

70662-4

70662-4

No. 70662-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TBF Financial, LLC, Respondent,

v.

Boris Petrenko

BRIEF OF RESPONDENT

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN -9 PM 2:47

Laurin S. Schweet, WSBA #16431
Jacob D. Rosenblum, WSBA #42629
Attorneys for Respondent
Schweet Linde & Coulson, PLLC
575 South Michigan Street
Seattle, WA 98108
(206) 275-1010

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF THE CASE.....	2
	A. The Underlying Proceeding	2
	B. Mr. Petrenko’s Frivolous Motion and Order for CR 11 Sanctions.....	3
	C. Mr. Petrenko’s Appeal and the Parties’ Settlement	7
	D. Mr. Petrenko’s Bankruptcy and Failure to Give Notice to TBF ..	8
	E. Final Judgment Entered in the Underlying Proceeding	10
III.	ARGUMENT	10
	A. Standard of Review	10
	B. Mr. Petrenko’s Motion was Frivolous and Warranted Sanctions.....	11
	1. Mr. Petrenko’s argument that TBF lacked capacity to sue because it did not register a “trade name” is frivolous; TBF does not have a “trade name”	11
	2. Even if TBF used a trade name, it would not have to register it with the Secretary of State because it does not “transact business” in Washington State.....	16
	C. The Court should Award TBF its Reasonable Attorney’s for Having to Defend Against this Frivolous Appeal.	18
IV.	CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Bacon v. Gardner</i> , 38 Wn.2d 199, 303 (1951).....	15
<i>Biggs v. Vail</i> , 124 Wn.2d 193, 197 (1994)	10
<i>Bryant v. Joseph Tree, Inc.</i> , 119 Wn2d 210, 219 (1992).....	10, 11
<i>Building Industry Ass'n of Washington v. McCarthy</i> , 152 Wn. App. 720, 745 (2009).....	10
<i>Harrington v. Pailthorp</i> , 67 Wn. App. 901, 911-12 (1992)	11
<i>Marquis v. City of Spokane</i> , 130 Wn.2d 87, 108 (1996).....	15
<i>Rhinehart v. Seattle Times, Inc.</i> , 59 Wn. App. 332, 342 (1990)	19
<i>Seattle Ass'n of Credit Men v. Green</i> , 45 Wn2d 139, 142 (1954).....	15
<i>State v. Castellanos</i> , 132 Wn2d 94, 97 (1997).....	10
<i>State v. J.M.</i> , 144 Wn.2d 472, 480 (2001).....	13
<i>State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.</i> , 146 Wn.2d 1, 9 (2002).....	13
<i>Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 338-39 (1993)	10
<i>Whatcom County v. City of Bellingham</i> , 128 Wn.2d 537, 546 (1996).....	14
<i>Young v. Estate of Snell</i> , 134 Wn.2d 267, 279 (1997).....	13
<i>Yurtis v. Phipps</i> , 143 Wn. App. 680, 697 (2008).....	18

Statutes

RCW 19.80.005 13
RCW 19.80.010 12
RCW 19.80.010(2)..... 12
RCW 19.80.040 5, 12, 16, 18
RCW 25.15.350(1)(h) 5, 16

Rules

CR 11(b)..... 11

I. INTRODUCTION

*"I am going to be pretty frank because when I saw this I just said, "Really? You have to be kidding.""*¹

--Hon. Julie Spector

Appellant Boris Petrenko expects this Court to believe the absurd legal position that any limited liability company that brings a lawsuit in Washington State must register a trade name—regardless of whether it actually uses a trade name in the first place. Based on this absurd theory, Mr. Petrenko moved to dismiss the underlying case brought by Respondent TBF Financial, LLC ("TBF"), arguing that because TBF had failed to register a trade name with the Washington Secretary of State under RCW 19.80.010, it lacked capacity to sue. But TBF does not have a trade name and does not transact business in Washington. Consequently, the trial court rightfully ordered CR 11 sanctions against Mr. Petrenko and there is no argument that it abused its discretion in doing so.

Mr. Petrenko's baseless legal theory completely ignores the plain language and purpose of the trade name statutes. The issues Mr. Petrenko raised to the trial court were (1) not debatable; (2) had no chance of success; and (3) had no basis in law or fact.²

¹ *Verbatim Transcript of Proceedings*, June 21, 2013 at 15:8-10.

