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IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY _____
DEPUTY

No. 699288-I

JILL E. LANE,

Plaintiff/Appellant,

v.

MARK VON DER BURG, COLDWELL BANKER BAIN,
FIRST-CITIZENS BANK & TRUST COMPANY, DAWN
GADWA, AND FIRST-CITIZENS BANK
WASHINGTON/FIRST-CITIZENS BANCSHARES,

Defendants/Respondents.

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STATE OF WASHINGTON
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On Appeal from the Superior Court of King County
The Hon. Laura G. Middaugh
Superior Court Docket Number 12-2-19315-1

BRIEF OF RESPONDENT FIRST-CITIZENS BANK &
TRUST COMPANY

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ORIGINAL

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I. INTRODUCTION

This action arises from the “squatter mansion” episode in Kirkland that attracted both local and national attention in the summer of 2010. Plaintiff / Appellant Jill E. Lane brought this lawsuit for invasion of privacy against Respondent First-Citizens Bank & Trust Company (“**FCB**”), FCB employee Dawn Gadwa, and FCB’s realtors, Mark Von der Burg and Colwell Banker Bain, regarding Ms. Lane’s unlawful occupancy of a multi-million dollar Kirkland mansion that was previously foreclosed upon and owned by FCB (the “**Mansion**”).

After FCB evicted Ms. Lane from the Mansion by way of an unlawful detainer action, Ms. Lane was convicted of criminal trespass in Kirkland Municipal Court for her unlawful occupancy of this property. However, prior to her eviction from the Mansion and conviction for criminal trespass, and shortly after she unlawfully took possession of the Mansion, Ms. Lane and her partner James McClung met with FCB employee Dawn Gadwa, the realtor that FCB employed to sell the Mansion, Mark Von der Burg, and a fifth person at Mr. Von der Burg’s office in Bellevue. It was this meeting in June of 2010 that led to this lawsuit.

The meeting consisted almost exclusively of Mr. McClung and Ms. Lane explaining their justification for how Ms. Lane had allegedly

secured an ownership interest and/or right of occupancy in the Mansion through a form of “squatter’s rights” and why she could remain there. Although difficult to understand, this theory appeared to be predicated on the idea that FCB enjoyed only a weak form of ownership of the Mansion, and that a process called “Banker’s Acceptance” was being used throughout the west coast to occupy properties and coerce or force transactions under similar circumstances. Ms. Lane argued this theory of “Banker’s Acceptance” was gaining increased acceptance and being utilized successfully in situations similar to Ms. Lane’s.

Approximately two years later, Ms. Lane apparently learned as a result of her criminal trespass case that the conversation that took place during the aforesaid meeting in June of 2010 had been recorded, allegedly without her knowledge or consent. As a result, on May 31, 2012 Ms. Lane and Mr. McClung filed this lawsuit for invasion of privacy under RCW 9.73 based on the recording of the above-described conversation. Ms. Lane and Mr. McClung asserted in their complaint that FCB, Dawn Gadwa, Mark Von der Burg, and Coldwell Banker Bain violated the Washington Privacy Act when Mr. Von der Burg recorded the subject conversation, which was allegedly recorded without the consent of Ms. Lane and Mr. McClung.

On October 26, 2012, the trial court dismissed Ms. Lane’s and Mr.

McClung's claims on summary judgment. In doing so, the trial court found that the conversation at issue was not private in nature under Washington's Privacy Act, and that during the conversation at issue, Ms. Lane and Mr. McClung conveyed threats of extortion or other unlawful requests or demands to FCB.

On November 6, 2012, FCB filed its motion for attorneys' fees, costs, terms and sanctions pursuant to CR 11 and RCW 4.84.185. Mark Von der Burg subsequently filed his motion for sanctions on November 26, 2012. Ms. Lane and her attorney vigorously opposed these motions.

Ultimately, after much briefing by all parties concerned, on January 4, 2013 the trial court granted both motions for sanctions and attorney's fees. In so doing, the trial court made numerous and detailed findings of fact regarding the frivolity of Ms. Lane's claims and then entered judgment in favor of FCB against Ms. Lane and her attorney, jointly and severally, in the amount of \$16,000 for terms and sanctions. The trial court also entered judgment in favor of Mr. Von der Burg against Ms. Lane and her attorney for this same amount.

Ms. Lane moved for reconsideration of the sanctions rulings on January 14, 2013, and the trial court denied this motion on January 15, 2013. Ms. Lane and her attorney then filed their notice of appeal on February 11, 2013.

The only conclusion to be drawn from the record is that Ms. Lane and Mr. McClung unlawfully occupied the Mansion and subsequently met with FCB and Mr. Von der Burg for the express purpose of attempting to defraud FCB and governmental entities in order to obtain ownership of the Mansion. The record further reflects this lawsuit was filed without any reasonable inquiry into the facts or law surrounding Ms. Lane's claims, and that this suit was filed for an improper purpose.

The record also reflects the trial court was made aware that even though FCB repeatedly told Ms. Lane that it would seek sanctions if she did not dismiss her claims, she nevertheless elected to forge ahead with this frivolous action, even though it was evident at the outset that Ms. Lane's claims were wholly unsupported by existing law. As such, there is no doubt that the trial court properly exercised its discretion by awarding sanctions against Ms. Lane and her attorney.

II. RESTATEMENT OF THE ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether substantial evidence supports the trial court's finding that this action was not warranted by existing case law. Answer:

Yes.

2. Whether substantial evidence supports the trial court's finding that Ms. Lane did not make a reasonable inquiry into the factual or

legal basis of this action. Answer: Yes.

3. Whether substantial evidence supports the trial court's finding that Ms. Lane's attorney did not provide evidence in support of Ms. Lane's position even when given additional time to do so. Answer: Yes.

4. Whether substantial evidence supports the trial court's finding that Ms. Lane presented evidence to support her argument that there was a reasonable basis for her claim that was not in existence prior to the filing of the complaint. Answer: Yes.

5. Whether substantial evidence supports the trial court's finding that Ms. Lane presented evidence to support her argument that there was a reasonable basis for her claim by way of a transcript of a hearing from the lower bench that was not made by a certified transcriptionist, appeared to have been selectively transcribed, and contained at best a statement from the bench that identified that there might be an issue as to whether the recording was made illegally. Answer: Yes.

6. Whether substantial evidence supports the trial court's finding that information about the identity of the unknown person at the meeting in question, which was the basis for finding that the meeting was not private under the Privacy Act, appeared to be within the control of Ms.

