No. 76025-4-I 9420-8

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

ROBERT HOWARD,

Appellant,

Vs.

PSCC, INC. d/b/a PUBLIC STORAGE, SHURGARD STORAGE CENTERS, LLC, d/b/a PUBLIC SOTRAGE; JOHN DOE

,

APPELLANT'S

PETITION FOR REVIEW BY THE SUPREME COURT

Chalmers C. Johnson, WSBA # 40180
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1155 Bethel Ave.
Port Orchard, WA 98366
Attorney for Appellant

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I. IDENTITY OF PETITIONER

The Petitioner is Robert Howard, who was the Plaintiff in the Superior Court and the Appellant in the Appellate Court. This Petition is being filed on Mr. Howard's behalf by his attorney of record, Chalmers C. Johnson, WSBA # 40180.

II. CITATION TO COURT OF APPEALS DECISION

The Washington State Court of Appeals, Division One, issued an unpublished opinion, denying the Appellant's appeal, which was filed on January 17, 2017, case No: 76025-4-I. Neither party filed a motion for reconsideration. This Petition for Review is being filed with the Appellate Court pursuant to the Washington Rules of Appellate Procedure, Rule 13.4, on February 16, 2017, thirty days from the date of the filing of the Opinion.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the statutory language of RCW 19.150.060 (3) and (5), which prohibits the sale of personal papers and personal photographs by a public storage business when the contents of a storage unit are sold is violated when a public storage business sells a client's personal property and photographs at auction and relies on the buyer to locate and voluntarily return any such property.

2. Whether a clause in a contract which disclaims liability except in cases of willful injury or willful violation of law applies to release a public storage business from a willful violation RCW 19.150.060 (3) and (5)

IV. STATEMENT OF THE CASE

Respondent, Public Storage, in the business of maintaining and renting storage units to customers. Mr. Howard, the Appellant, was a customer of the Public Storage in 2014 and 2015, renting a storage unit pursuant to a rental agreement. (CP 147-148). The agreement is an exhibit to the Declaration of Hunter, an employee of Public Storage. (CP 200) Mr. Howard signed up for an auto-pay process to pay Public Storage, drawing funds from his account through a debit card. (CP 147-148) He placed items in the storage facility, which included personal photographs and personal papers, irreplaceable items dear to himself and his family for their sentimental value. Mr. Howard's debit card was cancelled by his bank, resulting in the auto-payments no longer being made to Public Storage. Mr. Howard was unaware that Public Storage was not receiving payments until after February 23, 2015. (CP 167) It is undisputed that Public storage made efforts to contact Mr. Howard by mail to notify him of non-payment and that the notices were delivered to the address that Mr. Howard had given Public storage on the contract. Mr. Howard, however, did not open the initial notices.

Public Storage had a statutory duty imposed by Washington Statutory law, RCW 19.150.060 to preserve photographs and personal papers for 6 months after the sale of the personal property in the storage unit, and to return that property to Mr. Howard. (CP 149, 158) RCW

19.150.060 also actually prohibits the storage facility from selling the items in the first place stating "(3) That all the property, **other than personal papers and personal photographs**, may be sold" It is undisputed in the record that Public Storage has a policy of prohibiting its employees from ever entering a storage space being rented by a customer. (CP 200) When Public Storage auctions off the contents of a storage unit under this policy, it sells ALL of the items in the storage unit without first reviewing the contents to remove personal papers and personal photographs first. Public Storage auctioned all of the personal property in the storage unit, including the personal papers and photographs on or about February 23, 2015, for a total of $60.00. (CP 148, 157) Mr. Howard did receive notice of the sale by mail from Public Storage and, read it. Within days of the sale, Mr. Howard spoke with Public Storage employees and management, attempting to retrieve his photographs and personal papers from Public Storage. Public storage, of course, was prohibited from selling these things and was required, under Washington Statutory law to maintain these items for six months after a sale. (CP 167) The management official on site (Ms. Hunter) refused to give Mr. Howard any information about the identity of the person who had purchased the property, and was not able to produce any of Mr. Howard's personal papers or photographs. (CP 167) Mr. Howard hired a lawyer, who wrote a letter to Public Storage and hand delivered it to the Public Storage employee on March 11, 2015. (CP 172) In the letter, the attorney

explained Washington Code section 19.150.060, and asked Public Storage to disclose the name and contact information for the buyer so that Mr. Howard could attempt to mitigate his loss by contacting the buyer and trying to negotiate the re-purchase of his property. (CP 172) Public Storage did not respond to the March 11th letter. Mr. Howard sued for replevin and obtained an Order on April 3, 2015, from Judge Forbes, requiring Public Storage to return any of Mr. Howard's personal papers or photographs should it come into possession of the property. Public Storage has not returned anything to Mr. Howard to date. (CP 140, 218) Mr. Howard served discovery requests upon Public Storage, requesting the identification of the person who it claims purchased his property. Public Storage refused to identify this individual, citing constitutional privacy grounds. (CP 245)

Public Storage moved for Summary Judgment on all causes of action, including the replevin action. Mr. Howard also moved for summary judgment, asking the Court to recognize that the sale of the photographs and papers was prohibited, specifically, by RCW 19.150.060 (3) and (5). The Court denied Mr. Howard's motion and granted summary judgment to Public Storage on all claims. Mr. Howard timely appealed. The Appeal was denied by an unpublished opinion filed on January 17, 2017.

