Filed
Washington State
Court of Appeals
Division Two

September 7, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES JOHNSTON, M.D. and ULRIKE JOHNSTON, Appellants, v. HIDDEN COVE PROPERTY OWNERS ASSOCIATION LLC, a Washington limited liability company; SUSAN and GARY DE WITT, and their marital community; KATHLEEN and CORBIN DERUBERTIS, and their marital community; DONALD and NANCY LORIMER, and their marital community; KERRY and DAN SAMANIEGO, and their marital community; COURTENAY and PAM HEATER, and their marital community, Respondents.	No. 47642-8-II ORDER GRANTING APPELLANT'S MOTION FOR RECONSIDERATION AND ORDER AMENDING OPINION

The unpublished opinion in this case was filed on July 19, 2016. Upon the motion of appellants for reconsideration, it is hereby

ORDERED that appellants' motion for reconsideration is hereby granted, and the opinion previously filed on July 19, 2016, is hereby amended as follows:

Page 5, the sentence starting at line 13 will be deleted and replaced with the following sentence:

> The letter referenced Dr. Johnston's prior convictions and related newspaper articles, and that he had taken actions to block trail usage that upset the neighbors.

IT IS SO ORDERED.

DATED this __7th_____ day of September, 2016.

SUTTON, J.

We concur:

JOHANSON, P.J.

MELNICK, J.

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Washington State
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Division Two

July 19, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES JOHNSTON, M.D. and ULRIKE JOHNSTON, Appellants, v. HIDDEN COVE PROPERTY OWNERS ASSOCIATION LLC, a Washington limited liability company; SUSAN and GARY DE WITT, and their marital community; KATHLEEN and CORBIN DERUBERTIS, and their marital community; DONALD and NANCY LORIMER, and their marital community; KERRY and DAN SAMANIEGO, and their marital community; COURTENAY and PAM HEATER, and their marital community, Respondents.	No. 47642-8-II UNPUBLISHED OPINION

SUTTON, J. — James and Ulrike Johnston appeal from the superior court's summary judgment order dismissing their claims against Hidden Cove Property Owner's Association (HCPOA). The Johnstons argue that summary judgment was improper because they presented evidence creating genuine issues of material fact as to HCPOA's liability for civil conspiracy and vicarious liability for their claims of defamation, outrage, invasion of privacy and harassment.

We hold that (1) the Johnstons failed to raise any genuine issues of material fact that HCPOA participated in a civil conspiracy against them and (2) HCPOA is not vicariously liable

for any actions taken against the Johnstons by members or officers of HCPOA who acted in their individual capacities. Thus, we affirm..

FACTS

I. BACKGROUND FACTS

This dispute arose from neighbor's use of a pedestrian and bike trail in the Hidden Cove neighborhood. The trail is on the Johnstons's property and connects Manual and Sivertson Roads; neighborhood and island residents have regularly used the trail for access between the two roads since 1995. The Johnstons and their two children moved to Bainbridge Island in 2008, and rented the home in the Hidden Cove neighborhood at the end of Sivertson Road from the property owner, William Gibson.

Hidden Cove's neighborhood association, was incorporated in September 2009. Before its incorporation, Hidden Cove residents met for a formal meeting on September 12, 2009, and again on November 20, 2010. At the September 2009 meeting, the HCPOA members elected the following officers: Courtenay Heater, President; Corbin DeRubertis, Vice President; Edy Nielson, Secretary; and Susan de Witt, Treasurer.

A. TRAIL USE

Sometime between mid-2008 and September 12, 2009, the Johnstons's objected to the neighbor's use of the trail on their property. The Johnstons discouraged use of the trail by putting up "No Trespassing" signs, blocking the trail with natural barriers, and constructing a fence.

In August, there was a confrontation between Dr. Johnston and Don Lorimer's[1] son and a few of his friends about the trail use. Two days later, Lorimer emailed Courtenay Heater, HCPOA president, to inform him of the confrontation and escalating situation with the Johnstons.

Lorimer also advised that another neighbor, Dan Samaniego, would try to resolve the matter peacefully with the Johnstons and stated he did not expect Heater to take any action. Lorimer decided that he and his family would stop using the trail. Heater hoped that the dispute could be resolved, acknowledged that a "joint effort" was required, and stated that he would help to restore "comity and tolerance." Clerk's Papers (CP) at 414. In his reply the next day, Lorimer stated that the residents must respect the law and keep off the trail.

