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NO. 97539-6

SUPREME COURT OF THE STATE OF WASHINGTON

SETH BURRILL PRODUCTIONS, INC., a Washington corporation,

Respondent,

vs.

REBEL CREEK TACKLE, INC., a Washington corporation,

Appellant/Petitioner

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Respondent Seth Burrill Productions, Inc. (“SBP”) submits this Answer to oppose Petitioner Rebel Creek Tackle, Inc.’s (“RCT”) Petition for Review (the “Petition”).

SBP incorporates by reference its August 23, 2019 Opposition to RCT’s Motion for Extension of Time to file the untimely Petition. That Opposition outlines RCT’s inexplicable campaign of litigation harassment against SBP. This campaign includes (i) appeal of a Contempt Ruling against RCT which was found frivolous (Appeal One), (ii) appeal of a Receiver Ruling against RCT which was found frivolous (Appeal Two), (iii) appeal of a Sanctions Ruling against RCT’s counsel which was found frivolous (Appeal Three, which is the subject of this Petition), and, (iv) appeal of a Wrong Case Ruling (detailed below), which is currently pending with Division III (Appeal Four).

RCT’s Petition in this Appeal Three continues its harassment campaign, again forcing SBP to spend resources to respond to a meritless appeal.

II. COURT OF APPEALS DECISION

On July 11, 2019, the Court of Appeals of the State of Washington, Division III, issued its unpublished opinion in *Seth Burrill Productions, Inc., v. Rebel Creek Tackle, Inc.*, No. 35572-1-III, 2019 Wash. App. Lexis

1875 (Div. III, July 11, 2019) (“Appeal Three”). Appeal Three was an appeal by RCT from an order denying summary judgment and imposing CR 11 sanctions against RCT’s counsel. The Court found “RCT’s appeal frivolous,” affirmed the order on appeal, and found SBP is entitled to attorneys’ fees as sanctions under RAP 18.9(a) and its costs for the appeal (“Appeal Three Decision”).¹

III. ISSUES PRESENTED FOR REVIEW

SBP discerns that RCT attempts to present seven “Issues Presented for Review”:

(1) RCT entitles its first purported issue: “Judicial Authority, Mootness, CR 11 Sanctions”. RCT claims there are “issues of ‘substantial public interest’ and or suggest ‘conflict with a decision of the Supreme Court” But RCT’s argument (Petition at 7-16) fails to identify, explain, or detail any such conflicts, or any such public interest, or how RAP 13.4(b)(1), (2), or (3) are triggered.

(2) In its second purported issue, RCT protests the result of exercises of discretion against RCT, but fails to invoke any RAP 13.4(b) predicate.

(3) In its third purported issue, RCT accuses Division III of serious judicial impropriety, but provides no evidence. RCT’s conjecture of some

¹ A copy of the Appeal Three Decision is reproduced in the attached Appendix.

“lunch” in furtherance of judicial misconduct seems wholly inappropriate (grounded on mere speculation and not known to be true). Petition at 13.

(4) In its fourth purported issue, RCT protests the result of exercises of discretion against RCT’s counsel, but fails to invoke any RAP 13.4(b) predicate.

(5) In its fifth purported issue, RCT acknowledges that the referenced arbitration is concluded, making it moot as Division III ruled. RCT argues a substantial public interest, but RCT’s argument (Petition at 7-16) fails to present any explanation how a moot point about a private arbitration has any substantial public interest related to civil procedure in the Superior Courts.

(6) In its sixth purported issue, RCT claims the Superior Court had authority to hear its Motion for Summary Judgment, but fails to invoke any RAP 13.4(b) predicate.

(7) In its seventh purported issue, RCT claims the Superior Court had authority to hear its Motion about arbitration and for Summary Judgment. RCT alleges a conflict with “Washington state statutes and case law”, but RCT’s argument (Petition at 7-16) fails to present any explanation of any recognizable conflict under RAP 13.4(b).

RCT’s Petition (i) fails to show that RCT is an aggrieved party under RAP 3.1; (ii) fails to comply with the procedural requirements of RAP

13.4(a); and (iii) fails to demonstrate any basis for discretionary review under the substantive requirements of RAP 13.4(b).

