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No. 70662-4  
COURT OF APPEALS,  
DIVISION I  
OF THE STATE OF WASHINGTON

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Boris Petrenko, et al., Appellants

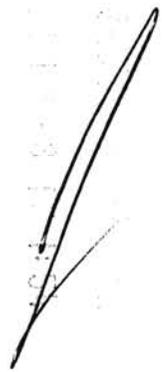
v.

TBF Financial, LLC, Respondent

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BRIEF OF APPELLANT PETRENKO

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A handwritten signature in black ink, appearing to be 'Andreas Kischel', written over a faint, dotted grid background.

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## I. INTRODUCTION

Appellant Boris Petrenko, co-counsel for defendant Stay-in-Home Mortgage, LLC, appeals CR 11 sanctions granted against him to Respondent-plaintiff TBF Financial, LLC, by the trial court for Petrenko's filing frivolous CR 12 motion to dismiss lawsuit for lack of capacity to sue. (CP 122-124; RP 1-18). Respondent TBF Financial, LLC argued that it was entitled to attorney's fees as sanctions under CR11. (CP 48-56; CP 64-65; CP 72-73; CP 74-75). However, the trial court reserved determination of the amount of attorney's fees for a later time. (CP 123; RP 17-18).

The record on appeal shows that CR 11 sanctions imposed against Petrenko is the result of genuinely egregious errors of law committed by the lower court and therefore this Court should reverse imposition of CR 11 sanctions against Petrenko.

## II. ASSIGNMENT OF ERROR

1. The trial court erred in finding Petrenko's CR 12 motion to dismiss for lack of capacity was not well grounded in fact. (CP 123; RP 1-18)
2. The trial court erred in finding Petrenko's CR 12 motion to dismiss for lack of capacity to sue was not warranted by existing law. (CP 123; RP 1-18).

3. The trial court erred in finding Petrenko's CR 12 motion to dismiss for lack of capacity to sue was frivolous in violation of CR 11. (CP 123; RP 1-18).

4. For the purposes of CR 11 sanctions, the trial court erred in finding that TBF Financial, LLC, operated under its "true name" and was not required to register pursuant to RCW 19.80.010. (CP 123; RP 3-5).

5. For the purposes of CR 11 sanctions, the trial court erred in finding that TBF Financial, LLC, purchase and resale of the lease equipment for its residual value constitutes "securing or collecting debts or enforcing mortgages and security interests in property securing debts" pursuant to RCW 25.15.350(h). (RP 3-4).

6. For the purposes of CR 11 sanctions, the trial court erred by not considering evidence that TBF Financial, LLC, was purchasing and reselling lease equipment for its residual value in the State of Washington. (CP 6-8; CP 15-17; CP 83; CP 115-116).

7. For the purposes of CR 11 sanctions, the trial court erred in finding that TBF Financial, LLC, purchase and resale of the lease equipment for its residual value did not constitute "doing business" under RCW 25.15.350(h). (CP 121-124; RP 1-19).

### III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

This appeal presents the issue of whether the trial court abused its discretion by finding that CR 11 sanctionable conduct occurred, whereas Petrenko presented his argument, legal brief and documentary evidence in support of his CR 12 motion to dismiss for lack of capacity to sue.

### IV. STATEMENT OF THE CASE

Respondent TBF Financial, LLC is a Limited Liability Company organized in the State of Illinois. (CP 9). TBF Financial, LLC, is not registered in the State of Washington. (CP 71; CP 72-73). TBF Financial, LLC, is in business of buying the equipment lease charge-offs. (CP 118). TBF Financial collects deficient lease payments **and also purchases and resells the lease equipment for its residual value for profits in the State of Washington.** (CP 6-8; CP 15-17; CP 40-41; 115-116; CP 118). From approximately year 2005 through the present time, TBF Financial, LLC, commenced over hundred twenty lawsuits of commercial nature in Washington State Courts. (CP 93-114). TBF Financial, LLC filed lawsuits in various counties of the state of Washington. (CP 93-114). TBF Financial under pretense of the breach of contract claim in its every lawsuit resells lease equipment for its residual value in the State of Washington. (CP 93-114; CP 115-116).