Lane, who chose not to reveal it and yet continued to oppose FCB's motion for summary judgment. Answer: Yes.

7. Whether the trial court abused its discretion when it awarded FCB \$16,000.00 in terms and sanctions against Ms. Lane and her attorney. Answer: No.

III. STATEMENT OF THE CASE

This case arises from invasion of privacy claims that Plaintiff / Appellant Jill E. Lane and James McClung brought against Defendant / Respondent First-Citizens Bank & Trust Company ("FCB"), FCB employee Dawn Gadwa, and FCB's realtors, Mark Von der Burg and Colwell Banker Bain, regarding Ms. Lane's unlawful occupancy of a multi-million dollar Kirkland mansion that was previously foreclosed upon and owned by FCB (the "**Mansion**"). CP 366. This case also concerns Ms. Lane's attempts to defraud FCB and various governmental entities in order to obtain ownership of said property. CP 366; *see also Police Squelch Squatters' Brazen Move Into Mansion, Danny Westneat, The Seattle Times, June 15, 2010, available at http://seattletimes.nwsourc.com/html/dannywestneat/2012126896_danny16.html (last visited August 21, 2012).*

After FCB evicted Ms. Lane from the Mansion by way of an unlawful detainer action, Ms. Lane was convicted of criminal trespass in

Kirkland Municipal Court for her unlawful occupancy of this property. CP 368, 532; *see also Bellevue Squatter Found Guilty of Trespassing in Kirkland Luxury Home, Kirkland Reporter.com, available at <http://www.kirklandreporter.com/news/159942515.html>* (last visited August 21, 2012). CP 368, 532.

However, prior to her eviction from the Mansion and her conviction for criminal trespass, and shortly after she unlawfully took possession of the Mansion, Ms. Lane and Mr. McClung met with FCB employee Dawn Gadwa, the realtor that FCB employed to sell the Mansion, Mark Von der Burg, and a fifth person at Mr. Von der Burg's office in Bellevue. CP 369. This meeting began on June 7, 2010 at 4:00 p.m. CP 369-70.

The day before this meeting, Mr. Von der Burg became aware that unidentified individuals were living in the Mansion despite the fact that it was still listed for sale and no purchase and sale agreement had been signed. CP 368. The Kirkland Police Department was then summoned to the Mansion, where police officer C. Mann observed Ms. Lane and two other individuals in front of the garage. CP 368. Officer Mann testified in a probable cause affidavit for Ms. Lane's arrest as follows:

I arrived at the residence with other officers and contacted Jill E. Lane (DOB 10/09/1979) and two other males in the front garage. Jill identified

herself as the new home owner, showed me legal documentation to prove this, and stated that she had worked with her broker, Jim McClung to purchase the house four days earlier, when she had picked up the keys. Upon looking through her documentation, I saw her name on the forms, the name of a Living Trust, which she stated she was a beneficiary of, and the address of the home.

CP 369.

Mr. Von de Burg then arrived at the Mansion and spoke with Ms. Lane as well as Officer Mann. CP 369. During this conversation and despite Mr. Von der Burg's protestations to the contrary, Ms. Lane again asserted that she owned the Mansion. CP 369.

The following day, Ms. Lane contacted Mr. Von der Burg to schedule a meeting to discuss Ms. Lane's "ownership" of the Mansion. CP 369. The meeting occurred later the same day at Mr. Von der Burg's Coldwell Banker Bain office in Bellevue. CP 369.

The meeting consisted almost exclusively of Mr. McClung and Ms. Lane explaining to FCB employee Dawn Gadwa and Mr. Von der Burg their justification for how Ms. Lane had allegedly secured an ownership interest and/or right of occupancy in the Mansion through a form of "squatter's rights" theory and why she could remain there. CP 369. Although difficult to understand, this theory appeared to be predicated on the idea that FCB enjoyed only a weak form of ownership of

the Mansion and that a process called “Banker’s Acceptance” was being used throughout the west coast to occupy properties and coerce or force transactions under similar circumstances. CP 370. This theory did not comport with any legal process that FCB or its realtor was aware of, but Ms. Lane argued that it was gaining increased acceptance and being utilized successfully in situations similar to Ms. Lane’s. CP 370.

Approximately two years later, Ms. Lane apparently learned as a result of her criminal trespass case that the aforesaid meeting had been recorded, allegedly without her knowledge or consent. *See* CP 370. As a result, on May 31, 2012 Ms. Lane and Mr. McClung filed this lawsuit for invasion of privacy under RCW 9.73 based on the recording of the above-described conversation. CP 370. Ms. Lane and Mr. McClung asserted in their complaint that FCB, Dawn Gadwa, Mark Von der Burg, and Coldwell Banker Bain violated the Washington Privacy Act when Mr. Von der Burg recorded the subject conversation, which conversation was allegedly recorded without Ms. Lane’s or Mr. McClung’s consent. CP 3. A transcript or meeting notes of this conversation can be found at CP 474-478.

FCB subsequently served Ms. Lane and Mr. McClung with requests for production, interrogatories, and requests for admission, which they failed to properly respond to. CP 533. Due to their willful and

intentional failure to timely and properly respond to FCB's requests for admission, the trial court ultimately entered an order on September 13, 2012 that provides Ms. Lane and Mr. McClung were deemed to have admitted the following facts:

- Neither of the Plaintiffs ever owned the Mansion.
- The subject matter of the conversation at issue in this lawsuit concerned Plaintiffs and their occupancy of the Mansion.
- None of the Defendants ever gave Plaintiffs permission to enter the Mansion.
- None of the Defendants ever gave Plaintiffs permission to occupy the Mansion.
- Plaintiffs have no document or documents from any of the Defendants reflecting that they had permission to enter and occupy the Mansion.
- Plaintiffs unlawfully entered the Mansion.
- Plaintiff Jill Lane was convicted of criminal trespass in Kirkland Municipal Court as a result of her entry into and occupation of the Mansion.
- Plaintiffs unlawfully remained in the Mansion.
- Plaintiffs never held a bona fide ownership interest in the

Mansion.

- Plaintiffs never held a bona fide possessory interest in the Mansion, such as a license or leasehold interest.
- Plaintiffs caused fraudulent documents related to ownership interests in the Mansion to be filed with a governmental entity and/or entities.
- There were five (5) people present during the conversation referenced in Plaintiffs' Complaint, and this conversation took place between the hours of 9:00 a.m. and 6:00 p.m. in [Mansion realtor] Mark Von der Burg's Bellevue office.
- Plaintiffs expected Dawn Gadwa [of FCB] to discuss with other employees of FCB and/or First-Citizens BancShares some or all of the things that were discussed during the conversation referenced in Plaintiffs' Complaint.
- Plaintiffs did not tell or otherwise instruct any of the Defendants not to reveal the contents of the conversation referenced in Plaintiffs' Complaint to anyone else who was not present during said conversation.

