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HON. NICOLE GAINES-PHELPS
Hearing Date: January 3, 2020 at 11:00 a.m.
With Oral Argument

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

LARGO WALES, a married woman,)
)
Plaintiff,)
v.) No. 19-2-20274-2 KNT
)
CITY OF AUBURN, WA, a Washington)
State municipality; NANCY BACKUS, as) LARGO WALES RESPONSE TO
Mayor of the City of Auburn, and) DEFENDANTS MOTIONS TO
Individually and her marital community; and) DISMISS
The Committee to Elect Nancy Backus and)
its J. Doe committee members thereto; and)
ROB ROSCOE and his marital community,)
)
Defendants)
)

I. RELIEF REQUESTED

Plaintiff LARGO WALES and Answers Defendants Motions to Dismiss.

II. STATEMENT OF FACTS

Defendants having brought forth a CR 12(b)(6) respective Motions to Dismiss based on procedural questions as to the efficacy of pleading the Washington Constitution as a duty to which the common law remedies apply based on clear allegations of violations of free speech and privacy.

III. STATEMENT OF THE ISSUE

The following issue is presented for resolution by the court:

1 1. Should Defendants respective Motions to Dismiss be denied?
2

3 IV. EVIDENCE RELIED UPON
4

5 This Response is based on the court records and pleadings.
6

7 V. LEGAL AUTHORITY
8

9 This Response is made pursuant to RCW 4.04.010, Extent to which common law prevails, which
10 provides:
11

12 “The common law, so far as it is not inconsistent with the Constitution and laws of the United
13 States, or of the state of Washington nor incompatible with the institutions and condition of
14 society in this state, shall be the rule of decision in all the courts of this state.”
15

16 This Response is also made in accordance with the following case law, to wit:
17

18 5.1 “As noted, by statute and judicial decision, all Washington statutes are interpreted by
19 Washington courts under Washington common law unless the Legislature expresses
20 otherwise. See RCW 4.04.010” *Skamania County v. Woodall*, 104 Wn.App. 525, 16 P.3d
21 701, (Div. 2 2001)
22

23 5.2 **Under article I, section 7,¹ the right to privacy is broad, and the circumstances under
24 which that right may be disturbed are limited.** Article I, section 7 is " not grounded in
25 notions of reasonableness" as is the Fourth Amendment. *State v. Snapp*, 174 Wn.2d 177, 194,
26 275 P.3d 289 (2012). Instead, article I, section 7 is grounded in a broad right to privacy and
27 the need for legal authorization in order to disturb that right. See *State v. Day*, 161 Wn.2d 889,
28 896, 168 P.3d 1265 (2007). Within this framework, " reasonableness does have a role to play"
29 along with history, precedent, and common sense in defining both the broad privacy interests
30 protected from disturbance, *id.* at 894; see *State v. Miles*, 160 Wn.2d 236, 244, 156 P.3d 864
31 (2007), as well as the scope of disturbance that is or may be authorized by law, see *State v.*
32 *Duncan*, 146 Wn.2d 166, 177, 178, 43 P.3d 513 (2002) (" [S]ociety will tolerate a higher level
33 of intrusion for a ... higher crime than it would for a lesser crime."); *Day*, 161 Wn.2d at 897-
34 98 & n.6 (holding that " legislative labeling" of a parking violation as a traffic offense could
35 not justify a warrantless investigative stop for suspicion of that offense); *Snapp*, 174 Wn.2d at
36 194 (noting that the scope of an exception to the requirement of a warrant must be " delimited
37 by its justifications"). Interference with the broad right to privacy can be legally authorized by
38 statute or common law, but only insofar as is reasonably necessary to further substantial
39 governmental interests that justify the intrusion. See, e.g., *State v. Valdez*, 167 Wn.2d 761,
40 775-77, 224 P.3d 751 (2009). *State v. Arreola*, 176 Wn.2d 284, 290 P.3d 983, (2012)
41 **Emphasis ours**
42

43 5.3 “¶ 29 Champagne's complaint does not transgress the liberal bounds of the notice pleading
44 standard. The County argues persuasively that a generic prayer for relief does not provide

¹ Referencing the Washington State Constitution. **Footnote ours**

1 adequate notice to the opposing party of a particular remedy. **However, the entirety of**
2 **Champagne's complaint supplies direct allegations sufficient to give notice to both the**
3 **court and the County that Champagne sought relief** under the MWA, WPA, and WRA.
4 See CP at 6-7. Furthermore, Champagne's allegedly intentional omission of a particular prayer
5 for relief is immaterial. This court has found that the pleader's intention when drafting the
6 complaint does not control the court's scope of review. Berge, 88 Wash.2d at 763, 567 P.2d
7 187. [16] ¶ 30 We hold that the totality of Champagne's complaint comports with notice
8 pleading rules and that review of the causes of action under the MWA and WPA in addition to
9 the WRA is appropriate. *Champagne v. Thurston County*, 163 Wn.2d 69, 178 P.3d 936,
10 (2008) **Emphasis ours.**

11 VI. ANALYSIS

12 Defendants' proposition is that rights enunciated in the Washington State Constitution have no
13 remedy, thus are a dead letter. The opposite is more likely. The Constitution cannot grant a greater
14 right but be devoid of the essence to enforce that right. The common law in Washington affords the
15 remedies provided in the Washington State Constitution constructs.

16 Defendant correctly states that all facts must be viewed in a light favorable to the other party in a
17 Motion. They do not claim the allegations in the Amended Complaint are untrue, nor could they. The
18 allegations include specific facts and events that are not rebutted. Whereas the Amended Complaint
19 was never answered, the time now passed, the allegations therein are admitted.

20 Taken in totality, a violation of free speech and of privacy spring forth from the facts, sufficiently
21 pleaded therein said Complaint as amended. Once the basic understanding of the claim is given
22 notice, both the common law and the Constitutional law are implicated. Defendants appear to be
23 confusing duty and remedy. A breach of duty is being complained of, to be sure. The Complaint in
24 totality satisfies the notice requirements. The remedy flows from the common law underneath, and
25 incorporated into, the Washington State Constitution.

26 The defendant is inviting the Court to turn a blind eye or two. Instead the Court should find that the
27 Amended Complaint, in totality, has given rise to a colorable claim of breach under the Washington
28 Constitution with remedies lying in common law.

29 *I certify that this memorandum contains 1089 words, in compliance with the Local Civil Rules.*

30 VII. PROPOSED ORDER

31 A proposed order denying the relief requested accompanies this Response.

32 Dated: December 3, 2019

33 

34 John M. Torres, Jr., WSBA# 26287
35 Attorney for Largo Wales