On or about September 23, 2011, TBF Financial, LLC, purchased Stay-in-Home defaulted account and received assignment from CIT Technology Financing Services, Inc. (CP15). Respondent TBF Financial, LLC, sued Stay-in-Home Mortgage, LLC, in King County Superior Court on defaulted account for unpaid equipment lease payments claiming breach of contract. (CP 1-3; CP 9-11). In its disguised breach of contract lawsuit against Stay-in-Home Mortgage, LLC, similarly to its all other lawsuits, TBF Financial, LLC, was also reselling lease equipment for its residual value to Stay-in-Home Mortgage, LLC. (CP 8; CP 17; CP 41; CP 116).

In case at hand, like on other numerous occasions, this TBF Financial, LLC's underlying breach of contract lawsuit against Stay-in-Home Mortgage, LLC, did not involve an action in replevin, nor in rem or repossession to recover property. Instead, TBF Financial was reselling its lease equipment for its residual value to Defendant Stay-in-Home.

In January 2013, Appellant Petrenko served TBF Financial, LLC, with defendant's interrogatories and requests for production. (CP 24-36). Respondent TBF Financial, LLC, provided responses to defendant's interrogatories through which Appellant Petrenko established that TBF Financial, LLC, was not registered in the State of Washington as required under RCW 19.80.010. (CP 24-42).

Appellant Petrenko further performed a cursory check of the Washington Secretary of State Department of Corporations web site at <http://www.sos.wa.gov/corps/> and the Washington State Department of Licensing web site at <http://www.dol.wa.gov/business/checkstatus.html> which revealed that no entity named TBF Financial, LLC, exists as a registered or licensed limited liability company in the State of Washington. (CP 18-23). Appellant Petrenko also noticed that TBF Financial, LLC in its original and amended complaints stated that it was organized and registered in the State of Illinois. (CP 1; CP 9). Both its original and amended complaints had accounting statement attachments showing purchase and resale of the lease equipment for its residual value and sale tax. (CP 6-8; CP 15-17). The resale of the lease equipment was also evident from the documentation produced by TBF Financial in response to Defendant Stay-in-Home discovery requests. (CP 41).

On April 16, 2013, Appellant Petrenko filed CR 12(h)(2) Motion to Dismiss Plaintiff's Complaint for Lack of Capacity to Sue. (CP 18-23). In this motion Petrenko argued that Plaintiff TBF Financial, LLC, failed to complete registration as provided for in RCW 19.80.010 and therefore lacked capacity to maintain any lawsuit in any of the courts of this state. (CP 18-23).

On May 13, 2013, TBF Financial, LLC, responded to Petrenko's motion to dismiss in its opposition brief. (CP 48-56). In its response, TBF Financial, LLC, argued that it was "securing or collecting debts" and its activities in the state of Washington did not qualify it as "transacting business." (CP 48-56; CP 64-71; CP 72-73). TBF Financial, LLC claimed that under RCW 25.15.350(h) it was exempted from registration requirement set in RCW 19.80.010. TBF Financial, LLC also argued that it was not using "a trade name," instead it was operating under its "true name." (CP 48-56). Attorney for TBF Financial, LLC, argued that Petrenko's motion was frivolous in its nature and requested the trial court to impose CR 11 sanctions against Petrenko. (CR 64-65).

On May 13, 2013, Appellant Petrenko filed reply to TBF Financial, LLC's, opposition to defendant's motion to dismiss. (CP 79-85). In his reply, Appellant Petrenko brought to the attention of the trial court that TBF Financial, LLC, resells its acquired lease equipment for its residual value in the State of Washington. (CP 83). Appellant Petrenko in support of his reply submitted exhibits that clearly reflected purchase and resale of the lease equipment by TBF Financial, LLC in the State of Washington. (CP 86-87; CP 88-89; CP 115-116; CP 117-118).

In its pleadings Respondent TBF Financial, never denied the fact that it was reselling the lease equipment for its residual value and that such resale occurred on numerous other occasions within the state.

