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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 355268

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BAKER BOYER NATIONAL BANK,

Plaintiff/Respondent,

v.

JAMES PATTERSON FOUST, JR.,

Defendant/Appellant.

BRIEF OF APPELLANT

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RAP 1819

I. INTRODUCTION

Defendant James Patterson Foust, Jr., (Foust) appeals from a summary judgment granted to Plaintiff Baker Boyer National Bank (Baker Boyer) on all issues. The lower court also denied Defendant's motion for reconsideration and request to withdraw an admission. Baker Boyer sued Foust to enforce a commercial guaranty that Foust signed on behalf of JPF Enterprises, LLC (JPF), for a loan from Baker Boyer to JPF.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in entering the order of July 20, 2017, entering judgment for plaintiff and denying defendant's motion for reconsideration.
2. The trial court erred in entering the order of June 20, 2017, granting plaintiff's motion for summary judgment on all points.
3. The trial court relied on selected portions of the commercial guaranty form instead of including the exceptions for law and public policy.
4. The trial court failed to follow federal law which requires a statement of reasons for an adverse action on a loan application.

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B. Issues Pertaining to Assignments of Error

1. Does defendant's assertion of fraud in the inducement raise genuine issues of material fact that preclude entry of summary judgment?
(Assignment of Error 1).
2. The trial court stated in the order granting summary judgment at 1.b.ii that defendant Foust agreed that plaintiff bank had no duty to disclose any information. The trial court relied on a statement on page two of the commercial guaranty form to make this finding. That form also states on page two that guarantor waives and agrees not to assert any counterclaim. The guarantor form also acknowledges on page two that any waivers by Mr. Foust are "...effective only to the extent permitted by law or public policy." Fraud is contrary to public policy. Is it proper for the trial court to dismiss claims of fraud and fraudulent inducement, thereby allowing bank to commit fraud with impunity?
(Assignment of Error 1, 2, 3).
3. The trial court held the commercial guaranty to be an enforceable contract without applying all of the language in the guaranty. Is it proper for the trial court to ignore the public policy against fraud when the commercial guaranty contains an express exception for public policy? (Assignment of Error 3).
4. Is it proper for the trial court to ignore the relevant federal law requiring the bank to send a declination letter to explain the reasons for

its decision when the commercial guaranty contains an express exception for law? (Assignment of Error 3).

5. Does the August 20, 2013, email from Chris Sentz to James Foust show an adverse action on Foust's loan application, thereby triggering the requirement to give a statement of reasons pursuant to federal law, as promised in the email? (Assignment of Error 4).
6. The trial court denied Appellant's motion for reconsideration "for reasons set forth in plaintiff's response." Did the trial court abuse its discretion by relying on untenable reasons to deny Foust's motion for reconsideration? (Assignment of Error 1).

III. STATEMENT OF THE CASE

A. PROCEDURE

Plaintiff/Respondent Baker Boyer National Bank (Bank) filed a lawsuit against Defendant/Appellant James Patterson Foust, Jr. (Foust) to enforce the terms of a commercial guaranty. CP 1-16. Foust gave this guaranty when his company JPF Enterprises, LLC (JPFE), borrowed from Bank to invest in providing mobile housing units for the Bakken oil boom in western North Dakota. CP 19, 241. Bank also sued JPFE in North Dakota to foreclose on the collateral. CP 5-6. Foust and JPFE filed counterclaims in both cases alleging fraud and negligent misrepresentation by Bank. CP 18-20. Bank filed in the Walla Walla case a motion for summary judgment on all claims which was granted by the trial court. CP 31, 295-298. Bank has marshalled and sold the North Dakota collateral

(the housing units purchased by JPFE with the loan proceeds) for pennies on the dollar. CP 57. Bank has now filed a motion for summary judgment in the North Dakota case.

We also note that the trial court entered findings to support the order granting summary judgment. CP 297-8. Findings of fact on summary judgment are not proper, are superfluous, and are not considered by the appellate court. *Kries v. WA-SPOC Primary Care, LLC*, 362 P.3d 974, 982, 190 Wn.App. 98, 117 (2015). Since the findings are not considered by the appellate court Foust does not list a challenge to each finding.