² TBF brings to this Court's attention that this is not the first time Mr. Petrenko has raised his frivolous trade name theory against TBF. As Mr. Petrenko is fully aware, this argument was already raised in a separate prior lawsuit involving Mr. Petrenko and TBF and

Now, Mr. Petrenko has chosen to double down on his preposterous theory by furthering the same untenable arguments to the Court of Appeals, wasting judicial resources and forcing TBF to endure unnecessary attorney's fees. Like his motion to the trial court, this appeal is frivolous as well. Therefore, Mr. Petrenko's appeal should be denied with an award to TBF for its reasonable attorney's fees in having to respond to this frivolous appeal.

II. STATEMENT OF THE CASE

A. The Underlying Proceeding

This case originally arises out of an equipment lease entered into between Defendant Stay in Home, Mortgage, Inc. and CIT Technology Financing Services, Inc. ("CIT") on June 22, 2006 (the "Lease"). CP 4. Defendants Martin Taylor and Judy Taylor executed a Personal Guaranty of the Lease, covering the equipment. CP 4. On September 23, 2011, CIT assigned the Lease to Respondent TBF Financial, LLC ("TBF") by bill of

implicitly rejected by this Court of Appeals. *See TBF Financial, LLC v. Petrenko*, 171 Wn. App. 1018 (2012)(unpublished). This case involved a lease dispute between TBF and Mr. Petrenko where summary judgment was awarded against Mr. Petrenko by the trial court. *Id.* at 1. On appeal, Mr. Petrenko made the same frivolous argument that TBF used a trade name and lacked capacity to sue. Based on this frivolous argument, Mr. Petrenko asked that the Court of Appeals dismiss TBF's lawsuit with prejudice. *See Brief of Appellant Petrenko, TBF v. Petrenko*, No. 66800-5-I (Jan. 9, 2012) at 16. Of course, the Court of Appeals did not dismiss the case and thus implicitly rejected Mr. Petrenko's argument. Consequently, when Mr. Petrenko filed his Amended Motion to Dismiss in the underlying proceeding, he was already on notice of his failed argument.

sale. CP at 5. Defendant Stay in Home Mortgage, Inc. breached the Lease by failing to make payments when due. CP 2.

B. Mr. Petrenko's Frivolous Motion and Order for CR 11 Sanctions

On January 7, 2012 TBF filed its complaint. CP 1. More than a year later, on February 7, 2013 Defendants, through their co-counsel Boris Petrenko, filed a CR 12(h)(2) Motion to Dismiss Complaint for Lack of Capacity to Sue ("First Motion to Dismiss") and noted the hearing for May 24, 2013. CP 146. The First Motion to Dismiss appeared to allege that because TBF had identified itself as a corporation in its Complaint, TBF therefore operated under a trade name, thus allegedly requiring it to register with the Washington Secretary of State under RCW 19.80.010.

After Mr. Petrenko filed the First Motion to Dismiss and because TBF's Complaint incorrectly identified itself as a corporation, on March 12, 2013 TBF promptly moved to amend its complaint to clarify its status as a limited liability company duly organized and existing in the State of Illinois. CP 154. On April 4, 2013 the Court granted TBF's Motion to Amend Complaint, and TBF's Amended Complaint for Breach of Contract (the "Amended Complaint") was filed the next day on April 5, 2013. CP 172; CP 174.

The same day TBF filed its Amended Complaint, which accurately reflected TBF as an LLC (thus reflecting it did not use a trade name), TBF mailed a letter to Boris Petrenko requesting that he withdraw his client's First Motion to Dismiss because his motion was clearly frivolous. CP 66. TBF's letter specifically requested that Mr. Petrenko withdraw his pleading by April 15, 2013, or that TBF would move for sanctions and ask the Court for terms under Washington CR 11. CP 67.

On April 5, 2013, the same day TBF filed its Amended Complaint, Mr. Petrenko served (but did not file) TBF with a copy of Defendants' Amended Motion to Dismiss. CP 65. Like the First Motion to Dismiss, the Amended Motion to Dismiss again frivolously argued that TBF was required to register with the Secretary of State because it operated under a trade name. Accordingly, on April 8, 2013 TBF's attorney emailed Mr. Petrenko informing him that, because TBF did not use a trade name and did not transact business in Washington State, his Amended Motion to Dismiss was frivolous. CP 68. TBF further requested that he withdraw his pleading by April 15, 2013 or that TBF would move for sanctions and ask the Court for terms. CP 68. Despite TBF's request, on April 16, 2013, the day after

TBF's requested withdrawal date, Mr. Petrenko filed the Amended motion to Dismiss with the Court.³ CP 18.

