

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington
corporation,)

Plaintiff,)

v.)

KNITTING FEVER, INC., a New York
Corporation, DESIGNER YARNS, LTD., a
corporation of England, FILATURA
PETTINATA V.V.G. DI STEFANO VACCARI
& C. (S.A.S.) an entity organized or existing
under the laws of Italy, SION ELALOUF, an
individual, DIANE ELALOUF, an individual,
JAY OPPERMAN, an individual, DEBBIE
BLISS, an individual, DAVID WATT, an
individual and DOES 1-50.)

Defendants.)

No. C10-00861 RSM
DECLARATION OF MICHAEL J.
KILLEEN IN OPPOSITION TO
CASCADE'S MOTION TO
DISQUALIFY DAVIS WRIGHT
TREMAINE LLP

**Noted on Motion Calendar:
August 6, 2010**

I, Michael J. Killeen, do hereby depose and state as follows:

1. I have been associated with the law firm of Davis Wright Tremaine LLP
("DWT") since 1979, and I have been a DWT partner since 1985. I am a long-time
member of DWT's Employment Law Department in the Seattle office. My cases often
involve counseling and defending employers in employment-law related litigation.

1 2. I never accepted any engagement to represent Cascade Yarns, Inc.

2 3. The first time that I ever heard of Cascade Yarns, Inc. was on March 4,
3 2009, at about 11:00 a.m., when I took a call from Robert Dunbabin, who told me that a
4 business his parents owned had been served with a pregnancy discrimination, wrongful
5 discharge lawsuit filed by a former employee, Meredith Kohn. I asked him to send me a
6 copy of the complaint and told him that I would run a conflicts check. I recommended that
7 he inquire as to whether the company's insurance covered this claim. I received a copy of
8 the complaint from Mr. Dunbabin at 11:31 a.m. that morning. At about 3:03 p.m. that day,
9 I advised Mr. Dunbabin that a conflicts check was being run and asked him whether he had
10 checked to see if Cascade Yarn's insurance would cover a pregnancy discrimination
11 lawsuit.

12 4. At 3:21 p.m. on March 4, 2009, I received the conflicts check results,
13 showing what appeared to be a 1991 lease matter involving Cascade Yarns, Inc. and The
14 Seattle Times. As part of my due diligence, I sent follow-up inquiries to two DWT
15 attorneys who may have known about this matter. At 3:40 p.m., I sent Mr. Dunbabin an
16 email stating the conflicts check was "clean" except for this matter. I asked him to
17 respond.

18 5. At 3:52 p.m. on March 4, 2009, I received a short, publicly available
19 corporate profile of Cascade Yarns, Inc. from the DWT Library, which I had requested as
20 part of DWT's recommended due diligence in determining whether to accept a new client
21 engagement.

22 6. At 4:01 p.m. on March 4, 2009, Mr. Dunbabin responded that he would
23 "ask [his] father [about the 1991 lease matter]. They are not and have not been a tenant or
landlord to us recently by [sic] my knowledge." Four minutes later he told me: "My
father couldn't recall anything [about the 1991 lease matter]." Attached as **Exhibit A** are
true and correct copies of these emails. At the same time, I was reviewing the internal

1 DWT emails I received responding to my inquiries about the 1991 lease matter. All of
2 these exchanges are covered in emails. I have provided copies of all of my emails and my
3 notes relating to the Cascade Yarns, Inc./Kohn matter to Mr. Guite at his request.

4 7. At 4:12 p.m. on March 4, 2009, I responded to a short email initiated by Mr.
5 Dunbabin, in which he stated that Ms. Kohn was fired because she was overpaid and didn't
6 work hard. I sent a reply asking Mr. Dunbabin a couple of basic questions regarding the
7 size of the business, who made the termination decision, and whether the reasons were in
8 writing. I asked these questions as part of my due diligence in determining the basic
9 nature, scope, and size of the case to decide whether it would make sense for and be cost
effective for DWT to agree to represent Cascade Yarns, Inc. in this case.

10 8. Mr. Dunbabin responded to my questions in an email at 7:11 p.m. that
11 night. I did not see his answers until the next morning. At this point, we had had no oral
12 conversations other than Mr. Dunbabin's initial phone call on March 4.

13 9. On March 5, 2009, the first communication was an email initiated at 10:10
14 a.m. by Mr. Dunbabin. The email said: "If we could speak before 11:00 it would be great.
15 My father, who fired her, is leaving to [sic] California in an hour." Attached as **Exhibit B**
16 is a true and correct copy of this email. I responded that I could take a call at 10:30 a.m.
This email exchange is included in the copies that I sent to Mr. Guite.

17 10. At 10:30 a.m. on March 5, 2009, I called Mr. Dunbabin, per his request. He
18 put me on speaker phone with his father; he also announced that his mother and sister were
19 in the room. I had not asked, nor was I told beforehand, that I would be speaking to
20 anyone other than Mr. Dunbabin and his father. However, I didn't object and I proceeded
to have a discussion.