SBP respectfully requests that RCT's Petition be denied and that SBP be awarded attorneys' fees and sanctions under RAP 18.9(a).

IV. STATEMENT OF THE CASE

Respectful of this Court's time, SBP will not restate the complete history of RCT's campaign of litigation harassment;² however, a short summary aids understanding of RCT's positions in its Petition.

RCT granted SBP a license to make fishing divers. RCT's counsel improperly terminated the license. SBP invoked arbitration and prevailed (the "Arbitration Award"). RCT did not pay the Arbitration Award.

SBP opened a Superior Court matter (Case No. 13-2-01982-0) to confirm the Arbitration Award as a Judgment, which was confirmed. SBP brought a motion for contempt, which was granted (the "Contempt Ruling"). RCT appealed the Contempt Ruling to Division III (Case No. 32119-3) ("Appeal One"). Division III affirmed the Contempt Ruling, finding RCT's appeal frivolous and awarding SBP attorneys' fees. RCT petitioned to the Supreme Court. This Court denied the petition.

² A broadened summary of the strained history between the parties is contained in SBP's August 23, 2019 Opposition to RCT's Motion for Extension of Time to file the untimely Petition.

RCT did not pay the Judgment or comply with Supplemental Proceedings. SBP moved in its Superior Court matter for appointment of a Receiver, which was granted (the “Receiver Ruling”). RCT appealed the Receiver Ruling to Division III (Case No. 34401-1) (“Appeal Two”). Division III affirmed the Receiver Ruling, finding RCT’s appeal frivolous and awarding SBP attorneys’ fees.

RCT then “moved” in SBP’s old Superior Court matter for “Summary Judgment” and “Declaratory Judgment”, despite the fact that SBP’s Superior Court matter included no Complaint, Cross Claim, or Counterclaim. Superior Court Judge Hazel denied RCT’s motions and awarded CR 11 sanctions against RCT’s counsel (the “CR 11 Ruling”). RCT appealed the CR 11 Ruling to Division III (Case No. 355721) (“Appeal Three”). Division III affirmed, finding RCT’s appeal frivolous and awarding attorneys’ fees and costs. This is the July 11, 2019 decision at issue in RCT’s present Petition.

While Appeal Three was pending, RCT commenced Arbitration Two, the result of which formally ended the license and awarded RCT nominal royalties. SBP participated in Arbitration Two without objection, and SBP fully complied with and fully satisfied the Arbitration Two Award. Because Arbitration Two was completed prior to Appeal Three, Division

III correctly concluded that RCT's arbitration arguments in Appeal Three were moot.

Despite SBP's full satisfaction of the Arbitration Two Award, RCT moved in SBP's old Superior Court matter to confirm the Arbitration Two Award as a Judgment. The Superior Court denied RCT's motion on procedural grounds (the "Wrong Case Ruling"), instructing RCT's counsel to file its own action and to pay the required filing fee in order to present RCT's requests. Instead of heeding the Superior Court's direction, RCT appealed the Wrong Case Ruling to Division III (Case No. 368998) ("Appeal Four"). RCT missed the deadline to file its Designation of Clerk's Papers in Appeal Four and missed the September 9, 2019 deadline to file its Opening Brief. RCT moved to extend time, which was granted on September 26, 2019, before SBP could be heard in opposition.

On Sunday September 29, 2019, RCT filed a "Motion to Consolidate Appeal of Division III cases 368998 and 355721" (Filing ID No. 20190929191022SC206013). RCT's newest Motion apparently requests that this Court consolidate Appeal Three (355721) with Appeal Four (368998), even though Appeal Three has already been decided by Division III and Appeal Four has not.

Against that backdrop, RCT petitions for discretionary review of the Appeal Three Decision affirming the sanctions lodged against RCT's

counsel and dismissing RCT's Motions for Summary Judgment, Declaratory Relief, CR 11 sanctions, and issues concerning arbitration. But RCT's seven "issues presented for review" do not adequately invoke or support the important legal circumstances that warrant discretionary review under RAP 13.4(b).