B. FACTS

There is a long story of Baker Boyer National Bank (hereafter Baker Boyer or Bank) investing in the housing market for the Bakken oil boom by making loans to various parties to invest in manufactured housing units built by GreenFlex in Oregon. CP 27. The placement and rental of the units was handled by GreenFlex Housing, LLC (GFH) who contracted with Badlands, LLC (Badlands), to manage the units in North Dakota mobile home parks. CP 28. Badlands embezzled from GFH. CP 243 ¶9, 249. Several Bank employees were involved and Bank was in constant communication with GFH. CP 241-261, 316-335. One investor wanted to sell his units, and Foust/JPFE ended up buying his 30 units. CP 27, 241, 263. So JPFE's new loan paid off the prior investor's loan from Bank.

But the key facts for this appeal focus on Bank's requirement that Foust/JPFE contract with GFH to manage the subject rental units when Bank knew GFH was not able to perform its contract with JPFE. CP 28. Bank's prerequisites for the loan included a personal guaranty by Foust and a contract with GFH, a Bank client, to manage the placement and rental of the units. CP 28, 242, 255. Bank was already dealing with GFH and other investors in the GreenFlex units.

Baker Boyer mandated JPFE execute an agreement for unit management with Greenflex Housing (GFH). CP 242, 255. That agreement executed between GFH and Foust/JPFE set as terms:

- i. GFH would pay Foust \$1500 per month for 7 years
- ii. Agreement was executed on June 1, 2013
- iii. Agreement was the only reason Foust was willing to proceed with purchase of the 30 units then financed by Baker Boyer. Units were owned by Jason Sundseth's company (Vindans, LLC) and financed by Bank and was at this time in default.
- iv. Foust's financial analysis at that time determined:
 1. Monthly gross income from GFH was \$45,000 (30 * \$1,500).
 2. Monthly Net income after Loan payment was approximately \$27,000.
 3. Expected cash required was about \$600,000.
 4. Payback period was about 22 months.
 5. Expected income stream was about 84 months.

Foust was interested in investing in the income stream that would be produced by the mobile housing units. CP 145-147. He thought he could sell his investment at a profit a year later. CP 145. Foust discussed

the matter thoroughly with the banker, Mr. Chris Sentz. CP 171-2. Foust relied in Bank's recommendation and requirement to use GFH to manage the rentals. CP 335.

Baker Boyer sent Foust an "Expression of Interest" on June 4, 2013. CP 107-108. It included a requirement to "execute an agreement with GFH" for 6 years. CP 107. Such a similar agreement was previously executed on 6/1/2013. CP 103-106. The remainder of June and July was spent by Bank in due diligence of Foust and GFH financials.

A series of e-mails between GFH and Bank shows that:

1. GFH had no assets, it was an empty shell just providing a service.
2. Was in arrears of payments to existing clients.
3. Did not own the ground leases units were on.
4. Was not likely to be able to comply with the payment terms of the GFH/Foust Agreement.

On 8/20/2013 banker sent an e-mail to Foust that said:

Chris Sentz [sentzc@bakerboyer.com]
Tuesday, August 20, 2013 11:11 AM
'jpf@jpfent.com'
Melissa Hayes; Haley Thompson-Miller
North Dakota Financing...

Jim,

I am sorry to inform you that your requested financing for units in North Dakota is no longer a viable possibility. You will need to pursue an alternate source of financing if you wish to continue your purchase agreement with Jason.

I will be sending an official declination letter in the mail.

Sincerely,

Chris

CP 257.

However, the official declination letter was never sent to Foust. Instead, after telling GFH that he did not know where the Foust loan stood and asking for more information from GFH, on 8/26/2013 the banker sent an e-mail to Foust that said:

Chris Sentz [sentzc@bakerboyer.com]
Monday, August 26, 2013 1:30 PM
'jpf@jpfent.com'
Melissa Hayes; Haley Thompson-Miller

Update: Financing for units in North Dakota

Jim,
Some things have occurred which once again allow me to consider financing you for the purchase of Vindans LLC's 30 park model RV units in North Dakota. "If" you still wish to pursue the purchase of the units I will need a couple of things..
CP 258.

Between 8/20/2013 to 8/26/2013, just four business days, Bank changed from a position that it could not finance units to it could finance units.

No additional e-mails, telephone conversations with Foust or any other facts came into play. What did come into play was Chris Sentz has stated that he did not make the final decision to grant the Foust loan. CP 90. Therefore, Sentz must have informed his boss that he had declined the Foust loan.