See CP 371.

On or about September 26, 2012, FCB moved for the summary judgment dismissal of Ms. Lane's Complaint, and Mr. Von der Burg filed

his motion for dismissal and/or partial summary judgment regarding Ms. Lane's claims. *See* CP 366. The parties argued these motions on October 26, 2012. CP 441. On that date, the trial court granted both motions. CP 441-446. A copy of the orders on these motions is attached as **Appendix A and B**. In these orders, the trial court found that the conversation at issue was not private in nature under Washington's Privacy Act, and that during the conversation at issue, Ms. Lane and Mr. McClung conveyed threats of extortion or other unlawful requests or demands. CP 443; CP 446.

On November 6, 2012, FCB filed its motion for attorneys' fees, costs, terms and sanctions pursuant to RCW 4.84.185, the frivolous lawsuit statute. CP 719. By way of this motion, FCB sought to recover from Ms. Lane, Mr. McClung, and their attorney, Andrew L. Magee, the \$26,075.45 in attorneys' fees and \$239.00 in costs that FCB incurred defending against Ms. Lane's claims and ultimately causing these claims to be dismissed on summary judgment. CP 719-727. Mr. Von der Burg subsequently filed his motion for sanctions on November 26, 2012. CP 824. Ms. Lane and her attorney vigorously opposed these motions. *See* CP 862.

On November 30, 2012, the trial court entered an order regarding the motions for sanctions. CP 862. A copy of this order is attached as

Appendix C. In this order, the trial court noted that Ms. Lane had produced no argument supported by admissible evidence that refuted the motions of FCB and Mr. Von der Burg. CP 862. The trial court went on to state that if there was admissible evidence that Ms. Lane was told by a judicial officer [in the Kirkland criminal trespass action] that the conversation which is the subject matter of this lawsuit was recorded in violation of the law, that could establish that Ms. Lane's position in pursuing her invasion of privacy claim, while not legally viable, was not unreasonable or frivolous. CP 862. The trial court noted that Ms. Lane had had since November 6, 2012 to provide evidence of this. CP 862. The trial court then granted Ms. Lane's request for a continuance in part and gave Ms. Lane until noon on December 11, 2012 to provide additional evidence to rebut the motions for sanctions. CP 863.

Ms. Lane filed her response to the trial court's order of November 30, 2012 on December 11, 2012. CP 864. Accompanying this response were declarations from Ms. Lane and her attorney, Mr. Magee. CP 903; CP 909.

By way of an order entered on December 13, 2012, the trial court stated it had done a preliminary review of the material submitted by Ms. Lane and that it would consider a reply from FCB and Mr. Von der Burg.

CP 938. Mr. Von der Burg filed his reply on December 26, 2012, CP 939, and FCB filed its reply on December 31, 2012. CP 945.

On January 4, 2013 the trial court granted both motions for sanctions and attorney's fees and entered judgment in favor of FCB and Mr. Von der Burg against Ms. Lane and her attorney (the "**Judgment**"). CP 962. A copy of the Judgment is attached as **Appendix D**. The Judgment contains the following findings of fact:

- This action was not warranted by existing case law (Ms. Lane made no argument that there was a good faith argument for extension of existing law).
- Ms. Lane did not make a reasonable inquiry into the factual or legal basis of the action.
- Ms. Lane's attorney was consistently late in filing motion papers with the trial court and opposing parties.
- Ms. Lane's attorney has not provided evidence in support of Ms. Lane's position even when given additional time to do so.
- Ms. Lane's presentation of "evidence" to the trial court supporting the assertion that there was a reasonable basis for the claim because of statements from the lower court that the action of Ms. Lane was unlawful were based on

evidence that was not even in existence prior to the filing of the complaint and a transcript of a hearing from the lower bench that was not made by a certified transcriptionist, appeared to have been selectively transcribed, and, even if considered, contained at best a statement from the trial court that identified that there might be an issue as to whether the recording was made illegally.

- The information about the identity of the unknown [fifth] person at the meeting (which was the basis for finding that the meeting was not private) appeared to be within the control of Ms. Lane, but she chose not to reveal it and yet continued to oppose FCB's motion for summary judgment.

Based on these findings of fact, the trial court entered judgment in favor of FCB against Ms. Lane and her attorney, jointly and severally, in the amount of \$16,000 for terms and sanctions. CP 964. The trial court also entered judgment in favor of Mr. Von der Burg against Ms. Lane and her attorney, jointly and severally, in the amount of \$16,000 for terms and sanctions. CP 964.

Ms. Lane moved for reconsideration of the sanctions rulings on January 14, 2013, and the trial court denied this motion on January 15, 2013. CP 965; CP 971. Ms. Lane and her attorney subsequently filed

their notice of appeal concerning the Judgment on February 11, 2013. CP 315.

IV. ARGUMENT

A. **The Trial Court Did Not Abuse Its Discretion When It Sanctioned Ms. Lane And Her Attorney.**

1. *Review of Civil Rule 11 and RCW 4.84.185.*

A decision to impose sanctions is vested in the sound discretion of the trial court and will only be overturned on appeal where there is an abuse of that discretion. *E.g., Douglas v. Hill*, 148 Wn. App. 760, 199 P.3d 493 (2009). A trial court abuses its discretion when its decision is manifestly unreasonable or rests on untenable grounds. *State v. Lord*, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007).

The Court of Appeals reviews the trial court's factual findings to see if they are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law. *Keever & Assocs., Inc. v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005), *review denied*, 157 Wn.2d 1009 (2006). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *Id.* at 734, 119 P.3d 926.

As with Civil Rule 11, a trial court is not required to find an improper purpose under the statute allowing for the imposition of

sanctions against a litigant for filing a frivolous action before awarding fees, RCW 4.84.185; it is enough that the action is not supported by any rational argument and is advanced without reasonable cause. *Eller v. East Sprague Motors & R.V.'s, Inc.*, 159 Wn. App. 180, 244 P.3d 447 (2010).

