

SEP 06 2013

FILED

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF BENTON

STATE OF WASHINGTON, )  
 )  
 Plaintiffs, )

No. 13-2-00871-5  
(Consolidated with 13-2-00953-3)

v. )

ARLENE'S FLOWERS, INC., d/b/a )  
ARLENE'S FLOWERS AND GIFTS, and )  
BARRONELLE STUTZMAN, )  
 )  
 Defendants. )

**MEMORANDUM OF AUTHORITIES  
IN SUPPORT OF PARTIAL  
SUMMARY JUDGMENT ON CPA  
CLAIM BY INGERSOLL AND FREED**

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ROBERT INGERSOLL and CURT FREED, )  
 )  
 Plaintiffs, )

v. )

ARLENE'S FLOWERS, INC., d/b/a )  
ARLENE'S FLOWERS AND GIFTS; and )  
BARRONELLE STUTZMAN, )  
 )  
 Defendants. )

**I. INTRODUCTION**

A plaintiff must prove that he has been injured in his "business or property" to make a cognizable CPA private right of action claim. That has been the consistent holding of the Washington Supreme Court for nearly three decades based on the unambiguous language of the

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1 CPA. Here, Plaintiffs Robert Ingersoll and Curt Freed have failed to allege any injury to their  
2 business or property in support of their CPA claim.

3 Thus, Plaintiffs cannot maintain their CPA claim as a matter of law and this Court should  
4 grant partial summary judgment to Defendants.  
5

## 6 II. FACTS

7 Robert Ingersoll and Barronelle Stutzman enjoyed a warm relationship over the  
8 approximately nine years that he has been a customer of Arlene's Flowers. Stutzman Aff., ¶¶3-4.  
9 Barronelle has created floral arrangements for him for a variety of occasions, with full  
10 knowledge that he identified as a gay man and was in a relationship with Curt Freed. Id., ¶4.  
11 That never affected the dignity and respect that he was given as a customer and a friend. Id., ¶5.  
12

13 In March of 2012, Robert came to the shop to ask Barronelle if she would do the flowers for  
14 his wedding to Curt Freed. Id., ¶6. Barronelle has a deeply held belief that marriage is defined  
15 by God as a union of a man and a woman, and she believes that participating in a same-sex  
16 ceremony by using her artistic talents to create the floral arrangements would seriously violate  
17 her faith and her conscience. Id., ¶¶8-11. She also believes that it would send a message that she  
18 endorsed same-sex marriage, which as a matter of faith she could not do. Id., ¶7. Thus,  
19 Barronelle gently told Robert that she could not do the floral arrangements because of her faith.  
20 Id., ¶12.

21 Robert said he understood, and he asked for other florists she would recommend. Id., ¶13.  
22 Barronelle gave him the names of three nearby florists, including Lucky's Flowers, Shelby's,  
23 and Buds and Blossoms. Id., ¶14. Ingersoll and Freed also had at least six additional,  
24 apparently unsolicited, offers to create their wedding floral arrangements, including two offers  
25

1 to provide the arrangements at cost. Exhibit 1, Defendants' First Set of Discovery Requests to  
2 Plaintiff Robert Ingersoll and Responses Thereto, Answer to Interrogatory No. 11; Exhibit 2,  
3 Answer to Request for Admission No. 3.  
4

5 For their ceremony, they ordered eleven boutonnieres and/or corsages from their friend  
6 Carol Travis, and purchased another floral arrangement from Lucky's Flowers in Kennewick,  
7 which is one of the floral shops that Barronelle recommended. Exhibit 1, Answer to  
8 Interrogatory No. 10; Stutzman Aff., ¶14. Robert and Curt held their wedding ceremony on July  
9 21, 2013. Exhibit 1, Answer to Interrogatory No. 17.  
10

### 11 III. LEGAL ARGUMENT

#### 12 A. Summary Judgment Standard

13 Summary judgment is appropriate under CR56 "if the pleadings, affidavits, depositions, and  
14 admissions on file show that there is no genuine issue of material fact and that the moving party  
15 is entitled to judgment as a matter of law." *Right-Price Recreation, LLC v. Connells Prairie*  
16 *Cmty. Council*, 146 Wn. 2d 370, 381 (2002) (en banc). In making that determination, the Court  
17 views the facts and all reasonable inferences drawn from the facts in the light most favorable to  
18 the nonmoving party. *Id.* The moving party bears the initial burden of demonstrating that no  
19 genuine issue of material fact exists. *Id.* This may be done either by (1) "setting out [one's] own  
20 version of the facts," or (2) alleging that the nonmoving party failed to present sufficient  
21 evidence to support its case" and identifying "those portions of the record, together with the  
22 affidavits, if any, which demonstrate the absence of a genuine issue of material fact." *Indoor*  
23 *Billboard*, 162 Wn. 2d at 70 (quotation and alteration omitted).  
24  
25  
26

1       Once the moving party makes this threshold showing, the summary judgment burden shifts  
2 to the plaintiff. *Id.*; *Right-Price Recreation*, 146 Wn. 2d at 381-82. The plaintiff must then  
3 “present admissible evidence demonstrating the existence of a genuine issue of materiel fact.”  
4 *Indoor Billboard*, 162 Wn. 2d at 70 (quotation omitted). Failure to demonstrate “the existence of  
5 an element essential to [the plaintiff’s] case, and on which that party will bear the burden of  
6 proof at trial” results in a grant of summary judgment in the defendant’s favor. *Burton v. Twin*  
7 *Commander Aircraft LLC*, 171 Wn. 2d 204, 223 (2011) (en banc) (quotation omitted).