The consequences of this would be that the \$1 million loan to Sundseth's Vindans, LLC would thus be in default and remain as a bad loan. Sentz was counting on the Foust balance sheet. CP 89-90. Mr.

Sentz knew the GFH agreement that would have guaranteed the bank payment for 7 years could not be performed by GFH. Because he was denying the loan, he acknowledged that he was obligated to send Foust a declination letter informing him of the reasons Bank was declining the loan. CP 257.

It is obvious from the August 26 email that his boss instructed Sentz to continue with the loan application and not send the declination letter. Comments in the record from bank employees indicate they reasoned that they did not care if GFH could or could not make their payments to Foust under the contract. Instead they relied on Foust's strong personal financial statement and personal guaranty. CP 53, 89-90.

Therefore, the banker sent Foust an e-mail stating the bank would once again consider the financing. CP 258. Had the declination letter been sent to Foust, he would have had the opportunity on 8/20/2013 to know the circumstances of GFH and cease the financing application. CP 28. Foust would have learned the company he was relying on to make the payments was unsound, in arrears making payments to existing clients, and had no company assets. CP 28.

Baker Boyer wanted to make sure that Foust/JPFE did not drop out of the loan. GFH could not comply with their agreement with Foust and Bank withheld the information contained in various e-mails which are in the record. CP 28, 241-261, 316-335.

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IV. SUMMARY OF ARGUMENT

Genuine issues of material fact preclude summary judgment. A reasonable person will draw logical conclusions from the facts. Summary judgment is appropriate only if a reasonable person could reach only one conclusion.

Because there exist genuine issues of material fact, Foust is entitled to a trial on his counterclaims for fraud and negligent misrepresentation.

V. ARGUMENT

A. STANDARD OF REVIEW

Well settled standards govern appellate review of summary judgment rulings. An appellate court reviews a summary judgment de novo; the inquiry is the same as the trial court. *Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 573, 304 P.3d 472 (2013). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most favorable to Foust as the nonmoving party. *Id.* After the court considers all facts in the light most favorable to Foust, summary judgment is appropriate “only if [the court] determine[s], based on all of the evidence, reasonable persons could reach but one conclusion.” *Indoor Billboard Washington, Inc. v. Integra*, 162 Wn.2d 59, 70, 170 P.3d 10 (2007).

Denial of a motion for reconsideration is reviewed for abuse of discretion. *Rivers v. Wash. State Conf. of Mason Contractors*, 145

Wn.2d 674, 685, 41 P.3d 1175, 1180 (2002). Discretion is abused if it is manifestly unreasonable or if it is exercised on untenable grounds or for untenable reasons. *Id.*

B. FOUST'S COUNTERCLAIMS PRESENT GENUINE ISSUES OF MATERIAL FACT, THEREBY REQUIRING A TRIAL (Issue 1)

Here the Bank injected itself deeply into Foust's decision making, controlling the outcome of the investment he made, all the while knowing that his investment would fail. Bank planned from the beginning to collect from Foust under the guaranty, not from JPFE. CP 53, 90.

None of the cases relied on by Bank and the trial court involved fraud in the inducement of the contract. The *Tokarz* case is the closest analogy presented by Bank. *Tokarz v. Frontier Federal Savings and Loan Assoc.*, 33 Wn.App. 456, 656 P.2d 1089 (Div. 3 1982). But the facts are materially different. Tokarz borrowed from Frontier to pay Post, a contractor doing a job for Tokarz. The contractor Post was also a Frontier customer. Frontier knew that Post was having financial difficulties and decided to stop loaning money to Post, causing Post to be unable to perform its contract with Tokarz. Tokarz, the borrower, alleged that Frontier, the lender, should have told Tokarz about the financial difficulties of Post, the contractor. The court disagreed, stating that this was an ordinary banking relationship and held that Frontier had no duty to disclose its information about Post. *Id.*

