

No.: 45117-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

DAVID HYYTINEN,

Appellant,

vs.

CITY OF BREMERTON and the STATE OF
WASHINGTON, in its capacity as legal representative of
the Washington State Patrol,

Respondents.

OPENING BRIEF OF APPELLANT
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FILED
COURT OF APPEALS
DIVISION II
2013 OCT 25 PM 3:25
STATE OF WASHINGTON
BY
DENNY

ORIGINAL

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I. INTRODUCTION

The goal of equity is to do substantial justice. Equity exists to protect the interests of deserving parties from the 'harshness of strict legal rules.'¹ Washington courts embrace a long and robust tradition of applying the doctrine of equity.²

See, *Columbia Community Bank v. Newman Park, LLC*, 177 Wash 2d 566 (2013).

In 2007, the Appellant, David Hyytinen, purchased a 2002 Cadillac Escalade ("Escalade") from the Bremerton Police Department ("BPD") at a public auction. The BPD transferred title to the Escalade to Mr. Hyytinen. The State of Washington (hereinafter the "State") issued a title and registration to Mr. Hyytinen.

Four (4) years later, in 2011, Mr. Hyytinen received a letter from the Department of Licensing ("DOL") requesting a VIN inspection. Mr. Hyytinen unwittingly presented the Escalade to the Washington State Patrol ("WSP") for the VIN inspection. The WSP, without prior notice, seized and impounded the Vehicle claiming it

¹ *Rodriguez v. Sep't of Labor & Indus.*, 85 Wn.2d 49, 953, 540 P.2d 1359 (1975)(quoting *Ames v. Dep't of Labor & Indus.*, 176 Wash. 509, 513-14, 30 P.2d 239 (1934)).

² See, *Hamm v. State Farm Mut. Auto. Ins. Co.*, 151 Wn.2d 303, 326, 88 P.3d 35 (2004)(Sweeny K., dissenting.)

was stolen property. There is no dispute that Mr. Hyytinen never received written notice of the seizure and impoundment as required under RCW 46.12.725, and was not afforded due process.

According to the WSP, the BPD sold a stolen vehicle to an innocent citizen. The City of Bremerton (hereinafter the "City") claims it has no liability for selling stolen property. The BPD also claims that it is entitled to keep the money paid by Mr. Hyytinen. In essence, the BPD claims that it is entitled to keep the profits from selling stolen property. The State claims it had no duty to notify Mr. Hyytinen of the seizure and impoundment of the Escalade. Mr. Hyytinen has never been compensated for the Escalade.

Left with absolutely no other alternative, Mr. Hyytinen was forced to file suit against the City and the State in their respective legal capacities as legal representatives for the BPD and WSP, seeking to recover his damages as a result of the City selling him stolen property.

II. ASSIGNMENTS OF ERROR

- A. The trial court erred in granting Defendant State of Washington's Motion for Summary Judgment Dismissal on April 26, 2013. RP(04/26/13)(p. 22:8-19); A-4 – A-6.
- B. The trial court erred in granting Defendant City of Bremerton's Summary Judgment Motion for

Summary Judgment Dismissal of Plaintiff's Claims Against the City on 04/12/13. A-1 – A-3.

- C. The trial court erred in granting Defendant State of Washington, Washington State Patrol's Motion for Summary Judgment re Negligence on June 28, 2013. A-9 – A-11 and A-12 – A-13.
- D. The trial court erred in denying Plaintiff's Motion to Amend Plaintiff's Third Amended Complaint on June 14, 2013. A-7 – A-8.

III. ISSUES RELATED TO THE ASSIGNMENTS OF ERROR

- A. Did the trial court err in finding that the WSP had not violated Mr. Hyytinen's due process rights by failing to give statutorily required notice? (Assignment of Error A).
- B. Did the trial court err in finding that the WSP had not violated RCW 46.12.725, as a matter of law? (Assignment of Error A).
- C. Did the trial court err in concluding that the UCC four (4) year statute of limitations for contracts re sale of goods was applicable? (Assignment of Error B).
- D. Did the trial court err when it did not find that the BPD was unjustly enriched? (Assignment of Error B).
- E. Did the trial court err dismissing Plaintiff's claims of fraud and negligence against the BPD given that: (1) the claims were not time-barred; and (2) there exists a dispute of material fact? (Assignment of Error B).
- F. Did the trial court err in finding that the WSP did not negligently violate RCW § 46.12.725? (Assignment of Error C).

- G. Did the trial court err in entering a monetary judgment against Mr. Hyytinen in favor of the WSP? (Assignment of Error C).
- H. Did the trial court err by declining to allow Plaintiff from clarifying his negligence claim against the WSP? (Assignment of Error D).
- I. Did the trial court err by denying Plaintiff the right to amend his complaint to add a state claim of due process? (Assignment of Error D).

IV. STATEMENT OF THE CASE

A. Background Facts

In 2003, the BPD began a narcotics investigation during the course of which it was discovered that the subject vehicle, a 2002 Cadillac Escalade, was being used in the sale of controlled substances. CP 710, ¶¶3: 16-20. The BPD claimed that the Escalade was owned by Darryl A. Shears. CP 711, ¶4. Mr. Shears has a lengthy criminal record most notably involving possession of stolen property as well as a prior forgery conviction. CP 580. On January 28, 2004, the Kitsap County Superior Court issued a warrant allowing seizure of the Escalade pursuant to RCW 69.50.505. A-39 – A-46; CP 713-714.

On January 29, 2004, the BPD seized the Escalade from Darryl Shears on the strength of the warrant. CP 710, ¶3: 23-26 and 716.³

On January 30, 2004, Notice of Seizure and Intended Forfeiture of the Escalade was sent to Darryl Shears. CP 716. Notice was not sent to anyone else. RP (04/12/13)(p.10:24-25 and p. 11:8-13); CP 716.

On February 17, 2006, subject to Washington State's drug seizure and forfeiture laws (RCW 69.50, *et. seq.*), the Escalade was forfeited to the BPD by an Order granting the stipulated settlement reached between the parties. CP 726-27. On March 13, 2006, title to the Escalade was issued by the State of Washington to the BPD. CP 101-102; CP 728.

On June 12, 2007, the BPD placed an ad in the legal section of the Bremerton Sun newspaper advertising as follows:

THE BREMERTON POLICE DEPARTMENT
Will auction the following described seized
vehicle on June 30, 2007 at King County Auto
Auction, 6722 Pacific Highway East, Fife, WA
during their regularly monthly auction...

2002 Cadillac Escalade

³ We note that while Sergeant Plumb of the BPD states that the Escalade was seized on 01/30/04, the notice of seizure and intended forfeiture identifies the date of seizure as 01/29/04. CP 710, ¶3: 23-26; but *cf.*, CP-716.

See, CP 729.

On June 30, 2007, Mr. Hyytinen purchased the Escalade for \$21,500.00. CP 106-115; CP 730.

On July 3, 2007, title to the Escalade was issued by the State of Washington to Mr. Hyytinen. CP 334: 17-18 and CP 353. From the date of purchase in 2007 until the Escalade was wrongfully seized and impounded by the WSP in 2011, Mr. Hyytinen properly titled and registered the Escalade. CP 706, ¶2. During the duration of his control and possession of the Escalade, Mr. Hyytinen properly and continuously maintained all transaction and licensing fees associated with the ownership of a vehicle as required under Washington law. CP 707, ¶3.

On April 14, 2011, the DOL sent correspondence to Mr. Hyytinen regarding a VIN inspection requested by the WSP. CP 731-732. Mr. Hyytinen received no further correspondence from the DOL.⁴

⁴ On May 2, 2011, the DOL drafted written notification to Mr. Hyytinen that his title to the Escalade had been issued in error. CP 733-34. However, Mr. Hyytinen never received the May 2, 2011, correspondence. CP 707, ¶4. The DOL was aware that Mr. Hyytinen never received the May 2, 2011, notice as said correspondence (which the DOL resent on May 17, 2013, although *without* a certificate of mailing) was returned to the DOL by the US Post Office and marked "return to sender." CP 735-36; see also, RCW 46.12.550(1); A-26.

On July 6, 2011, Mr. Hyytinen brought the Escalade to the WSP for the requested VIN inspection. Following the VIN inspection, he was informed that the Escalade was being confiscated. Mr. Hyytinen responded as follows:

At that point, I showed them my title. That I was the legal owner of the vehicle because I had paid it off. And they [the WSP] basically just shunned that; it doesn't matter.

CP 763 (p.33:21-24)(internal citations added).

Thereafter, Detective Ian Morhous of the WSP verbally stated, “[y]ou [Hyytinen] can't take the vehicle. The vehicle is ours.”

CP 764 (p.34:1-4)(internal citations added). Det. Morhous then advised Mr. Hyytinen that an investigation would be performed. CP 764 (p.34:4-14). Because the WSP impounded the Escalade and Mr. Hyytinen was “basically left in the parking lot of the Washington State Patrol without a ride home”; he was forced to call a neighbor and spend \$40.00, in order to get home. CP 764 (p. 34:13-22).

To date, Mr. Hyytinen is without the vehicle, without the money he used to purchase the vehicle and he has not been compensated for the loss of use of the vehicle. CP 471; CP 706-707. Mr. Hyytinen, a salesperson in the pet industry, used the Escalade in his employment because “there are big heaving things

that need to be taken to customers on a whim and things that need to fit in an Escalade or SUV.” CP 597 (p.42:25 and 43:1-4).

B. The BPD’s Failure to Perform a Routine VIN Inspection Results in the Sale of Stolen Property to an Unsuspecting Member of the Public.