B. SEPTEMBER 12, 2009, HCPOA MEETING

Heater put the trail issue on the agenda for the September 2009 HCPOA meeting because it had "become one of interest to the entire neighborhood." CP at 453. The primary purpose of the September 12 meeting was to address HCPOA's incorporation status and to address a land-use issue confronting the neighborhood. Seven property owners attended the 2 hour, 15 minute meeting—Don Lorimer, Pamela Roth-Heater, Susan de Witt, Corbin DeRubertis, Dan and Kerry Samaniego, and Jeffrey Sneller.

During the 10 to 15 minute conversation regarding the trail, some of the attending HCPOA members asked Lorimer to discuss the August altercation between his son and Dr. Johnston but he declined. Several other residents asked whether the public had any easement rights to use the trail. Ryan Vancil, HCPOA's attorney, generally addressed the easement issue, and Jeffrey Sneller, the

[1] Lorimer is a Sivertson Road resident and HCPOA member.

original developer of Gibson's property, said he would look into the issue, although later Sneller had no recall of the conversation.

Heater took handwritten notes at the meeting and typed them up. In his declaration, Heater stated that there were no negative comments made about the Johnstons, no discussions about their backgrounds, damaging their reputations, or writing a letter to Gibson not to rent or sell the property to the Johnstons. Heater also declared that there was no effort to try and force the Johnstons out of the neighborhood, and there was "no plot or scheme" discussed at that meeting. CP at 454. The relevant minutes from the September 2009 meeting read:

> ITEM III: Concerning Manual Road path use over residents' yards.
>
> VOTE: Shall counsel be engaged to examine History of path in order to facilitate resolution of dispute?
> Ayes: 0
> Nays: 7 Vote not carried
>
> Homeowner [Jeffrey] Sneller agreed to research trail easement status since he developed home site upon which trail has existed.
>
> Note: Counsel Fees would be earmarked from HCPOA general fund.

CP at 256. The minutes further stated that the "path use dispute" was "TABLED." CP at 257. Nothing else is mentioned in the September 2009 minutes regarding the Johnstons.

Vancil confirmed Heater's declaration that the residents decided not to take any action regarding the trail, and no one discussed trying to drive the Johnstons out or to damage the Johnston's reputations. The remaining property owners (except Sneller) who attended the meeting all provided similar declarations about what took place at the meeting—the members discussed the trail use issue for 10 to 15 minutes and decided that Sneller would look into whether a dedicated easement existed. The members did not approve hiring an attorney to research an easement for

the trail, did not discuss the Johnstons, and did not discuss or develop any plan or scheme pertaining to the trail or the Johnstons. Sneller did not recall any discussion about ousting or disparaging the Johnstons.

C. EVENTS AFTER SEPTEMBER 2009

In late 2009, Susan de Witt and Kerry Samaniego, two of the Johnstons's closest neighbors, discovered that Dr. Johnston had been accused of and charged with improper conduct with several of his patients in Texas in 1997.[2] Due to the escalating nature of the Johnstons's relationship with their neighbors, de Witt and Kerry Samaniego decided to confront the Johnstons's landlord, William Gibson, with the information, hoping that he would not continue to lease or sell the property to the Johnstons.

In early December, de Witt and Kathleen DeRubertis, another neighbor, approached Gibson at an event held at his home and gave him a letter signed by de Witt, DeRubertis, and the Samaniegos. The letter referenced Dr. Johnston's prior conviction and related newspaper articles, that he lost his medical license, and that he had taken actions to block trail usage that upset the neighbors. The letter was drafted and delivered without the knowledge, consent, or participation of HCPOA.[3] In addition to delivering the packet to Gibson, an unknown person placed the out of state newspaper clippings regarding Dr. Johnston's charges and trial in the Johnstons's mailbox, which their eldest daughter discovered.

[2] Before living in Washington, the Johnstons lived in Oregon and Texas. Until 1997, Dr. Johnston owned a private medical practice in Nacogdoches, Texas.

[3] Corbin DeRubertis and Courtenay Heater were made aware of the letter and its delivery to Gibson after the encounter at Gibson's home occurred.

