court acknowledged, Plaintiffs submitted "declarations in the record that were filed in 2010 that indicate that a few individuals, I believe three, no longer shop there." CP 608. The trial court erred in finding this was not sufficient to demonstrate a factual injury to the Co-op.

Injury in fact is shown when a party demonstrates that it was "specifically and perceptibly harmed" by the defendants' actions. *City of Burlington v. Washington State Liquor Control Bd.*, 187 Wn. App. 853, 868, 351 P.3d 875 (2015) (quoting *Trepanier v. City of Everett*, 64 Wn. App. 380, 382, 824 P.2d 524 (1992)).[3] "The injury in fact test is not meant to be a demanding requirement. Typically, if a litigant can show that a potential injury is real, that injury is sufficient for standing." *Id.* at 869 *see also id* at 872 (describing requirement as "minimal" and noting that the mere threat of expanded liquor sales was a sufficient injury for standing).

---

[3] *City of Burlington*'s standing analysis addressed a challenge under the Administrative Procedure Act, but for present purposes, the analysis there is the same—the "zone of interest" test and the "injury-in-fact" test. *City of Burlington*, 187 Wn. App. at 864 n.16 ("*WASAVP* is a non APA case that involved standing under the uniform declaratory judgment act (UDJA) chapter 7.24 RCW. Nevertheless, *WASAVP* is controlling authority because the two-part standing test under the UDJA is nearly identical to the APA two-part standing test.").

Accordingly, Plaintiffs plainly submitted evidence sufficient to establish that the Co-op suffered an injury in fact. *See Trepanier*, 64 Wn. App. at 383 (a party's "affidavits [must] collectively demonstrate sufficient evidentiary facts to indicate that he will suffer an 'injury in fact.'") (quoting *Concerned Olympia Residents v. Olympia,* 33 Wn. App. 677, 683, 657 P.2d 790 (1983)) (alterations in original). The declarations submitted by Plaintiffs were not challenged by Defendants. Instead, Defendants focused on whether "membership and sales increased post-Boycott." CP 582 (Defendants' reply in support of summary judgment). But such evidence has no bearing on Plaintiffs' evidence that "numerous other Co-op members" cancelled their memberships in response to the Policy. App. 2, ¶ 3. Nor does it have any connection to the fact that two Plaintiffs have stopped shopping at the Co-op due to the Israel Boycott since "the summer of 2010." App. 6 ¶ 13; App. 10 ¶ 13; App. 17 ¶ 12. Indeed the Co-op itself halted a planned expansion in part because of "the uncertain impact of the recently adopted boycott of Israeli products." CP 365 (Co-op newsletter explaining that planned downtown Olympia expansion was being suspended). These are palpable and material harms suffered by the Co-op due to Defendants' misconduct, and the trial court erred in treating them as outweighed by evidence offered by Defendants.

This unchallenged evidence establishes that the Co-op suffered an injury; i.e., loss of revenue from the declarants' refusal to spend money at the Co-op due to the enactment of the Israel Boycott. *See, e.g,. Branson v. Port of Seattle*, 152 Wn.2d 862, 876, 101 P.3d 67 (2004) (courts "consider whether the party seeking standing has suffered from an injury in fact, ***economic or otherwise***.") (emphasis added).

Moreover, the trial court already determined that Plaintiffs had standing by denying Defendants' motion to dismiss. CP 423 (Plaintiffs' opposition to summary judgment, noting that standing argument had already been decided on motion to dismiss). Unlike a federal court, standing is not a jurisdictional issue as "the Washington Constitution places few constraints on superior court jurisdiction . . . in Washington, a plaintiffs lack of standing is not a matter of subject matter jurisdiction." *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 198, 312 P.3d 976 (2013); *see also U.S. Bank Nat. Ass'n v. La Mothe*, 181 Wn. App. 1007 (2014) (following *Trinity*).[4] In *Trinity*, the court held that the defendant had waived the defense of lack of standing by failing to

---

[4] The *Trinity* court was aware that the Washington Supreme Court in *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 212 n.3 45 P.3d 186 (2002) had stated that standing is "jurisdictional." *Trinity*, 176 Wn. App. at 199 n.7. However, the *Trinity* court found that this was "the type of '"drive-by jurisdictional ruling"' that the *Trinity* court would not rely on. *Id.* (quoting *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 208, 258 P.3d 70 (2011)).

raise it before the trial court. While the procedural posture here is different—Defendants did raise standing—the import is the same. The trial court already decided the question of standing at the motion to dismiss stage. Defendants and the trial court were not free to re-visit it later, especially after the case had already gone up to the Washington Supreme Court.