On May 22, 2013 TBF filed its Opposition to Defendants' CR 12(h)(2) Motion to Dismiss and Request for CR 11 Sanctions ("Opposition") which requested CR 11 sanctions against Mr. Petrenko for failing to withdraw his frivolous motion. TBF's Opposition further informed the court that even if TBF used a trade name, it would not be required to register with the Secretary of State because it did not transact business in Washington State.⁴ CP 47.

Thereafter, on May 23, 2013 Mr. Petrenko then filed Defendants' Reply to Plaintiff's Opposition to Defendants (sic) CR 12(h)(2) Motion to Dismiss and Request for CR 11 Sanctions (the "Reply Brief") which continued to reiterate his baseless assertions that TBF operated under a trade name. CP 79. However, Mr. Petrenko's Reply Brief did not offer a single

³ Coupled with his Amended Motion to Dismiss, Mr. Petrenko also served TBF by email with a pleading entitled Defendant's CR 12(h)(2) Motion Witness List ("Witness List"). CP 62. The Witness List, without any legal justification, stated that TBF's attorneys Laurin S. Schweet and Jacob D. Rosenblum be called to testify on TBF's behalf at the May 24, 2013 hearing on the Amended Motion to Dismiss. CP 62. This Witness List was clearly frivolous since the Court had not ordered an evidentiary hearing and such testimony was clearly barred by RCW 56.60.060(2)(a). Nevertheless, TBF was forced to incur even more fees by having to respond to the Witness List and inform the trial court that TBF's attorneys would not be testifying at the hearing. *See* CP 58-63.

⁴ Here, although RCW 19.80.040 requires the registration of trade names as a prerequisite to a lawsuit, such requirement only applies to persons "transacting business" under a trade name. As TBF pointed out in its opposition, the only business that TBF transacts in the State of Washington relates to the collection of debts, which specifically does not constitute "transacting business" under Washington's foreign LLC statute, RCW 25.15.350(1)(h).

piece of evidence that showed TBF transacted business under an assumed name in any state. CP 79-85. In his Reply Brief, Mr. Petrenko also asserted a new frivolous legal theory that TBF “transacted business” in Washington State based on the absurd grounds that TBF included the residual value of the leased equipment in its damages calculations in its lawsuits (which it was entitled to do under the lease). CP 83.

On June 21, 2013 the Court held a hearing on the Amended Motion to Dismiss. At the hearing, the trial court entered an Order Denying Defendants’ Motion for to Dismiss and for CR 11 Sanctions (the “Sanctions Order”). CP 122. The Sanctions Order made the following findings, all which were thoroughly supported by the record:

1. TBF does not use a trade name and is not required to register its name with the Washington Secretary of State
2. Defendants’ Amended Motion to Dismiss is not well grounded in fact or warranted by existing law and is frivolous; and
3. Defendants’ attorney Boris Petrenko received adequate notice that his motion was frivolous and that TBF would move for sanctions and request terms should Mr. Petrenko fail to withdraw his frivolous motion.⁵

CP 123.

⁵ Here, it is worth noting that Mr. Petrenko’s brief completely misrepresents the trial court’s findings. In his opening brief, Mr. Petrenko dubiously states, “While the trial court clearly disagreed with Petrenko’s legal positions, it appears equally apparent that the trial court did not believe that these positions were the result of inadequate investigation or inquiry into the facts or the law.” Nothing can be further from the truth as Judge Spector specifically stated to Mr. Petrenko at the hearing, “It is clear to me you haven’t done your research.” See *Verbatim Transcript of Proceedings*, June 21, 2013 at 5:5.

The Court reserved the amount of attorney's fees so that Mr. Petrenko would have the opportunity to object to them. CP 123. As of the date of this brief's filing, the trial court has yet to rule on the amount of attorney's fees against Mr. Petrenko.