On June 21, 2013, the trial court conducted motions hearing and denied Appellant Petrenko's CR 12 motion to dismiss for lack of capacity to sue. (CP 121-124; RP 1-19). The trial court made a finding that Appellant Petrenko's motion to dismiss for lack of capacity to sue was frivolous and in violation of CR 11. (CP 121-124; RP 15). The trial court reserved determination of the amount of sanctions to a later time. (CP 123; RP 17-18).

In his pleadings submitted to the trial court Petrenko merely pointed trial court that since TBF Financial resells its lease equipment for residual value, it is therefore doing business in the State of Washington within statutory meaning. In view of the fact that TBF Financial is doing business it must register pursuant to Ch. 19.80 RCW. If TBF Financial is not registered, it cannot maintain any lawsuits in any courts of the State of Washington. The trial court sanctioned Petrenko pursuant to CR 11 for making such motion.

On July 13, 2013, Petrenko timely filed this appeal. (CP 137-142).

## V. SUMMARY OF ARGUMENT

This case presents an issue of substantial public interest capable of recurring in the future because the State of Washington has interest in enforcement of its laws and protection of the public. Contrary, TBF Financial claims that it is not required to comply with Chapter 19.80 RCW requirements and, in essence, it declared that other foreign companies may similarly conduct business in the State of Washington without registration.

Furthermore, while the lower court proceedings focused almost exclusively on the conduct of defendant's counsel, this appeal shifts the spotlight to the other side of the table, i.e., to the inequitable conduct of Jacob Rosenblum, counsel for TBF Financial. A fair inquiry reveals that counsel for TBF Financial mislead the lower court as to the true nature of the TBF Financial business activities in the State of Washington, i.e., **purchase and resale of the lease equipment for its residual value**. Although Petrenko brought this fact to the attention of the lower court and presented supporting documentary evidence, the lower court simply ignored it. This one-sided administration of justice is both unfair on its face and contrary to established law. If this Court is to stay true to its previous rulings, it

should reverse the lower court's award of CR 11 sanctions against Petrenko in its entirety.

## VI. ARGUMENT

### (1) Standard of Review

The standard of appellate review for such sanctions is the abuse of discretion. Biggs v. Vail, 124 Wash.2d 193, 197, 876 P.2d 448 (1994) (citing Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wash.2d 299, 338-39, 858 P.2d 1054 (1993)). A court's determination will not be disturbed absent a clear abuse of discretion. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006). "A discretionary decision rests on 'untenable grounds' or is based on 'untenable reasons' if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is 'manifestly unreasonable' if 'the court, despite applying the correct legal standard' to the supported facts, adopts a view 'that no reasonable person would take.'" Mayer, 156 Wn.2d at 684 (internal quotation marks omitted) (quoting State v. Rohrich, 179 Wn.2d 647, 654, 71 P.3d 638 (2003)).

If a trial court's findings of fact are clearly unsupported by the record, then an appellate court will find the trial court abused its discretion. Mayer, 156 Wn.2d at 684. An appellate court can disturb a trial court's sanction only if it is clearly unsupported by the record. Ermine v. City of

Spokane, 143 Wn.2d 636, 650, 23 P.3d 492 (2001) (noting that a reasonable difference of opinion does not amount to abuse of discretion).

In deciding whether the trial court abused its discretion, we must keep in mind that “[t]he purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system”. (Emphasis added). Biggs v. Vail, 124 Wash.2d 193, 197, 876 P.2d 448 (1994) (citing Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 220, 829 P.2d 1099 (1992)).

CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. Bryant, at 220, 829 P.2d 1099. Courts should employ an objective standard in evaluating attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by “inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted”. Bryant, at 220, 829 P.2d 1099. The attorney's reasonableness is evaluated by an objective standard, meaning the court should ask whether a reasonable attorney in similar circumstances could believe his or her actions were factually and legally justified. Roeber v. Dowty Aerospace Yakima, 116 Wash.App. 127, 142, 64 P.3d 691 (2003) (citing Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 220, 829 P.2d 1099 (1992)).

