

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

JAMES POWERS,

Appellant,

and

BANNER BANK, a Washington
Bank Corporation,

Plaintiff,

v.

REFLECTION LAKE
COMMUNITY ASSOCIATION,
a Washington nonprofit
corporation; and RICK SMITH,

Respondents.

No. 39039-0-III

MOTION TO
INCLUDE
EXTRARECORD
MATERIALS IN
APPENDIX

1. Identity of Moving Party

Respondents ask for the relief designated in Part 2.

2. Statement of Relief Sought

Permission to include extrarecord materials in an appendix
to the Respondents' brief, pursuant to RAP 10.3(a)(8).

3. Facts Relevant to Motion

This is the second appeal between the parties in this matter, the first being decided by this Court in *Banner Bank v. Reflection Lake Community Association*, 20 Wn. App. 2d 1060, 2022 WL 214604 (2022) (Court of Appeals Cause No. 38048-3-III). In that case, this Court sanctioned Appellant, James Powers, under RAP 18.9 for filing a frivolous appeal. *Id.* On remand, Powers challenged the trial court's ability to enter the sanction as a judgment, claiming that a prior settlement agreement executed between the parties should have stayed the first appeal before it was decided. *See generally*, appellant's br.

Several records are therefore relevant that are outside the purview of the trial court record. First, several appellate court records from the first appeal are relevant. This includes a motion Powers filed with this Court asking that the first appeal be stayed and a withdrawal of that same motion filed in less than 24 hours where he represented to this Court the appeal should proceed "regardless of settlement status." Additionally, RLCA's fee

request and this Court's mandate document the fees awarded for all time RLCA spent in that prior matter.

Second, the parties briefed the enforceability of the purported settlement agreement in another case that the parties are litigating. RLCA's filings in that matter will assist the Court in understanding the background between the parties, Powers's nature as a vexatious litigant, and other helpful context to decide this latest frivolous appeal.

4. Grounds for Relief and Argument

RAP 10.3(a)(8) mandates that a party seek the Court's permission to include extrarecord materials in the appendix of its brief. The materials included in the appendix to RLCA's brief will assist the Court.

The appendix materials are pertinent to understanding the frivolous arguments Powers raises in his brief. He omits key documents from the record in the prior appeal to obscure the fact that he represented to this Court that the appeal should go forward "regardless of settlement status." And he has engaged

in multiple, baseless lawsuits against RLCA making it more difficult to build a complete and accurate record for this Court to properly ascertain the truth of this matter.

Relief under RAP 10.3(a)(8) is appropriate under these circumstances. The RAPs must be “liberally interpreted to promote justice and facilitate the decision of cases on the merits.” RAP 1.2(a). The items included in the appendix are all court filings or rulings that have been publicly filed in related matters between these parties and would be subject to judicial notice under ER 201.¹ The parties’ prior filings and representations in court documents are relevant to this Court’s adjudication of the issues raised by this latest appeal, notably judicial estoppel.

This Court should allow RLCA to include these materials in the appendix to its brief. RAP 10.3(a)(8).

¹ Judicial notice can be taken at any time, including on appeal. ER 201(f).

This document contains 514 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 13th day of January, 2022.

Respectfully submitted,

/s/ Aaron P. Orheim

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DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Motion to Include Extrarecord Materials in Appendix* in Court of Appeals, Division III Cause No. 39039-0-III to the following:

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Original electronically delivered via appellate portal to:
Court of Appeals, Division III
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: January 13, 2023, at Seattle, Washington.

/s/ Matt J. Albers _____
Matt J. Albers, Paralegal
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TALMADGE/FITZPATRICK

January 13, 2023 - 12:33 PM

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Comments:

Motion to Include Extrarecord Materials in Appendix; Brief of Respondents

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