There are two very important differences between *Tokarz* and this case: (1) Frontier did not require its borrower Tokarz to contract with Post; and (2) Frontier was not dealing with Post for the purpose of determining the feasibility of Tokarz' project. Generally a bank should not be disclosing to customers the financial information about its other customers. But in this case they did not need to give Foust any details other than GFH could not perform. Baker Boyer required JPFE to contract with GFH (CP 241-2, 255) and since Bank was effectively acting on behalf of JPFE to procure a contract that would produce an income stream to finance JPFE's investment, Bank did not owe any duty to GFH to keep its financial information away from Foust. To the contrary, Bank was probing GFH activities precisely because Foust's project and payments to bank depended on the performance of GFH. CP 246. Bank knew that GFH could not perform its contract with JPFE and approved the loan regardless of that, while presenting the deal to Foust as an investment that would be paid back through the GFH contract. CP 145-147, 242. At a minimum, due to the special relationship created by the Bank's insistence on the relationship with GFH, Bank could have referred Foust to GFH's accountant, Chris Cassidy, with whom Chris Sentz was communicating. Comments by Bank employees show that Bank was not relying on GFH performance but, rather, Foust's personal balance sheet. CP 53, 89. This type of loan (asset based loan, instead of income) is the most risky for a lender. Bank knew it had more risk here, Foust did not.

CP 319 ¶14, 334, 335. Baker Boyer injected itself far enough into Foust's business decision making that it owed him a duty to disclose what it knew about the feasibility of this investment decision. CP 255.

It is also important to note the court's statements at the end of the *Tokarz* case: "Tokarz did not offer any other depositions or affidavits to contradict the facts upon which Frontier relied; but, rather, rests on the unsupported allegations of his complaint." *Tokarz*, 656 P.2d at 1096. Here Foust has presented several declarations to contradict the facts upon which Bank relied. CP 27-30, 241-261, 262-270, 316-335.

Because the Bank not only knew it was a losing deal but the bank required a contract with this particular company, this was not an ordinary lender/borrower relationship. This set JPFE up as being in business with GFH and dependent upon GFH profits while Foust had no control or management authority. This was not an ordinary arms-length transaction. The bank had a duty to tell Foust what it knew about GFH, Badlands and the financial viability of the investment. *See, Hutson v. Wenatchee Federal Savings and Loan Assoc.*, 22 Wn.App. 91, 588 P.2d 1192 (1978).

C. FRAUD IS AGAINST PUBLIC POLICY, WHICH IS EXPRESSLY STATED IN THE COMMERCIAL GUARANTY AS AN EXCEPTION TO FOUST'S WAIVER OF THE BANK'S DUTY TO DISCLOSE (Issues 2, 3)

Fraud has been against public policy in Washington for decades. The Washington court said in 1931:

...a provision in a contract, such as the one in the case at bar, to render such instrument negotiable and thus cut off the defenses of fraud and usury, violates the public policy of the state. ... The effect of the provision of which the appellant complains is that the appellant bound himself not to assert a right which the law gives him on reasons of public policy, therefore the provision is void. ... he may not bind himself by contract that he will not avail himself of a right which the law has allowed to him on grounds of public policy.

Motor Contract Co. v. Van Der Volgen, 162 Wash. 449, 298 P. 705 (1931).

Motor Contract Co. is still good law. This is not New York or Delaware where it is possible to contractually waive the right to allege fraud.

The bank is expected to argue that Foust cannot talk about public policy because it is not in his briefing to the trial court. Whether Foust talks about it or not, the court should sua sponte rule that fraud is against public policy, would make the guaranty void, and Foust must be allowed the opportunity to prove his case. That is public policy in Washington whether we label it as such or not.

Bank relies on its boilerplate commercial guaranty form which states that Foust agrees the Bank need not disclose to him "...any information or documents acquired by Lender in the course of its relationship with Borrower." CP 70. This form also acknowledges on the same page that Foust's waivers are not valid if "...prohibited by

applicable law” and further states “if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.” CP 70. In fact, any contract term that contravenes law or public policy is not enforceable whether the contract acknowledges such or not. *Hendryx v. People's United Church of Spokane*, 42, Wash. 336, 346, 84 P. 1123, 1127 (1906) (question here is, can a man ... by ... fraud, divert the property? Neither the law nor public policy will sustain such a rule. Fraud vitiates all transactions. ... Equity will compel fair dealing, disregarding all forms and subterfuges, and looking only to the substance of things).

Fraud in the inducement refers to fraud that induces the transaction “by misrepresentation of motivating factors such as value, usefulness, age, or other characteristic of the property or item in question.” *Pedersen v. Bibioff*, 64 Wash.App. 710, 722, 828 P.2d 1113 (1992). If fraud in the inducement is shown, the transaction is voidable. *Id.* In alleging that, at the time they signed the guaranties, they were misled concerning the status of the Rancho option, Messrs. England and Labadie raised a potentially valid defense.