b. Appellants Fall Within the Zone of Interests of RCW 24.03

Plaintiffs are members of the Co-op, and Defendants were members of the Board when the Israel Boycott was enacted. *See Davis*, 183 Wn.2d at 278. RCW 24.03.127 imposes a "reasonableness standard for directors in their dealings with the corporation and its members." *Waltz v. Tanager Estates Homeowner's Ass'n*, 183 Wn. App. 85, 90, 332 P.3d 1133 (2014). The clear purpose of this statute is to protect "the corporation and its members" from improper acts by directors. Indeed, the zone of interests extends beyond the terms of a single statute, as "[i]f the party's interests are affected or impacted by a statute, the party is within the zone of interests." *Benton Cty. v. Zink*, 191 Wn. App. 269, 279, 361 P.3d 801 (2015). Defendants were bound to act in the best interests of the Co-op when they were board members. Their actions in violating the Bylaws adversely impacted the Co-op's interests. Accordingly, as Plaintiffs are

proceeding derivatively on behalf of the Co-op, they satisfy the zone of interests test.

2. The Other Justiciability Requirements Are Met

While the trial court's holding did not turn on the other justiciability requirements, Plaintiffs easily satisfy those factors as well.

First, an actual dispute exists. The parties clearly continue to disagree as to whether the Board had the power to ignore its governing documents and enact the Israel Boycott. Nothing in the record suggests the Israel Boycott has been rescinded or modified since 2010. *See* CP 24-25.

Second, Plaintiffs and Defendants have both genuine and opposing interests. Both sides continue to dispute whether the enactment of the Israel Boycott followed the Bylaws. *Osborn v. Grant Cty. By & Through Grant Cty. Comm'rs*, 130 Wn.2d 615, 632, 926 P.2d 911 (1996) (adversarial requirement met when two parties claimed control over employees). The Co-op has a clear interest in avoiding the injuries it has already suffered. *See supra* § III.D. Moreover, the Co-op has an interest in ensuring that it is managed in accordance with its governing documents, as well as in maximizing its membership going forward by removing the improper Israel Boycott. CP 251 (mission of Co-op to contribute to "health and well-being of people . . . through a locally-oriented, collectively managed, not-for-profit cooperative organization that relies on

consensus decision making"); *Orion Corp. v. State*, 103 Wn.2d 441, 455, 693 P.2d 1369 (1985) ("To have standing, one must have some protectable interest that has been invaded or is about to be invaded."). And, Defendants plainly believe the Israel Boycott is still justified, regardless of any damage that its improper enactment has caused to the Co-op community as a whole. CP 289, 340-41, 343 (Israel Boycott was the result of "a small group of activists").

Third, "a judicial determination" of the parties' respective rights will "be final and conclusive." *Osborn*, 130 Wn.2d at 631. As discussed in detail below, a declaration and injunction invalidating the Israel Boycott would resolve this dispute. The Co-op, as a derivative plaintiff, would be bound by a court ruling. *Walters v. Ctr. Elec., Inc.*, 8 Wn. App. 322, 329, 506 P.2d 883 (1973) (in a derivative action, "the corporation is the real party in interest"); *LaHue v. Keystone Inv. Co.*, 6 Wn. App. 765, 778, 496 P.2d 343 (1972); *see also* 46 Am. Jur. 2d Judgments § 598 ("[A] judgment for or against a shareholder in [derivative] actions is generally considered to bind the corporation and its officers, as well as other shareholders, including those not made parties to the action . . . ."). Defendants would be bound as well, both as members of the Co-op and as individuals who were, are, or may in the future be, directors of the Co-op.

C. The Trial Court Improperly Applied the Summary Judgment Standard by Drawing Inferences in Favor of the Moving Party

By ignoring uncontested evidence that the Co-op suffered injuries due to the Israel Boycott, and relying instead on Defendants' evidence, the trial improperly applied the summary judgment standard. As noted above, Plaintiffs needed only to provide evidence of standing sufficient to show an injury. They did so. The trial court, on the other hand, not only ignored that evidence, but also improperly drew inferences in favor of Defendants—the moving parties. CP 608. Even assuming *arguendo* that the evidence proffered by Plaintiffs by itself was not sufficient to establish standing, the trial court should still have denied summary judgment in considering the evidence proffered by both parties. *Davis*, 183 Wn.2d at 281 ("Summary judgment does not concern degrees of likelihood or probability. Summary judgment requires a legal certainty: the material facts must be undisputed, and one side wins as a matter of law.").