V. ARGUMENT

A. **The Court should deny the Petition because the Petition fails to show that RCT is an aggrieved party under RAP 3.1.**

RCT, like SBP, is a small, family owned, local business. Neither company has money to spend on litigation with no rational objective. Regrettably, none of RCT's counsel's actions that led to the Contempt Ruling (and Appeal One), the Receiver Ruling (and Appeal Two), the Sanctions Ruling (and Appeal Three), or the Wrong Case Ruling (and Appeal Four) could have benefitted RCT, even if it had been successful.

RCT has nothing to gain in this Appeal Three, and RCT could lose more attorneys' fees. Indeed, RCT appears not to be a real party in interest in the Petition. Washington courts have long held that for a party to be aggrieved, the decision must adversely affect that party's property or pecuniary rights, or a personal right, or impose on a party a burden or obligation. *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 150, 437 P.3d 677, 681 (2019) (quotations and citations omitted).

RCT's requests for arbitration are moot because the arbitration it sought already concluded with the award fully satisfied. The CR 11 sanctions were lodged against RCT's counsel, not RCT. Only an aggrieved party may seek appellate review. RAP 3.1.

Although an attorney may appeal sanctions on his own behalf, counsel for RCT did not appeal on his own behalf as an aggrieved party. RCT was not legally injured by the Appeal Three Decision and, therefore, lacks standing to seek further appellate review.³ *Id.*

B. The Court should also deny the Petition because the Petition fails to meet the requirements of RAP 13.4(a).

Dismissal of the Petition is appropriate under the procedural requirements for a Petition for Discretionary Review of RAP 13.4(a). As detailed in SBP's Opposition to RCT's Motion to Extend Time, the Petition was not timely filed and the filing fee was not timely paid.

C. The Court should also deny the Petition because the issues presented do not satisfy the requirements of RAP 13.4(b).

Dismissal of the Petition is appropriate under the substantive requirements of RAP 13.4(b) which identifies the only four circumstances this Court considers in granting discretionary review. The Petition fails to

³ SBP is uncertain of the present relationship between RCT and its counsel, but RCT's irrational litigiousness shows that RCT may be detached from the decision-making. For example, RCT's Petition, its Motion for Extension of Time, and the record from Appeal Three include no testimony from RCT. RCT's counsel appears to be acting unilaterally and for his own purposes in commission of RCT's litigation harassment campaign.

demonstrate a significant question as to applicability of any of the four circumstances.

1. RAP 13.4(b)(1).

Under RAP 13.4(b)(1), there is no Court of Appeals conflict with the Supreme Court. RCT provides no case law to demonstrate such a conflict exists between the Appeal Three Decision and a decision of the Supreme Court.

Indeed, the Supreme Court's decisions comport with the decision of the Court of Appeals in Appeal Three. First, the Court of Appeals found that RCT's challenge to the superior court's summary judgment ruling, ruling on arbitrability, and motion for stay have been rendered moot by the outcome of arbitration. Therefore, the Court of Appeals could not provide further relief. *State of Wash. v. T.J.S.-M.*, 193 Wn.2d 450, 454, 441 P.3d 1181, 1184 (2019) (stating this Court "do[es] not consider questions that are moot) (citations omitted).

Second, the Supreme Court has long held that it will not reverse a superior court's CR 11 decision unless "its order is manifestly unreasonable or based on untenable grounds." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). The Court of Appeals found several reasons why CR 11 sanctions against RCT's counsel were justified. The Court of Appeals properly applied and analyzed the

lower court's decision through an abuse of discretion standard. Finding no abuse of discretion, the Court of Appeals affirmed the lower court's sanctions finding. The application of the abuse of discretion standard is in direct alignment with the Supreme Court's decisions on the issue of CR 11 sanctions.

2. RAP 13.4(b)(2).

Under RAP 13.4(b)(2), there is no Court of Appeals conflict with a written decision of the Court of Appeals.