A frivolous action is one that cannot be supported by any rational argument on the law or facts. *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82, *review denied*, 113 Wn.2d 1001, 777 P.2d 1050 (1989). A pleading, motion or legal memorandum may be subject to sanctions under Rule 11 if it is both (1) “baseless” and (2) signed without reasonable inquiry. *Hicks v. Edwards*, 75 Wn. App. 156, 876 P.2d 953 (1994). A filing is “baseless” if (a) not well grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law. *Id.*

2. Review of the Washington Privacy Act.

Generally, Washington’s Privacy Act prohibits the recording of any “private conversation” without first obtaining the consent of all the persons engaged in the conversation. RCW 9.73.030(1). The Legislature did not define the term “private” in RCW 9.73. *State v. Clark*, 129 Wn.2d 211, 224, 916 P.2d 384 (1996) (*en banc*). Washington appellate courts have addressed that term by analyzing under the circumstances of a particular case whether a given conversation or communication was

private. *Id.* at 224, 916 P.2d 384.

The intent or reasonable expectation of the participants, including the reasonable expectation of privacy, if any, as manifested by the facts and circumstances of each case controls as to whether a conversation is private. *Id.* (citing *Kadoranian v. Bellingham Police Dept.*, 119 Wn.2d 178, 829 P.2d 1061 (1992) (*en banc*)). The term “private conversation” is to be given its ordinary and usual meaning, and the word “private” has been interpreted as “belonging to one’s self ... secret ... intended only for the persons involved (a conversation) ... holding a confidential relationship to something ... a secret message: a private communication ... secretly; not open or in public.” *State v. D.J.W.*, 76 Wn. App. 135, 140-141, 882 P.2d 1199 (1999) (internal citations omitted).

In determining whether a conversation is “private” under the Privacy Act, factors for consideration include the duration and subject matter of the conversation, the location of the conversation and the presence or potential presence of a third party, and the role of the non-consenting party and his relationship to the consenting party. *Clark*, 129 Wn.2d at 227, 916 P.2d 384.

Generally, the presence of another person during a conversation means that the matter is not secret or confidential to qualify as “private” and afford protection under the Privacy Act. *Clark*, 129 Wn.2d at 226,

916 P.2d 384. Hence, a person has no reasonable expectation of privacy in a conversation that takes place at a meeting where one who attended could reveal what transpired at the meeting to others. *Id.* (citing *State v. Slemmer*, 48 Wn. App. 48, 53, 738 P.2d 281 (1987)).

Although the question of whether a particular conversation is “private” under the Privacy Act is a question of fact, where the facts are undisputed and reasonable minds could not differ, the issue may be determined as a matter of law. *E.g.*, *Clark*, 129 Wn.2d at 225, 916 P.2d 384; *see also Kadoranian*, 119 Wn.2d at 190, 829 P.2d 106.

3. *No Reasonable Person Could Possibly Conclude The Conversation At Issue Was Private.*

Here, there simply is no question that the trial court correctly ruled the conversation at issue was not “private” under the Privacy Act. Five (5) people were present during this conversation. The conversation occurred during normal business hours at Mr. Von der Burg’s Bellevue office. The conversation consisted almost exclusively of Ms. Lane explaining her justification for how she had secured an ownership interest and/or right of occupancy in the Mansion through a form of “squatter’s rights” and why she could remain there. The record reflects Ms. Lane and Mr. McClung expected Dawn Gadwa of FCB to discuss with other employees of FCB some or all of the things that were discussed during this conversation.

Neither Ms. Lane nor Mr. McClung told or otherwise instructed Ms. Gadwa or Mr. Von der Burg not to reveal the contents of the conversation to anyone else who was not present during said conversation.

Given these facts, no reasonable person could conclude that the conversation at issue was private in nature. As such, the trial court correctly held Ms. Lane had no cause or excuse to bring this action. Based on this finding and related findings, which are supported by substantial evidence,¹ the trial court did not abuse its discretion by entering judgment in favor of FCB against Ms. Lane and her attorney in the amount of \$16,000.

4. *Ms. Lane's Privacy Act Claims Are Barred By Statute Because Ms. Lane Tried To Extort FCB During The Conversation At Issue.*

Another reason why the sanctions awards should stand is because Ms. Lane's Privacy Act claims are plainly barred by statute as a matter of law. Ms. Lane and her attorney should have determined as much prior to filing this lawsuit. Specifically, Washington's Privacy Act allows the recording of private conversations "which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands[.]" RCW 9.73.030(2)(b). Such conversations "may be recorded with the consent of

¹ This evidence is largely summarized by the replies of FCB and Mr. Von der Burg in support of their sanctions motions, which can be found at CP 124-28, CP 145-49, and CP 939-55.

[only] one party to the conversation.” *Id.*

Ms. Lane’s illegal conduct during the conversation at issue, in which the trial court found that Ms. Lane conveyed threats of extortion or other unlawful requests or demands to FCB, serves as a complete bar to Ms. Lane’s Privacy Act claims. *This bar would exist even if the conversation at issue could be characterized as “private” in nature.*

Moreover, Ms. Lane admitted in this lawsuit that she never held any bona fide ownership or possessory interest in the Mansion, and that she caused fraudulent documents purporting to state an ownership interest in FCB’s property to be filed with governmental entities. CP 375-76. In addition, it is undisputed that Ms. Lane was criminally convicted for trespassing in the Mansion. CP 376. Nevertheless, Ms. Lane set up a meeting with Mr. Von der Burg and Ms. Gadwa to discuss her illegal occupancy of the Mansion as well as her fraudulent scheme to obtain ownership of it. CP 376. Based on the foregoing, there is no question that Ms. Lane’s conversation with FCB and Mr. Von der Burg is not protected by the Privacy Act, and the trial court rightly held as much.

In light of these and other findings, the trial court rightly sanctioned Ms. Lane and her attorney. After all, this is a case in which the trial court found after exhaustive briefing that “[t]he action was not warranted by existing case law,” Ms. Lane “did not make a reasonable

inquiry into the factual or legal basis of the action,” Ms. Lane’s “attorney has been consistently late in filing motion papers,” and Ms. Lane’s “attorney has not provided evidence in support of [Ms. Lane’s] position even when given additional time to do so[.]” CP 301.

The only conclusion to be drawn from the record is that Ms. Lane and Mr. McClung unlawfully occupied the Mansion and subsequently met with FCB and Mr. Von der Burg for the express purpose of attempting to defraud FCB and governmental entities in order to obtain ownership of the Mansion. The record further reflects this lawsuit was filed without any reasonable inquiry into the facts or law surrounding Ms. Lane’s claims, and that this suit was filed for an improper purpose.