C. Mr. Petrenko's Appeal and the Parties' Settlement

On July 16, 2013, before any final judgment was entered in the underlying case, Mr. Petrenko prematurely filed a Notice of Appeal of the Sanctions Order. CP 137. Subsequently, the underlying parties agreed to settle their dispute but agreed that the trial court would retain jurisdiction over Mr. Petrenko for purposes of the CR 11 sanctions. *See Answer to Petrenko's RAP 3.2 Motion for Substitution of Parties* at 3. The parties' settlement was contingent upon the trial court entering an Order dismissing the claims and counterclaims of the parties with prejudice. *Id.*

On July 30, 2013, TBF filed a Motion for Stipulated Order of Dismissal with Prejudice as to Defendants but Retaining Jurisdiction Over Sanctioned Attorney along with a proposed order. CP 191. However, due to Mr. Petrenko's premature Notice of Appeal, the trial court would not enter the parties' stipulated order. CP 183. Instead, on August 2, 2013, the trial court entered an Order Explaining Lack of Jurisdiction which stated that, due to Mr. Petrenko's appeal, the Court no longer had jurisdiction over the underlying proceeding. CP 183. Because Mr. Petrenko prematurely

filed his Notice of Appeal, the parties were prevented from finalizing the terms of their settlement, and thus the claims between the parties remained unresolved. Despite holding up his own clients' settlement, Mr. Petrenko never withdrew his Notice of Appeal. *See Answer to Petrenko's RAP 3.2 Motion for Substitution of Parties*. On December 17, 2013, the Court of Appeals ruled that Mr. Petrenko's appeal was premature and that once the trial court entered a final judgment, Mr. Petrenko could file an amended notice under this cause number. *See Apr. 1, 2014 Notation by Commissioner*.

D. Mr. Petrenko's Bankruptcy and Failure to Give Notice to TBF

Unbeknownst to Respondent or its attorneys, Mr. Petrenko filed Chapter 7 Bankruptcy on September 18, 2013. CP 185. On December 18, 2013, the Day after the Court of Appeals entered its decision, Boris Petrenko, through his attorney Andreas Kischel, filed an amended bankruptcy schedule adding TBF's attorneys, Schweet Linde & Coulson, PLLC ("SLC") as a creditor of his bankruptcy estate. *See Status Report*, Mar. 21, 2014, Exh. A. SLC never received notice that it was added to Mr. Petrenko's amended schedule and Mr. Petrenko was granted a discharge on December 26, 2014. *See Status Report*, Jan. 21, 2014 at 3.⁶

⁶ Even though Mr. Petrenko obtained a discharge in bankruptcy, he was not discharged from the Sanctions Order. Under 11 U.S.C. § 523(a)(6), a debt based on a "willful and malicious injury" is nondischargeable. Specifically, the 9th Circuit has held that 11 U.S.C. § 523(a)(6) applies to sanctions for frivolous legal claims, liked those ordered against Mr.

On January 7, 2014, Respondent's attorney emailed Judge Spector's bailiff Christine Robinson to ask if Judge Spector, in light of the decision by the Court of Appeals, would be ruling on any pending motions. *See Status Report*, Jan. 21, 2014 at 2. Mr. Petrenko and his attorney Andreas Kischel were copied on the email. *Id.* That same day, Mr. Petrenko filed a letter to the Court stating that the Sanctions Order had been "discharged as pre-petition debt in the Ch. 7 bankruptcy." CP 185. The letter also attached the Bankruptcy Court's Order granting Mr. Petrenko his discharge. CP 187.

It was not until January 8, 2014 that TBF and its attorneys were first given notice of Mr. Petrenko's bankruptcy and that SLC had been added to Mr. Petrenko's amended schedules. *See Status Report*, Jan. 21, 2014 at 3. Incidentally, Mr. Petrenko's attorney Andreas Kischel did not file a declaration of mailing with his amended schedule that added SLC as a creditor. *See Status Report*, Jan. 21, 2014 at 3.

Petrenko. *In re Zelis*, 66 F.3d 205 (9th Cir., 1995). The 9th Circuit Court of Appeals has further held that where a debt is nondischargeable and the creditor does not receive proper notice, dischargeability is unaffected by scheduling. *In re Beezley*, 994 F.2d 1433, 1434 (1993). As the Court in *In re Beezley* stated, "[T]he debtor's failure to schedule in time to provide notice to the creditor of the need to seek an adjudication of dischargeability is *conclusive* (at least in the absence of actual knowledge of the bankruptcy on the part of the creditor). The debt is not discharged." *Id.* at 1437. Here, because (1) Mr. Petrenko failed to give TBF notice in time to file an action for nondischargeability and (2) CR 11 sanctions are nondischargeable, the Sanctions Order has not been discharged.