Again, RCT has failed to cite one decision from any division of the Washington Court of Appeals in conflict with the Court of Appeals' decision in Appeal Three. To the contrary, all divisions of the Court of Appeals apply the same standard when reviewing moot cases and cases for CR 11 sanctions under an abuse of discretion standard. Like the Supreme Court, case law from all divisions in this State directly align with the Court of Appeals' affirmation of the lower court's decision here in Appeal Three. *See, e.g., In re Parentage of Infant Child F.*, 178 Wn. App. 1, 9, 313 P.3d 451 (2013) (where proceedings are moot, the court cannot provide relief); *Timberland Bank v. Mesaros*, No. 50207-1-II, 2018 Wash. App. LEXIS 1158, *7, 2018 WL 2215463 (Div II, May 15, 2018) (same); *4518 S. 256th, LLC v. Karen L. Gibbon, PS*, 195 Wn. App. 423, 433, 382 P.3d 1 (2016) (same); *see also, e.g., Skimming v. Boxer*, 119 Wn. App. 748, 756, 82 P.3d

707 (2004) (adjudging CR 11 sanctions based on whether decision was unreasonable or on untenable grounds); *Heckard v. Murray*, 5 Wn. App. 2d 586, 594-595, 428 P.3d 141 (2018) (same); *Stiles v. Kearney*, 168 Wn. App. 250, 263, 277 P.3d 9 (2012) (same).

RCT fails to demonstrate that the Appeal Three Decision is in any way in conflict with any other Washington Court of Appeals decision regarding CR 11 sanctions and moot issues.

3. RAP 13.4(b)(3) and (4).

RAP 13.4(b)(3) and (4) require a significant question of law under the Constitution of the State of Washington or of the United States; or an issue of substantial public interest that should be determined by the Supreme Court. Under RAP 13.4(b)(3), there is no significant question of law under the Constitution of Washington or the United States. Under RAP 13.4(b)(4), there is no issue of substantial public interest requiring determination by the Supreme Court. RCT has not clearly stated any significant question of law pertaining to the Constitution of the State of Washington nor the United States. Similarly, RCT has not articulated any issue of substantial public interest which should be decided by the Supreme Court. RCT has failed to simply identify, argue, or articulate any of the above. Because RCT has failed to comply with RAP 13.4(b), this Court should deny its petition for review.

D. The Court should award SBP its attorneys' fees and issue sanctions because the untimely Petition does not meet any of the criterion required to bring this appeal.

RCT filed its Petition in violation of three fundamental provisions of the RAP, in addition to the main point that RCT's appeal is about an exercise of discretion already found to have been proper. RAP 3.1 was violated since RCT is not an aggrieved party, only its counsel is aggrieved. RAP 13.4(a) was violated because RCT did not file its Petition on time with the required filing fee. RAP 13.4(b) was violated because RCT did not identify which of the four circumstances that justify discretionary review are applicable and provable.

RCT's Petition is meritless. RCT's Petition makes no legal or economic sense – neither party has anything to gain. RCT's Petition was filed in violation of the Rules. RCT's Petition again delays finality for SBP. Most egregiously, RCT's Petition was filed as another chapter in its inexplicable campaign of litigation harassment, of which RCT's most recent "Motion to Consolidate" is a part. SBP continues to be harmed directly by RCT's counsel's harassment campaign – SBP is still involved in litigation that should have been fully completed years ago, and SBP is still paying attorneys' fees to fight RCT's litigation cavalcade.

Because RCT (i) filed its Petition for purposes of delay, (ii) filed a frivolous appeal, and (iii) failed to comply with the applicable rules to the


detriment of SBP, SBP respectfully requests an award of attorneys' fees and sanctions pursuant to RAP 18.1 and RAP 18.9. In particular, SBP also specifically requests an Order prohibiting RCT's counsel from continuing the litigation harassment campaign.

VI. CONCLUSION

RCT's Petition is improper under the law and the Rules of this Court. The Court of Appeals, in its decision, found the appeal (and all prior appeals before it) without merit and noted RCT did not present any debatable issue. Now RCT submits its Petition. However, in asking the Supreme Court to review the Court of Appeals decision affirming the order denying RCT's summary judgment motion and granting sanctions against its counsel, RCT fails to comply with any aspect of RAP 13.4(b). Therefore, SBP respectfully asks the Supreme Court to deny RCT's Petition and to award SBP attorneys' fees and sanctions.

DATED this 30 day of September, 2019.

LEE & HAYES, P.C.