"The purpose of summary judgment is to avoid useless trials on formal issues which . . . , if factually supported, could not as a matter of law lead to a result favorable to the nonmoving party." *Mostrom v. Pettibon,* 25 Wn. App. 158, 167, 607 P.2d 864 (1980). "A genuine issue of material fact exists when reasonable minds could differ on the facts controlling the outcome of the litigation." *Dowler v. Clover Park Sch. Dist. No. 400*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011).

It is black letter law that the court must "construe all evidence an all reasonable inferences in the light most favorable to the nonmoving party." *Keck v. Collins*, 181 Wn. App. 67, 79, 325 P.3d 306 (2014), *aff'd,* 184 Wn.2d 358, 357 P.3d 1080 (2015). Even if facts are not in dispute, if "different inferences may be drawn therefrom as to ultimate facts . . . a summary judgment would not be warranted." *Preston v. Duncan*, 55 Wn.2d 678, 681, 349 P.2d 605 (1960).

In its oral ruling, the trial court noted that Defendants had "put into the record a declaration indicating there has been no financial harm." CP 608. Summary judgment was granted because, in the trial court's view, Plaintiffs had failed to contest that declaration. *Id.* In doing so, the trial court made several errors.

First, Plaintiffs did contest the declaration, which stated that the Co-op's sales and membership had increased following the enactment of the Israel Boycott. CP 52-53, ¶¶ 17-18. In their opposition brief to Defendants' motion for summary judgment, Plaintiffs noted the myriad reasons why an increase in sales and membership was not inconsistent with harm resulting from the Israel Boycott. CP 426. For example, such an increase may have resulted from the improving economy or growth in Olympia's population. *Id.* In other words, Plaintiffs articulated several

contrary inferences that could be drawn from Defendants' evidence, yet the trial court declined to draw such inferences in Plaintiffs' favor.

Secondly, the evidence presented (and relied upon by the trial court), did not in any way rebut Plaintiffs' evidence; i.e., but for Defendants' actions, sales and membership would have been higher than they were. *Id.* The trial court was obligated to consider these contrary and reasonable inferences. Its failure to do so was reversible error.

Both Defendants and the trial court made the same fundamental mistake of confusing the *measure* of damages with *whether* an injury occurred. Plaintiffs' evidence established the latter as a matter of law, while Defendants' evidence should have been weighed by a jury. Whether Defendants' position that the Co-op suffered comparatively little harm is "correct" is not an issue for summary judgment.

The Court of Appeals rejected a similar argument in *Wuth ex rel. Kessler v. Laboratory Corp. of Am.*, 189 Wn. App. 660, 359 P.3d 841 (2015). In *Wuth*, the plaintiffs filed a "wrongful birth" claim against the defendant on behalf of their child. On appeal, the defendant argued that the wrongful birth claim should not have survived summary judgment because the birth "brought a net increase in the quality" of the plaintiffs' lives. *Id.* at 687. The Court of Appeals rejected this argument because, "[a]lthough the relevant evidence on the issue was undisputed, it

established only that [the child's] birth brought both joy and significant anguish to the [plaintiffs'] family. On this evidence, the jury could have concluded either that [the child's] birth brought a 'net increase' or a 'net loss' to his parents." *Id.* The same logic applies with equal force here to Defendants' evidence. A jury could conclude that membership and sales would have been higher if the Israel Boycott had not been enacted. As "different inferences could be drawn from the evidence, summary judgment [is] not appropriate." *Id.*

Finally, Defendants' argument (accepted by the trial court) would effectively insulate boards of directors from their own misconduct so long as the profits of a corporation increase after the directors' misconduct. Such a position is not (and cannot) be the law. Standing requires an injury in fact, not a balancing test.

D. The Trial Court Erred in Holding that It Could Not Provide Injunctive Relief to Enforce any Declaratory Relief

The trial court's other error was its determination that it could not provide Plaintiffs with injunctive relief because Defendants were no longer members of the Board. CP 608.[5]

Plaintiffs brought this action derivatively on behalf of the Co-op, the real party in interest. An injunction enforcing the voiding of the Israel

---

[5] The trial court did acknowledge, however, that a "possible future amendment" could resolve this issue. CP 609.

Boycott would bind the Co-op, its Board, and Defendants as parties to this suit. *Walters*, 8 Wn. App. at 329 (in a derivative action, "the corporation is the real party in interest and the minority stockholder who brings the action is at best only a nominal plaintiff seeking to enforce a right of the corporation against a third party" (citing *Ross v. Bernhard*, 396 U.S. 531, 90 S. Ct. 733, 24 L. Ed. 2d 729 (1970)); *see also In re Ezcorp Inc. Consulting Agreement Derivative Litig.*, 130 A.3d 934, 946–47 (Del. Ch. 2016) (a judgment in a derivative action may have binding effect on the corporation and other stockholders if the derivative action survives a motion to dismiss).