The BPD ran a database search and determined that the Escalade was not stolen and that the Escalade was owned by Darryl Shears. CP 711, ¶4. The BPD also ran a criminal history check on Darryl Shears and learned that he had five (5) felony convictions, two (2) of which were for possession of stolen property and one (1) for forgery. CP 580. Despite Mr. Shear’s criminal history of stolen property and forgery, the BPD failed to verify the Escalade’s ownership by performing an actual VIN examination:

Q: Can you give me your estimation as to how many VINs you’ve personally examined over the course of your career?

A: Probably hundreds.

...

Q: Did you at any point in time ever look at the VIN on the Escalade?

A: I don’t remember ever doing that.

See, CP 740 (p. 14:13-16); CP 741 (p. 19:21-25 and 20:1-7).

C. The WSP's Failure to Comply with RCW § 46.12.725 Results in the Loss of Property and Deprivation of Due Process.

The WSP failed to provide Mr. Hyytinen the written notification required by RCW § 46.12.725, within five (5) days of July 6, 2011, as to the seizure and impoundment of his vehicle. A-27. In fact, at no time has Mr. Hyytinen ever received written correspondence from the WSP, a fact that is undisputed by the WSP:

It is not contested the vehicle was seized on July 6th. It is not contested that the Patrol did not provide Mr. Hyytinen written notice that it seized the vehicle.

RP (04/26/13)(p.7:21-24);CP 707, ¶¶ 6-7.

D. Both the State and the City Received a Benefit from the Sale.

In 2006, Bremerton paid out 10% (\$2,622.50) of the Escalade's fair market value (\$26,225.00) to the State. CP 729; see also, RCW 69.50.505(9)(a);A-43. For some unknown reason, the BPD held onto the Escalade for over a year before selling it to the general public. Following the Escalade's sale to Mr. Hyytinen for \$21,500.00, Bremerton retained \$20,185.00, of the sale proceeds less the \$1,315.00, sale fee to King County Auto Auction. CP 730; see also, CP 745 (p. 34: 22-25 and p.35:1-10). Both the State of

Washington and the City of Bremerton have profited from the sale of stolen property to an innocent citizen. RCW 69.50.505(9)-(10); A-43 – A-44; CP 730.

E. Procedural History

On September 21, 2011, Plaintiff filed suit against the City. CP 1-9.

On November 3, 2011, Mr. Hyytinen filed a Standard Tort Claim Form with the City of Bremerton pursuant to the notice requirements of RCW 4.96.020. See, A-23 – A-25; CP 618-630.

On November 4, 2011, Mr. Hyytinen filed an Amended Complaint. CP 10-15.

On September 5, 2012, Mr. Hyytinen served notice of his intent to join the Washington State Patrol as a party by filing a Standard Tort Claim Form with the State of Washington pursuant to the notice requirements set forth in RCW 4.92.100. See, A-21 – A-22; CP 807-828.

On February 6, 2012, Mr. Hyytinen filed his Second Amended Complaint. CP 48-53.

On December 13, 2012, Plaintiff filed his Summons and Third Amended Complaint for Damages. CP 309-319.

On April 12, 2013, the trial court entered an order granting summary judgment in favor of the City. CP 685-87; A-1 – A-3. The trial court ruled that Plaintiff's: (1) breach of contract claims were untimely and therefore dismissed; (2) fraud and negligence claims were both untimely "in terms of the failure to file the notice of claim as well as the lack of dispute of a material fact"; and (3) unjust enrichment was both time-barred as well as barred by the fact that the claim does sound in contract." RP (04/12/13)(p. 24:20-25 and p. 25:1-4).

On 04/26/13, the trial court heard the parties' cross motions for summary judgment. CP 374-381 and CP 688-705; RP (04/26/13)(p.3:1-4). Following oral arguments, the trial court found as follows:

[I]t may be that there is, as the State has admitted today, two violations of the State's behavior under the statute, both the failure to give the written notice and the disposition of the vehicle prior to the 60 days, but without an independent cause of action, I am unable to discern how a Court can grant relief to Mr. Hyytinen.

RP (04/26/13)(p.22:13-19)(internal citation added).

Despite acknowledging that the State violated Mr. Hyytinen's due process rights and Washington seizure laws, the trial court

granted the State's motion for summary judgment. A-4 – A-6; CP 852-854; RP(04/26/13)(p. 22:8-13).

On 06/14/13, the trial court denied Plaintiff's Motion to Amend Plaintiff's Complaint in order to clarify the negligence cause of action against the WSP as well as add a state claim of violation of due process against the WSP. A-7 – A-8; CP 984-985. The trial court denied Plaintiff's Motion to Amend on three grounds: (1) timeliness; (2) futility; and (3) "there is simply no authority for the proposition that a state due process claim is any different from a federal due process claim." RP (06/14/13)(p.12:23-25 and p. 13:1-9).

On 06/28/13, the trial court granted Plaintiff's motion for summary judgment dismissal re: negligence. A-9 – A-11; CP 1067-1069.

On 06/18/13, the trial court entered judgment **against** Mr. Hyytinen in favor of the WSP. A-12 – A-13; CP 1070-1071.

V. ARGUMENT AND AUTHORITY

A. Standard of Review

An appellate court reviewing a summary judgment order must engage in the same inquiry as the trial court. *Sedwick v. Gwinn*, 73 Wash.App. 879, 884, 873 P.2d 528, 531

(1994)(referencing *Marincovich v. Tarabochia*, 114 Wash.2d 271, 274, 787 P.2d 562 (1990)). The appellate court reviews the facts and law with respect to summary judgment de novo. *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wash.2d 337, 341, 883 P.2d 1383 (1994).

The law requires that this Court resolve all questions of fact in favor of the non-moving party. Mr. Hyytinen is the absolutely innocent victim of a preposterous legal conundrum involving two police departments, the BPD and the WSP. The BPD put the Escalade into the stream of commerce after its allegedly proper investigation resulted in a determination that the Escalade was not stolen property. The WSP took the Escalade from Mr. Hyytinen saying it determined that the Escalade was a stolen vehicle. Then without notice, hearing and/or a judicial determination, the WSP released the Escalade to Canada, depriving Mr. Hyytinen of his due process right to a hearing and corresponding finding of fact as to whether the Escalade was in fact a stolen vehicle. Amazingly, both the WSP and the BPD have taken the position that they are entitled to keep Mr. Hyytinen's money. Essentially, both the State and the City claim it can profit from the sale of stolen property.

B. The WSP Violated Mr. Hyytinen's Due Process Rights.

The Fourth Amendment of the United States Constitution explicitly protects the rights of its citizens from unlawful seizures and search and seizure. U.S. CONST., amend. IV; A-14. The Takings Clause protects a citizen's constitutional rights stating: "[n]o person shall be ...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST., amend. V; A-15. The Equal Protection Clause of the Fourteenth Amendment provides that: "No state...shall deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST., amend. XIV, §1; A-16. The level of scrutiny required in the analysis of classifications burdening certain fundamental rights is strict scrutiny.

A Washington resident's constitutional rights are echoed under the Declaration of Rights set forth in Article 1 of the Washington State Constitution:

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

See, WASH. CONST. art. I, § 3; A-17.

The weight of these constitutionally protected personal liberties caused the Washington Legislature to require that state actors meet a higher standard than its federal counterpart.⁵ WASH. CONST. art. I, §§ 1,3,7,29, 30, 32; see also, A-17 – A-18.

Under Washington law, the WSP's seizure/impoundment of Mr. Hyytinen's Escalade must satisfy the standards set forth under RCW 46.12.725. Seizure and impoundment which fails to comply with the strict letter of the law constitutes an illegal taking in violation of Mr. Hyytinen's due process rights.

1. **The WSP failed to notify Mr. Hyytinen of the Escalade's seizure and impoundment as required under RCW 46.12.725.**

Under RCW 46.12.725(2), the law enforcement agency seizing a vehicle must send written notice of such impoundment, by certified mail, to all known persons claiming an interest in the vehicle. The written notice must be sent within five days of the impoundment of any vehicle and must: (1) advise the person of the fact of seizure; (2) the possible disposition of the article or articles;

⁵ The concept that states may interpret their own constitutions to expand individual rights guaranteed by the United States Constitution is a fundamental constitutional principle. The idea that the federal Constitution represents the "floor" for individual rights and that states may set the "ceiling" is beyond dispute. See, e.g., *Oregon v. Hass*, 420 U.S. 714, 719 (1975); *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *Cooper v. California*, 386 U.S. 58, 62 (1967) (stating that the states have the power to impose higher standards than those required by the federal Constitution).

(3) the requirement of filing a written claim requesting notification of potential disposition; and (4) the right of the person to request a hearing to establish a claim of ownership. *Id.*

The WSP never provided Mr. Hyytinen with the **required** certified notice of his right to request a hearing to establish his claim of ownership. This fact is not disputed:

It is not contested the vehicle was seized on July 6th. It is not contested that the Patrol did not provide Mr. Hyytinen written notice that it seized the vehicle.

RP (04/26/13)(p.7:21-24); see also, CP 707, ¶ 6-7.

The WSP argues that because Mr. Hyytinen had actual notice of the Escalade's seizure and impoundment (i.e., the Escalade was confiscated at the VIN inspection), the WSP had no duty "to take any further steps to inform him of his options." CP 377:22-24.

The WSP's argument fails because Washington statute requires more. The WSP's violation of Mr. Hyytinen's due process rights divested him of his innate right to a *timely* hearing and judicial determination on his ownership interest/claims in the Escalade. As such, Mr. Hyytinen was precluded from asserting theories of ownership by right, interest and/or equity, including the following:

(1) the WSP failed to establish that the Escalade was stolen; (2) Mr. Hyytinen had good title to the Escalade given his status as a good faith buyer; (3) the court's order of 02/17/06, transferred title to the BPD. Moreover, the WSP's failure to give notice *entirely foreclosed* any opportunity to negotiate for a settlement with the purported true owner which could have included an assignment of rights of the true owner's claims against the BPD based on BPD's failure to provide notice as required under RCW 46.12.725(2) and *Moen v. Spokane City Police Dept.*, 10 Wash,App. 714, 42 P.3d 456 (2002).