By: 

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CERTIFICATE OF SERVICE

I certify that on the 30th day of September, 2019, I caused to be served a true and correct copy of the foregoing document by the method indicated upon:

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J. CHRISTOPHER LYNCH

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

SETH BURRILL PRODUCTIONS, INC.,))	No. 35572-1-III
a Washington corporation,)	
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
REBEL CREEK TACKLE, INC., a))	
Washington corporation,)	
)	
Appellant.)	

PENNELL, A.C.J. — Rebel Creek Tackle, Inc. appeals orders from the Spokane County Superior Court denying summary judgment and imposing CR 11 sanctions. We affirm the orders on review and award attorney fees and costs to Seth Burrill Productions, Inc.

BACKGROUND

Rebel Creek Tackle, Inc. (RCT) was formed to handle the business affairs of a fishing lure that came to be known as the “‘Bud’s Diver.’” *Seth Burrill II*, slip op. at 2.¹

¹ Unless otherwise noted, background facts are drawn from this court’s two prior decisions in this matter, *Seth Burrill Prods., Inc. v. Rebel Creek Tackle, Inc.*, No. 32119-3-III (Wash. Ct. App. July 7, 2015) (*Seth Burrill I*) (unpublished), <https://www.courts.wa.gov/opinions/pdf/321193.unp.pdf>, and *Seth Burrill Prods., Inc., v. Rebel Creek Tackle, Inc.*, No. 34401-1-III (Wash. Ct. App. Apr. 11, 2017) (*Seth Burrill II*) (unpublished), https://www.courts.wa.gov/opinions/pdf/344011_unp.pdf.

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Seth Burrill Prods., Inc. v. Rebel Creek Tackle, Inc.

RCT licensed Seth Burrill Productions, Inc. (SBP) as “the exclusive producer and distributor of the lures, granting it ‘full, unrestricted use of the injection molds,’” which were later sent to Plastic Injection Molds, Inc. (PIM), for production in Richland, Washington. *Seth Burrill I*, slip op. at 1-2.

The 2010 license agreement (Agreement) between RCT and SBP required SBP to sell 15,000 units within the first five years of the Agreement, and thereafter sell at least 3,000 units per year. The Agreement specified that if SBP did not meet these sales expectations, RCT could terminate the Agreement by written notice within 30 days of the five-year anniversary date, or, thereafter, by 30 days’ notice.

Due to conflicts between the parties, RCT unilaterally terminated the Agreement in 2012 and started distributing the fishing lures produced by PIM. SBP brought a breach of contract action and, in May 2013, an arbitrator determined that RCT breached the Agreement and entered an award that reinstated the Agreement, with modifications, and provided damages. Some of the modifications to the Agreement included that (1) SBP was to have use of the injection molds, (2) RCT was to “‘cooperate in the transfer and/or delivery of said molds as requested by [SBP],’” *Seth Burrill I*, slip op. at 2 (alteration in original), and (3) the expiration date for termination of the Agreement was extended from May 31, 2015, to May 31, 2016, such that the Agreement became a six-year contract

instead of a five-year contract. A month later, SBP successfully obtained an order confirming the arbitration award, pursuant to RCW 7.04A.220 and RCW 7.04A.250, in Spokane County Superior Court cause number 13-2-01982-0.

Shortly after prevailing in arbitration, SBP contacted PIM to get the injection molds transferred for the lures, but because the molds were RCT's property, PIM would not provide SBP the molds without permission. After unsuccessfully attempting to contact RCT, SBP contacted RCT's counsel who refused to agree to the transfer of the molds, told PIM to not give SBP the molds, and told SBP that he no longer represented RCT. After further unsuccessful attempts to contact RCT, SBP filed a motion for contempt in the superior court, which then determined RCT intentionally violated the court order confirming the arbitration award, and imposed remedial sanctions. RCT appealed, and this court found RCT's appeal was without any merit, affirmed the superior court's contempt finding, and awarded attorney fees and costs for the appeal to SBP.