Moreover, the trial court erred in ignoring its equitable powers. The UDJA empowers the trial court to issue a declaratory judgment and to issue injunctive relief. RCW 7.24.080 (court may grant additional relief when "necessary and proper").[6] "[E]very court has inherent power to enforce its decrees and to make such orders as may be necessary to render them effective. This principle is also codified in RCW 7.24.080." *Ronken v. Bd. of Cty. Comm'rs of Snohomish Cty.*, 89 Wn.2d 304, 312, 572 P.2d 1 (1977).

---

[6] Indeed, a court may do so even if the statute in question does not provide a private right of action. *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 187, 157 P.3d 847 (2007). Moreover, "[w]here a statute creates a new right but no remedy, the common law will provide that remedy." *McCandlish Elec., Inc. v. Will Const. Co., Inc.*, 107 Wn. App. 85, 97, 25 P.3d 1057 (2001).

Moreover, joinder of the Co-op is not necessary because if "nonjoinder does not prejudice the rights of the absent corporation sought to be benefited, or the rights of the defendants against whom the corporate cause of action is asserted, judgment in favor of the absent corporation in the stockholder's derivative suit may be upheld." *LaHue*, 6 Wn. App. at 778. In *LaHue*, the court looked to whether the absent corporation would be prejudiced. The court found that it would not because the corporation had shown no interest in the suit, although its "officers and directors knew of the trial." The Co-op is on notice of this litigation. CP 350. That the Co-op was not joined is no impediment to granting injunctive relief. *See United Nursing Homes, Inc. v. McNutt*, 35 Wn. App. 632, 640, 669 P.2d 476 (1983) ("It is generally held, under statutes similar to RCW 7.24, that declaratory and coercive relief may be combined in the same proceeding." (citing Annot., 155 A.L.R. 501, 503 (1945))).

If Plaintiffs have the right to seek a declaratory judgment, then they have the right to a remedy as well—including injunctive relief. Doing so would be well within the equitable power of the trial court. *Cogdell v. 1999 O'Ravez Family, LLC*, 153 Wn. App. 384, 390, 220 P.3d 1259 (2009) ("A court in equity has broad discretion to fashion a remedy to do substantial justice and end litigation.") (citing *Hough v. Stockbridge*, 150 Wn.2d 234, 236 (2003)). Ordering the Co-op and its Board to cease the

Israel Boycott (if Plaintiffs prevail) would clearly fall within the trial court's "broad equitable powers." *Id.* Because the trial court found otherwise, it committed reversible error.

VI. CONCLUSION

For the foregoing reasons, the trial court's order should be reversed.

RESPECTFULLY SUBMITTED this 13th day of August, 2018.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Avi J. Lipman
Robert M. Sulkin, WSBA No. 15425
Avi J. Lipman, WSBA No. 37661
Curtis C. Isacke, WSBA No. 49303

600 University Street, Suite 2700
Seattle, WA 98101
P: (206) 467-1816 / F: (206) 624-5128
rsulkin@mcnaul.com
alipman@mcnaul.com
cisacke@mcnaul.com

Attorneys for Appellants

APPENDIX

☐ EXPEDITE
☐ No hearing is set
√ Hearing is set
Date: January 13, 2011
Time: 11 a.m.
Judge/Calendar: Hon. Paula Casey/
Hon. Christopher Wickham

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KENT L. and LINDA DAVIS; JEFFREY and SUSAN TRININ; 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; SUZANNE SHAFER; JULIA SOKOLOFF; and JOELLEN REINECK WILHELM,

Defendants.

No. 11-2-01925-7

DECLARATION OF TIBOR BREUER OPPOSING DEFENDANTS' SPECIAL MOTION

I, Tibor Breuer, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based on personal knowledge:

1. I am over the age of 18, have knowledge of the facts set forth below, and am competent to testify thereto.

2. I have lived in Olympia, Washington since 1988. I joined the Olympia Food Cooperative (the "Co-op") as a member in 1988.

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 1

3. I am familiar with the enactment in July 2010 by the Co-op's Board of Directors of a resolution to boycott and divest from Israel, which I believe was improper and unlawful. As a direct result of the Board's action, and in protest against the process by which the Board enacted the Israel Boycott and Divestment resolution/policies, I cancelled my Co-op membership in December 2010. I am aware of numerous other Co-op members who did the same.

