

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-5079

KHURRUM AFZAL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in 08-CV-869,
Senior Judge Eric G. Bruggink.

ON MOTION

Before PROST, Circuit Judge.

ORDER

The United States moves to strike Exhibit FF from the appendix attached to Khurrum Afzal's informal reply brief. Afzal opposes.

The United States argues that the document attached to Afzal's reply brief as Exhibit FF, entitled "Plaintiff's Response to 'Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss,'" was not filed by the United States Court of Federal Claims and thus is not part of the record on appeal. Afzal contends that he submitted the document in question to the trial court one day prior to the entry of judgment and thus it is part of the record on appeal.

Pursuant to Fed. R. App. P. 10, the record on appeal is confined to, inter alia, papers and exhibits filed in trial court. In this case, the docket sheet of the trial court indicates that the document in question was not filed; rather, the docket sheet indicates

that the trial court directed the clerk to return the filing to Afzal because judgment had already been entered. Because the document was not filed by the trial court, it is not part of the record on appeal. Thus, we grant the United States' motion to strike Exhibit FF.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to strike Exhibit FF to Afzal's informal reply brief is granted.
- (2) A copy of this order shall be transmitted to the merits panel assigned to decide this case.

FOR THE COURT

AUG 11 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Khurram Afzal
Steven M. Mager, Esq.

s17

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

AUG 11 2009

JAN HORBALY
CLERK