An abuse of discretion occurs when an order is manifestly unreasonable or based upon untenable grounds. Blair v. GIM Corp., Inc.,

88 Wash.App. 475, 482, 945 P.2d 1149 (1997). Courts should conduct an inquiry into “what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted” to determine if the attorney engaged in an appropriate level of pre-filing investigation. Blair v. GIM Corp., Inc., 88 Wash.App. 475, 482, 945 P.2d 1149 (1997) (citing Bryant v. Joseph Tree Inc., 119 Wash.2d 210, 220, 829 P.2d 1099 (1992)).

Because the trial court’s order does not identify the basis of the finding of sanctionable conduct in violation of CR 11, Petrenko will address each argument TBF Financial, LLC, raised in support of its motion for CR 11 sanctions against Petrenko. Regardless of the basis, the finding of sanctionable conduct in violation of CR 11 was an abuse of discretion and must be reversed.

**(2) Scope of CR 11**

CR 11 requires attorneys to date and sign all pleadings, motions and legal memoranda. Such signature constitutes the attorney's certification that:

“to the best of the ... attorney's knowledge, information, and belief, formed after reasonable inquiry it [the pleading, motion or memoranda] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose,

such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Biggs v. Vail, 124 Wash.2d 193, 196, 876 P.2d 448 (1994).

CR 11 addresses two separate problems: baseless filings and filings made for an improper purpose. In re Cooke, 93 Wash.App. 526, 529, 969 P.2d 127 (1999) (citing Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 217, 220, 829 P.2d 1099 (1992)).

“The burden is on the movant to justify the request for sanctions.” Brin v. Stutzman, 89 Wash.App. 809, 827, 951 P.2d 291 (1998) (citing Biggs, 124 Wash.2d at 202, 876 P.2d 448).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 219, 829 P.2d 1099 (1992).

The Ninth Circuit has observed that:

“Were vigorous advocacy to be chilled by the excessive use of sanctions, wrongs would go uncompensated. Attorneys, because of fear of sanctions, might turn down cases on behalf of individuals seeking to have the courts recognize new rights. They might also refuse to represent persons whose rights have been violated but whose claims are not likely to produce large damage awards. This is because attorneys would have to figure into their costs of doing business the risk of

unjustified awards of sanctions.”

Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 219, 829 P.2d 1099 (1992).  
(citing Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1363–64  
(9th Cir.1990)).

The purpose behind the rule is to deter baseless filings, not filings which may have merit. Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 220, 829 P.2d 1099 (1992). Interpretation of CR 11 thus requires consideration of both CR 11's purpose of deterring baseless claims as well as the potential chilling effect CR 11 may have on those seeking to advance meritorious claims. Bryant v. Joseph Tree, Inc., 119 Wash.2d 210, 219, 829 P.2d 1099 (1992).

CR 11 does not provide for sanctions, however, merely because an action's factual basis proves deficient or a party's view of the law proves incorrect. Doe v. Spokane and Inland Empire Blood, 55 Wash.App. 106, 111, 780 P.2d 853 (1989). The principal concern of the rule is whether the attorney acted reasonably in taking the action. Id., at 111, citing Cabell v. Petty, 810 F.2d 463, 466 (4th Cir.1987). Accordingly, in order for the trial court to rule on a party's motion for CR 11 sanctions, it is essential that the court inform itself and make findings as to the inquiry undertaken by the nonmoving party. Id., at 111. The court's focus should begin with the language of the rule itself and center on the attorney's: “knowledge,

information, and belief, formed after reasonable inquiry ...” CR 11. Doe v. Spokane and Inland Empire Blood, 55 Wash.App. 106, 111, 780 P.2d 853 (1989). The trial court should inquire into, and make relevant findings regarding the research into the law and the investigation into the facts conducted by respondent's attorney prior to commencing this lawsuit. Doe v. Spokane and Inland Empire Blood, 55 Wash.App. 106, 112, 780 P.2d 853 (1989).

CR 11 sanctions are not appropriate because an action’s factual basis ultimately proves deficient or a party’s view of the law proves incorrect. Citizens for Clean Air. v. City of Spokane, 114 Wn.2d 20, 40, 785 P.2d 447 (1997).