The trial court was also made aware that even though FCB repeatedly told Ms. Lane that it would seek sanctions if she did not dismiss her claims, she nevertheless elected to forge ahead with this frivolous action, even though it was evident at the outset that Ms. Lane’s claims were wholly unsupported by existing law. For these reasons, there is no question that the trial court properly exercised its discretion by awarding sanctions against Ms. Lane and her attorney.

5. *Ms. Lane’s Due Process Rights Have Not Been Violated.*

Once it is determined that due process applies, the question becomes what process is due. *Buechler v. Wenatchee Valley College*, 298

P.3d 110, 119, 291 Ed. Law Rep. 468 (2013) (internal citations omitted). Even where a hearing is required, the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved. *Id.* (internal citations omitted).

The *Bryant v. Joseph Tree, Inc.* case that Ms. Lane relies upon, 119 Wn.2d 210, 829 P.2d 1099 (1992), does not hold that a party that is targeted for sanctions is entitled to oral argument or an evidentiary hearing on the issue. Instead, *Bryant* notes that “CR 11 procedures ‘obviously must comport with due process requirements.’” *Id.* at 224, 829 P.2d 1099.

The Washington Supreme Court has held that oral argument is not a due process right. *E.g., Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 697, 41 P.3d 1175 (2002). In *Rivers*, the Washington Supreme Court noted that oral argument is not prescribed for motions for sanctions, and that due process does not require any particular form or procedure, only that a party receives proper notice of proceedings and an opportunity to present its position before a competent tribunal. *Id.* at 698, 41 P.3d 1175. Thus, Ms. Lane was not denied due process under controlling Washington Supreme Court authority simply because the trial court ruled on the two sanctions motions after it considered exhaustive briefing from the parties but did not hear oral argument.

Moreover, the trial court’s rulings on the sanctions motions are not

contrary to KCLR 7(b)(4)(B), which is entitled “Scheduling Oral Argument on Dispositive Motions,” because these motions are not “dispositive motions” within the meaning of this rule. The trial court heard oral argument on the two dispositive motions in this case, namely FCB’s motion for summary judgment and Mr. Von der Burg’s motion to dismiss, before ruling on the sanctions motions. Nevertheless, even if the sanctions motions could fairly be characterized as “dispositive motions” under KCLR 7(b)(4)(B), a departure from this rule does not automatically amount to a violation of due process or reversible error.

The reality is the trial court did not violate Ms. Lane’s due process rights. As seen from the order regarding the motions for Rule 11 sanctions dated November 30, 2012, Ms. Lane and her attorney had ample time to produce evidence to show this case was not frivolous. CP 195-96. This they failed to do. The Judgment dated January 4, 2013 demonstrates the trial court considered all of the materials that the parties submitted and reached its ruling based on these materials. In doing so, the trial court made numerous findings of fact regarding the frivolity of this case, which findings are supported by substantial evidence. *See* CP 301. As such, there simply is no question that Ms. Lane’s due process rights have not been infringed upon.

B. The Court Should Award FCB Reasonable Attorneys' Fees And Costs Incurred On Appeal If FCB Prevails In This Forum.

Attorney's fees and expenses incurred on appeal can be awarded if applicable law, a contract, or equity permits an award of such fees and expenses. RAP 18.1(a). The party requesting an award of fees and expenses must devote a section of its opening brief to the request for the fees or expenses. RAP 18.1(b).

Attorney's fees can be awarded on appeal when an appeal is frivolous. *See, e.g., In re Recall Charges Against Feetham*, 149 Wn.2d 860, 72 P.3d 741 (2003). 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 was no reasonable possibility” of success. *Id.* (citing *Millers Cas. Ins. v. Briggs*, 100 Wn.2d 9, 15, 665 P.2d 887 (1983)).

This appeal is frivolous. There are no debatable issues upon which reasonable minds might differ in this case, and this appeal is so totally devoid of merit that there is no reasonable possibility of success. The conversation that gave rise to this lawsuit involved *five (5) people* at Mr. Von der Burg's office during normal business hours. There is no possible way for that conversation to be “private” in nature under the Privacy Act. No reasonable person could possibly conclude otherwise.

Moreover, the trial court rightly found that Ms. Lane conveyed threats of extortion or other unlawful requests or demands to FCB during this conversation. Thus, Ms. Lane's Privacy Act claims are plainly barred by statute as a result. These claims would be barred even if the conversation at issue was "private" in nature, which it is not.

Finally, it bears mentioning again that the trial court made numerous findings of fact as to why the imposition of sanctions was warranted in this case. CP 301. In light of these findings, which are supported by substantial evidence, Ms. Lane has no reasonable possibility of success on appeal. As such, if FCB prevails in this forum, it requests an award of costs and attorney's fees pursuant to the foregoing authority.

V. CONCLUSION

The trial court did not abuse its discretion when it entered judgment against Ms. Lane and her attorney in favor of FCB for terms and sanctions in the amount of \$16,000. The trial court made numerous detailed findings that reflect the frivolity of Ms. Lane's claims, and these findings are supported by substantial evidence. Accordingly, FCB asks this Court to affirm the lower court's sanctions ruling. FCB further requests an award of its costs and attorney's fees incurred on appeal in the

event it prevails in this forum.

RESPECTFULLY SUBMITTED this 13 day of June, 2013.

EISENHOWER CARLSON PLLC

By: AL KL
Alexander S. Kleinberg, WSBA # 34449
Chad A. Arceneaux, WSBA # 40442
Attorneys for First-Citizens Bank &
Trust Company

DECLARATION OF SERVICE

I, Jennifer Fernando, am a legal assistant with the firm of Eisenhower Carlson PLLC, and am competent to be a witness herein. On June 13, 2013, at Tacoma, Washington, I caused a true and correct copy of First-Citizens Bank & Trust Company's Brief of Respondent to be served upon the following in the manner indicated below:

Andrew Magee 44th Floor 1001 Fourth Avenue Plaza Seattle, WA 98154 <i>amagee@mageelegal.com</i>	<input checked="" type="checkbox"/> by Legal Messenger <input checked="" type="checkbox"/> by Electronic Mail
---	--

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of June, 2013, at Tacoma, Washington.


Jennifer Fernando

FILED
COURT OF APPEALS
DIVISION II
2013 JUN 13 PM 1:55
STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX A

THE HONORABLE LAURA G. MIDDAGH
DATE OF HEARING: OCTOBER 26, 2012
TIME OF HEARING: 10:00 A.M.
WITH ORAL ARGUMENT

FILED
KING COUNTY, WASHINGTON

OCT 26 2012

SUPERIOR COURT CLERK
BY Susan Bone
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JILL E. LANE,
Plaintiff, and;

JAMES C. MCCLUNG III,
Plaintiff,

vs.