McCorkle Estate v. England, 91 Wn.App. 1022 (Div. 1 1998)

(*McCorkle* is an unpublished opinion cited under GR 14.1, has no precedential value, is not binding on any court, and is cited for persuasive analysis only). In *McCorkle* the appellate court stated that the guarantor parties had raised a potentially valid defense and were, therefore, entitled to trial to prove the defense. The same rationale applies here. Foust was

misled concerning the status of GFH and the income stream he was purchasing and, therefore, is entitled to a trial to prove his case.

D. BANK'S ACTIONS WERE CONTRARY TO FEDERAL LAW (Issues 4,5)

Bank's actions in this case were contrary to federal law. "Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor." 15 U.S.C. §1691(d)(2). Adverse action includes "a denial ... of credit." 15 U.S.C. §1691(d)(6). On August 20, 2013, Mr. Sentez of Baker Boyer Bank sent an email to Foust to inform him that the bank was declining his loan application and said an official declination letter would follow by mail. CP 257.

Federal law requires the bank to give the reason(s) for denying the loan. 15 USC 1691(d)(2); 12 CFR 1002.9(a)(2). The bank did not send the required declination letter. CP 244. The email from Sentez to Foust was notice to the customer that the loan was declined. The bank was required by the federal code and the federal regulation to give the reasons. It failed to comply. Now the bank claims that it can do so with impunity. The bank had no right to hide what it knew.

A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken

15 USC 1691(d)(3)

Given what the bank knew about GFH and Badlands, the underlying RV park leaseholder, declining the loan would be consistent

with sound lending practices and existing bank policy. Had these known reasons for initially declining the loan been given to Foust, he would neither have signed the loan on behalf of JPF nor signed the personal guaranty. CP 318 at paragraph 11 last sentence, 319 at paragraph 16.

Bank argued below that no adverse action was taken by Bank, citing *Madrigal v. Kline Oldsmobile, Inc.*, 423 F.3d 819 (8th Cir. 2005), claiming this was “a similar case [to Foust].” CP 466. *Madrigal* is not like this case. Ms. Madrigal, the borrower, wanted to buy a car but did not qualify for financing. The car dealer kept trying to find suitable financing, finally agreeing to pay the lender to buy down the interest rate which gave borrower a lower monthly payment. When Madrigal was offered the loan she refused to accept it and sued. The court pointed out that the loan was “on substantially the terms requested” and, therefore, was not an adverse action under 15 U.S.C. §1691(d)(6) and, moreover, “it was [borrower], not [lender], who refused to go forward with the deal.” *Madrigal*, 423 F.3d at 823. That is nothing like Foust’s case.

Bank continues its argument stating “the bank initially hesitated to approve the loan...” CP 466. The bank did not “hesitate.” It declined the loan and stated that a declination letter would be sent. CP 244, 257, 318, 330. The message from Bank to Foust stated that a declination letter would follow. That is an acknowledgment that Bank had taken an adverse action and was required by law to state its reasons. Writing the letter is

not the adverse action. The letter is required because of the adverse action.

E. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION (Issue 6)

The trial court summarily denied Foust's motion for reconsideration "for the reasons set forth in the Plaintiff's response." CP 339. The reasons given by Bank were that (1) there was no "adverse action" which required Bank to give its reasons to Foust, (2) Foust relied on conspiracy theories and speculation, and (3) Foust provided no basis to retract his admission of acting on behalf of his marital community. CP 464-473.

As to the first reason the Bank argues that the court should not even consider the question because Foust cannot raise it for the first time on reconsideration, citing a case that rejected an attempt to switch from a mutual mistake theory to a fraud theory. *Wilcox v. Lexington Eye Ist.*, 130 Wn.App. 234 (Div 1, 2005). Foust did not attempt to switch theories but simply further explained his case with the evidence already in front of the court and some more Bank emails. Bank does not even attempt to distinguish this court's decision holding that new evidence and an allegation of fraud in the inducement can be raised for the first time in a motion for reconsideration. *August, et al v. US Bancorp, et al*, 146 Wn.App. 328, 190 P.3d 86 (Div 3, 2008). Foust is not raising the issue for the first time but is continuing to argue the same issue, pointing to more of Bank's own emails and the Bank's own form guaranty already in the

record. Bank's misstatement of the facts and argument are not a tenable reason to deny reconsideration, but merely support the need for a fact-finding trial.