E. Final Judgment Entered in the Underlying Proceeding

On April 16, 2014 the trial Court entered a Stipulated Order of Dismissal with Prejudice as to Defendants but Retaining Jurisdiction Over Sanctioned Attorney. CP 191. Subsequently, on May 8, 2014, the Court of Appeals substituted Mr. Petrenko as the party to this appeal and set a briefing schedule. The trial court has yet to award any attorney's fees related to the Sanctions Order.

III. ARGUMENT

A. Standard of Review

“The standard of appellate review for [CR 11] sanctions is the abuse of discretion standard.” *Biggs v. Vail*, 124 Wn.2d 193, 197 (1994) (citing *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn2d 299, 338-39 (1993)). “An abuse of discretion occurs only when no reasonable person would take the view that the trial court adopted.” *Building Industry Ass'n of Washington v. McCarthy*, 152 Wn. App. 720, 745 (2009)(citing *State v. Castellanos*, 132 Wn2d 94, 97 (1997)). In deciding whether the trial court abused its discretion, this court must keep in mind that “[t]he purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system.” *Bryant v. Joseph Tree, Inc.*, 119 Wn2d 210, 219 (1992).

In addition, Washington CR 11(b) requires that an attorney drafting a pleading certifies that he has read the motion, and that to the best of the attorney's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, that the motion is "well grounded in fact" and is "warranted by existing law." CR11(b). "The reasonableness of an attorney's inquiry is evaluated by an objective standard". *Harrington v. Pailthorp*, 67 Wn. App. 901, 911-12 (1992)(citing *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220 (1992)). It is not sufficient that an attorney personally believed, after exhaustive research, that a claim was meritorious. *Id.*

Here, the inquiry of this Court is only whether the trial court abused its discretion in ordering sanctions. Because the trial court has not yet ordered the award for attorney's fees against Mr. Petrenko, the amount of sanctions is not an issue on appeal.

B. Mr. Petrenko's Motion was Frivolous and Warranted Sanctions.

1. Mr. Petrenko's argument that TBF lacked capacity to sue because it did not register a "trade name" is frivolous; TBF does not have a "trade name"

It cannot be emphasized enough that the sole basis for Mr. Petrenko's Amended Motion to Dismiss was that TBF failed to register a trade name with the Washington Secretary of State and therefore lacked

capacity to sue. TBF does not have a trade name. For this simple fact, Mr. Petrenko's motion was frivolous and had no basis in law or fact. Thus, the trial court clearly did not abuse its discretion in ordering sanctions against Mr. Petrenko

The requirement for an LLC to register any trade names with the Washington Secretary of State is clearly defined under Chapter 19.80 of the Revised Code of Washington. The Chapter 19.80 statutes require LLC's transacting business under a trade to register that trade name with the Secretary of State in order to bring a lawsuit. If an LLC uses a trade name, it must register with the Secretary of State; if an LLC does not use a trade name, it does not need to register.

Specifically, RCW 19.80.040 provides in full:

No person or persons carrying on, conducting, or transacting business **under any trade name** shall be entitled to maintain any suit in any of the courts of this state until such person or persons have properly completed the registration as provided for in RCW 19.80.010.

(emphasis added).

As RCW 19.80.040 makes clear, only a person transacting business "under any trade name" is required to complete the registration provided for in RCW 19.80.010. The registration requirement for LLC's is provided for in RCW 19.80.010(2) which states that any foreign LLC that "transacts business" in Washington under "any trade name" must "register the trade

name with the office of the secretary of state”. “Trade name” is defined by RCW 19.80.005 as:

..... a word or name, or any combination of a word or name, used by a person to identify the person’s business which (a) is not, or does not, include the true and real name of all persons conducting business, or (b) includes words which suggest additional parties of interest such as “company,” “and sons,” or “and associations.”

“The court’s fundamental objective is to ascertain and carry out the Legislature’s intent, and if the statute’s meaning is plain on its face, then the court must give effect to the plain meaning as an expression of legislative intent.” *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9 (2002) (citing *State v. J.M.*, 144 Wn.2d 472, 480 (2001); see also *Young v. Estate of Snell*, 134 Wn.2d 267, 279 (1997) (the meaning of a statute must be derived from the wording of the statute itself where the statutory language is plain and unambiguous).