Despite this court's ruling, SBP was unable to collect from RCT on its judgment, so SBP "offered to forgo a portion of the judgment amount and release other claims against [RCT] in exchange for partial payment of the judgment and assignment of the molds," and the patent assets. *Seth Burrill II*, slip op. at 3. SBP also wanted to engage in discovery of RCT's assets. Ultimately, RCT expressed no desire to accept SBP's offer,

which led to SBP's motion "for an order authorizing supplemental proceedings to determine the extent of [RCT's] nonexempt property available to satisfy the judgment."

Id. Later on, when SBP served RCT with written discovery requests authorized by the superior court, RCT's answers provided that "it did not have a current bank account, an insurance policy, a corporate minute book, or financial statements and had not filed income tax returns or made a profit between 2010 and 2013." *Id.* at 4. RCT claimed that the only assets it owned were the fishing lure molds, its patent assets, its Agreement with SBP, and an application for rights outside of the United States.

Due to SBP's concerns about ever collecting on its judgment, in the spring of 2016, SBP filed a motion in superior court "to appoint a general receiver for [RCT] and order [RCT] to assign the patent and molds to the receiver." *Id.* at 5. The superior court granted SBP's motion for a receivership. RCT immediately filed a notice of appeal and moved in the superior court for a stay of the receivership. RCT then paid a large cash sum into the registry of the superior court and filed a notice of supersedeas, but the superior court denied RCT's motion for stay.

RCT moved for discretionary review of the order denying a stay of the receivership. It also filed a motion for stay in this court. Appellate review commenced after our commissioner ruled that the receivership order was appealable as a matter of

right. The commissioner also stayed the receivership during the pendency of the appeal.

While this matter was on appeal, RCT's counsel prepared a motion for declaratory judgment of termination of the Agreement, dated June 1, 2016. The motion bears no case number, but it is captioned as a pleading for the Court of Appeals.² The body of the motion states it has been "filed in both the Court of Appeals and in the Spokane County Superior Court." Clerk's Papers at 73. This representation is misleading. The motion was filed with this court as part of the then-pending appeal. However, it was not directly filed with the superior court. Instead, the motion was merely e-mailed to the superior court. *Id.* at 79-80. A copy of the motion only made its way into the superior court file as part of the appellate record from the prior appeal.

The substance of RCT's declaratory judgment motion alleged that SBP had breached the Agreement by failing to sell 15,000 Bud's Diver units by June 1, 2016 (the date specified in the arbitration award). RCT's motion claimed it was noted for hearing on June 2, 2016. *Id.* at 73. The record on review does not show that such a hearing ever occurred.

² The top caption of the pleading reads, "IN THE COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON." Clerk's Papers at 73. The pleading is entitled "APPELLANT'S MOTION FOR DECLARATORY JUDGMENT OF TERMINATION OF LICENSE AGREEMENT AND FOR HEARING ON AN EMERGENCY BASIS ON JUNE 2, 2016." *Id.*

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Seth Burrill Prods., Inc. v. Rebel Creek Tackle, Inc.

In a decision dated April 11, 2017, this court determined the superior court did not abuse its discretion in granting SBP's motion to appoint a receiver, affirmed the order appointing the receiver and the superior court's refusal to assess RCT's post-judgment claim to setoffs, and awarded SBP attorney fees and costs. A mandate was filed terminating review of the case on May 11, 2017.

Shortly after issuance of the mandate, the superior court entered orders terminating the receivership and disbursing the cash funds held in the court's registry. The court's orders resolved the parties' dispute regarding the initial arbitration award and contempt sanction. The court orders provided that SBP was to file a satisfaction of judgment with the superior court after receiving the disbursement. However, no satisfaction of judgment was filed.

On July 6, 2017, RCT filed a motion for summary judgment in the superior court. The motion purported to relate to the motion for declaratory judgment that had been filed with the Court of Appeals in June 2016. RCT's motion requested a declaration that the Agreement was terminated and that rights and access to Bud's Diver be returned to RCT. RCT's motion was not supported by any authenticated documents. Instead, RCT appended a series of unsworn exhibits to its memorandum of authorities in support of summary judgment.

After RCT filed for summary judgment, SBP contacted RCT's counsel requesting that RCT withdraw its motion as it was not grounded in fact or law, and SBP notified RCT that if it was not going to withdraw its motion, SBP would pursue CR 11 sanctions against RCT's counsel.