MARK von der BURG/COLDWELL
BANKER BAIN
BELLEVUE/COLDWELL BANKER REAL
ESTATE LLC
And;
DAWN GADWA/FIRST CITIZENS BANK
WASHINGTON/FIRST CITIZENS
BANCSHARES,
Defendants.

NO. 12-2-19315-1 SEA

ORDER GRANTING DEFENDANT
FIRST-CITIZENS BANK & TRUST
COMPANY'S MOTION FOR
SUMMARY JUDGMENT

THIS MATTER having come on regularly for hearing upon Defendant First-Citizens Bank & Trust Company's Motion for Summary Judgment, First-Citizens Bank & Trust Company ("FCB") appearing by and through its attorneys, Eisenhower Carlson PLLC, Alexander S. Kleinberg and Chad E. Arceneaux, Plaintiff Jill Lane appearing by and through her attorney, Andrew Magee, and the Court having reviewed the records and files herein, including:

1. FCB's Motion for Summary Judgment;

ORDER GRANTING DEFENDANT FIRST-CITIZENS BANK
& TRUST COMPANY'S MOTION FOR SUMMARY
JUDGMENT - 1
00523272.DOC

**EISENHOWER
CARLSON** PLLC
Attorneys at Law

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Tacoma, WA 98402
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www.eisenhowerlaw.com

1 2. The Declaration of Chad E. Arceneaux in Support of Defendant First-Citizens Bank
2 & Trust Company's Motion for Order Deeming Requests for Admission to Have Been Admitted;

3 3. The Declaration of Chad E. Arceneaux in Support of Defendant First-Citizens Bank
4 & Trust Company's Motion for Summary Judgment;

5 4. The Order Granting In Part Defendant First-Citizens Bank & Trust Company's
6 Motion for Order Deeming Requests for Admission to Have Been Admitted;

7 5. The Declaration of Alexander S. Kleinberg Regarding Order Granting In Part
8 Defendant First-Citizens Bank & Trust Company's Motion for Order Deeming Requests for
9 Admission to Have Been Admitted;

10 6. The Declaration of Mark von der Burg in Support of Defendant Mark von der
11 Burg's CR 12(b)(6) Motion for Dismissal, Sanctions, Statutory Damages, and/or Partial
12 Summary Judgment;

13 7. The Declaration of Mark Schedler in Support of Defendant Mark von der Burg's
14 CR 12(b)(6) Motion for Dismissal, Sanctions, Statutory Damages, and/or Partial Summary
15 Judgment;

16 8. Plaintiff Jill Lane's Response to Defendant First-Citizens Bank & Trust Company's
17 Motion for Summary Judgment;

18 9. The Declaration of Andrew L. Magee in Support of Plaintiff's Response to
19 Defendant First-Citizens Bank & Trust Company's, et al, Motion for Summary Judgment;

20 10. The Defendant First-Citizens Bank & Trust Company's Reply in Support of its
21 Motion for Summary Judgment and Motion to Strike; and

22 11. The Declaration of Chad E. Arceneaux in Support of Defendant First-Citizens bank
23 & Trust Company's Motion for Summary Judgment and Motion to Strike.

24 **NOW, THEREFORE,** ~~the Court finds that despite having been provided adequate and~~
25 ~~proper notice of FCB's Motion for Summary Judgment, Plaintiff Jill Lane failed to timely~~
26 ~~respond in opposition to FCB's Motion for Summary Judgment in violation of the Washington~~

1 ~~Superior Court Rules and King County Local Civil Rules, that Plaintiff Lane has failed to offer~~
2 ~~any reasonable excuse for failing to timely respond FCB's motion and Plaintiff's conduct~~
3 ~~prejudiced FCB's ability to file reply pleadings related to this case, that Plaintiff Lane has~~
4 ~~displayed a pattern of dilatory conduct with respect to her prosecution of this action and, without~~
5 ~~reasonable excuse, has repeatedly failed to abide by applicable court rules, that after~~
6 ~~consideration of lesser sanctions, it is appropriate that Plaintiff's Response to Defendant First-~~
7 ~~Citizens Bank & Trust Company's Motion for Summary Judgment and the Declaration of~~
8 ~~Andrew L. Magee in Support of Plaintiff's Response to Defendant First-Citizens Bank & Trust~~
9 ~~Company's Motion for Summary Judgment be stricken from the record.~~

10 ~~Further,~~ the Court finds that the conversation referenced in Plaintiffs' Complaint was not
11 private in nature under Washington's Privacy Act, that during the conversation at issue in this
12 case the Plaintiffs conveyed threats of extortion or other unlawful requests or demands, that
13 cause exists to grant the relief requested in FCB's motion, that there is no genuine issue as to any
14 material fact, and that FCB is entitled to the dismissal of Plaintiff's claims against the
15 Defendants on summary judgment as a matter of law.

16 ~~Further, having reviewed Plaintiff's Response to Defendant First-Citizens Bank & Trust~~
17 ~~Company's Motion for Summary Judgment and the Declaration of Andrew L. Magee in Support,~~
18 ~~of Plaintiff's Response to Defendant First-Citizens Bank & Trust Company's Motion for~~
19 ~~Summary Judgment, the Court finds that even if Plaintiff's Response to Defendant First-Citizens~~
20 ~~Bank & Trust Company's Motion for Summary Judgment and/or the Declaration of Andrew L.~~
21 ~~Magee in Support of Plaintiff's Response to Defendant First-Citizens Bank & Trust Company's~~
22 ~~Motion for Summary Judgment were to have been considered by the Court in reaching its ruling,~~
23 ~~Plaintiff's responsive pleadings fail to raise any issue of material fact nor any issue of law that~~
24 ~~would warrant denial of FCB's Motion for Summary Judgment.~~

25 And, having so found, it is hereby:
26

1 ~~ORDERED, ADJUDGED AND DECREED~~ that Plaintiff Lane's Response to
2 Defendant First-Citizens Bank & Trust Company's Motion for Summary Judgment is stricken
3 from the record; it is further

4 ~~ORDERED, ADJUDGED AND DECREED~~ that the Declaration of Andrew L. Magee
5 in Support of Plaintiff's Response to Defendant First-Citizens Bank & Trust Company's Motion
6 for Summary Judgment is stricken from the record; it is further

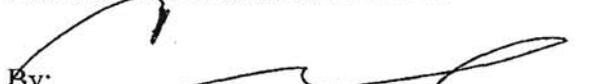
7 **ORDERED, ADJUDGED AND DECREED** that FCB's Motion for Summary
8 Judgment is granted in its entirety, and Plaintiff Lane's claims for violation of right to privacy
9 against ~~the~~ ^{ALL} Defendants are hereby dismissed with prejudice and without recovery; it is further

10 **ORDERED, ADJUDGED AND DECREED**, that ^{PURSUANT TO PRIOR ORDER} FCB may subsequently submit a
11 motion for attorneys' fees and costs pursuant to Civil Rule 54 and/or other applicable law.