The relevant statutes providing the requirement of registration with the Secretary of State are clear and unambiguous. Only LLC’s transacting business in Washington under a trade name are required to register in order to have capacity to sue. If an LLC does not use a trade name, no registration is required. In the underlying proceeding, TBF was clearly not required to register with the Secretary of State in order to have capacity to sue because

TBF does not use a trade name. TBF only operates under its true name, “TBF Financial, LLC” and does not do business under any other name.

Given that TBF does not operate under any trade name, Mr. Petrenko’s motion was frivolous and warranted CR 11 sanctions. His motion was exceptionally frivolous as he did not even allege that TBF used a trade name.

Though unartfully stated and unclear from his pleadings, Mr. Petrenko appears to take the absurd position that under Washington law, every LLC, regardless of what name they use to do business, has no “true and real name” and therefore must register a trade name with the Secretary of State in order to sue another party in Washington. In essence, Mr. Petrenko wants the Court to believe that the Washington legislature intended to specifically single out and require LLCs to register trade names that they do not even have.

Even where a statute is ambiguous, “the courts must construe the statute so as to effectuate the legislative intent. In doing so, we avoid a literal meaning if it would result in unlikely, absurd or strained consequences. The purpose of an enactment should prevail over express but inept wording.” *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546 (1996).

Here, no reasonable person could honestly believe that the legislature intended for LLCs to register trade names when they do not in fact have trade names. Clearly, Mr. Petrenko failed to research and consider any of the potential pitfalls of his frivolous legal theory. Washington case law makes it crystal clear that the major purpose of the trade name statute is to ensure that parties know who they are suing or who is suing them. *See Seattle Ass'n of Credit Men v. Green*, 45 Wn2d 139, 142 (1954) (“The purpose of the statutes is to advise anyone extending credit to a business operating under an assumed name, who the real persons are conducting the business are.”); *Bacon v. Gardner*, 38 Wn.2d 199, 303 (1951) (“This statute is directed principally against concealed partnerships”.) In this matter, there could not be any confusion as to who TBF Financial, LLC is because they only transact business under their real name. *See Marquis v. City of Spokane*, 130 Wn.2d 87, 108 (1996) (“If a statute is unclear, and thus subject to judicial interpretation, it will be interpreted in the manner that best fulfills the legislative purpose and intent”.) If for some reason Mr. Petrenko believed the statute were unclear, had he actually done his research, it would have been abundantly clear that TBF was not required to register a trade name.

2. Even if TBF used a trade name, it would not have to register it with the Secretary of State because it does not “transact business” in Washington State.

“You have to look at [RCW] 19.80 in conjunction with [RCW] 25.15. If you don’t you haven’t fully researched the issue.”⁷

-Hon. Judge Spector

Although TBF does not use a trade name, even if TBF did use a trade name, it would not be required to register with the Secretary of State because TBF does not “transact business” for purposes of RCW 19.80.040. “Transacting business” is defined under Washington’s foreign LLC statute, RCW 25.15.350(1)(h), which provides:

(1) The following activities, among others, do not constitute transacting business within the meaning of this article:

.....(h) Securing or collecting debts or enforcing mortgages and security interests in property securing debts

Because the only business that TBF transacts in the State of Washington relates to the collection of debts, even if it operated under a trade name, it would not “transact business” under the definition provided in RCW 25.15.350(1). Thus, even if Mr. Petrenko could have shown TBF used a trade name (which he did not even attempt to do), his argument that TBF

⁷ *Verbatim Transcript of Proceedings*, June 21, 2013 at 5:12-14.

lacked capacity to sue was clearly without merit and had no basis in fact or law.

The sole evidence used to support Mr. Petrenko's nearly unintelligible argument that TBF transacts business in Washington consisted of docket printouts of lawsuits that TBF had filed in Washington State. Incidentally, Mr. Petrenko offered no evidence, by declaration or any other means, that these lawsuits involved anything other than collecting on debts. He further offered no evidence that he had ever read a single complaint in any of the other cases that TBF had filed or that he was familiar with the allegations contained therein. In essence, Mr. Petrenko's argument to the trial court appeared to be that, because TBF filed multiple lawsuits in Washington, it must be transacting business there as well. Clearly, this a frivolous and absurd argument and has no merit.