9       **B. A viable action under the CPA requires Plaintiffs to show some injury to their**  
10 **business or property that is caused by Defendants’ actions, which Plaintiffs have not even**  
11 **alleged.**

12       Private actions under the CPA require that plaintiffs establish each of five criteria: (1) an  
13 “unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest  
14 impact; (4) injury to plaintiff in his or her business or property; and (5) causation.” *Hangman*  
15 *Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn. 2d 778, 780 (1986) (citation  
16 omitted); see also 6A Wash Prac., Wash. Pattern Jury Instr. Civ., WPI 310.01. Plaintiffs have  
17 the burden to establish each element. *Id.*

18       For the purposes of this argument, the first three elements are not at issue in this motion.  
19 This motion focuses on the last two elements—injury to property or business and causation.  
20 *Ingersoll and Freed* have failed to establish these required elements, meaning that their CPA  
21 claim cannot prevail as a matter of law. The Washington Supreme Court has repeatedly made it  
22 clear that without a showing that there has been an injury to property or business caused by the  
23 Defendant, there is simply no remedy under the Consumer Protection Act. *Ambach v. French*,

1 167 Wn. 2d 167, 172 (2009) (en banc) (noting that the legislature specifically defined the  
2 private right of action in RCW 19.86.090).

3  
4 As the Court has noted, “[t]he legislature’s use of the phrase ‘business or property’ in the  
5 CPA is restrictive of other categories of injury and is used in the ordinary sense to denote a  
6 commercial venture or enterprise.” Id. (quotation and citation omitted). Although the injury  
7 does not need to be substantial, “it must be an injury to business or property.” Id.; see also  
8 Panag v. Farmers Ins. Co. of Wash., 166 Wn. 2d 27, 39 (2009) (en banc) (“What is necessary,  
9 and does constitute the needed link between the plaintiff and the actor, is that the violation  
10 caused injury to the plaintiff’s business or property as required by RCW 19.86.090.”).

11  
12 As the Supreme Court described, “business” is defined as “a commercial enterprise carried  
13 on for profit; a particular occupation or employment habitually engaged in for livelihood or  
14 gain.” Ambach, 167 Wn. 2d at 172 (quoting Blacks’ Law Dictionary 226 (9th ed. 2009)). The  
15 Court explained that the modern legal definition of property “includes not all a person’s rights,  
16 but only his proprietary as opposed to his personal rights. . . . In this sense a man’s land, chattels,  
17 shares, and the debts due to him are his property; but not his life or liberty.” Id. (quoting Black’s  
18 Law Dictionary, at 1336).

19  
20 Thus, the Supreme Court has held that “damages for mental distress, embarrassment, and  
21 inconvenience are not recoverable under the CPA.” Panag, 166 Wn. 2d at 57. Nor are personal  
22 injuries, Ambach, 167 Wn. 2d at 173, or expenses associated with pursuing a CPA claim,  
23 Washington State Physicians Exch. v. Fisons Corp., 122 Wn. 2d 299, 316 (1993) (en banc), or  
24 any other injury not specifically to business or property, Ledcor Industries, Inc v. Mutual of  
25 Enumclaw, Insurance. Co., 150 Wn. App. 1, 12 (2009). See also Ambach, 167 Wn. 2d at 173

1 Thus, the Court should grant Defendants judgment as a matter of law on Plaintiffs Ingersoll and  
2 Freed's CPA claim. Id.


3  
4 **IV. CONCLUSION**

5 Plaintiffs seek precedent that would require Barronelle Stutzman to craft floral  
6 arrangements for a same-sex wedding ceremony, regardless of her religious convictions. But  
7 Ingersoll and Freed's CPA claim overreaches because they have not sustained an injury to their  
8 property or business. In short, this is not a CPA case; Plaintiffs' case should rise or fall on  
9 whether Barronelle violated the WLAD, and if so, whether WLAD can overcome her  
10 constitutional claims.

11  
12 Defendants respectfully request that the court grant partial summary judgment and  
13 dismiss the CPA claim of Ingersoll and Freed, leaving Plaintiffs to proceed with the WLAD  
14 claim.

15 RESPECTFULLY submitted this 6th day of September, 2013.

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