4. In the early 1990s, I was a member of the Board of Directors of the Co-op. I am familiar with the enactment in May 1993 of the Co-op's Boycott Policy. Underlying the adoption of the Boycott Policy were several intentions, among them that (1) the Co-op would be a follower with regard to boycotts that were already recognized—not a leader; (2) the prior recognition of such boycotts would be national in scope; and (3) authority to recognize boycotts would reside with the Co-op Staff—not the Board,

5. Although it was given no advance notice of the Board's plans to vote on the proposal to boycott and divest from Israel, the Co-op community quickly caught wind of the Board's improper action. Prompt requests were made by certain Co-op members to rescind the resolution/policies, and the Board faced widespread criticism for its action.

6. At a meeting on or around August 12, 2010, two petitions were submitted to the Board of the Co-op requesting that the Israel Boycott and Divestment resolution/policies be rescinded, including mine. Together, these petitions contained the signatures of approximately 350 members of the Co-op. So far as I am aware, no action was ever taken by the Board in response to those petitions. In fact, it soon became clear to me that the Board had no intention of rescinding the resolution/policies.

7. Many present Co-op members who oppose the process by which the Board enacted the Israel Boycott and Divestment resolution/policies support the Plaintiffs in their lawsuit against the Defendants. Although I am not a lawyer, I believe the Plaintiffs "fairly and adequately" represent those Co-op members.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 2

Dated this 30th day of November, 2011.

Tibor Breuer

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 3

☐ EXPEDITE
☐ No hearing is set
√ Hearing is set
Date: January 13, 2011
Time: 11 a.m.
Judge/Calendar: Hon. Paula Casey/
Hon. Christopher Wickham

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KENT L. and LINDA DAVIS; JEFFREY and SUSAN TRININ; 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; SUZANNE SHAFER; JULIA SOKOLOFF; and JOELLEN REINECK WILHELM,

Defendants.

No. 11-2-01925-7

DECLARATION OF KENT DAVIS OPPOSING DEFENDANTS' SPECIAL MOTION

I, Kent Davis, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based on personal knowledge:

1. I am over the age of 18, have knowledge of the facts set forth below, and am competent to testify thereto. I am one of the Plaintiffs in the above-captioned litigation.

2. My wife, Linda Davis, and I have lived at the same address in Olympia, Washington since December 2004. Linda and I have been married since July 1978. We both joined the

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 4

Olympia Food Cooperative (the "Co-op") as members in 2004, and have remained members of the Co-op since that time.

3. In August 2010, I learned that my Co-op membership had been mistakenly cancelled as the result of either computer or Staff error at the Co-op. Apparently, the error that led to the temporary suspension of my Co-op membership resulted from the misimpression that I did not have a current address on file with the Co-op. My address, however, has not changed since I joined the Co-op as a member in 2004. As soon as I learned of the Co-op's mistake, I arranged for my Co-op membership to be reinstated.

4. I am familiar with the enactment in July 2010 by the Co-op's Board of Directors of a resolution to boycott and divest from Israel, which I believe was improper and unlawful.

5. Although it was given no advance notice of the Board's plans to vote on the proposal to boycott and divest from Israel, the Co-op community quickly caught wind of the Board's improper action. Prompt requests were made by certain Co-op members to rescind the resolution/policies, and the Board faced widespread criticism for its action.

6. It soon became clear to me, however, that the Board had no intention of rescinding the Israel Boycott and Divestment resolution/policies. In an effort to avoid litigation and resolve our differences with the Defendants informally, I and the other Plaintiffs sent a letter, dated May 31, 2011, to each of the Defendants setting forth our position. A true and correct copy of that letter is attached to the Declaration of Avi J. Lipman as Exhibit AA.

7. I am familiar with this litigation and have been and remain willing to learn more about it. Indeed, I and the other Plaintiffs have been closely involved at every stage of our ongoing dispute with the Defendants.

8. I and the other Plaintiffs have not surrendered our control of the litigation to our attorneys.

9. I maintain a personal commitment to the action on the part of the Co-op.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 5

10. Through this lawsuit, I and the other Plaintiffs seek a remedy on behalf of the Co-op, not ourselves personally.

11. I maintain an interest in this action that outweighs any personal interest I might have in the outcome. In fact, I have no personal interest in the outcome of this litigation insofar as I stand to gain nothing financially if we prevail.

12. At some point after the summer of 2010, I and the other Plaintiffs sought out the assistance of a pro-Israel charitable organization (StandWithUs) in an effort to contest the Board's unlawful actions. Unlike the Board members, we did not have an organization like Boycott, Divestment and Sanctions ("BDS")—an international alliance of anti-Israel political organizations—to help us. Our communication with StandWithUs resulted from frustration and exhaustion at being ignored, derided, and ultimately brushed aside by the Defendants. I and the other Plaintiffs, however, are not "pawns" of StandWithUs or any other organization. Although I am not a lawyer, I believe we are the "real parties in interest" on behalf of the Co-op.