(a) *The WSP has not established that the Escalade was stolen.*

Conspicuously absent throughout the entire dispute regarding Mr. Hyytinen's purchase of the Escalade is any court order or administrative policy determining that the vehicle was in fact stolen. Rather, the 02/17/06 Order, specifically forfeits the Escalade to the BPD. CP 726-27. Furthermore, the City did not believe the Escalade to be stolen:

The City did not know it was stolen. The City checked all of the information available to it. Access –and this is in Sergeant Plumb's declaration – access the DOL, WASIC/NCIC. All those agencies, that – and databases that will tell you when a vehicle's been stolen. No red flags. No issues. Everybody believes that this vehicle has clear title. There's absolutely

no evidence at all that the City in 2007, when it was sold to the plaintiff, had any knowledge that the vehicle was stolen.

RP (04/12/13)(p.9:14-23).

The WSP determined that the Escalade was stolen in direct contradiction to the BPD's prior determination of the Escalade's status. The fact remains that at the time of the WSP's unlawful confiscation of the Escalade, the last judicial determination of record identified the Escalade as properly forfeited property and transferred said property to the BPD.

The WSP acted as both Judge and Jury with respect to all issues concerning this particular vehicle. The WSP's conduct violated the purpose of RCW 46.12.725, which allows for seizure and impoundment "for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it had been reported stolen." RCW 46.12.725(1). The WSP unilaterally determined the Escalade to be stolen despite Mr. Hyytinen's obvious property interest made apparent to the WSP not only by his verbal acknowledgement but by his physical demonstration of title at the time of seizure:

At that point, I showed them my title. That I was the legal owner of the vehicle because I

had paid it off. And they [the WSP] basically just shunned that; it doesn't matter.

See, CP 763 (P. 33:21-24)(internal citations added).

Significantly, the WSP made its determination without notice or hearing as required by Washington law. The WSP's failure to give the statutorily required notice resulted in the deprivation of Mr. Hyytinen's right to make arguments regarding his ownership interest in the Escalade.

The WSP deprived Mr. Hyytinen of the right to verify any of the information claimed by the WSP. Not only does such conduct fly in the face of the United States' well-established system of "checks and balances" but seemingly upholds unchecked police power in violation of State constitutional rights. WASH. CONST. art. I, § 32; A-18. In doing so, WSP has also engaged in spoliation of evidence and violated Washington law.

(b) *Mr. Hyytinen had good title to the Escalade pursuant to the voidable title doctrine.*

Under the voidable title doctrine, a good faith purchaser for value acquires good title from seller with "voidable title." *Graham v. Notti*, 147 Wn. App.629, 639, 196 P.3d 1070 (Wash. Ct. App. 2008)(citing *Heinrich v. Titus-Will Sales, Inc.*, 73 Wn.App.147,158, 868 P.2d 169 (1994)); RCW 62A.2-403; A-37. Voidable title exists only if the title claimant has some legal interest in the property. Voidable title may exist although the claimant acquired an interest

in the property through a transaction flawed by a lack of good faith or a technical defect. *Heinrich*, 73 Wn. App. at 159.

The UCC provides two means of obtaining voidable title: a transaction of purchase or entrustment. A purchase transaction involves a voluntary transaction creating an interest in property. See, *Graham*, 147 Wn. App. 639; RCW 62A.1-201 (29)&(32); A-34. Various policy principles support placing the risk of loss on the entruster – for instance, it protects the innocent buyer who, based on his observation of goods in the possession of a merchant of those goods, believes that the merchant has legal title to the goods and can, therefore, pass title in the goods to another. *Heinrich*, 73 Wn. App. at 152-152 (citing Official Comment 2, RCW 62A.2-403).⁶

In the instant matter, Plaintiff Hyytinen has established that: (1) the BPD “entrusted” the Escalade to the King County Public Auction based on the authority of a court order; (2) the King County Public Auction was a merchant dealing in automobiles; and (3) Plaintiff Hyytinen bought the Escalade from the King County Public Auction as a “buyer in ordinary course of business.” RCW 62A.1-

⁶ A buyer in ordinary course of business is a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind. RCW § 62A.1-201(9). "Buying" includes receiving goods under a pre-existing contract for sale. *Id.*

201(9);A-31–A-32. Pursuant to the entrustment doctrine, Mr. Hyytinen obtained, at worst, a “voidable title.” In order to “void” that title, further judicial determinations were required before Mr. Hyytinen’s title could be voided. The WSP failed to take any of these steps, thus depriving Mr. Hyytinen of his rights to due process.

(c) ***The BPD regularly engaged in the sale of forfeited property.***

This was not the first time the BPD sold seized property to the public, nor was it the first time the BPD used an auction house to sell such property. CP 746 (p.37:2-9). In fact, the Escalade was sold at auction along with four (4) other vehicles. CP 745(p. 35:19-25). The King County auction house was specifically used to generate more public exposure on the sale and “bring a little more money.” CP 745 (p.36: 16-18). Moreover, the BPD advertised the sale of the Escalade to the public. CP 729.

The buyer, Mr. Hyytinen, who had no knowledge of the Escalade’s stolen status at the time of sale and paid a substantial sum (\$21,500.00) for the Escalade. CP 730 and 763(p. 31:11-16). Mr. Hyytinen had no reason to suspect that the BPD did not do its due diligence by failing to perform a basic VIN examination. CP 580

and CP 740 (p.14:13-16); CP 741 (p. 19:21-25 and 20:1-7). Moreover, at the time of sale, the BPD was the legal owner of the Escalade as it had title to the vehicle obtained by virtue of the court's order. CP 728. The BPD, by its very establishment as a law enforcement agency, is both a literal and figurative implementation of justice charged with protection of the public good and a symbolic entity in which the public may intrinsically place their trust. Mr. Hyytinen had every right to believe that the BPD had sold him good title to the Escalade.

(d) *Mr. Hyytinen never had an opportunity to attempt to negotiate/settle any potential subrogation claims/interests.*

Although Mr. Hyytinen does not know exactly what happened to the vehicle, upon information and belief, the vehicle was shipped by WSP to Canada, shortly after the seizure. What the evidence does show is that the Escalade was stolen from a Cadillac dealership located in Canada on November 15, 2002. CP 131. The insurance company insuring the Escalade paid out the claim. CP 134.

Had Mr. Hyytinen been properly noticed of his right to make a claim, he could have negotiated a settlement or an assignment or rights with the insuring company and/or other claimants. Such a

settlement could have included an exact remedy to sue the agency that failed to put the true owners on notice of the “seizure/forfeiture” and/or “seizure/impoundment” for damages. See, *Moen v. Spokane City Police Department*, 110 Wn. App. 714, 42 P.3d 456 (2002). The parties could have negotiated an assignment of rights for an exchange of proceeds. The WSP’s violation of Mr. Hyytinen’s due process rights permanently deprived him of any such remedy.

2. The WSP failed to release the Escalade to Mr. Hyytinen as required by law.

Pursuant to RCW 46.12.725(3), the WSP was required to release the Escalade to Mr. Hyytinen as the lawful owner when Mr. Hyytinen produced his title for inspection establishing proof that he owned the Escalade. Instead, the WSP impounded the Escalade. The WSP clearly disregarded the release requirement provided by statute in violation of Mr. Hyytinen’s constitutional rights.

C. The WSP Violated RCW 46.12.725 as a Matter of Law.

The correspondence from the DOL was defective pursuant to the requirements of RCW 46.12.550. Moreover, even if the correspondence was not defective, the DOL was not the law enforcement agency which seized the Escalade. RCW

46.12.725(2) requires that the **seizing agency** provide a person with interest written notice setting forth, among other things, the right of the person to request a hearing to establish a claim of ownership, within five (5) days. Mr. Hyytinen has never received written notification from the WSP as required by law. As such, the WSP clearly violated the notice requirements under RCW 46.12.725(2), in violation of Mr. Hyytinen's constitutionally protected rights.

Mr. Hyytinen was a good faith purchaser who bought the Escalade from a state actor that had lawful title pursuant to a court order.⁷ The WSP maintains that because Mr. Hyytinen had actual notice that the vehicle was being impounded (*i.e.*, the WSP forced him to leave his vehicle and find another way home), the WSP was not required to take further steps to inform Mr. Hyytinen of his options. The WSP's arguments disregard the plain language of the law. Pursuant to RCW 46.12.725(2), within five (5) days of the seizure, the seizing agency **must** provide a person with interest in

⁷ The WSP's position ignores the previously entered Order regarding ownership. As set forth above, the Kitsap County Superior Court authorized the BPD to take possession of the vehicle. Pursuant to the State's impound laws, the BPD was legally authorized to sell the vehicle at public auction. Implicit in the Order and Washington State law is the principle that title to that property transfers to the good-faith purchaser. Nevertheless, RCW 46.12.725, merely requires a person claiming an interest in the property to be entitled to notice. Obviously, Mr. Hyytinen had a good-faith claim to the vehicle's ownership.

the seized property written notice setting forth, among other things, the right of the person to request a hearing to establish a claim of ownership. The WSP failed to do so.

D. Mr. Hyytinen's Contractual Claims Against the BPD are Not Time-Barred.

Typically an action sounding in contract has a six (6) year statute of limitations. RCW 4.16.040; A-19. However, Article 2 of the Uniform Commercial Code ("UCC"), as adopted by Washington State, is the governing law in the sale of moveable goods. RCW 62A.1-101, *et. al*; A-29. Under RCW 62A.2-725, the statute of limitations in contracts for sales is four (4) years after the cause of action accrues. A-38.

