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Honorable Jim Rogers
Noted: 10/21/16 at 10:00 am
With Oral argument

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

TRACY S. MCNAMARA, an individual,

Plaintiff,

v.

KAREN KOEHLER; AKA "THE VELVET
HAMMER;" JOHN DOE KOEHLER;
JOHN DOE "HAMMER"; STRITMATTER
KESSLER WHELAN KOEHLER MOORE
KAHLER, a Washington professional
corporation,

Defendants.

No. 16-2-16400-5 SEA

~~PROPOSED~~ ORDER
GRANTING DEFENDANTS'
MOTION FOR DISMISSAL
UNDER CR 12(c) 56

[Clerk's Action Required]

This matter came before the Court on Defendants' Motion for Dismissal Under CR
12(c). Having reviewed the pleadings and files in this matter, heard argument of counsel,
and issued an oral opinion, the Court rules as follows:

Defendants' Motion to Dismiss under CR 12(c) is hereby GRANTED, and the
Complaint is hereby dismissed with prejudice.

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ORDER GRANTING DEFENDANTS' MOTION FOR
DISMISSAL UNDER CR 12(c) - 1
DWT 30328954v1 0107086-000001

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 • 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 • Fax: (206) 757-7700

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ORDER

The plaintiff's Complaint is dismissed with prejudice.

IT IS SO ORDERED.

ENTERED this: 18 November 2016


The Honorable Jim Rogers
SUPERIOR COURT JUDGE

PRESENTED BY:
Davis Wright Tremaine LLP
Attorneys for Defendants

By s/ Bruce E. H. Johnson
Bruce E. H. Johnson, WSBA #7667
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 757-8069
Fax: (206) 757-7069
E-mail: brucejohnson@dwt.com

1 Order 16-2-16400-5 SEA

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4 Preliminarily, this motion contains a great deal of evidence, and therefore the Court
5 converts the Motion into one for summary judgment under CR 56. All submitted evidence is
6 admitted and was considered. All inferences are against the nonmoving party.

7 The Stritmatter firm posted certain statements about Ms. McNamara/Nessl
8 ("McNamara") on its firm's web site. These statements are based upon a lawsuit it filed in
9 Grant County. The Strittmater complaint is for wrongful death and undue influence. Ralston
10 et al v. Nessler, 15-2-01064-2, Sup. Ct. Grant County. The factual allegations in the complaint
11 are incendiary: incest, undue influence in financial matters, deliberate isolation from family
12 members, and murder in a foreign country. Of course, Ms. McNamara hotly disputes these
13 allegations. The parties agree that the fair reporting privilege could apply if the web site
14 accurately reported the facts of the complaint. The issue is whether these statements made on
15 the Strittmater web site are fair reports of the complaint.
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18 The firm posted (for a time, until it was complained of) that Ms. McNamara had an
19 "Interpol warrant" for her arrest. In fact, she did not have an Interpol warrant. Interpol had
20 posted a "red notice," and the Belize police had issued a warrant for her. It appears that a
21 warrant in Belize does not have the same legal meaning as it does in the United States and
22 resembles a summons in effect, and can be issued by the police. While the use of the term
23 "Interpol warrant" claim was inaccurate, strictly speaking, it was true that there was a legal
24 document called a warrant, issued by the Belize police, and it was true that there was an
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~~11 Page~~
Hon. Jim Rogers
King County Superior Court
Dept. 45
516 3rd Avenue
KCC-SC-0203
Seattle, Washington 98104

1 Interpol posting. (Defense points out that after Ms. McNamara's counsel pointed out the
2 inaccuracy about the warrant, that part of the posting was changed, though the rest remained).

3 The Stritmatter firm also listed this case under a web page noting successful verdicts
4 and cases. However, the firm made no claim of recovery about the case itself on that page, and
5 for certain other cases. In fact, the featured case on the page is the "Ride the Ducks" case
6 which, it is clear from the site, is far from settled, as one victim is asking for donations and
7 there is no mention of a verdict or settlement. Another case on the page is pending before this
8 Court, and no claim there is made that the case is settled. The rest of the discrepancies, in light
9 of the actual allegations made in the complaint, do not stray far from the complaint.
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11 The Court concludes that based upon the undisputed evidence, that the statements are
12 privileged under the fair reporting privilege. *Cox Broadcasting Corp v. Cohn*.

13 The defense also claims that the statements are absolutely privileged under *Demopolis*
14 and *Jeckle v. Crotty*. That is a closer question because the statements in question are arguably
15 for advertising and not for the administration of justice. This Court does not decide the case
16 under that privilege.
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1 The CPA claim is dismissed. Under *Short v. Demopolis*, the claim does not relate to
2 the "entrepreneurial aspects" of the Strittmater practice, and therefore not under the trade or
3 commerce section of RCW 19.86. The relationship between this Plaintiff and the defendant is
4 one of adversary, not customer.

5 IT IS SO ORDERED.

6 November 17, 2016

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11 _____
12 Hon. James E. Rogers
13 King County Superior Court
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