13. After the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies, a number of Co-op members either cancelled their memberships or otherwise stopped shopping at the Co-op in protest. For example, my wife and I previously shopped at the Co-op one or two times per week, but have not done so since the summer of 2010.

14. "Voter turnout" for the Co-op's Board elections in November 2010 was greater for the five candidates endorsed by BDS because BDS activists at the Evergreen State College campus had recruited and then carpooled students to the Co-op to become members for the express purpose of endorsing the Israel Boycott and Divestment resolution/policies.

15. I and the other Plaintiffs have received significant support from other Co-op members since we filed suit against the Defendants, and I believe we "fairly and

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 6

adequately" represent those members who oppose the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies. Indeed, I received many votes from such people when I ran for an open position on the Board in November 2010.

16. My wife and I are not personally "personally adverse" to the Defendants, as Defendants claim in their opening brief. Nor are we pursuing this lawsuit out of "vindictiveness" toward them. We object to the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies, and have expressed as much publicly. But we take no issue with the Defendants personally.

Dated this 30th day of November, 2011.

Kent Davis

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 7

☐ EXPEDITE
☐ No hearing is set
√ Hearing is set
Date: January 13, 2011
Time: 11 a.m.
Judge/Calendar: Hon. Paula Casey/
Hon. Christopher Wickham

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KENT L. and LINDA DAVIS; JEFFREY and SUSAN TRININ; 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; SUZANNE SHAFER; JULIA SOKOLOFF; and JOELLEN REINECK WILHELM,

Defendants.

No. 11-2-01925-7

DECLARATION OF LINDA DAVIS OPPOSING DEFENDANTS' SPECIAL MOTION

I, Linda Davis, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based on personal knowledge:

1. I am over the age of 18, have knowledge of the facts set forth below, and am competent to testify thereto. I am one of the Plaintiffs in the above-captioned litigation.

2. My husband, Kent Davis, and I have lived at the same address in Olympia, Washington since December 2004. Kent and I have been married since July 1978. We both

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 8

joined the Olympia Food Cooperative (the "Co-op") as members in late 2004 or early 2005, and have remained members of the Co-op since that time.

3. In August 2010, Kent and I learned that Kent's Co-op membership had been mistakenly cancelled as the result of either computer or Staff error at the Co-op. Apparently, the error that led to the temporary suspension of Kent's Co-op membership resulted from the misimpression that he did not have a current address on file with the Co-op. His address, however, has not changed since we joined the Co-op as members. As soon as Kent and I learned of the Co-op's mistake, we arranged for his Co-op membership to be reinstated.

4. I am familiar with the enactment in July 2010 by the Co-op's Board of Directors of a resolution to boycott and divest from Israel, which I believe was improper and unlawful.

5. Although it was given no advance notice of the Board's plans to vote on the proposal to boycott and divest from Israel, the Co-op community quickly caught wind of the Board's improper action. Prompt requests were made by certain Co-op members to rescind the resolution/policies, and the Board faced widespread criticism for its action.

6. It soon became clear to me, however, that the Board had no intention of rescinding the Israel Boycott and Divestment resolution/policies. In an effort to avoid litigation and resolve our differences with the Defendants informally, I and the other Plaintiffs sent a letter, dated May 31, 2011, to each of the Defendants setting forth our position. A true and correct copy of that letter is attached to the Declaration of Avi J. Lipman as Exhibit AA.

7. I am familiar with this litigation and have been and remain willing to learn more about it. Indeed, I and the other Plaintiffs have been closely involved at every stage of our ongoing dispute with the Defendants.

8. I and the other Plaintiffs have not surrendered our control of the litigation to our attorneys.

9. I maintain a personal commitment to the action on the part of the Co-op.

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 9

10. Through this lawsuit, I and the other Plaintiffs seek a remedy on behalf of the Co-op, not ourselves personally.

11. I maintain an interest in this action that outweighs any personal interest I might have in the outcome. In fact, I have no personal interest in the outcome of this litigation insofar as I stand to gain nothing financially if we prevail.

12. At some point after the summer of 2010, I and the other Plaintiffs sought out the assistance of a pro-Israel charitable organization (StandWithUs) in an effort to contest the Board's unlawful actions. Unlike the Board members, we did not have an organization like Boycott, Divestment and Sanctions ("BDS")—an international alliance of anti-Israel political organizations—to help us. Our communication with StandWithUs resulted from frustration and exhaustion at being ignored, derided, and ultimately brushed aside by the Defendants. I and the other Plaintiffs, however, are not "pawns" of StandWithUs or any other organization. Although I am not a lawyer, I believe we are the "real parties in interest" on behalf of the Co-op.