D. KATHLEEN DERUBERTIS'S FEBRUARY 2010 ANTI-HARASSMENT ORDER

In February 2010, the Johnstons sought an anti-harassment order against Kathleen DeRubertis and Susan de Witt. DeRubertis and de Witt hired Ryan Vancil to defend them at their own expense. HCPOA was not a party to the anti-harassment proceedings nor did it provide DeRubertis or de Witt with a defense or financial support in these proceedings.

At the anti-harassment hearing, DeRubertis testified that at "meetings" the homeowner's association had discussed taking information about the Johnstons to Gibson. CP at 1035-36. DeRubertis stated,

> [W]e are in a homeowners association. This had been discussion [sic] at meetings. There had been discussions with neighbors.
>
> . . . .
>
> [T]his conversation, you know, was not just myself and Susan De Witt [sic]. It was also in the homeowners association. It was—it is information that is circulating throughout the neighborhood. . . . [I]t's a neighborhood, and it is an association.
>
> [T]he conversation about going to Gibson] had started in homeowners association meetings and conversations with neighbors, you know, after one neighbor's son was pushed down and that sort of thing. So it wasn't just a conversation that started out of the blue.
>
> In one of the homeowners association meetings, someone said. You know, well, what should we do? And, you know, the proper course—the reasonable course was, well, someone should talk to Will Gibson. And that had been kind of like, someone should talk to Will Gibson and then no one pursued it.

CP at 1035-36. Later, in her declaration in support of summary judgment, DeRubertis admitted that she had not attended the September 2009 HCPOA meeting and had no personal knowledge of what anyone said or did at the meeting.

E. NOVEMBER 20, 2010, HCPOA MEETING

In late 2010, HCPOA received a letter from the Johnstons threatening litigation. Heater called a special HCPOA meeting for November 20 to discuss with the members how to respond

to the Johnstons's letter. This was the first HCPOA meeting after September 2009. At the November meeting, minutes from the September 2009 HCPOA meeting were formally approved. The rest of the meeting was dedicated to "general discussion" of the letter from the Johnstons's attorney, and the members present unanimously decided that HCPOA would not respond to the letter, other than an acknowledgement that HCPOA had received the letter. CP at 923. There was no other discussion regarding the Johnstons.

The November 2010 meeting minutes reflect the business carried out at the meeting regarding the pending litigation initiated by the Johnstons:

> Item 3.
>
> A. Discussion of pending litigation. There was a general discussion about [Johnstons's] November 10, 2010 letter of notification of pending litigation against HCPOA and some of its members. . . . There was a brief discussion about the advisability of making a response to [the] letter and the members present were unanimous in their opinion that no formal response should be made at this time. . . HCPOA [will] not make any formal response.

CP at 923. The minutes from the November 2010 meeting also reflect discussion of HCPOA's legal representation in the pending litigation, and potential strategy for keeping litigation costs down for HCPOA. The minutes reflect no additional conversation regarding the Johnstons.

The September 2009 and November 2010 meetings are the only HCPOA meetings that occurred while the Johnstons lived on Sivertson Road. There was never any discussion at either of the meetings regarding any efforts to try to force the Johnstons from their home or any other course of conduct directed at the Johnstons.

II. THE JOHNSTONS'S COMPLAINT

The Johnstons filed their complaint on January 20, 2011. The complaint alleged nine causes of action, including defamation, invasion of privacy, malicious interference with parent-child relationship, outrage, and civil conspiracy against HCPOA and the seven Hidden Cove residents.[4]

The only mention of HCPOA in the Johnstons's complaint stated,

> The defendants hatched their plan to get rid of the Johnstons during HCPOA meetings conducted by the defendants. One such meeting took place on September 12, 2009 at the home of defendants Susan and Gary de Witt. Subsequently, the defendants' harassment of the Johnstons escalated.

CP at 17-18.

III. HCPOA'S SUMMARY JUDGMENT MOTION

HCPOA moved for summary judgment to dismiss all of the Johnstons's claims, and argued that there was no evidence that HCPOA conspired against the Johnstons or that HCPOA was vicariously liable for any actions taken by individuals, members, or officers. To support their claim that HCPOA participated in the civil conspiracy against them, the Johnstons cited the minutes from the September 2009 and November 2010 HCPOA meetings, and DeRubertis's testimony at the February 2010 anti-harassment hearing that conversations regarding the Johnstons occurred at the HCPOA meetings. The Johnstons also relied on email communications sent and received by Susan de Witt and Courtenay Heater, and Susan de Witt's conduct.