12 DONE this 26th day of October, 2012.

13
14
15 ~~KING COUNTY SUPERIOR COURT JUDGE~~ LAURA GENE HODGAUGH

16 Presented by:
17 EISENHOWER CARLSON PLLC

18
19 By: 
Alexander S. Kleinberg, WSBA # 34449
20 Chad E. Arceneaux, WSBA # 40442
21 Attorneys for Defendant First-Citizens Bank
& Trust Company, Dawn Gadwa, and First-
Citizens BancShares

22 Approved as to form, notice of presentation waived:

23 ANDREW L. MAGEE, LLC

24
25 By: 
Andrew L. Magee, WSBA #31281
26 Attorney for Plaintiff Jill Lane

* THE COURT DENIES
DEFENDANT FCB'S MOTION
TO STRIKE PLAINTIFF'S
RESPONSIVE PLEADINGS
& FURTHER THE COURT
DID CONSIDER PLAINTIFF
LANE'S RESPONSE TO
DEFENDANT FCB'S
MOTION FOR SUMMARY
JUDGMENT AS WELL
AS THE DECLARATION
OF ANDREW L. MAGEE
IN SUPPORT OF
PLAINTIFF'S RESPONSE

APPENDIX B

FILED
SUPERIOR COURT OF WASHINGTON

The Honorable Laura Middaugh

OCT 26 2012

SUPERIOR COURT OF WASHINGTON
BY Susan Bone
DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

JILL E. LANE,

Plaintiff and;

JAMES C. MCCLUNG III,

Plaintiff,

vs.

MARK von der BURG/COLDWELL
BANKER BAIN
BELLEVUE/COLDWELL BANKER
REAL ESTATE, LLC

And;
DAWN GADWA/FIRST CITIZENS
BANK WASHINGTON/FIRST
CITIZENS BANCSHARES

Defendants.

NO. 12-2-19315-1 SEA

**ORDER GRANTING DEFENDANT
MARK VON DER BURG'S CR 12(B)(6)
MOTION FOR DISMISSAL,
SANCTIONS, STATUTORY
DAMAGES, AND/OR PARTIAL
SUMMARY JUDGMENT**

THIS MATTER, having come before the Court by way of Defendant Mark Von der Burg's CR 12(b)(6) Motion for Dismissal, Sanctions, Statutory Damages, and/or Partial Summary Judgment ("Motion"), in the above-referenced matter, and the Court having reviewed and considered the following pleadings on file with the Court:

1. Plaintiff's Complaint; Plaintiff's Amended Complaint;
2. Defendant Mark Von der Burg's CR 12(b)(6) Motion;
3. Declaration of M. Von der Burg;

ORDER GRANTING DEFENDANT MARK VON DER BURG'S CR 12(B)(6) MOTION FOR DISMISSAL, SANCTIONS, STATUTORY DAMAGES, AND/OR PARTIAL SUMMARY JUDGMENT - 1

Williams, Kastner & Gibbs PLLC
Two Union Square
601 Union Street, Suite 4100
Seattle, WA 98101
Telephone: (206) 628-6600 • Fax (206) 628-6611

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- 4. Declaration of M. Schedler and attached exhibits;
- 5. Defendant's Reply Brief in Support of Defendant's CR 12(b)(6) Motion; and

- 6. ~~Defendant's Supplemental Reply Brief in Support of Defendant's CR 12~~
- 7. ~~Plaintiff's Response in opposition to Defendants CR 12(b)(6) Motion * (b)(6)~~
- 8. ~~Plaintiff's Informational Filing~~

Based upon the Court's consideration of the above, the Court hereby GRANTS ~~Motion~~ ^{Based on arguments and evidence presented,} Defendant Mark Von der Burg's Motion and DISMISSES the case with prejudice. ~~The Court finds~~ ^{that the conversation in question is not}

FURTHERMORE, the Court GRANTS the following: ~~a "private communication" under RCW 9.73.03~~ ^{The Court further finds the conversation constituted communicating "unlawful requests or demands" under RCW 9.73.030(2)}

~~CR 11 Sanctions against Plaintiffs in the form of reasonable attorneys fees and expenses.~~ Pursuant to previous Order, Defendants may bring CR 11 sanctions w/in 30 days of today's date.

~~[ALTERNATIVELY]~~

~~The Court GRANTS the following:~~

~~Summary Judgment on the issue of damages and limits Plaintiffs' recovery to \$100.00 pursuant to RCW 9.73.060.~~

DATED this 24 day of October, 2012.

~~The Honorable Laura Middaugh~~

DATED this 22nd day of October, 2012.

PRESENTED BY:

Cynthia J. May
attorney for Plaintiff, Jill E. Lane

s/Hunter Abell, WSBA #37223
WILLIAMS, KASTNER & GIBBS PLLC
Attorney for Mark Von der Burg
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Fax: (206) 628-6611
Email: habell@williamskastner.com

* Court did not consider the email exchange attached to Plaintiff's Response Brief in Opposition to Defendant's CR 12(b)(6) Motion.

ORDER GRANTING DEFENDANT MARK VON DER BURG'S CR 12(B)(6) MOTION FOR DISMISSAL, SANCTIONS, STATUTORY DAMAGES, AND/OR PARTIAL SUMMARY JUDGMENT - 2

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APPENDIX C

NOV 30 2012

SUPERIOR COURT
BY Susan Bone
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

McClung, et al,

Plaintiff/Petitioner,

vs.

Von Der Burg, et al

Defendant/Respondent.

No. 12-2-19315-1 SEA

ORDER re Motion for Cr 11 Sanctions

Clerk's Action required: n/a

THIS MATTER came before the undersigned on the Motion of the Defendants for Cr 11 sanctions. The Court considered all of the materials provided by both sides.