However, Washington's codification of the UCC must be "liberally construed and applied to promote its underlying purposes and policies." RCW 62A.1-103(a); A-30. In fact, RCW 62A.1-103(b) specifically provides that the principles of ***law and equity*** supplement the UCC's provisions. Even the City would agree that, "in order to get relief from this Court, plaintiff must be able to maintain a legal or equitable cause of action." RP (04/12/13)(p. 4: 18-20).

1. **The UCC's four year statute of limitations is not absolute.**

The City argues that the four year statute of limitations proscribed by the UCC is absolute. Such an interpretation thwarts

the liberal construction of the UCC and at least one of its purposes and policies, specifically “to permit the continued expansion of commercial practices through custom, usage and agreement of the parties.” RCW 62A.1-103(a)(2). Significantly, the UCC specifically distinguishes “contract” from “agreement” by defining “contract” to mean “the total legal obligation that results from the parties’ agreement as determined by this title as supplemented by other applicable laws.” RCW 62A.1-201(12). The UCC defines “agreement” to mean the “bargain of the parties in fact, as found in their language or inferred from other circumstances...including course of dealing or usage of trade.” 62A.1-201(3).

The BPD’s total legal obligation was to transfer clear and valid title. If the vehicle was stolen, the BPD failed to meet its obligation. Therefore, the prescribed four year statute of limitations is inapplicable as it only applies to **contracts** for sale. RCW 62A.2-725. However, the displacement of that particular provision, i.e. RCW 62A.2-725, does not terminate the BPD’s obligations to comply with those remaining and relevant provisions. RCW 62A.1-103(b).

2. The BPD breached its contractual obligations.

Under RCW 62A.2-312, in a contract for sale, the seller warrants that: "(a) the title conveyed shall be good, and its transfer rightful; and (b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge." RCW 62A.2-312(1)(a)-(b); A-36; CP 311, §§ 3.1-3.5. A seller "who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like." RCW 62A.2-312(3). As such Mr. Hyytinen is entitled to buyer's remedies under the UCC.

3. The BPD violated the implied warranty of good title.

In the alternative, the BPD violated its implied warranty of good title. An action upon a "contract or *liability*, express or *implied*, which is not in writing, and does not arise out of any written instrument" is three (3) years. RCW 4.16.080(3)(emphasis added);A-20.

As established above, the BPD regularly engaged in the sale of seized and forfeited property. CP 746 (p. 37:2-9). The BPD customarily used an agent to effectuate the sale of such property to the public. The BPD's purpose of selling such property was to make a profit. In the instant case, the BPD's profit margin

motivated them to select a third-party agent that would generate more public exposure on the sale and “bring a little more money.” CP 745 (p.36: 16-18). The BPD also advertised the sale of the Escalade to the public. CP 729. As such the BPD had an affirmative duty to deliver title clear of encumbrances. The BPD breached its duties resulting in injury to Mr. Hyytinen.

E. Mr. Hyytinen is Entitled to Recovery Under the Theory of Unjust Enrichment because Substantial Justice Requires such a Result.

Unjust enrichment is the method of recovery for the value of the benefit retained because notions of fairness and justice require it. *Young v. Young*, 164 Wn.2d 477, 191 P.3d 1258 (2008)(referencing *Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.*, 61 Wn. App. 151, 160, 810 P.2d 12 (1991)) (“Unjust enrichment occurs when one retains money or benefits ***which in justice and equity belong to another***”)(emphasis added).

Three elements must be established in order to sustain a claim based on unjust enrichment: (1) the defendant receives a benefit, (2) the received benefit is at the plaintiff's expense; and (3) the circumstances make it unjust for the defendant to retain the benefit without payment. *Young*, 164 Wn.2d at 485.

The City argues that: (1) Plaintiff's unjust enrichment claim must fail because there was a contract; and (2) Defendant City of Bremerton did not receive a benefit. CP 342-343.

1. **The Escalade's stolen status precludes the formation of a valid contract.**

The City argues that unjust enrichment is inapplicable because there is a contract between the BPD and Mr. Hyytinen. RP (04/12/13)(p.13:4-5). However, a contract cannot exist where there is no legal capacity to bargain for the subject matter of the contract. In determining whether a contract is void as against public policy "public policy" embraces all acts or contracts which tend clearly to injure public health, public morals, public confidence in purity of administration of law, or which undermined that sense of security for individual rights, whether personal liberty or private property, which any citizen ought to feel. *American Home Assur. Co. v. Cohen*, 815 F.Supp.365 (W.D. Wash.1993).

The BPD's argument that a contract was created ignores the requirement that the parties mutually agree to the essential terms of the contract. *West Coast Airlines, Inc. v. Miner's Aircraft & Engine Serv., Inc.*, 66 Wn.2d 513, 403 P.2d 833 (1965). The BPD cannot

demonstrate mutual agreement because clearly Mr. Hyytinen would not have contracted for the purchase of stolen goods.

2. The City received a benefit.

The City next argues that Mr. Hyytinen fails to prove the first element required under *Young* because the City did not receive a benefit. The BPD unequivocally made a profit from the BPD's sale of the stolen vehicle to Mr. Hyytinen:

If the defendant be under an obligation, from the ties of natural justice, to refund; the law implies a debt, and gives this action, founded in the equity of the plaintiff's case, as it were upon a contract, ("quasi ex contractu").

See, *Young*, 164 Wn.2d 477 at 486 (citing *Cont'l Baking Co.*, 72 Wn.2d 138, 143, 431 P.2d 993 (1967) (internal quotation marks omitted) (quoting *State ex rel. Employment Sec. Bd. v. Rucker*, 211 Md. 153, 157-58, 126 A.2d 846 (1956))).

The BPD received over \$20,000.00, from Mr. Hyytinen for the vehicle. Mr. Hyytinen, upon being informed by the WSP that his vehicle was stolen and would be confiscated, contacted the BPD in an effort to obtain a refund on the money he paid for a stolen vehicle. The BPD denied any and all wrongdoing and refused to give Mr. Hyytinen any refund.

F. The UCC's Four Year Statute of Limitations does not Apply where a Valid Contract does not Exist.

If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient. See, *Restatement (Second) of Contracts* § 164(1) (1981). A misrepresentation is "an assertion that is not in accord with the facts." *BakeryEquipment.com v. Coastal Food, Inc.*, 2012 U.S. Dist. LEXIS 35329 (W.D. Wash. Mar. 15, 2012) (citing *Yakima County (W.Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 390-91, 858 P.2d 245 (1993) (quoting *Restatement, supra*, § 159)). The party seeking to have the contract voided bears the burden of proving any misrepresentation. *Id.*, at 391.

Implicit in its offer of sale was the BPD's representation that the Escalade had a clean title. The BPD by virtue of being a law enforcement agency stood in a superior position of knowledge and ability to investigate. It had a duty to determine ownership of the vehicle before it sold the vehicle to an innocent party. Mr. Hyytinen justifiably relied on the BPD's status as a law enforcement agency that there was indeed good title when he purchased the vehicle. However if the vehicle was stolen, the BPD did not have good title

to give. Thus resulting in the material misrepresentation upon which Mr. Hyytinen justifiably relied voiding the contract.

Because there is no contract, the four (4) year statute of limitations under the UCC is inapplicable. As such, the statute of limitations on an unjust enrichment claim would be a three year statute of limitations that accrues upon discovery. RP (04/12/13)(p.21:16-20). The statute of limitations on Mr. Hyytinen's unjust enrichment claim contract claims expires on July 6, 2014 (i.e., three years from date of discovery (07/06/11 – date of seizure)). In the alternative, Mr. Hyytinen's claim of unjust enrichment did not expire until July 3, 2013 (i.e., six years from date of "contracting" (07/03/07 – title transfer). In either instance, Mr. Hyytinen timely filed his unjust enrichment claim.

G. Mr. Hyytinen's Tort Claims Against the BPD are Not Time- Barred.

Mr. Hyytinen alleges two claims sounding in tort against the City – fraud and negligence. CP 309-15; CP 339: 11-18. An action for taking, detaining or injuring personal property is to be commenced in three (3) years. RCW 4.16.080(2). The discovery rule has been applied in cases where the defendant fraudulently conceals a material fact from the plaintiff and thereby deprives the

plaintiff of the knowledge of accrual of the cause of action; application of the discovery rule tolls the limitation period until such time as the plaintiff knew or, through the exercise of due diligence, should have known of the fraud. *Crisman v. Crisman*, 85 Wn. App. 15, 20; 931 P.2d 163 (Wash. Ct. App. 1997).

1. **Mr. Hyytinen complied with the notice requirements under RCW 4.96.020.**

In *Troxell*, the plaintiff was injured in a slip and fall incident which occurred on December 17, 1998. *Troxell v. Rainier Public School Dist. No. 307*, 154 Wn.2d 345, 111P.3d, 1172 (2005). Plaintiff commenced suit against the Defendant City on December 10, 2001, after only 59 days had passed in violation of the 60 day notice period proscribed under RCW 4.96.020(4). *Id.*, 154 Wn.2d at 347; A-23 – A-26. The Washington Supreme Court affirmed the trial court's dismissal with prejudice of plaintiff's tort claims because she commenced her tort action before the required sixty-day period had expired, as required by RCW 4.96.020(4). *Troxell*, 154 Wn.2d at 360. However, in *Troxell*, the three-year statute of limitations had run on the plaintiff's tort claim.

Troxell does not bar a plaintiff from bringing a claim against a municipality because initially the plaintiff failed to comport with the

notice requirement. Rather, the notice requirement only has that effect where the statute of limitations expired prior thereto. Moreover, the *Troxell* Court notes that, “the purpose of RCW 4.96.020(4) is to establish a period of time for government defendants to investigate claims and settle those claims where possible.” *Id.*, 351 (citing *Medina v. Public Utility District No. 1 of Benton County*, 147 Wn.2d 303, 317, 53 P.3d 993 (2002)).

