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

S. MICHAEL KUNATH,
Plaintiff,
vs.
CITY OF SEATTLE,
Defendant.

No. 17-2-18848-4 SEA
ECONOMIC OPPORTUNITY
INSTITUTE'S RESPONSE TO PLAINTIFF
KUNATH'S MOTION FOR SANCTIONS

SUZIE BURKE, *et al.*,
Plaintiffs,
vs.
CITY OF SEATTLE, *et al.*,
Defendants.

DENA LEVINE, *et al.*,
Plaintiffs,
vs.
CITY OF SEATTLE,
Defendant.

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I. INTRODUCTION

Plaintiff Kunath’s CR 11 motion should be denied. The standard for awarding sanctions under CR 11 is extremely high and while the Court may have in this instance not agreed with Economic Opportunity Institute’s (EOI’s) argument as to which legislative title to rely upon, such argument is neither frivolous nor pursued for an improper purpose. Rather, it is Mr. Kunath’s motion that is brought for the improper purpose of using bullying tactics to litigate this case. It is telling that Mr. Kunath says that he will withdraw his motion if EOI and the City decide not to appeal. EOI will not give in to such bullying. As the Court recognized, the issues addressed in its Order on Parties’ Cross-Motions for Summary Judgment will ultimately be decided by the State Supreme Court. These are issues of first impression that are important for our State. EOI stands by its arguments and will appeal them to the Supreme Court.

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II. AUTHORITY & ARGUMENT

As relevant here, sanctions may only be imposed under CR 11 if the filings are (1) not warranted by existing law or a good faith argument for the alteration of existing law, or (2) interposed for an improper purpose. *Ames v. Pierce Cty.*, 194 Wn. App. 93, 120, 374 P.3d 228, 242 (2016). “Because CR 11 sanctions have a potentially chilling effect, the trial court should impose sanctions only when it is patently clear that a claim has absolutely no chance of success. The fact that a complaint does not prevail on its merits is not enough.” *Loc Thien Truong v. Allstate Prop. & Cas. Ins. Co.*, 151 Wn. App. 195, 208, 211 P.3d 430, 436 (2009).

Mr. Kunath’s own briefing and evidence demonstrates that EOI’s arguments are based on existing law and made for a proper purpose. As Mr. Kunath described in his reply brief, EOI cites three cases in which courts consider a bill’s title to include the Code Reviser’s narrative title, and there are several more cases that do the same. EOI’s Summ. J. Resp. & Reply at 5-6 (citing cases

1 and distinguishing cases Kunath relies on for his title argument); Kunath’s Reply on Cross Mot. For
2 Summ. J. at 5. Mr. Kunath specifically concedes: “EOI does identify one case that erroneously
3 treated the Code Reviser’s heading as the title, *Washington Citizen Action v. Office of Ins. Com’r*, 94
4 Wn.App. 64, 971 P.2d 527 (1999), and in candor to the Court, a smattering of such decisions by the
5 Courts of Appeals do exist.” *Id.* Given that Kunath acknowledges that EOI’s argument is based on
6 several appellate cases, he cannot meet his burden to show that EOI’s submissions lack a legal basis.

7 Mr. Kunath’s evidence also shows that EOI’s arguments are not made for an improper
8 purpose, such as causing delay or harassing other parties. In attorney-client communications
9 attached to his counsel’s declaration, EOI’s counsel sticks by the soundness of its arguments as to the
10 unconstitutionality of the RCW 36.65.030. Davis Decl., Ex. E at 1, 5-6.

11 Moreover, while the Court may have accepted Mr. Kunath’s argument about which title
12 should be used for its constitutional inquiry, EOI’s arguments do not depend on which title is used
13 for this analysis, as EOI extensively discussed in its briefing. See, e.g., EOI’s Mot. for Summ. J. at
14 10-12; EOI’s Summ. J. Resp. & Reply at 6-8; EOI’s Reply to Levine and Burke Plaintiffs at 2-6.
15 Ultimately, these issues will be fully litigated and decided before the Supreme Court. EOI is
16 confident that its arguments will be at least seriously considered if not adopted by that court,
17 particularly in light of RCW 36.65’s legislative history showing that legislators believed they were
18 voting on a law concerning the novel combined city-county form of government. See EOI’s Mot. for
19 Summ. J. at 4-6.
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21 III. CONCLUSION

22 For the foregoing reasons, Mr. Kunath’s motion should be denied.
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1 RESPECTFULLY SUBMITTED this 4th day of December, 2017.

2 SMITH & LOWNEY, PLLC

3
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11 The above-signed attorney certifies that this memorandum contains 644 words, in compliance with
12 the Local Civil Rules.
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