As for conspiracy theories and speculation, Foust is entitled to draw all reasonable inferences from the evidence. When the banker states that the loan is denied, then continues to discuss the matter with GFH, a third party chosen by Bank, then changes its mind to go ahead and make a loan, referring to "this unique underwriting process," when it knows that GFH is underperforming, there must be some explanation. Then the bankers give declarations to the court stating that they thought this was a good loan based on Foust's personal financial statement, not based on the supposed income stream from GFH renting the housing units. CP 53, 89-90. Income that the Bank knew would not materialize. Foust's personal financial statements did not show any income. CP 60-65. Bank knew the loan paperwork was based on phantom income.

The evidence further shows that GFH had good reason to not tell Foust that it was not able to pay the unit owners because of Badlands' embezzlement. That reason is that Mr. Sundseth claimed he was duped and Mr. Eakin, managing member of GFH (CP 262 ¶2), was afraid he would sue GFH and its principals if they did not get him out of his investment. CP 269 last paragraph. GFH had a vested interest in Bank loaning to JPF to buy out Sundseth's (Vindans, LLC) bad loan. Neither Bank nor GFH wanted Foust to back out. That conclusion is well

warranted by the facts before the court. Facts that show this transaction to be something more than normal banking activity. Facts that show a special relationship between Bank and Foust. The Bank labeling this conclusion as a conspiracy theory is not a tenable reason to deny reconsideration.

Finally, whether Foust had reason to retract his admission regarding marital community is not a tenable reason to deny reconsideration of summary judgment on all issues. That is an issue that should also be remanded for further development in the trial court.

F. FOUST IS ENTITLED TO HIS ATTORNEY'S FEES

The prevailing party in a contract action is entitled to attorney fees if the contract authorizes such an award. *Columbia Community Bank v. Newman Park, LLC*, 166 Wn.App. 634, 271 P.3d 300 (Div 2, 2012). The contract between Foust and Bank allows costs and attorneys' fees to the Bank. CP 70-71. Therefore, the prevailing party shall be entitled to its costs and fees whether it is the party specified in the contract or not. RCW 4.84.330. Foust is entitled to his costs and fees on appeal. RAP 18.

VI. CONCLUSION

The better reasoning is that Foust is entitled to a trial.

The trial court essentially ruled that there are no material facts because the bank was not obligated to say anything to Foust. Therefore, what the bank said or didn't say is not a material fact. This analysis does not apply to the instant case. Banks cannot be allowed to commit fraud

with impunity. This case involves a Bank injecting itself into its customer's business decision. Foust has presented genuine issues of material fact and must be allowed the opportunity to prove his case. The trial court decision should be reversed and the case remanded for trial on all issues.

Respectfully submitted this 9th day of November, 2017.

LENARD L. WITTLAKE, PLLC

A handwritten signature in black ink, appearing to read 'Lenard L. Wittlake', is written over a horizontal line.

Lenard L. Wittlake, WSBA No. 15451
Attorney for Appellant

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2 Attorney & Counselor at Law
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6
7 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
8 DIVISION III

9 BAKER BOYER NATIONAL BANK,

10 Plaintiff/Respondent,

11 vs.

12 JAMES PATTERSON FOUST, JR.,

13 Defendant/Appellant.

No. 355268

CERTIFICATE OF SERVICE

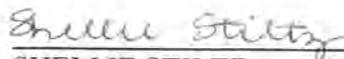
(DEFENDANT/APPELLANT'S
BRIEF)

14 SHELLIE STILTZ declares under penalty of perjury under the laws of the
15 State of Washington: That I am a citizen of the United States, over the age of 18
16 years, and that on November 9, 2017, a true and correct copy of the
17 DEFENDANT/APPELLANT'S BRIEF, as well as a copy of this CERTIFICATE OF
18 SERVICE, were mailed by regular first class mail, postage prepaid, to:

18 Thomas T. Bassett
19 Foster Pepper PLLC
20 618 W. Riverside, Ste. 300
21 Spokane, WA 99201-5102

Todd Reuter
Foster Pepper PLLC
618 W. Riverside, Ste. 300
Spokane, WA 99201-5102

22 Signed at Walla Walla, WA, this 9th day of November, 2017.

23 
24 SHELLIE STILTZ