The court makes the following Orders:

1. Plaintiff's Motion to strike Defendant's motion is denied.
2. Plaintiff's Motion for oral argument is denied.
3. Plaintiff has produced no argument supported by admissible evidence that refutes the Defendants' motion. However, if there is admissible evidence that the Plaintiff was told by a judicial officer that the conversation which is the subject matter of this lawsuit was recorded in violation of the law, that could establish that the Plaintiff's position in pursuing this claim, while not legally viable, was not unreasonable or frivolous. The plaintiff has had since November 6th to provide evidence of this. While asking for an extension of a month the plaintiff has not provided the Court with any basis for that request, including what evidence is being sought and what efforts have been made so

ORDER re Motion for CR 11 Sanctions

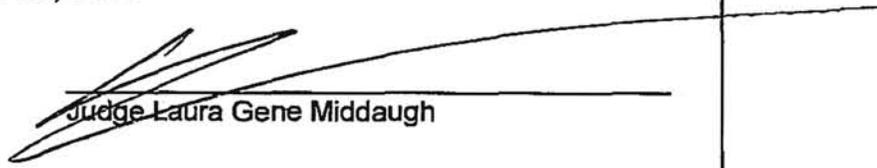
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far to gather such evidence. However, the Court is granting a continuance of this motion as follows:

- a. The plaintiff has until 12 noon December 11, 2012 to provide additional evidence to the Court and opposing counsel. Along with any evidence the plaintiff wishes the court to consider the plaintiff shall provide a declaration as to why the evidence was not available to be considered with the motion. The Court is informing the plaintiff that the Court will consider not just whether the plaintiff was told the recording was made illegally but also what information the Court who made that decision had about the recording. If the Court decides to consider the evidence and the Court finds upon a preliminary reading that the evidence may be sufficient to defeat the Defendants' motion, the Court will allow the defendants an opportunity to reply to the new material. If the Court does not receive any additional evidence on time, the Defendants' motion will be granted.

Dated _____ November 27, 2012



Judge Laura Gene Middaugh

APPENDIX D

FILED
KING COUNTY, WASHINGTON

JAN - 4 2013

SUPERIOR COURT CLERK

FILED
KING COUNTY, WASHINGTON

JAN 04 2012 2013

SUPERIOR COURT CLERK
BY Susan Bone
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

Jill E. Lane

Plaintiff,

v.

Mark von der Burg, Coldwell Banker
Bain; et al

Defendant.

No. 12-2-19315-1 SEA

JUDGMENT AND ORDER
GRANTING DEFENDANTS'
MOTIONS FOR SANCTIONS.

Clerk's Action required: Enter
Judgment as in Judgment Summaries

JUDGMENT SUMMARY

1.

Judgment creditor:	Mark Von der Burg
Judgment debtors:	Jill E. Lane and Andrew Magee
Principal judgment amount:	\$16,000
Interest to date of judgment:	-0-
Attorney's fees:	-0-
Costs:	-0-
Other recovery amount:	-0-
Principal judgment shall bear interest at 12 % per annum	
Attorney's fees, costs & other recovery amounts shall bear interest at n/a % per annum.	
Attorney for judgment creditor:	Hunter Abeell
Attorney for judgment debtor:	Andrew Magee for Jill E. Lane
Other:	-0-

2.

Judgment creditor:	First Citizens Bank & Trust Company
Judgment debtors:	Jill E. Lane and Andrew Magee
Principal judgment amount:	\$16,000
Interest to date of judgment:	-0-
Attorney's fees:	-0-
Costs:	-0-
Other recovery amount:	-0-

Judgment and Order Granting Defendants'
Motions for Sanction Page 1 of 3

ORIGINAL
Page 300

Principal judgment shall bear interest at 12 % per annum

Attorney's fees, costs & other recovery amounts shall bear interest at n/a % per annum.

Attorney for judgment creditor: Chad Arceneaux

Attorney for judgment debtor: Andrew Magee for Jill E. Lane

Other: -0-

This matter came before the court on the motion of defendants for CR 11 sanctions. The Court considered the initial documents filed by the parties and allowed the plaintiff an opportunity to file another response (see Court Order, docket No. 69). The Court has reviewed the entire file in this case and considered all documents that have been filed in making its decision on this motion. Based on its review of the file the Court finds that

1. The action was not warranted by existing case law (the plaintiff made no argument that there was a good faith argument for extension of existing law);
2. The Plaintiff did not make a reasonable inquiry into the factual or legal basis of the action;
3. The plaintiff's attorney has been consistently late in filing motion papers with the Court and opposing parties;
4. The plaintiff's attorney has not provided evidence in support of the plaintiff's position even when given additional time to do so;
5. The plaintiff's presentation to the Court of "evidence" supporting the assertion that there was a reasonable basis for the claim because of statements from the lower court that the action of the defendant was unlawful were based on evidence that was not even in existence prior to the filing of the complaint and a transcript of a hearing from the lower bench that was not made by a certified transcriptionist, appeared to have been selectively transcribed , and, even if considered, contained at best a statement from the Court that identified that there might be an issue as to whether the recording was made illegally.
6. The information about the identity of the unknown person at the meeting(which was the basis for finding that the meeting was not private) appeared to be within the control of the

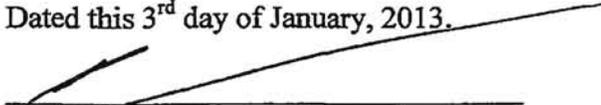
plaintiff, but she chose not to reveal it and yet continued to oppose the defendant's motion for summary judgment;

7. The defendant First Citizen's Bank did not clearly comply with all motion rules, thus bringing some of the work of responding to plaintiff's motion arising from procedural issues on himself and it was impossible for the court to segregate out all the billing for activities relating to this case from other cases relating to the Plaintiff
8. The fees listed for defendant Mark von der Burg had some duplication and review by several attorneys.

Based on the above the Court orders that

1. Defendant Mark Von der Burg is awarded judgment against Plaintiff Jill Land and Plaintiff's Counsel Andrew Magee, jointly and severally, in the total amount of \$16,000 along with post-judgment interest on this amount at the rate of 12% per annum for terms and sanctions.
2. Defendant First Citizen's Bank is awarded judgment against Plaintiff Jill Land and Plaintiff's Counsel Andrew Magee, jointly and severally, in the total amount of \$16,000 along with post-judgment interest on this amount at the rate of 12% per annum for terms and sanctions.

Dated this 3rd day of January, 2013.



Judge Laura Gene Middaugh