Counsel may be subject to CR 11 sanctions “if three conditions are met: (1) the action is not well grounded in fact, (2) it is not warranted by existing law, and (3) the attorney signing the pleading has failed to conduct a reasonable inquiry into the factual or legal basis of the action.” Herring v. Department of Social and Health Services, 81 Wash.App. 1, 35, 914 P.2d 67 (1996) (citing Lockhart v. Greive, 66 Wash.App. 735, 743-44, 834 P.2d 64 (1992); Hicks v. Edwards, 75 Wash.App. 156, 162, 876 P.2d 953 (1994)). A complaint must lack a factual or legal basis before it can become the proper subject of CR 11 sanctions. IBF, LLC v. Heuft, 141 Wash.App. 624, 637, 174 P.3d 95 (2007) (citing Bryant v.

Joseph Tree, Inc., 119 Wash.2d 210, 219-220, 829 P.2d 1099 (1992)). Even then, “the court cannot impose CR 11 sanctions unless it also finds that the attorney who signed and filed the complaint failed to conduct a *reasonable inquiry* into the factual and legal basis of the claim.” Id., at 637. (Emphasis original). The court must specify the sanctionable conduct in its order. North Coast Elect. Co. v. Selig, 136 Wash.App. 636, 649, 151 P.3d 211 (2007).

To avoid being swayed by the benefit of hindsight, the trial court should impose sanctions only when it is “patently clear that a claim has absolutely no chance of success.” McDonald v. Korum Ford, 80 Wash.App. 877, 884, 912 P.2d 1052 (1996) (citing Oliveri v. Thompson, 803 F.2d 1265, 1275 (2d Cir.1986) (quoting Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 254 (2d Cir.1985)), *cert. denied*, 480 U.S. 918, 107 S.Ct. 1373, 94 L.Ed.2d 689 (1987); Bryant, 119 Wash.2d at 220, 829 P.2d 1099).

*A case of first impression cannot be said frivolous.* (Emphasis added). Collinson v. John L. Scott, Inc., 55 Wn.App. 481, 488, 778 P.2d 534 (1989). Cases of first impression that present debatable issues of substantial public importance are not frivolous. Moorman v. Walker, 54 Wash.App. 461, 466, 773 P.2d 887 (1989) (citing Linda D. v. Fritz C., 38 Wash. App. 288, 301, 687 P.2d 223, review denied, 102 Wash.2d 1024

(1984)).

**(3) The Court of Appeals Should Consider All Evidence Presented by Petrenko for the Purposes of Determination as to Whether Petrenko has Committed CR 11 Violation.**

“Evidence called to the attention of the trial court is properly before appellate court, whether or not it was considered by the trial court.”

Goodwin v. Wright, 100 Wash.App. 631, 648, 6 P.3d 1 (2000).

When the facts are undisputed, the appellate court is not bound by the trial court’s interpretation, but may draw its own legal conclusions from the evidence. City of Seattle, v. Shepherd, 93 Wn.2d 861, 613 P.2d 1158 (1980). An undisputed fact is “a fact disclosed in the record or pleadings that the party against whom the fact is to operate either has admitted or has conceded to be undisputed.” Heriot v. Lewis, 35 Wn.App. 496, 668 P.2d 589 (1983). The appellate court may make its own findings based on undisputed evidence in the record. State ex rel. Coyle-Reite v. Reite, 46 Wn.App. 7, 728 P.2d 625 (1986).

This Court should consider legal briefs and evidence presented by Petrenko to the trial court in support of his CR 12 Motion to Dismiss for Lack of Capacity to Sue.

TBF Financial, LLC, does not dispute the fact that it purchases and resells the lease equipment for its residual value within the State of Washington.

At the time of the motions hearing the following undisputed evidence was presented to the trial court by Appellant Petrenko and Respondent TBF Financial, LLC

- TBF Financial, LLC, Response to Defendants' CR 12 Motion to Dismiss and Request for CR 11 Sanctions. Footnote 1 makes specific admission that TBF is "a limited liability company." (CP 49).
- TBF Financial filed its original complaint with attachments reflecting purchase and resale of the lease equipment. (CP 6; CP 8).
- TBF Financial amended complaint shows purchase and resale of the lease equipment. (CP 15; CP 17).
- TBF Financial in response to Defendant's Interrogatories and Requests for Production provided Exhibit 1 which reflects sale of the lease equipment for its residual value (CP 40-41).
- Petrenko presented to the trial court Defendants' Reply to Plaintiff's Opposition to Defendants' CR 12 Motion to Dismiss and Request for CR 11 Sanctions. (CP 79-118). In his legal brief

Petrenko pointed out to the trial court that TBF Financial resells its equipment for residual value in the State of Washington. (CP 83).

