

69843-5

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NO. 69843-5-I

COURT OF APPEALS, DIVISION I

OF THE STATE OF WASHINGTON

WILLIE RUSSELL and CHRISTINE F.  
HARPER, husband and wife,

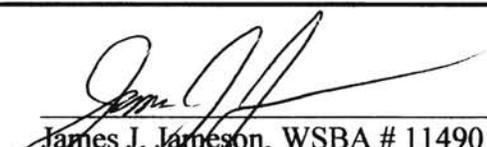
Plaintiffs/Petitioners

v.

CARLEEN MATSON NICOLE NG-A-QUI,  
JEFFREY ST. GEORGE, LYNN BAMBERGER  
and STEPHAN BAMBERGER and the marital  
community composed thereof; and  
LYNNE WORLEY-BARTOK and JOHN DOE  
WORLEY-BARTOK, and the martial community  
composed thereof,

Defendants/Respondents

REPLY BRIEF OF APPELLANTS

  
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COURT OF APPEALS  
STATE OF WASHINGTON

 ORIGINAL

TABLE OF AUTHORITIES

<u>CASES</u>	PAGE
<u>North Coast Electric Company v. Selig</u> Wn. App. 636, 151 P.3d 211 (2007).	2

## ARGUMENT

As the assignment of error, issues pertaining to assignment of error and Appellants' statement of the case have been set forth in Appellants' opening brief, Appellants will merely address certain issues raised in Respondent's Brief. In an effort to be brief, Appellants will not reassert arguments made in Appellants' opening brief. Appellants raised four issues pertaining to their assignment of error. They were:

1. Did Plaintiffs violate CR 11 in filing their Complaint against Defendants?
2. Even if it is determined that Plaintiffs violated CR 11, are sanctions appropriate when Defendants received no notice of a potential CR 11 violation?
3. As the Court made no Findings of Fact or Conclusions of Law that Plaintiffs' action was frivolous for the purpose of RCW 4.84.185, did the Court err in Conclusion of Law 2.10 by awarding attorney's fees pursuant to that statute?
4. If sanctions were warranted, is there a proper factual basis to award attorney's fees in the amount of \$74,710.14?

Appellants rely on the arguments set forth in their opening brief as to issues 1 and 3 and will not address them further herein.

TIMELINESS OF NOTICE OF POTENTIAL CR 11 VIOLATION

Respondents baldly assert that they sought sanctions “In the early stages of litigation.” Respondents’ Brief IV C 2, pages 12-13. They allege that so long as the CR 11 issue was raised before trial, notice is timely. This is simply not the law. In North Coast Electric Company v. Selig, 136 Wn. App. 636, 151 P.3d 211 (2007) this Court held:

Additionally, a party should move for CR 11 sanctions as soon as it becomes aware they are warranted. “Prompt notice of the possibility of sanctions fulfills the primary purpose of the rule, which is to deter litigation abuses.” (Citation to Biggs II). Here, North Coast did not move for sanctions under CR 11 until Selig dismissed its counterclaims, which was over a year after his original pleadings. We hold that the award is not supported as a CR 11 sanction.

Id. at 649-50.

In the present case, Appellants filed their Summons and Complaint on November 12, 2010 and Defendants did not file their motion for sanctions until nearly two years later. As such, pursuant to Biggs II and North Coast Electric Company v. Selig the notice was not timely and sanctions were inappropriate.

### FACTUAL BASIS FOR AWARD OF ATTORNEY'S FEES

Respondents' Brief indicates that this issue was not raised by Appellants in the trial court. Respondents' Brief IV E 1, pages 15-16. This is simply not true. Plaintiffs' Response to Defendants' Motion for Sanctions Pursuant to CR 11 and RCW 4.84.185 and for Entry of Judgment (CP 371-378) raised this issue at page 7 (CP 377, lines 3-18). Therefore, this issue was not waived and pursuant to 224 Westlake v. Engstrom Properties, cited in Appellants' opening brief, there was not an appropriate factual basis to determine whether Respondents' fee request was reasonable.

### RESPONDENTS' REQUEST FOR ATTORNEY'S FEES ON APPEAL

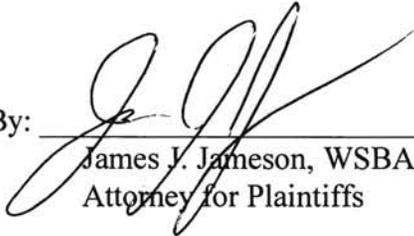
As set forth in Respondents' Brief at page 17: "An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there is no reasonable possibility of reversal." This appeal challenges the trial court's award of sanctions. There are debatable issues as to whether Appellants' Summons and Complaint was frivolous, whether Respondents' notice of intent to seek sanctions was timely and whether there was a proper factual basis as to the amount of attorney's fees awarded. This appeal is not frivolous.

CONCLUSION

In conclusion, the trial court erred in awarding attorney's fees to Respondents pursuant to CR 11 and RCW 4.84.185. The Court of Appeals should reverse the order and judgment on sanctions entered by the trial court on January 7, 2013 and remand with instructions to deny the motion.

DATED: July 2, 2013

RESPECTFULLY SUBMITTED:

By:   
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Attorney for Plaintiffs