Mr. Petrenko further disingenuously argued (and does so now on appeal) that TBF did business in Washington because of TBF's alleged "sale of its equipment for the residual value". However, TBF never sold any equipment.⁸ Mr. Petrenko apparently failed to realize that TBF merely sought the residual value of the leased equipment as part of its claim since

⁸ In his opening brief, Mr. Petrenko absurdly argues that TBF "purchases and resells" lease equipment for profits. *Brief of Appellant Petrenko* at 3. However, the only evidence in the record Mr. Petrenko cites to support this ridiculous position consists of TBF's bill of sale evidencing the assignment of the debt in the underlying and TBF's accounting statements.

the underlying contract allowed TBF to do so; here, the residual value of the equipment was part of the debt within the defaulted equipment lease that TBF purchased and attempted to collect. The fact that TBF included the residual value of equipment as part of its damages does not mean that TBF “sold” any equipment.

Through correspondence from TBF’s attorney, Mr. Petrenko was put on notice of the fact that TBF did not transact business in Washington State and of the language of RCW 19.80.040. In spite of this knowledge, Mr. Petrenko refused to withdraw his frivolous motion. In addition, even if TBF used a trade name, Mr. Petrenko’s motion would still be frivolous as he clearly ignored the plain language of RCW 19.80.040. Thus, the trial court did not abuse its discretion, and CR 11 sanctions were appropriate.

C. The Court should Award TBF its Reasonable Attorney’s for Having to Defend Against this Frivolous Appeal.

Even if no ground for an award of attorney’s fees would otherwise apply, a respondent may recover attorney fees on appeal if the appeal is frivolous. RAP 18.9(a). “An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal.” *Yurtis v. Phipps*, 143 Wn. App. 680, 697 (2008)(citing *Rhinehart v. Seattle Times, Inc.*, 59 Wn. App. 332, 342

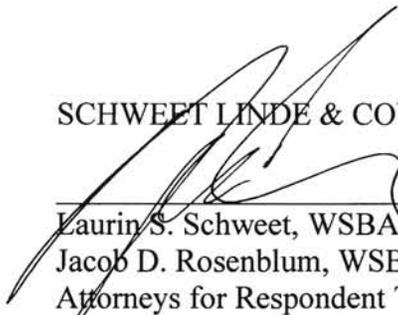
(1990)). In this appeal, Mr. Petrenko presents no debatable issues of law or fact and continues to assert his vexatious legal theories. Thus, if Mr. Petrenko's arguments to the trial court were frivolous, they are no less frivolous on appeal. TBF has unfairly had to endure the cost of defending against Mr. Petrenko's vexatious legal theories and should be awarded its attorney's fees for having to respond to this appeal.

IV. CONCLUSION

Mr. Petrenko's Amended Motion to Dismiss had no basis in law fact and was clearly frivolous. Thus, the trial court did not abuse its discretion in ordering sanctions against Mr. Petrenko. As a result, his appeal should be denied. In addition, TBF should be awarded its reasonable attorney's fees for having to defend against Mr. Petrenko's frivolous appeal upon application.

Dated this 9th day of June, 2014

SCHWEET LINDE & COULSON, PLLC


Laurin S. Schweet, WSBA #16431

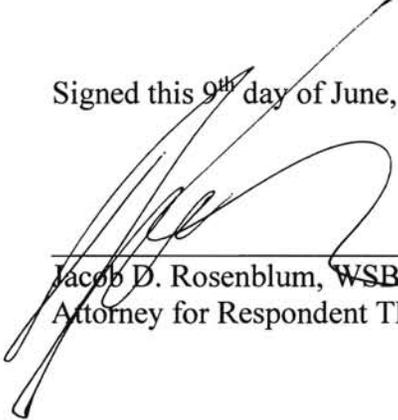
Jacob D. Rosenblum, WSBA#42629

Attorneys for Respondent TBF Financial, LLC

CERTIFICATE OF SERVICE

I certify that on June 9, 2014 I caused a copy of the foregoing Brief of Respondent to be personally delivered to Andreas Kischel, Appellant's attorney, at 155 108th Ave N.E., Ste. 210, Bellevue, Washington, 98004.

Signed this 9th day of June, 2014.



Jacob D. Rosenblum, WSBA #42629
Attorney for Respondent TBF Financial, LLC

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN -9 PM 2:47