- Defendant Stay-in-Home in support of its response to TBF Financial, LLC, opposition brief submitted exhibits that clearly showed purchase and resale of the lease equipment for its residual value. (CP 86-87; CP 115-116; CP 117-118).

This information and evidence was crucial in determination of CR 11 violation, which the trial court simply ignored and that clearly showed that TBF Financial, LLC does not satisfy RCW 25.15.350(h) exceptions because it did not: “secure or collected debts or enforced mortgages and security interests in property securing debts.” Contrary to TBF Financial argument, its resale of the lease equipment does not satisfy statutory language under RCW 25.15.350(h). (CP-54).

Consequently, for the purposes of determination of CR 11 sanctions, this Court should consider Petrenko’s legal briefs and exhibits that were called to the attention of the trial court because such evidence was neglected by the trial court at the time of hearing.

**(4) Under Both RCW 25.15.340 and RCW 19.80.040 TBF Financial, LLC, Lacked Capacity to Maintain its Action Against Defendant Stay-in-Home Mortgage, LLC.**

Pursuant to **RCW 19.80.040 Failure to File:**

“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.”

**RCW 19.80.010. Registration required**

“Each person or persons who carries on, conducts, or transacts business in this state under any trade name must register that trade name with the department as provided in this section.

(3) Foreign or domestic limited liability company: The registration must set forth the limited liability company name as filed with the office of the secretary of state.”

**RCW 25.15.340. Doing business without registration**

“(1) A foreign limited liability company doing business in this state may not maintain any action, suit, or proceeding in this state until it has registered in this state, and has paid to this state all fees and penalties for the years or parts thereof, during which it did business in this state without having registered.”

At the time of CR 12 Motion to Dismiss hearing, Appellant Petrenko's brief with legal authorities and exhibits supported his CR 12 Motion to Dismiss Plaintiff TBF Financial's complaint against Stay-in-Home Mortgage. Petrenko made proper argument based on statutory language that TBF Financial lacked capacity to maintain its action against Stay-in-Home because TBF Financial failed to complete registration as provided for in RCW 19.80.010. (CP 18-23; CP 79-85).

TBF Financial on other side argued that that it does not operate under a trade name and is not required to register. (CP 48-56) TBF Financial further argued that its activities within the State of Washington related only to "securing or collecting debts" and does not qualify as "transacting business" under RCW 25.15.350(h).

The trial court incorrectly agreed that TBF Financial operated under its "true name" and that it was "securing or collecting debts" within the meaning of the RCW 25.15.350(h). Petrenko's CR 12 motion to dismiss was not frivolous in violation of CR 11 because TBF Financial misrepresented the fact that it was operating under its "true name" and "securing or collecting debts." Hence, the trial court abused its discretion in finding that Petrenko's motion was sanctionable in violation of CR 11.

**(5) Petrenko's CR 12 Motion was not Frivolous Because TBF Financial LLC Transacts Its Business Under "a Trade Name" Within the Meaning of Chapter 19.80 RCW.**

**RCW 19.80.005. Definitions:**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.

(2) "Department" means the department of revenue.

(3) "Person" means any individual, partnership, limited liability company, or corporation conducting or having an interest in a business in the state.

(4) "Trade name" means 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 the business; or

(b) Includes words which suggest additional parties of interest such as "company," "and sons," or "and associates."

(5) "True and real name" means:

(a) The surname of an individual coupled with one or more of the individual's other names, one or more of the individual's initials, or

any combination;

(b) The designation or appellation by which an individual is best known and called in the business community where that individual transacts business, if this is used as that individual's legal signature;

The definition of a “true and real name” is stated clearly in RCW 19.80.005(5). There is absolutely no confusion as to what constitutes a “true and real name.” In case at hand Respondent TBF Financial, LLC, is not using “the surname of an individual coupled with one or more of the individual’s other names, one or more of the individual’s initials, or any combination.” Attorney Rosenblum did not even argue, nor did he explain how his “true name” theory satisfies definition under the statute.