RCT declined to withdraw its motion for summary judgment, and SBP filed a memorandum opposing RCT's motion and a separate motion for CR 11 sanctions against RCT's counsel. In its response to SBP's opposition to summary judgment and motion for CR 11 sanctions, RCT argued its motion for declaratory judgment was proper since the original superior court case had not yet been dismissed. RCT also requested CR 11 sanctions against SBP.

The superior court denied RCT's motions for summary judgment and for CR 11 sanctions. The court granted SBP's motion for CR 11 sanctions. In its oral ruling, the superior court explained that the main issue with RCT's summary judgment motion was that there were no pleadings tied to RCT's claims. The court imposed \$4,500 in CR 11 sanctions. Payment was to be made by counsel for RCT to counsel for SBP as recoupment for having to defend the summary judgment motion.

After the superior court made its ruling, RCT requested that it stay the case since the matter would proceed to arbitration. The superior court initially granted RCT's

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Seth Burrill Prods., Inc. v. Rebel Creek Tackle, Inc.

request for a stay, but after reconsideration it denied RCT's request. In doing so, the superior court stated that it did not make a ruling as to whether the parties' dispute must go to arbitration and that the parties agreed that arbitration was an available option. The superior court further explained its CR 11 sanctions were also due to the frivolousness of RCT's counter-motion for CR 11 sanctions against SBP.

Shortly after the superior court's ruling, RCT filed a claim for arbitration. An arbitration decision and award was entered on January 22, 2018, and filed in the superior court on May 9, 2018. The arbitration decision granted RCT its requested relief and ruled that the Agreement was terminated due to SBP's failure to meet sales target requirements. The arbitrator also awarded RCT payment for outstanding royalties in an amount that had already been offered by SBP prior to the arbitration. The arbitration decision concluded that RCT and SBP would share equally in the payment of arbitration fees and costs, and neither party would be awarded attorney fees or costs.

During the interim of the arbitration proceedings, RCT appealed the superior court's decision on RCT's motion for summary judgment and the CR 11 sanctions.

ANALYSIS

Summary judgment and motion to stay

RCT contends the superior court erred in denying its motion for summary judgment because SBP failed to sell the required units under the Agreement, which allowed for termination of the Agreement, and the superior court failed to consider and decide which forum was required to hear these issues. RCT further argues that when the superior court found the Agreement and termination issue should proceed to arbitration, the superior court abused its discretion in declining to stay the case.

RCT's challenge to the superior court's summary judgment ruling, ruling on arbitrability, and motion for stay have been rendered moot by the outcome of arbitration. Arbitration has taken place despite the denial of a stay and that forum has settled the issues of whether SBP breached the Agreement and owed RCT royalties. This court cannot provide further relief. Thus, the substantive issue of whether RCT should have prevailed on its summary judgment motion and motion to stay are not issues that require appellate resolution.

CR 11 sanctions

The purpose of CR 11 is to prevent baseless filings, filings made for improper purposes, and abuses of the judicial system. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d

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448 (1994); *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). If a party engages in such conduct, the court can impose an appropriate sanction. CR 11(a).

A baseless filing is one not supported by the facts or existing law. *Bryant*, 119 Wn.2d at 219-20. In awarding sanctions for a baseless filing, the court must assess “whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified.” *Id.* at 220. Because CR 11 sanctions have a potential chilling effect, a court should impose sanctions only when it is “patently clear that a claim has absolutely no chance of success.” *Skimming v. Boxer*, 119 Wn. App. 748, 755, 82 P.3d 707 (2004).

A superior court’s decision to impose CR 11 sanctions is reviewed for abuse of discretion. *Id.* at 754. This is a deferential standard. We will not reverse a superior court’s CR 11 decision unless “its order is manifestly unreasonable or based on untenable grounds.” *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). An order meets this standard only if it falls outside the bounds of a decision a reasonable person could make. *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997).