[4] The Johnstons did not allege in their complaint that HCPOA was vicariously liable for the actions of its members and officers. They raise this issue for the first time on appeal.

Susan de Witt stated that she acted on her own, without any authorization, ratification, or agreement by HCPOA to participate in her conduct and actions toward the Johnstons, and that she acted on her own behalf. The emails to and from Heater advised him of incidents with the Johnstons over the trail, questions regarding the status of the trail, and consisted of communications regarding HCPOA's commitment to a resolution to the dispute, HCPOA regular business, and emails with Susan de Witt regarding HCPOA's finances. Heater had little interaction with the Johnstons, and what interaction he did have was in his own individual capacity and not on behalf of HCPOA.

The superior court found that there was "[no] nexus shown between the individuals' actions and the LLC as to the causes of action alleged" and "no disputed material issues of fact." VRP at 30-31. The superior court granted HCPOA's summary judgment motion and entered an order on October 5, 2012.

In April 2014, the Johnstons filed a motion for revision under CR 54(b) and sought review in front of a new judge to vacate the superior court's prior order dismissing their claims. The Johnstons argued that (1) their motion was timely as an interlocutory motion under CR 54(b) because there was not a final judgment against all of the defendants and (2) the superior court's summary judgment order dismissing their claims against HCPOA was "inconsistent and irreconcilable" with its prior rulings in the case denying individual HCPOA members motions for summary judgment. CP 1269-74. The superior court denied the Johnstons's motion for revision.

After the superior court denied their motion for revision under CR 54(b), the Johnstons filed a motion to reconsider the court's denial of their motion for revision or to grant their motion

for CR 54(b) certification. The superior court denied the Johnstons's motion for reconsideration and struck the noted hearing on the CR 54(b) motion.

The Johnstons then filed a motion for CR 54(b) certification of the court's summary judgment order dismissing their claims against HCPOA to allow them to immediately appeal the order and allow a stay on the rest of the case that was still pending against the Heaters. The superior court denied the motion for certification. The Johnstons appeal the court's summary judgment order, the order denying their motion for revision, and the order denying their motion for reconsideration.

ANALYSIS

I. SUMMARY JUDGMENT

The Johnstons argue that the superior court erred in granting summary judgment and dismissing their claims against HCPOA because there are genuine issues of material fact as to whether there was a civil conspiracy and whether HCPOA should be held liable for the "tortious actions of its members and officers." Br. of Appellant at 29. We disagree.

A. STANDARD OF REVIEW

We review the superior court's summary judgment order de novo, and consider only the evidence and issues brought to the attention of the court. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009); RAP 9.12. Summary judgment is proper when there is "no genuine issue as to any material fact" and the moving party is entitled to judgment as a matter of law. CR 56(c). We review the facts and reasonable inferences from those facts in the light most favorable to the non-moving party. *Jones v. Dep't of Health*, 170 Wn.2d 338, 352, 242 P.3d 825 (2010). "A genuine issue of material fact exists only where reasonable minds could reach different

conclusions." *Michael*, 165 Wn.2d at 601. A material fact is a fact that the outcome of the litigation depends on in whole or in part. *Atherton Condo. Apartment-Owners Ass'n Bd. of Directors v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

Summary judgment is subject to a burden-shifting scheme, and after the moving party submits adequate evidence, the non-moving party must set forth specific facts to sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact. *Michael*, 165 Wn.2d at 601. A plaintiff cannot rely on mere speculation and argumentative assertions "that unresolved factual issues remain." *Michael*, 165 Wn.2d at 602 (quoting *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986)); *Adams v. King Co.*, 164 Wn.2d 640, 647, 192 P.3d 891 (2008).

B. CIVIL CONSPIRACY

The Johnstons argue that there is "indisputable evidence" that HCPOA participated in a civil conspiracy to force the Johnstons out of their home. Br. of Appellant at 32-36. We disagree; the evidence the Johnstons rely upon does not present any genuine issue of material fact establishing that HCPOA, or any officer or agent on behalf of HCPOA, participated in a civil conspiracy against the Johnstons.