On November 3, 2011, Mr. Hyytinen filed a Standard Tort Claim Form in compliance with RCW 4.96.020, with the City. CP 618-630. Plaintiff filed his Third Amended Complaint on or about February 6, 2012, 95 days after filing the required notice with Defendant City of Bremerton. CP 309-15. The City of Bremerton was timely accorded proper notice in compliance with RCW 4.96.020.

In the instant matter, Mr. Hyytinen’s causes of action sounding in tort accrued in July of 2011, when Mr. Hyytinen’s Escalade was seized. As such, the statute of limitations on Mr. Hyytinen’s tort claim(s) runs in July of 2014, which is more than nine (9) months away. RCW 4.16.080. Clearly, Mr. Hyytinen timely initiated suit.

However, even under the Court's broadest reading of RCW 4.96.020 and its pertinent case law, the legislature's inherent policy of justice is reflected in its own statutory language thereby cushioning the potentially chilling effect of any rigorous interpretation:

With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

See, RCW 4.96.020(5); A-25.

2. **The BPD's sale of the Escalade resulted in injury to Mr. Hyytinen.**

There are two ways to establish fraudulent concealment or misrepresentation. The plaintiff may affirmatively plead and prove the nine elements of fraud or may simply show that the defendant breached an affirmative duty to disclose a material fact. *Crisman*, 85 Wn. App. at 21-22 (citing *Stiley v. Block*, 130 Wn.2d 486, 515-16, 925 P.2d 194 (1996); *Oates v. Taylor*, 31 Wn.2d 898, 902-03, 199 P.2d 924 (1948)). Either method of proof will activate the statutory discovery rule for fraud, RCW 4.16.080(4). *Crisman* at 21-22 (citing *Viewcrest Co-op Ass'n v. Deer*, 70 Wn.2d 290, 295, 422 P.2d 832 (1967)).

(a) The BPD had notice of the falsity of its warranty of title.

In order to establish fraud in Washington, a claimant must establish, by clear, cogent and convincing evidence, the nine elements of fraud: (1) a representation of existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that it be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom the representation is addressed; (7) the latter's reliance on the truth of the representation; (8) the right to rely on it; and (9) consequential damages. *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 166, 273 P.3d 965 (2012).

The City only disputes elements one (1) and four (4) of Mr. Hyytinen's asserted fraud claim. CP 339-40.

(i) Element 1: Representation of Existing Fact.

The City first argues that the BPD did not misrepresent any fact because Mr. Hyytinen did not talk to anyone from the City prior to the purchase of the vehicle. CP 340. This is a red herring. The Escalade was forfeited to the BPD via a court order. CP 726-27. The BPD had title to the Escalade. CP 101-102; CP 728. Moreover, by listing the Escalade for sale at an auction open to the

general public, the BPD, a law enforcement agency which by its very nature invokes public confidence, held the vehicle out for sale with a clean title. King County Auto Auction had apparent authority to sell the Escalade on behalf of the BPD. Significantly, the BPD did nothing to either stop the sale of the Escalade or notify Mr. Hyytinen that the Escalade did not in fact carry a clean title. As such, the BPD ratified the terms of the sale, including the representation that the Escalade had a clean title.

(ii) Element 4: Speaker's Knowledge of Its Falsity.

In the alternative, the City argues that even if the first element be proven, Mr. Hyytinen fails on element four in that the BPD did not know of the falsity. CP 340. The BPD had constructive notice that the Escalade was stolen. The BPD, as a law enforcement agency, is well informed of tactics to conceal a stolen vehicle including VIN cloning and, therefore, employ standard tests to verify the authenticity of a vehicle's VIN – especially a vehicle seized from a convicted forger with a criminal history positive for two counts of stolen property as well as forgery. The BPD failed to perform this standard VIN verification test. Had the test been performed by the BPD, as was its duty, the BPD

would have learned that the Escalade was stolen and the sale would not have occurred. Due to its negligent failure to follow standard protocol, the BPD fraudulently concealed the true ownership of the Escalade because fraud is not limited to actual knowledge but imputed knowledge. RP (04/12/13)(p.17:9-20).

3. **The BPD's negligent failure to verify the Escalade's VIN caused injury to Mr. Hyytinen.**

In *Moen v. Spokane City Police Department*, 110 Wn. App. 714, 42 P.3d 456 (2002), the Spokane City Police Department seized a new 2000 Ford Taurus. The Spokane City Police Department failed to notify Eugene Moen, the true owner of the Taurus, of the forfeiture of the Taurus. *Id* at 457. Mr. Moen challenged the forfeiture of the Taurus, and the trial court found that the seizure and forfeiture of the Taurus was not justified because of the department's failure to give the true owner notice, as required by RCW 69.50.505. *Id*.

Just as in *Moen*, this case arises out of a controversy regarding a police department's seizure and forfeiture of a vehicle without giving the vehicle's true owner notice. In *Moen*, the Spokane Police Department failed to give notice of the forfeiture hearing to the true owner of the Taurus. In this case, after failing to identify and give notice to the alleged true owner of the vehicle, the BPD sold the improperly forfeited vehicle to Mr. Hyytinen. In *Moen*, Eugene Moen attempted to get his improperly forfeited vehicle back

from the Spokane Police Department, but they refused, which prompted Mr. Moen to bring suit challenging the forfeiture. In this case, Mr. Hyytinen asked for a refund on the purchase price from the BPD when his vehicle was seized by the WSP after being identified as a stolen vehicle.

Pursuant to RCW 69.50.505, the seizure and forfeiture of the Escalade required the BPD to give the Escalade's true owner notice. The only way to give the true owner notice was to verify the Escalade's VIN number by conducting a standard VIN verification test. The BPD failed to do this thereby breaching its duty. CP 740 at p. 14:13-16 and 741 at p. 19:21-25, 20:1-7. Given the BPD's constructive notice of the Escalade's stolen status and by representing that the Escalade had clean title, the BPD put the Escalade back into the stream of commerce and created a good faith purchaser when it subsequently sold the Escalade to Mr. Hyytinen. Therefore, the BPD's violation of RCW 69.50.505, proximately caused Mr. Hyytinen's damages. "But for" the BPD's failure to perform its duty, Mr. Hyytinen never would have purchased the Escalade.

H. The WSP's Acknowledged Failure to Comply with RCW § 46.12.725 is Negligence Per Se.

In a negligence action, the plaintiff must show duty, breach of that duty, and injury proximately caused by the breach. *Hartley v.*

State, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). Duty may arise from a legislatively created standard of conduct or from a judicially imposed standard. *Amend v. Bell*, 89 Wn.2d 124, 132, 570 P.2d 138 (1977).

In order for a statutory duty to arise, the statute must: (1) protect a class of people that includes the person whose interest was invaded; (2) protect the particular interest invaded; (3) protect that interest against the kind of harm that resulted; and (4) protect that interest against the particular hazard that caused the harm. *Estate of Templeton v. Daffern*, 98 Wn. App. 677, 682, 990 P.2d 968 (2000)(citing *Restatement (Second) of Torts* § 286 (1965)). Breach of a statutory duty is evidence of negligence. *Id.*, at 684.

In *Skeie v. Mercer Trucking Co., Inc.*, 115 Wn. App. 144, 61 P.3d 1207 (2003), the Plaintiff was seriously injured when the car he occupied crashed head-on into a tractor-trailer and the trailer's load of cement blocks fell onto him. In its motion for summary judgment, the trucking company successfully argued that it did not have a duty to accident proof its truck in anticipation of the other driver's negligence and the victim's particular injuries.

On appeal, the Plaintiff argued the trucking company's failure to comply with the statute (*i.e.*, failure to properly secure its load of

cement blocks in accordance with the statutory requirement) resulted in the trucking company's breach of its statutorily-imposed duty to protect the Plaintiff from the events that actually occurred. The appellate court initially noted in reviewing legal causation the focus was upon the connection between the ultimate injury and whether the act of the defendant was too remote or insubstantial to impose liability.

The appellate court held the trucking company owed a legally enforceable obligation to secure its load so that it would not detach during a collision. The appellate court concluded the trucking company's failure to comply with the minimum statutory safety standards for securing the blocks was evidence of negligence and the judgment of the trial court was reversed.

In the instant matter, the WSP had a statutory duty to provide within five (5) days of the seizure and impoundment of the Escalade, written notice setting forth, among other things, the right of the person to request a hearing to establish a claim of ownership. It is undisputed that the WSP did not provide Mr. Hyytinen with the statutorily required certified written notice following the seizure and impoundment of his vehicle. The WSP's

argument that its admitted failure did not proximately cause Mr.

Hyytinen's resulting injuries and damages is self-defeating:

What's the proximate cause of them not providing written notice when they provide verbal notice? ...[T]here is none. What are the damages? The damages would be because of the Patrol's failure to provide him notice, because he doesn't get the vehicle. That's disputed. He has a title. He has a right to it. He has a certain type of right to it. Okay. You can argue that...That's for the hearing that could have happened....back in the summer of 2011.

RP(06/28/13)(p.23:6-19).

Because the WSP failed to send the required written notice to Mr. Hyytinen, Mr. Hyytinen was unaware of his right to request a hearing regarding his claim to the vehicle and the vehicle was subsequently released to some foreign claimant in Canada. Mr. Hyytinen has never received compensation for his vehicle and/or loss of use of the vehicle. As such, not only has the WSP violated its statutory duty (which is evidence of negligence), the WSP's failure to send the required written notice is clearly substantially related to the ultimate injury, the loss of Mr. Hyytinen's vehicle. The trial court clearly erred in dismissing Mr. Hyytinen's claim of negligence against the WSP.