The superior court’s CR 11 sanctions against counsel for RCT were justified for several reasons. First, as noted by the superior court, RCT lacked a proper basis for filing

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a summary judgment motion because the motion was not tied to any existing legal claims. SBP initiated the superior court case in order to confirm an arbitration decision and to hold RCT in contempt for failing to abide by the decision. RCT's request for declaratory relief was factually and legally unrelated to these issues. RCT may have had a justifiable desire for a declaratory judgment, confirming termination of the Agreement. It may have also been legally defensible to argue that the declaratory judgment was not subject to arbitration. But these substantive issues are beside the point. To obtain relief, RCT needed to initiate a new cause of action (which has since been done). It was not appropriate to attempt to piggyback off of an unrelated, preexisting case.

Second, RCT's motion for summary judgment was not supported by properly authenticated exhibits. CR 56(e); *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 141, 331 P.3d 40 (2014). Counsel for SBP repeatedly advised counsel for RCT of the problems with its filings, but RCT simply ignored the issue.

Finally, RCT lacked a viable basis for requesting CR 11 sanctions against counsel for SBP. When the superior court pressed counsel for RCT to explain its sanctions motion, counsel for RCT simply stated that it was entitled to prevail on the merits of its request to terminate the Agreement. This does not come close to meeting the criteria for CR 11 sanctions. A party's pleadings are not subject to CR 11 sanctions simply because

they are unsuccessful. Instead, as set forth above, CR 11 is aimed at preventing baseless filings that are not grounded in fact or law. RCT failed to provide any explanation of how SBP's court filings (which were ultimately successful) failed to meet this standard.

Not only was the superior court justified in imposing CR 11 sanctions, the sanctions were also reasonable in scope. SBP initially requested \$13,000 in sanctions, based on the time incurred responding to RCT's motion. But the superior court only imposed \$4,500, explaining that it was a reasonable attorney fee recoupment. This was an adequate exercise of discretion.

ATTORNEY FEES AND COSTS

Both RCT and SBP request attorney fees on appeal pursuant to RAP 18.1 and RAP 18.9(a). RAP 18.9(a) "permits an appellate court to award a party attorney fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action." *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hrgs. Bd.*, 170 Wn.2d 577, 578, 245 P.3d 764 (2010). "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 the appeal is so devoid of merit that there is no possibility of reversal." *Id.*

We find RCT’s appeal frivolous and, as a result, SBP is entitled to attorney fees as sanctions under RAP 18.9(a).³ Counsel for RCT has inaccurately represented the manner in which it filed the motion for declaratory judgment, as set forth above. The declaratory motion was never properly filed as a superior court motion, requesting action by the superior court.⁴ In addition, even if the declaratory judgment motion had been filed with the superior court, the motions for declaratory judgment and summary judgment would still have been improper as they were unrelated to any pending claims for relief in the superior court. RCT received fair warning of the deficiencies in its filings from both SBP and the superior court. Yet RCT persisted with this appeal and has never provided a tenable response to the procedural flaws outlined by SBP and the superior court. Instead, RCT’s briefing is devoted to the issues of arbitrability and whether the parties’ Agreement had been terminated—issues that were rendered moot by the arbitration

³ It necessarily follows that RCT is not entitled to attorney fees or costs.

⁴ The motion for declaratory judgment is not included in the record on review, except as an unsworn exhibit to RCT’s motion for summary judgment. In response to SBP’s claim that RCT’s motion was never filed, RCT has merely cited a letter received from counsel for SBP, stating, “‘In addition, your Motion for Declaratory Judgment of Termination of License Agreement, filed with the Spokane County Superior Court on June 1, 2016, . . . [.]’” Appellant’s Reply Br. at 2 n.2. This citation to correspondence does not constitute proof of filing. This court has had to engage in an independent review of court records in order to discern whether and how the declaratory judgment motion was filed.

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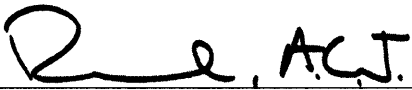
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decision that was issued in RCT's favor prior to filing of RCT's opening brief.

CONCLUSION


The orders on appeal are affirmed. SBP shall be awarded reasonable attorney fees and costs on appeal, subject to its timely compliance with RAP 14.4 and RAP 18.1(d).

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, A.C.J.

WE CONCUR:



Korsmo, J.



Siddoway, J.

LEE & HAYES, P.C.

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