13. After the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies, a number of Co-op members either cancelled their memberships or otherwise stopped shopping at the Co-op in protest. For example, my husband and I previously shopped at the Co-op one or two times per week, but have not done so since the summer of 2010.

14. "Voter turnout" for the Co-op's Board elections in November 2010 was greater for the five candidates endorsed by BDS because BDS activists at the Evergreen State College campus had recruited and then carpooled students to the Co-op to become members for the express purpose of endorsing the Israel Boycott and Divestment resolution/policies.

15. I and the other Plaintiffs have received significant support from other Co-op members since we filed suit against the Defendants, and I believe we "fairly and

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

adequately" represent those members who oppose the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies. Indeed, I received many votes from such people when I ran for an open position on the Board in November 2010.

16. My husband and I are not personally "personally adverse" to the Defendants, as Defendants claim in their opening brief. Nor are we pursuing this lawsuit out of "vindictiveness" toward them. We object to the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies, and have expressed as much publicly. But we take no issue with the Defendants personally.

Dated this 30th day of November, 2011.

Linda Davis

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 11

☐ EXPEDITE
☐ No hearing is set
√ Hearing is set
Date: January 13, 2011
Time: 11 a.m.
Judge/Calendar: Hon. Paula Casey/
Hon. Christopher Wickham

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KENT L. and LINDA DAVIS; JEFFREY and SUSAN TRININ; 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; SUZANNE SHAFER; JULIA SOKOLOFF; and JOELLEN REINECK WILHELM,

Defendants.

No. 11-2-01925-7

DECLARATION OF MICHAEL LOWSKY OPPOSING DEFENDANTS' SPECIAL MOTION

I, Michael Lowsky, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based on personal knowledge:

1. I have been employed as a staff member at the Olympia Food Cooperative ("OFC" or "Co-op") for approximately sixteen years. I have been a member of OFC for approximately twenty-three (23) years. I believe strongly in OFC and wish it no harm.

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 12

2. In or around May 1993, the OFC Board of Directors ("Board") enacted a "Boycott Policy." So far as I know, the content of the Boycott Policy has not been changed or amended since its original enactment. I am familiar with the Boycott Policy, which is published on OFC's website (www.olympiafood.coop/boycott).

3. Since the enactment of the Boycott Policy, the staff of OFC has decided—by consensus—to honor certain "nationally recognized" boycotts. These include boycotts of products manufactured by Phillip Morris; products manufactured by Celestial Seasons; products manufactured in China; and products manufactured in Norway. So far as I know, each of these boycotts was "nationally recognized" at the time OFC began honoring it, and each was approved by consensus by the Co-op staff.

4. In the spring of 2010, the Co-op staff was presented by the staff representative to the Board with a proposal to boycott products manufactured in Israel and to divest from investment in Israel. The staff representative to the Board drafted this proposal at the request of the Board. The involvement of the Board in a boycott proposal was not consistent with either prior boycotts or my understanding of the Boycott Policy. As presented, Co-op staff had three options: (a) "consent"; (b) "stand aside"; or (c) "take to meeting."

5. After at least one Co-op staff member checked "take to meeting," the proposal was sent to Co-op staff work group meetings (how and where the collective makes decisions). There were approximately 10-15 Co-op staff members at each meeting, as well as the staff representative to the Board. The meetings took place in or around the beginning of July 2010. Among the staff members at the meetings, there were a number of "firm blocks," meaning these members were clearly against the Israel boycott and divestment proposal. Because it only takes one Co-op staff member to block consensus, it was clear at those meetings that the Co-op staff did not support the Israel boycott and divestment proposal. No evidence was presented to us at those meetings, or at any other time, that a

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

boycott of and/or divestment from Israel were "nationally recognized." In fact, the proposal was presented to us as an opportunity to be the first grocery store to publicly recognize a boycott and/or divestment from Israel.

6. The Board was then notified of the lack of consensus among the Co-op staff regarding the proposal. Despite a block and a general lack of support for the proposal by Co-op staff, the Board independently consented to publicly support the Israel boycott and divestment in July 2010.

7. The Co-op staff never consented to the Israel boycott and divestment proposal. In fact, at no time has the Co-op staff ever reached consensus regarding any proposal, in any form, to boycott Israeli-made products and/or to divest from investment in Israel.

DATED this 16th day of November, 2011 at Olympia, Washington.