The statutory definition of “a trade name” plainly “means 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 the business; or (b) includes words which suggest additional parties of interest such as “company,” “and sons,” or “and associates.” Here, TBF Financial operates as limited liability *company* (LLC) as defined in RCW. TBF Financial, LLC uses word to identify its business, which does not include the true and real names of all persons conducting business.

Under RCW 19.80.005(3) “person” means any individual, partnership, *limited liability company*, or corporation conducting or having an interest in a business in the state. In case at hand TBF Financial is registered as *limited liability company* and has interest in a business in the State of Washington because it purchases and resells lease equipment for its residual value for profits. (CP 6-8; 15-17; CP 40-41; CP 86-87; CP 115-116; CP 118).

Attorney Rosenblum admits on behalf of TBF Financial, LLC, that “its status is as a limited liability company (LLC).” (CP-50). Moreover, in his declaration, attorney Rosenblum identifies “Plaintiff TBF Financial, LLC, is a limited liability company.” (CP 65). Rosenblum farther does so in his April 5, 2013, correspondence to Petrenko where Rosenblum says that “Although TBF Financial, LLC’s complaint originally stated TBF was a corporation (when it is in fact a limited liability company)...” (CP-66).

Consequently, TBF Financial, LLC used “a trade name” within statutory definition, not its “true name” as TBF Financial misrepresented to the trial court at the time of motions hearing.

- (6) **Petrenko's CR 12 Motion was not Frivolous Because TBF Financial's Purchase and Resale of the Lease Equipment does not Qualify as "Securing or Collecting Debts" Activities Under Chapter 25.15 RCW.**

**RCW 25.15.350. Transactions not constituting transacting business:**

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

- (a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (b) Holding meetings of the members, or managers if any, or carrying on other activities concerning internal limited liability company affairs;
- (c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositaries with respect to those securities or interests;
- (e) Selling through independent contractors;

- (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;
- (g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;
- (j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (k) Transacting business in interstate commerce;
- (l) Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;
- (m) Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this state; or
- (n) Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this state.

(2) The list of activities in subsection (1) of this section is not exhaustive.

In this case TBF Financial, LLC was not “securing or collecting debts or enforcing mortgages and security interest in property securing debts” within the meaning of the statute because TBF Financial, LLC, action was not in rem, nor replevin or repossession to secure property. Instead, TBF Financial, LLC, was repeatedly reselling its lease equipment on over one hundred twenty occasions, in all of its breach of contract actions that it commenced in the State of Washington. It is not clear on how many occasions TBF Financial sold its lease equipment as a result of its settled claims without filing legal action. Consequently, reselling of the lease equipment for its residual value cannot constitute “securing or collecting debts or enforcing mortgages and security interest in property securing debts.” This is convenient misclassification by TBF Financial, LLC, for the purposes of misleading the courts and the public in the State of Washington as to the true nature of its business. The plain meaning of “collecting debts” is merely an attempt to recover unpaid balance. The plain meaning of “securing security interests in property securing the debts” clearly means to take possession of the property, not resale of it. Attorney Rosenblum did not even argue, nor did he explain how resale of the lease equipment satisfies an exception under the collection statute.

(7) **RCW 25.15.345 Imposes Affirmative Duty on the Courts to Enjoin Any Foreign Limited Liability Company From Doing Any Business in This State Without Registration.**

Pursuant to RCW 25.15.345 “the superior courts shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in this state if such foreign limited liability company has failed to register under the article...”

Thus, it is very perplexing that in case at hand the trial court imposed CR 11 sanctions on Petrenko instead of enjoining TBF Financial, LLC from its further business activities in the State of Washington until it complies with statutory registration requirements.