I. The Trial Court Abused Its Discretion in Denying Plaintiff's Motion to Amend.

The standard of review on a trial court's denial of a motion to amend pleadings is an abuse of discretion or a failure to exercise discretion. *Del Guzzi Constr. Co. v. Global Nw. Ltd.*, 105 Wn.2d 878, 888, 719 P.2d 120 (1986); *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters*, 100 Wn.2d 343, 351, 670 P.2d 240 (1983). A trial court abuses its discretion when it exercises it in a manifestly unreasonable manner or bases it upon untenable grounds or reasons. *Wagner Dev. v. Fidelity & Deposit*, 95 Wn. App. 896, 906, 977 P.2d 639 (1999).

A trial court appropriately denies a motion to amend if an amended claim is duplicative or futile. *Syputa v. Druck, Inc.*, 90 Wn. App. 638, 649, 954 P.2d 279 (1998); see *Shelton v. Azar, Inc.*, 90 Wn. App. 923, 928, 954 P.2d 352 (1998). A lawsuit is futile where there is no evidence to support or prove existing or additional allegations and causes of action. *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154, 943 P.2d 1358 (1997). Futility is a reasonable ground for denying a motion to amend a complaint. *Id.*

1. **CR 15 allows for liberal amendment to the pleadings.**

Pursuant to CR 15, amendment to the pleadings should be freely given when justice so requires. *Chadwick Farms Owners Association v. FHC, LLC*, 139 Wn. App. 300, 160 P.3d 1061 (2007). Leave should be freely granted to allow amendment of the Complaint. Amendments are liberally allowed, and will be disallowed only if the opposing party would be materially prejudiced by the amendment. *Herron v. Tribune Pub. Co.*, 108 14 Wn.2d 162, 165, 736 P.2d 249, 253 (1987); *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, Etc.*, 100 Wn.2d 343, 349-50, 670 P.2d 240, 243 (1983). Refusal to so grant without showing of undue prejudice, dilatory practice or undue delay may be an abuse of discretion. *Tagliani v. Colwell*, 10 Wn. App. 227, 517 P.2d 207 (1973).

2. **The trial court's findings of timeliness and futility are based upon untenable grounds.**

CR 15(c) allows amendment of pleadings where the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. The amendment is within the applicable statute of limitations such that the WSP has received such notice of the institution of the action against them that they will

not be prejudiced in maintaining their defense on the merits. As such, an amendment adding a state claim of violation of due process would not be prevented by the statute of limitations. Therefore, Plaintiff is not time barred from amending the Complaint.

Significantly, the WSP has not demonstrated that Mr. Hyytinen made a voluntary, knowing and intelligent waiver of any constitutional right. See, *State v. Myers*, 86 Wn.2d 419, 426, 545 P.2d 538 (1976); *In re James*, 96 Wn.2d 847, 851, 640 P.2d 18 (1982); *State v. Valladares*, 99 Wn.2d 663, 664 P.2d 508 (1983). The facts in this case do not support the assertion that Mr. Hyytinen waived his right to a hearing. Moreover, this Court has made no findings that Mr. Hyytinen was aware that he was entitled to a hearing. *Ostlund v. Bobb*, 825 F.2d 1371, 1987 U.S. App. LEXIS 11244 (9th Cir. Cal. 1987)(referencing *Johnson v. Zerbst*, 304 U.S. 458, 464, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938); *United States v. Provencio*, 554 F.2d 361, 363 (9th Cir. 1977); *Correa v. Nampa School Dist.*, 645 F.2d 814, 816-17 (9th Cir. 1981)). What has been established is that the WSP failed to inform Mr. Hyytinen that he was entitled to a hearing pursuant to RCW 46.12.725, in violation of Mr. Hyytinen's state constitutional rights.

J. Mr. Hyytinen is Entitled to Reasonable Attorney's Fees and Costs.

Due to the actions and omissions of both the BPD and the WSP, Mr. Hyytinen has been damaged. The BPD sold property to Mr. Hyytinen without verifying its legitimacy. The WSP seized property without giving the required notice in violation of Mr. Hyytinen's constitutional rights. Both defendants acted negligently by failing to comply with their statutory duties. Both defendants were unjustly enriched. Mr. Hyytinen has not been compensated to date.

Mr. Hyytinen is entitled to reasonable attorney fees under RCW 69.50.505(6):

In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

In interpreting this statute, the court in *Moen v. Spokane City Police Dep't*, 110 Wn. App. 714, 718-721, 42 P.3d 456 (2002), awarded attorney fees to the claimant due to the improper conduct

of the seizing agency. See also *Deeter v. Smith*, 106 Wn.2d 376, 380, 721 P.2d 519 (1986) (ruling that the term “claimants” in the second sentence of the statute does not pertain to the seizing agency). “This is an attorney fee provision designed to protect individuals against having their property wrongfully taken by the State.” *Guillen v. Contreras*, 169 Wn.2d 769, 238 P.3d 1168, 1172 (2010).

Washington courts have also ruled that the imposition of fees is mandatory when a party is statutorily entitled to attorney fees. *Farm Credit Bank v. Tucker*, 62 Wn. App. 196, 207, 813 P.2d 619, review denied, 118 Wn.2d 1001, 822 P.2d 287 (1991).

Additionally, Mr. Hyytinen is entitled to an award for all attorney fees and costs incurred as a result of the WSP’s unconstitutional taking of his property. The court in *Moen v. Spokane City Police Dep’t*, 110 Wn. App. 714, 718-721, 42 P.3d 456 (2002), awarded attorney fees to the claimant due to the improper conduct of the seizing agency.

And finally, equity would require that in order to do substantial justice, Mr. Hyytinen should be awarded all fees and costs of this suit.

DATED THIS 25th day of October, 2013.

COLE | WATHEN | LEID | HALL



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rwathen@cwllaw.com
krider@cwllaw.com

No.: 45117-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

FILED
COURT OF APPEALS
DIVISION II
2013 OCT 25 PM 3:26
STATE OF WASHINGTON
BY [Signature] DEPUTY

DAVID HYYTINEN,

Appellant,

vs.

CITY OF BREMERTON and the STATE OF
WASHINGTON, in its capacity as legal representative of
the Washington State Patrol,

Respondents.

CERTIFICATE OF SERVICE

Rick J Wathen, WSBA #25539
Kimberly Larsen Rider, #42736
Attorneys for Appellants

Cole | Wathen | Leid | Hall
1000 Second Avenue, Ste 1300
Seattle, WA 98104
206.622.0494
206.587.2476

I, Kimberly Larsen Rider, hereby certify that on October 25, 2013, copies of the following document(s):

Appellant's Brief, Appendix to Brief, Certificate of Service

were caused to be filed with the Court of Appeals – Division II and copies served on counsel at the following address, via electronic mail and U.S. Mail:

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toreaef@atg.wa.gov
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dianah@atg.wa.gov

Counsel for the City of Bremerton Police Dept.

Mark E. Koontz
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345 6th Street, Ste. 600
Bremerton, WA 98337
Mark.koontz@ci.bremerton.wa.us
Leighann.denton@ci.bremerton.wa.us

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

DATED this 25th day of October, 2013, at Seattle, Washington.



Kimberly Larsen Rider, WSBA # 42736

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RECEIVED AND FILED
IN OPEN COURT
APR 12 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

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

DAVID HYYTINEN, an individual,

Plaintiff,

vs.

CITY OF BREMERTON, et al.,

Defendants.

Case No.: 11-2-02110-8

ORDER GRANTING DEFENDANT
CITY OF BREMERTON'S
MOTION FOR SUMMARY
JUDGMENT DISMISSAL OF
PLAINTIFF'S CLAIMS AGAINST
THE CITY

~~Proposed~~

THIS MATTER came before the Court on Defendant City of Bremerton's Motion for Summary Judgment Dismissal of Plaintiff's Claims Against the City.

The Court considered the pleadings filed in this action, including the following:

1. Defendant City of Bremerton's Motion for Summary Judgment Dismissal of Plaintiff's Claims Against the City;
2. Declaration of Randy Plumb in Support of Defendant City of Bremerton's Motion for Summary Judgment Dismissal of Plaintiff's Claims Against the City;
3. Declaration of Mark E. Koontz in Support of Defendant City of Bremerton's Motion for Summary Judgment Dismissal of Plaintiff's Claims Against the City;
4. Declaration of Shannon Corin in Support of Defendant City of Bremerton's Motion for Summary Judgment Dismissal of Plaintiff's Claims Against the City;

Order Granting Defendant City of Bremerton's
Motion for Summary Judgment Dismissal of Plaintiff's
Claims Against the City - 1

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY
345 6th Street, Suite 600, Bremerton, Washington 98337
Phone: 360-473-2345 Fax: 360-473-5161

APPENDIX 000001

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5. Plaintiff's Response in Opposition to City's Motion

MB

6. Declaration of Kimberly Larsen Rider; and
In Support of Plaintiff's Response

7. City's Reply Brief

Based on the pleadings and argument of counsel, the Court finds:

1. That plaintiff's suit was filed more than four years after plaintiff took possession of the Cadillac Escalade at issue in this case;
2. That plaintiff's breach of contract/implied warranty claim is barred by the statute of limitations under RCW 62A.2-725.
3. That plaintiff filed his tort claims before sixty had elapsed since he filed a claim for damage with the City in violation of RWC 4.96.020, so plaintiff's claims for fraud and negligence should be dismissed;
4. That the City made no representation to plaintiff regarding the title of the Escalade;
5. That the City had no knowledge that it did not have clear title to the Escalade;
6. That the City had no duty to plaintiff pursuant to RCW 69.50.505;
7. That plaintiff had a contractual relationship with the City, so it may not seek a remedy of unjust enrichment;
8. That plaintiff did not confer a benefit on the City as required by the unjust enrichment doctrine.