A plaintiff in a civil conspiracy action has the burden of proving the case by clear, cogent, and convincing evidence. *Sterling Bus. Forms, Inc. v. Thorpe*, 82 Wn. App 446, 450, 918 P.2d 531 (1996). An action for civil conspiracy requires proof of "an agreement by two or more persons to accomplish some purpose, not in itself unlawful, by unlawful means." *Sterling*, 82 Wn. App. at 451.

A finding that a conspiracy exists may be based on circumstantial evidence, but "'circumstances must be inconsistent with a lawful or honest purpose and reasonably consistent *only* with [the] existence of the conspiracy.'" *Sterling*, 82 Wn. App. at 451 (emphasis added, alternation in original) (quoting *Corbit v. J. I. Case Co*, 70 Wash. 2d 522, 529, 424 P.2d 290 (1967)). Evidence is sufficient if it shows "concert of action" or other facts and circumstances that create a "natural inference" that the unlawful acts were "'committed in furtherance of a common design, intention, and purpose of the alleged conspirators.'" *Lyle v. Haskins*, 24 Wn.2d 883, 899, 168 P.2d 797 (1946) (quoting 11 AM. JUR. *Conspiracy* § 56 at 585 (1937)).

To support their argument that members and officers conspired at HCPOA meetings, the Johnstons rely heavily on Kathleen DeRubertis's testimony from the February 2010 anti-harassment hearing. In her testimony, DeRubertis stated that, during the September 12 HCPOA meeting, members talked about the issues involving the Johnstons and about approaching Gibson about not re-renting or selling to them. However, Kathleen DeRubertis later admitted that she did not attend the September 2009 meeting[5] when these alleged conversations took place. Therefore, she has no personal knowledge of what members said or discussed at those meetings, and she based her February 2010 testimony entirely on hearsay and speculation, which she admits. Therefore, the Johnstons cannot rely on DeRubertis's inadmissible hearsay and speculative testimony to create a genuine issue of material fact. *Michael*, 165 Wn.2d at 602.

[5] There were two HCPOA meetings held during the relevant period of this litigation. The first in September 2009 and the second in November 2010. Kathleen DeRubertis was not present at either meeting.

The September 2009 meeting attendees deny that any subject matter discussion regarding the Johnstons occurred other than the trail use, a matter properly within the concern of the HCPOA. And although the trail issue was discussed at the September 2009 meeting, HCPOA did not pursue any action related to the trail or the Johnstons. The agenda prepared by Heater and the September 2009 annual meeting related to the neighborhood and addressed conflicts between HCPOA members and the Johnstons over the trail, but these topics are not inconsistent with a lawful or honest purpose. Further, there is no evidence produced by the Johnsons that the HCPOA authorized, approved, or initiated any action against the Johnsons by unlawful means.

The Johnstons allege that numerous emails were sent and informal meetings occurred between HCPOA members and Heater that show support, endorsement, and encouragement of the unlawful agreement to force the Johnstons from their home.[6] Susan de Witt's emails show that she had a personal incentive to see the Johnstons leave the neighborhood, and she admitted that all of her actions and communications regarding the Johnstons, outside of attending the 2009 HCPOA meeting, were in her own capacity, and not as an HCPOA member or its treasurer, and there is no evidence to the contrary submitted by the Johnstons.

Further, Heater, personally or as president of the HCPOA, had no prior or contemporaneous knowledge that de Witt and DeRubertis planned to and approached Gibson about not re-renting or selling his property to the Johnstons. Heater became aware that the women approached Gibson only about one month after it happened.

[6] The evidence that the Johnstons cite to support their allegations are email exchanges to schedule the formal annual meetings and the meeting minutes and agendas for the September 2009 and November 2010 meetings. There is no evidence of any informal HCPOA meetings on the record.

Heater's emails demonstrate that, as the HCPOA president, he became aware that there was a conflict in the neighborhood and that he was trying to gather information to reach a reasonable solution. The emails show that Heater and the HCPOA were aware of and involved in the trail dispute issue for a lawful purpose. Thus, Heater's conduct does not demonstrate an agreement to accomplish some purpose not in itself unlawful, but by unlawful means, and the Johnstons's claim of civil conspiracy fails. *Sterling*, 82 Wn. App. at 451.