(8) **For the Purposes of Evaluation of Petrenko’s Conduct with Relation to CR 11 Sanctionss, This Court Should Give Ordinary Meaning to the Words of the Statutory Language.**

When this court interprets a statute, it looks first to the ordinary meaning of the words used by the legislature. Anderson v. City of Seattle, 123 Wash.2d 847, at 851, 873 P.2d 489 (1994) (citing Sofie v. Fiberboard Corp., 112 Wash.2d 636, 668, 780 P.2d 206 (1989)). In such cases, this court’s primary duty is to ascertain and give effect to the intent and purpose of the legislature. Harmon v. Department of Social and Health Services, State of Washington, 134 Wash.2d 523, at 530, 951 P.2d 770

(1998) (citing State v. Hennings, 129 Wash.2d 512, 522, 919 P.2d 580 (1996)). If the language is unambiguous, the plain wording of the statute controls. Id., at 851, citing Geschwind v. Flanagan, 121 Wash.2d 833, 841, 854 P.2d 1061 (1993).

Liberal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned. Sorrells v. United States, 287 U.S. 435, 446 (1932). It is the function of the court to construe the statute, not to defeat it as construed. Sorrells, at 449.

For the purposes of CR 11 sanctions, in case at hand, the trial court ignored its primary function to construe the statute, not to defeat it. The trial court ignored and overlooked the crucial fact and evidence as to the nature of the Respondent TBF Financial, LLC, business activity, which clearly shows that TBF Financial, LLC is purchasing and reselling the lease equipment in the State of Washington for profit. (CP 6; CP 8; CP 15; CP 17; CP 40-41; CP 87; CP 116; CP 118). Furthermore, the definitions under RCW 19.16.100 don't include purchase and sale of the lease equipment activities as collection activity.

In its numerous breach of contract actions filed in various counties of the State of Washington, Respondent TBF Financial, LLC added residual value from resale of the lease equipment to delinquent monthly

payments and in this manner concealed its resale operations within the state. (CP-41). Instead of enjoining ongoing unregistered business activities in this state as required by the statute, the trial court gave TBF Financial green light to continue resale of its lease equipment for profit.

(9) **Applying Objective Standard to Petrenko’s Conduct and Testing by “Inquiring What was Reasonable to Believe at the Time the Motion was Submitted to the Trial Court,” a Reasonable Attorney in Similar Circumstances Could Believe His Actions were Factually and Legally Justified.**

It is an attorney’s obligation to advocate for his or her client and to seek the most favorable to the client resolution in any given case, if possible. Petrenko did exactly that—he was advocating for his client Stay-in-Home Mortgage, LLC.

Although employing a poor choice of words in explaining its ruling, review of the record indicates that the trial court did utilize an objective standard of reasonableness in its determination of this case. 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.

## V. CONCLUSION

Considering all pleadings, legal and statutory authorities and evidence, the trial court lacked tenable grounds to impose CR 11 sanctions against Petrenko. The trial court adopted an unreasonable view in sanctioning Petrenko. As noted above, Petrenko had a good faith basis under CR 11 to believe he was justified in bringing his CR 12 Motion to Dismiss for Lack of Capacity to Sue to protect his client Stay-in-Home Mortgage, LLC. *See Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992) (“The court should inquire whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified.”). Appellant Petrenko therefore requests that this Court reverse the lower court and vacate the award of CR 11 sanctions in its entirety.

Dated this 30<sup>th</sup> day of November, 2013.

By \_\_\_\_\_

  
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**COURT OF APPEALS**

**DIVISION 1 OF THE STATE OF WASHINGTON**

BORIS PETRENKO,	)	Case No.: 70662-4
	)	
Appellants,	)	
	)	
vs.	)	DECLARATION OF MAILING
	)	
TBF FINANCIAL, LLC,	)	
Respondent.	)	

I am legal assistant at Kischel Law Firm; under penalty of perjury under the laws of the State of Washington declare:

That on this day, I, Lyuba Aulova, sent via first class mail, postage pre-paid, the following BRIEF OF APPELLANT PETRENKO to the

attorneys of record for Respondent:

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Containing a true copy of the document to which this declaration is attached.

Dated at Bellevue, Washington this 2<sup>nd</sup> day of December, 2013.

  
\_\_\_\_\_  
Lyuba Aulova