Michael Lowsky

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 14

☐ EXPEDITE
☐ No hearing is set
√ Hearing is set
Date: January 13, 2011
Time: 11 a.m.
Judge/Calendar: Hon. Paula Casey/
Hon. Christopher Wickham

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KENT L. and LINDA DAVIS; JEFFREY and SUSAN TRININ; 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; SUZANNE SHAFER; JULIA SOKOLOFF; and JOELLEN REINECK WILHELM,

Defendants.

No. 11-2-01925-7

DECLARATION OF SUSAN MAYER OPPOSING DEFENDANTS' SPECIAL MOTION

I, Susan Mayer, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based on personal knowledge:

1. I am over the age of 18, have knowledge of the facts set forth below, and am competent to testify thereto. I am one of the Plaintiffs in the above-captioned litigation.

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

2. I have lived in Thurston County, Washington since 1988. I joined the Olympia Food Cooperative (the "Co-op") as a member in the early 1990s, and have remained a member of the Co-op since that time.

3. I am familiar with the enactment in July 2010 by the Board of a resolution to boycott and divest from Israel, which I believe was improper and unlawful.

4. Although it was given no advance notice of the Board's plans to vote on the proposal to boycott and divest from Israel, the Co-op community quickly caught wind of the Board's improper action. Prompt requests were made by certain Co-op members to rescind the resolution/policies, and the Board faced widespread criticism for its action.

5. At a meeting on or around August 12, 2010, two petitions were submitted to the Board of the Co-op requesting that the Israel Boycott and Divestment resolution/policies be rescinded. Together, the petitions contained the signatures of approximately 350 members of the Co-op, including mine. So far as I am aware, no action was ever taken by the Board in response to those petitions. In fact, it soon became clear to me that the Board had no intention of rescinding the resolution/policies. In an effort to avoid litigation and resolve our differences with the Defendants informally, I and the other Plaintiffs sent a letter, dated May 31, 2011, to each of the Defendants setting forth our position. A true and correct copy of that letter is attached to the Declaration of Avi J. Lipman as Exhibit AA.

6. I am familiar with this litigation and have been and remain willing to learn more about it. Indeed, I and the other Plaintiffs have been closely involved at every stage of our ongoing dispute with the Defendants.

7. I and the other Plaintiffs have not surrendered our control of the litigation to our attorneys.

8. I maintain a personal commitment to the action on the part of the Co-op.

9. Through this lawsuit, I and the other Plaintiffs seek a remedy on behalf of the Co-op, not ourselves personally.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

10. I maintain an interest in this action that outweighs any personal interest I might have in the outcome. In fact, I have no personal interest in the outcome of this litigation insofar as I stand to gain nothing financially if we prevail.

11. At some point after the summer of 2010, I and the other Plaintiffs sought out the assistance of a pro-Israel charitable organization (StandWithUs) in an effort to contest the Board's unlawful actions. Unlike the Board members, we did not have an organization like Boycott, Divestment and Sanctions ("BDS")—an international alliance of anti-Israel political organizations—to help us. Our communication with StandWithUs resulted from frustration and exhaustion at being ignored, derided, and ultimately brushed aside by the Defendants. I and the other Plaintiffs, however, are not "pawns" of StandWithUs or any other organization. Although I am not a lawyer, I believe we are the "real parties in interest" on behalf of the Co-op.

12. After the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies, a number of Co-op members either cancelled their memberships or otherwise stopped shopping at the Co-op in protest. For example, I previously shopped at the Co-op twice per week, but have not done so since the summer of 2010.

13. I and the other Plaintiffs have received significant support from other Co-op members since we filed suit against the Defendants, and I believe we "fairly and adequately" represent those members who oppose the Board's improper and unlawful enactment of the Israel Boycott and Divestment resolution/policies.

Dated this 30 th day of November, 2011.

Susan Mayer

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

APPENDIX 17

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.) 11-2-01925-7
Plaintiff,	)
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
wilcoxs@co.thurston.wa.us

APPENDIX 18

CP 604

APPEARANCES

For the Plaintiffs: ROBERT M. SULKIN
MCNAUL EBEL
600 University Street
Seattle, Washington 98101

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

APPENDIX 19

CP 605

INDEX

APPENDIX 20

CP 606

issued, your Honor. Appreciate it.

THE COURT: Thank you.

MS. LAHOOD: Thank you, your Honor.

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

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

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

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

APPENDIX 21

CP 607

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

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

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

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

APPENDIX 22

CP 608

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

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

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

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

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

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

MR. SULKIN: No, your Honor.

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

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

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

MS. LAHOOD: Thank you, your Honor.

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

MR. SULKIN: Thank you.

MS. LAHOOD: Thank you, your Honor.

(PROCEEDINGS ADJOURNED)

APPENDIX 24

CP 610

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 Wilcox

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