21 11. In that phone call, I continued doing my due diligence in determining
22 whether to take the engagement. I asked about insurance coverage and repeated the status
23 of my investigation of and unfinished discussion with Mr. Dunbabin about potential

1 conflicts. The Dunbabin family members said they didn't recall any dealings with The
2 Seattle Times. I told them that it didn't sound to me like there was a conflicts problem. I
3 then asked them to tell me a bit more about the nature of the case and basic context
4 because I was trying to determine whether or not to take the engagement. They told me
5 some of the reasons why the plaintiff lacked credibility; they also claimed that she was
6 working for her boyfriend's business when she was supposed to be working for Cascade
7 Yarns. They also stated their general reasons for firing her. I told them that employment
8 cases are difficult to dismiss on summary judgment, and that consequently, they can be
9 expensive. They reiterated to me that this was a frivolous case. They then said that they
10 had to go and terminated the call. I did not initiate this phone call, and I certainly did not
11 use the phone call for the purpose of finding out how Cascade Yarns makes decisions
12 regarding litigation or evaluates risk. I do not believe that I received any such information
13 during the call that would have been useful to me in defending the case or that would be
14 harmful to Cascade Yarns' interests if known by an adversary of Cascade Yarns.

15 12. At the conclusion of our phone call on March 5, 2009, I said that I would
16 think about whether it made sense for DWT to represent them and that, if we did, I would
17 consider proposing someone like Gillian Murphy, a senior associate, to basically handle
18 the matter.

19 13. Following that call, I spoke with Gillian Murphy about whether it made
20 sense for DWT to take the engagement. At 12:15 p.m. on March 5, 2009, I sent an email
21 to Mr. Dunbabin stating: "I've spoken to Gillian [Murphy]. We both agree that it is [in]
22 Cascade's best interest to engage a lawfirm other than DWT. I will send you a follow-up
23 letter. Thanks for thinking of us." Attached as **Exhibit B** is a true and correct copy of this
email.

14 14. At 12:29 p.m. on March 5, 2009, Mr. Dunbabin responded as follows:
15 "Thanks for getting back to me so promptly. I respected working with you from the other

1 side and wish you the best. Rob.” Attached as **Exhibit B** is a true and correct copy of this
2 email that Mr. Dunbabin sent me.

3 15. Shortly after the email exchange, I sent a declination letter to Mr. Dunbabin.
4 That letter states:

5 This letter confirms our earlier conversation and my
6 email to you that neither I nor this firm are able to represent
7 Cascade Yarns, Inc. in connection with the Meredith Kohn
8 lawsuit.

9

10 Except for our email exchanges and our telephone
11 conversations, I do not believe that I obtained any
12 information from you that must be considered confidential.
13 If you disagree in any respect with that conclusion, please
14 call me immediately to discuss. Otherwise, I will keep any
15 notes and emails confidential in my file. Of course, there is
16 no charge for the time that we spent in determining whether
17 to represent you.

18 16. I copied Lawton Humphrey, Henry Farber, and Gillian Murphy on this
19 letter. I copied Ms. Murphy on this letter because I had spoken to her briefly about
20 whether this case was appropriate for DWT to take. I copied Ms. Humphrey and Mr.
21 Farber because they were the Employment Law Department practice group chairs who are
22 supposed to be made aware of any decisions regarding potential representation of new
23 clients. I did not discuss with Mr. Farber or Ms. Humphrey the substance of any
information I learned in deciding not to take the engagement. I simply “cc’d” them on the
letter.

17 17. I received no response from Mr. Dunbabin or anyone at Cascade Yarn to
my March 5 declination letter.

18 18. My entire exchange with Mr. Dunbabin determining whether to take the
19 engagement took place within a 24-hour period, and the only substantive discussion about
20 the case was a phone conversation pertaining to the nature of the claims and defenses.
21 That conversation lasted less than an hour.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on August 2, 2010, I electronically filed the foregoing
DECLARATION OF MICHAEL J. KILLEEN with the Clerk of the Court using the
CM/ECF system which will send notification of such filing to the following:

Robert J. Guite
rguite@ssd.com

DATED this 2nd day of August, 2010.

Davis Wright Tremaine LLP
Attorneys for Defendants

By /s/ Rebecca Francis
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EXHIBIT A

From: rob@casca deyarns.com [mailto:rob@casca deyarns.com]

Sent: Wednesday, March 04, 2009 4:01 PM

To: Killeen, Michael; Dad

Subject: Re: Cascade Yarns Lawsuit

Not a clue,

I will ask my father. They are not and have not been a tenant or landlord to us recently by my knowledge.

Sent via BlackBerry by AT&T

From: rob@cascadeyarns.com
Sent: Wednesday, March 04, 2009 4:05 PM
To: Killeen, Michael
Subject: Re: Cascade Yarns Lawsuit
My father couldn't recall anything.

Sent via BlackBerry by AT&T

EXHIBIT B

From: Rob Dunbabin [rob@cascadeyarns.com]
Sent: Thursday, March 05, 2009 12:29 PM
To: Killeen, Michael
Subject: RE: Cascade Yarns Lawsuit

Mike,

Thanks for getting back to me so promptly. I respected working with you from the other side and wish you the best.

Rob

From: Killeen, Michael [mailto:MikeKilleen@DWT.COM]
Sent: Thursday, March 05, 2009 12:15 PM
To: Rob Dunbabin
Subject: RE: Cascade Yarns Lawsuit

Rob: I've spoken with Gillian. We both agree that it is Cascade's best interest to engage a lawfirm other than DWT. I will send you a follow-up letter. Thanks for thinking of us.

From: Rob Dunbabin [mailto:rob@cascadeyarns.com]
Sent: Thursday, March 05, 2009 10:10 AM
To: Killeen, Michael
Subject: RE: Cascade Yarns Lawsuit

Mike,

If we could speak before 11:00 it would be great. My father, who fired her, is leaving to California in an hour.

Rob