MB

Based on the above findings, it is hereby ORDERED:
pleadings and argument of counsel

MB

1. That Defendant City of Bremerton's Motion for Summary Judgment Dismissal of Plaintiff's Claims Against the City is GRANTED;

Order Granting Defendant City of Bremerton's
Motion for Summary Judgment Dismissal of Plaintiff's
Claims Against the City - 2

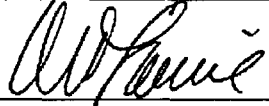
ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY
345 6th Street, Suite 600, Bremerton, Washington 98337
Phone: 360-473-2345 Fax: 360-473-5161

APPENDIX 000002

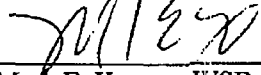
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2. That Plaintiff's claims against the City are dismissed with prejudice.


DONE IN OPEN COURT this 17 day of April, 2013.


KITSAP COUNTY SUPERIOR COURT JUDGE

Presented by:


Mark E. Koontz, WSBA #26212
Attorney for Defendant City of Bremerton

Approved as to Form:


Rick J. Wathen, WSBA #25539
Attorney for Plaintiff *Approved as to form*

Paul J. Triesch, WSBA #17445
Attorney for State of Washington

The Honorable Anna M. Laurie
Hearing Date: May 10, 2013

RECEIVED AND FILED
IN OPEN COURT
MAY 10 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

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

DAVID HYYTINEN, an individual,

Plaintiff,

v.

CITY OF BREMERTON,

Defendants.

No. 11-2-02110-8

~~Proposed~~ ORDER DENYING
DEFENDANT STATE OF
WASHINGTON'S NOTE FOR ENTRY
OF ORDER GRANTING SUMMARY
JUDGMENT and MOTION FOR
AWARD OF FEES

This matter came before the Court on Defendant's Note for Entry of Order Granting Summary Judgment and Motion for Award of Fees. The Court considered the following:

1. Defendant State of Washington's Note for Entry of Order Granting Summary Judgment and for Presentation of Judgment;
2. Defendant State of Washington' Proposed Judgment;
3. Defendant State of Washington's Proposed Order;
4. Defendant State of Washington's Cost Bill;
5. Plaintiff's Response in Opposition to Motion Defendant State of Washington's Note for Entry of Order Granting Summary Judgment and Motion for Award of Fees;
6. Declaration of Kimberly Larsen Rider, with attached exhibits;
7. Plaintiff's Proposed Order;

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ORDER DENYING DEFENDANT'S NOTE FOR ENTRY OF ORDER
GRANTING SUMMARY JUDGMENT AND MOTION FOR AWARD
OF FEES- 1

COLE WATHEN LEID & HALL, P.C.
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206-462-0494/FAX (206) 587-2478

APPENDIX 000004

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- 8. Defendant's Reply, if any;
- 9. _____;
- 10. _____;
- 11. _____; and
- 12. The pleadings and records filed in this matter.

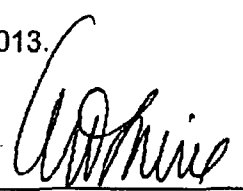
ORDER

1. The State of Washington's Note for Entry of Order Granting Summary Judgment and for Presentation of Judgment is **DENIED**.

2. The State of Washington's Motion for Award of Fees is **DENIED**.

3. The State of Washington's Motion for Summary Judgment heard before this Court on April 26, 2013, is **GRANTED**. Plaintiff's constitutional cause of action against the State of Washington is hereby **DISMISSED**. Plaintiff's negligence action against the State of Washington remains and request for dismissal of Plaintiff's cause of action sounding in ~~negligence~~ ^{negligence} **is DENIED**.

DATED this 10 day of May, 2013.



The Honorable Anna M. Laurie


1 Presented by:

2 COLE | WATHEN | LEID | HALL, P.C.

3 

4 Rick J Wathen, WSBA #25539
5 Kimberly Larsen Rider, WSBA #42736
6 Attorneys for Plaintiff

7 Approved as to Form:

8 

9 PAUL J. TRUESCH, WSBA # 17445
10 Attorney for Washington State Patrol.

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The Honorable Anna Marie Laune
Noted for Hearing June 14, 2013

RECEIVED AND FILED
IN OPEN COURT
JUN 14 2013
DAVID W PETERSON
KITSAP COUNTY CLERK

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

DAVID HYTTINEN, an individual,

Plaintiff,

v.

CITY OF BREMERTON and the STATE
OF WASHINGTON, in its capacity as
legal representative of the Washington
State Patrol.

Defendants.

No 11-2-02110-8

Denyiks
ORDER GRANTING MOTION TO
AMEND PLAINTIFF'S THIRD
AMENDED COMPLAINT

~~(PROPOSED)~~

THIS MATTER having come before this Court on Plaintiff's Motion to Amend Plaintiff's Third Amended Complaint, and the Court having considered all the papers filed in this matter and, more particularly, having considered:

- a. Plaintiff's Motion to Amend Complaint to Clarify the Negligence Cause of Action Against the WSP and to Add a State Claim of Violation of Due Process Against the WSP;
- b. Plaintiff's Proposed Fourth Amended Complaint,
- c. Declaration of Kimberly Larsen Rider, with attached exhibits;
- d. Defendant's Response in Objection Plaintiff's Motion, if any,

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[Signature]

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- e Plaintiff's Reply in Support of Plaintiff's Motion, if any; and
- e. _____, and
- f All other pleadings and documents filed herein.

The Court having considered the foregoing, and having heard the arguments of counsel, it is now, therefore

ORDERED, ADJUDGED and DECREED as follows:

- 1. Plaintiff Hyytinen's Motion to Amend Plaintiff's Complaint is ~~GRANTED~~ ^{Denied}; and
- 2. Plaintiff may ^{not} file the attached Fourth Amended Complaint.


DATED this 14 day of June, 2013.



 The Honorable Judge Anna Marle Laurie

Presented by:

COLE | WATHEN | LEID | HALL



 Rick J Wathen, WSBA No 25539
 Kimberly Larsen Rider, WSBA No. 42736
 Attorneys for Plaintiff Hyytinen

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IN OPEN COURT
JUN 28 2013
DAVID W PETERSON
KITSAP COUNTY CLERK

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The Honorable Anna M. Laurie

STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT

DAVID HYYTINEN, an individual,
Plaintiff,

NO. 11-2-02110-8

v

ORDER GRANTING DEFENDANT
STATE OF WASHINGTON,
WASHINGTON STATE PATROL'S
MOTION FOR SUMMARY
JUDGMENT RE NEGLIGENCE

CITY OF BREMERTON and the
STATE OF WASHINGTON, in its
capacity as legal representative of the
Washington State Patrol,

~~[PROPOSED]~~

Defendants.

This matter came before the court on Friday, June 28, 2013, on defendant Washington State Patrol's Motion for Summary Judgment Re Negligence. The court considered:

1. Defendant's Motion for Summary Judgment;
2. Declaration of Paul Triesch, with attached exhibits,
3. Declaration of John Scott Blonien, with attached exhibit;
4. The pleadings from the defendant's prior Motion for Summary Judgment, which are incorporated herein by reference (Defendant's Motion for Summary Judgment; Declaration of Ian Morhous with attached exhibits, Declaration of Paul Triesch with attached exhibits; Plaintiff's Response in Opposition to Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment Upon Undisputed Facts; Declaration of Kimberly Larsen Rider with attached exhibits; Declaration of David Hyytinen with attached exhibit; Defendant's Reply);

ORIGINAL

ORDER GRANTING DEFENDANT STATE OF
WASHINGTON, WASHINGTON STATE
PATROL'S MOTION FOR SUMMARY
JUDGMENT RE NEGLIGENCE
KITSAP CNTY CAUSE NO 11-2-02110-8

1

ATTORNEY GENERAL OF WASHINGTON
Torts Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7352

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APPENDIX 000009

- 1 5. Plaintiff's Response in Opposition to Motion for Summary Judgment;
- 2 6. Defendant's Reply.

3 The court also heard argument of counsel.

4 Now, wherefore, IT IS HEREBY ORDERED that the defendant's Motion for
5 Summary Judgment *Re* Negligence should be, and the same hereby is, GRANTED,
6 dismissing all claims against defendant State of Washington, Washington State Patrol
7 including, but not limited to, any claim for negligence. The defendant is hereby dismissed.

8 ~~IT IS FURTHER ORDERED that the defendant's motion for an award of fees and~~
9 ~~costs pursuant to RCW 4.84.185 and pursuant to CR 11 should be, and the same hereby is,~~
10 ~~GRANTED. The defendant shall note a hearing on this issue.~~

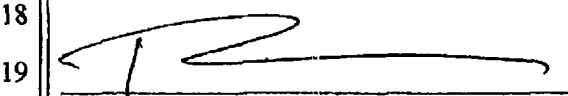
11 Done in open court this 28 day of June, 2013.



HONORABLE ANNA M LAURIE

15 Presented by:

16 ROBERT W FERGUSON
17 Attorney General



18
19 PAUL J TRIESCH, WSBA #17445
20 Assistant Attorney General
21 Attorneys for Defendant

22 Approved as to Form, Notice of
23 Presentation Waived:



24
25 RICK J. WATHEN, WSBA # 25539
26 KIMBERLY L. RIDER, WSBA # 42736
Attorneys for Plaintiff

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DECLARATION OF SERVICE

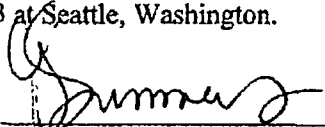
I declare that I caused a copy of this document to be sent for service on all parties or their counsel of record on the date below as follows:

ABC Legal Messenger

RICK J. WATHEN KIMBERLY LARSEN RIDER
COLE WATHEN LEID & HALL P.C.
1000 SECOND AVENUE, SUITE 1300
SEATTLE, WA 98104

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

DATED this 30th day of May, 2013 at Seattle, Washington.