HCPOA presented evidence that the communications were conducted for a lawful purpose and that de Witt's actions were done in her individual capacity and were not on behalf of, nor approved or authorized by, the HCPOA. Under the summary judgement burden-shifting scheme, the Johnstons had to produce *admissible* evidence that there was a genuine issue of material fact of a civil conspiracy by the HCPOA. However, the Johnstons merely alleged that emails between individuals implicated the HCPOA in a civil conspiracy and failed to provide admissible, non-speculative evidence to show that HCPOA was involved in a conspiracy to force them from their home. Thus, we hold that summary judgment dismissal of the Johnstons's civil conspiracy claims was proper.

C. VICARIOUS LIABILITY

The Johnstons argue that HCPOA is vicariously liable "for the tortious actions of its members and officers." Br. of Appellant at 29. Without deciding whether the Johnstons raised this issue below, we address the substantive claims of vicarious liability and hold that there is no evidence that the HCPOA authorized any of the acts carried out by the individual residents; thus, HCPOA is not vicariously liable for any of their unauthorized actions.

Express or implied agency relationship exists when one party acts under the direction and control of another. *Deep Water Brewing LLC v. Fairway Resources Ltd.*, 152 Wn. App. 229, 268, 215 P.3d 990 (2009). The burden of establishing the agency relationship rests with the party asserting its existence. *Deep Water*, 152 Wn. App. at 268.

Generally, we consider a principal to have notice of facts known to its officer or agent, based on the officer's or agent's underlying duty to communicate his knowledge to the corporation. *Hendricks v. Lake*, 12 Wn. App. 15, 22, 528 P.2d 491 (1974). Therefore, a corporation can be vicariously liable for the actions of its officers or agents acting on its behalf. *Deep Water*, 152 Wn. App at 268.

However, an exception to the rule exists when the officer or agent acquires notice or knowledge outside the scope of his powers or duties, or when he is not acting for or on the corporation's behalf. *Hendricks*, 12 Wn. App. at 22. The exception also applies in instances when the officer or agent deals with the corporation in his own interest that is adverse to the corporation's, or when the officer or agent "steps aside from the [corporation's] purposes in order to pursue a personal objective of the agent." *Deep Water*, 152 Wn. App at 269.

Here, there is no evidence that any of the individual residents or officers were acting on HCPOA's behalf. The only HCPOA officer involved in any actions related to the Johnstons's claims was Susan de Witt, the HCPOA treasurer. Mrs. de Witt acted on her own, and the other two officers named in the Johnstons's complaint, Corbin DeRubertis and Courtenay Heater, were not involved in providing the letter and materials to Gibson, and neither were aware that four members, including de Witt, approached Gibson until after it occurred. Further, the nature of de Witt's actions pursuing her personal objectives stepped outside of her role as HCPOA treasurer

and the HCPOA's purposes, and she acknowledges that she acted in her individual capacity. While Heater was aware that there was an ongoing dispute over the trail, and increasing acrimony between the Johnstons and other neighbors, there is no evidence that HCPOA authorized or participated in de Witt's actions toward the Johnstons during 2009 and 2010.

The Johnstons misconstrue the evidence that they allege shows that Heater and HCPOA supported the efforts to remove the Johnstons from the neighborhood. The evidence the Johnstons presented shows that (1) Heater knew about the trail dispute and brought it up for discussion in the September 2009 meeting and sought a reasonable and amicable solution to the ongoing dispute, (2) some members of the neighborhood sought HCPOA support in addressing the relationship breakdowns with the Johnstons, and (3) Heater communicated with Susan de Witt regarding HCPOA business matters. None of the emails show that Heater or HCPOA was involved in, or authorized, any actions taken against the Johnstons.

Thus, because de Witt acted outside her capacity as treasurer, and because there is no evidence that the HCPOA was either directly or indirectly involved in any actions taken against the Johnstons, we hold that the HCPOA is not vicariously liable for any tortious acts committed by any of the HCPOA members or officers.

CONCLUSION

We hold that (1) the Johnstons present no genuine issues of material fact establishing that HCPOA participated in a civil conspiracy against them and (2) the HCPOA is not vicariously liable for any actions taken by members or officers in their individual capacities against the Johnstons. Thus, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.
SUTTON, J.

We concur:

Johanson, J.
JOHANSON, P.J.

Melnick, J.
MELNICK, J.