GRACE SUMMERS

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DAVID W. PETERSON

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The Honorable Anna M. Laurie

STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT

DAVID HYYTINEN, an individual,

Plaintiff,

v.

CITY OF BREMERTON and the
STATE OF WASHINGTON, in its
capacity as legal representative of the
Washington State Patrol,

Defendants.

NO. 11-2-02110-8

13.9.01686.6

JUDGMENT

Judgment Summary:	RCW 4.64.030
Judgment Creditor:	State of Washington, Washington State Patrol
Judgment Creditor's Attorney:	Paul J. Triesch
Judgment Debtor:	David Hyytinen
Judgment Debtor's Attorneys:	Rick J. Wathen and Kimberly Larson Rider
Judgment Amount:	Taxable Costs and Statutory Attorney's Fees
Statutory Attorney's Fees (RCW 4.84.080 (1))	\$200.00
TOTAL COST BILL	\$200.00

THIS MATTER came before the Court for presentation of the Judgment and Cost Bill.
The plaintiff, David Hyytinen, was represented by Rick J. Wathen and Kimberly Larson Rider.

ORIGINAL

JUDGMENT
KITSAP CNTY CAUSE NO. 11-2-02110-8

ATTORNEY GENERAL OF WASHINGTON
Torts Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7352

EX-PARTE by mail

APPENDIX_000012

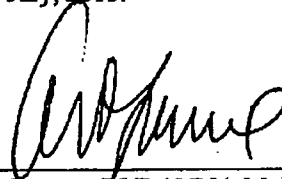
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The defendant, State of Washington, Washington State Patrol, was represented by Paul J. Triesch, Assistant Attorney General. On April 26 and June 28, 2013, the Court granted the defendant's respective motions for summary judgment, dismissing the plaintiff's claims against the defendant.

Now, therefore, JUDGMENT is hereby entered in favor of the defendant and against the plaintiff. The defendant is awarded statutory attorneys' fees to be paid by the plaintiff in the amount of TWO HUNDRED DOLLARS (\$200.00).

DONE IN OPEN COURT this 18 day of July, 2013.



THE HONORABLE ANNA M. LAURIE

ANNA M. LAURIE

Presented By:

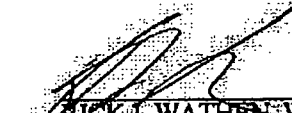
ROBERT W. FERGUSON
Attorney General

Approved as to form; presentation waived:

COLE WATHEN LEID & HALL, P.C.



PAUL J. TRIESCH, WSBA No. 17445
Assistant Attorney General
Attorneys for Defendant



RICK J. WATHEN, WSBA No. 25539
KIMBERLY L. RIDER, WSBA No. 42736
Attorneys for Plaintiff

**UNITED STATES CONSTITUTION
AMENDMENT IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**UNITED STATES CONSTITUTION
AMENDMENT V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**UNITED STATES CONSTITUTION
AMENDMENT XIV**

SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**WASHINGTON STATE CONSTITUTION
ARTICLE I
DECLARATION OF RIGHTS**

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

...

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

...

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

...

SECTION 23 BILL OF ATTAINDER, EX POST FACTO LAW, ETC. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

...

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

...

SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

RCW 4.16.040

Actions limited to six years.

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in RCW 64.04.007(2).

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

RCW 4.16.080

Actions limited to three years.

The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
- (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his or her official capacity and by virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subsection shall not apply to action for an escape;
- (6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his or her custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty, or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

RCW 4.92.100

Tortious conduct of state or its agents – Claims – Presentment and filing – Contents.

***** CHANGE IN 2013 *** (SEE 5136.SL) *****

(1) All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, must be presented to the *risk management division. A claim is deemed presented when the claim form is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, to the *risk management division. For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the *risk management division. The standard tort claim form must be posted on the **office of financial management's web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney in fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf;
or

(iv) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(c) The amount of damages stated on the claim form is not admissible at trial.

(2) The state shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the *risk management division. The standard tort claim form must not list the claimant's social security number and must not require information not specified under this section.

(3) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

RCW 4.96.020

Tortious conduct of local governmental entities and their agents — Claims — Presentment and filing — Contents.

(1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity.

(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. A claim is deemed presented when the claim form is delivered in person or is received by the agent by regular mail, registered mail, or certified mail, with return receipt requested, to the agent or other person designated to accept delivery at the agent's office. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

(3) For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the risk management division of the office of financial management, except as allowed under (c) of this subsection. The standard tort claim form must be posted on the office of financial management's web site.

(a) The standard tort claim form must, at a minimum, require the following information:

- (i) The claimant's name, date of birth, and contact information;
- (ii) A description of the conduct and the circumstances that brought about the injury or damage;
- (iii) A description of the injury or damage;
- (iv) A statement of the time and place that the injury or damage occurred;
- (v) A listing of the names of all persons involved and contact information, if known;
- (vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney in fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(iv) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(c) Local governmental entities shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity. If a local governmental entity chooses to also make available its own tort claim form in lieu of the standard tort claim form, the form:

(i) May require additional information beyond what is specified under this section, but the local governmental entity may not deny a claim because of the claimant's failure to provide that additional information;

(ii) Must not require the claimant's social security number; and

(iii) Must include instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity appointed to receive the claim.

(d) If any claim form provided by the local governmental entity fails to require the information specified in this section, or incorrectly lists the agent with whom the claim is to be filed, the local governmental entity is deemed to have waived any defense related to the failure to provide that specific information or to present the claim to the proper designated agent.

(e) Presenting either the standard tort claim form or the local government tort claim form satisfies the requirements of this chapter.

(f) The amount of damages stated on the claim form is not admissible at trial.

(4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first

been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

(5) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

RCW 46.12.550

**Refusal or cancellation of certificate – Notice – Penalty for subsequent operation
– Appeals.**

(1) The department may refuse to issue or may cancel a certificate of title at any time if the department determines that an applicant for a certificate of title is not entitled to a certificate of title. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the registered or legal owner or owners, and completing an affidavit of first-class mail. It is unlawful for any person to remove, drive, or operate the vehicle until a proper certificate of title has been issued. Any person removing, driving, or operating a vehicle after the refusal to issue or cancellation of the certificate of title is guilty of a gross misdemeanor.

(2)(a) The suspension of, revocation of, cancellation of, or refusal to issue a certificate of title or vehicle registration provided for in chapters 46.12 and 46.16A RCW by the director is conclusive unless the person whose registration or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county or the person's county of residence.

(b) Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal, the court shall issue an order to the director to show cause why the registration should not be granted or reinstated and return the order not less than ten days after the date of service of the notice to the director. Service must be in the manner as prescribed for the service of a summons and complaint in other civil actions.

(c) Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the registration or certificate and enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal.

RCW 46.12.725

Seizure and impoundment — Notice to interested persons — Release to owner.

(1) Any vehicle, watercraft, camper, or any component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, may be impounded and held by the seizing law enforcement agency for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it had been reported stolen.

(2) Within five days of the impounding of any vehicle, watercraft, camper, or component part thereof, the law enforcement agency seizing the article or articles shall send written notice of such impoundment by certified mail to all persons known to the agency as claiming an interest in the article or articles. The seizing agency shall exercise reasonable diligence in ascertaining the names and addresses of those persons claiming an interest in the article or articles. Such notice shall advise the person of the fact of seizure, the possible disposition of the article or articles, the requirement of filing a written claim requesting notification of potential disposition, and the right of the person to request a hearing to establish a claim of ownership. Within five days of receiving notice of other persons claiming an interest in the article or articles, the seizing agency shall send a like notice to each such person.

(3) If reported as stolen, the seizing law enforcement agency shall promptly release such vehicle, watercraft, camper, or parts thereof as have been stolen, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the possession of the article or articles.

RCW 46.12.735

Hearing – Appeal – Removal to court – Release after ruling.

(1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle, watercraft, camper, or component part thereof seized pursuant to this section.

(2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW.

(3) Such hearing shall be held within a reasonable time after receipt of a request therefor. Reasonable investigative activities, including efforts to establish the identity of the article or articles and the identity of the person entitled to the lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time within which a hearing must be held.

(4) The hearing and any appeal therefrom shall be conducted in accordance with Title 34 RCW.

(5) The burden of producing evidence shall be upon the person claiming to be the lawful owner or to have the lawful right of possession to the article or articles.

(6) Any person claiming ownership or right to possession of an article or articles subject to disposition under RCW 46.12.725 through 46.12.740 may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is two hundred dollars or more. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to judgment for costs and reasonable attorney's fees. For purposes of this section the seizing law enforcement agency shall not be considered a claimant.

(7) The seizing law enforcement agency shall promptly release the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof.

RCW 62A.1-101
Short titles.

(a) This title may be cited as the Uniform Commercial Code.

(b) This Article may be cited as Uniform Commercial Code--General Provisions.

RCW 62A.1-103

**Construction of uniform commercial code to promote its purposes and policies;
applicability of supplemental principles of law.**

(a) This title must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

RCW 62A.1-201

General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this title that apply to particular articles or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in RCW 62A.1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person

that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this title may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible

portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Article 5 of this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" with respect to a negotiable instrument, means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account

established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under RCW 62A.2-401 , but a buyer may also acquire a "security interest" by complying with Article 9A of this title. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under

Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under RCW 62A.2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to RCW 62A.1-203.

(36) "Send" in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

RCW 62A.2-312

Warranty of title and against infringement; buyer's obligation against infringement.

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

RCW 62A.2-403

Power to transfer; good faith purchase of goods; "entrusting".

(1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (*Article 9) and Documents of Title (Article 7).

RCW 62A.2-725

Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective.

RCW 69.50.505

Seizure and forfeiture.

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia*21 other than paraphernalia possessed, sold, or used solely to facilitate marijuana-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce,

process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an

affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden

of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited

during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court,

subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.