V. ARGUMENT

A. The Court should review this case because the issue raised is one which presents a substantial public interest which should be determined by the Supreme Court.

A petition for review by the Supreme Court will only be accepted on one or more of four distinct grounds, enumerated in RAP 13.4(b). This case is appropriate for review by the Supreme Court because it raises an issue of substantial public interest. Specifically, it pits the economic interests of public storage units in maintaining a lucrative income by auctioning off the belongings of clientele who are in arrears in rental payments against an interest in offering some limited protection for irreplaceable photographs and documents, which would have no real value to a purchaser but would potentially be irreplaceable and of practically incalculable value to the owners. The Washington State Legislature has considered the rights and practical business needs of both parties in this situation and has come up with a fair and reasonable solution, codified in RCW 19.150.060. As discussed in more detail below, this law allows the public storage business to sell off the customer's belongings with proper notice, etc. However, it specifically excepts from this right, the right to sell personal papers and personal photographs. The law places an affirmative duty on the public storage facility to maintain these items for six months after the sale so that they can be returned. Obviously, the legislature felt that this was an important duty, as it is specifically spelled out in the statute.

The substantial public interest in this case arises because of the practicality of the way that Public Storage facilities need to proceed with auctions of the contents of the storage units. These businesses auction off the contents of a unit. The appeal to the bidder of this kind of sale is, to put it bluntly, the thrill of the "treasure hunt." A buyer might bid $60 and find, upon opening the unit, that it is filled with valuable assets worth far in excess of what he paid, or, perhaps, find that it is filled with nothing but trash. The value to the bidder is in the fact that the contents are unknown. This is the only way to guarantee that whatever the former owner locked away, including any potentially valuable possessions have not been removed, is to guarantee the bidder that he or she is the first one to ever have access to the contents. This has become quite the economic subculture, spawning television shows like the reality TV show, Storage Wars. Here is the show summary from an internet ad, which really sums up how and why this storage facility storage auction business works:

"Four professional buyers and their teams as they scour repossessed storage units in search of hidden treasure. these seasoned veterans have found everything from coffins to the world's most valuable comic book collection, paying as little as ten dollars for items valued in the millions."

If Public Storage (the Respondent) and any other such facility which wants to maintain the integrity of this process and reap the financial benefit of auctioning off its client's belongings, the one thing it must do is guarantee that nobody has sifted through the unit prior to the sale and

potentially removed the hidden "treasure" that may be in the unit. Public Storage does this by refusing to unlock the unit until it is actually being auctioned or is auctioned, so that the successful bidder is guaranteed to be the first one to enter it. Here is where substantial the public interest arises. The only way for Public Storage to do this is to willfully shirk the duty placed on it by the Washington legislature, the duty to refrain from selling personal photographs or personal papers. In order to actually comply with the letter and the spirit of this law, Public Storage facilities would have to inspect the contents of a storage unit before auctioning it, in order to identify and remove any personal photographs or papers and maintain them for the owner for the 6 months required by the law. They can't do this and still promise potential bidders that the unit on which they are bidding is an untouched potential "treasure trove." If they were required to do this, the integrity of the "storage Wars" economic subculture would be untenable.

The Supreme Court is needed, in this case, to decide whether Public Storage facilities must be held to the letter, the plain meaning, and the spirit of the laws written to protect citizens from losing irreplaceable possessions when they have gotten into arrears on their storage units, or whether protecting the integrity of "Storage Wars" justifies ignoring the concerns of the legislature for the people and the statutory code of our State.

B. Public Storage businesses must be required to make some effort to actually inspect the contents of a storage unit before selling the contents in order to comply with RCW 19.150.060.

In the record, Mr. Howard testifies, in his declaration, that the items that he stored in the Respondent's public storage unit included personal papers and personal photographs. (CP 167) This should have been sufficient for the Court to have found that there was a genuine issue of material fact as to whether the storage unit actually contained property protected under RCW 19.150.060 (3) and (5). Not only did the record contain clear evidence that these items were in the storage unit, but the record contained no admissible evidence to the contrary. It is undisputed that none of Respondent's employees or witnesses actually knows what was in Mr. Howard's storage facility. Ms. Joni Hunter, the manager at Public Storage, has stated, in her declaration that no employee of public storage was ever allowed to enter a storage facility. (CP 203) Public storage has steadfastly refused to identify the only person besides Mr. Howard, who has actually seen the inside of unit 302 while Mr. Howard's belongings were in it, the person who purchased it at auction. Public Storage's attorney has objected to requests for this information, stating that to produce it would violate the U.S. and Washington constitutions.

Howard's testimony as to the contents of the storage unit, we are left with an undisputed record with no genuine issue of material fact. For the purposes of this summary judgment motion, the unit contained the following items:

3. I placed personal property in the storage unit including the following items, which are irreplaceable photographs and documents:

a) Family photos of my wife taken in childhood, and not stored in any other medium;

b) Family photos of my family which are not stored in any other medium;

c) VHS and DVD videos of my family which are not stored in any other medium;

d) A trophy that my daughter daughter won in 2007 for outstanding softball performance from Pierce College;

e) Other personal photos, videos, and documents of great importance t family.

(CP 167)

The record in this case is clear and undisputed. Storage unit 302 contained items which fall within the protection of RCW 19.150.060 (3) and (5), "personal papers and personal photographs."

Washington law allows Public Storage to sell off the possessions of customers who are in arrears on their rent payments. It sets for the specific notice requirements, and does not restrict the manner of the sale. However, it does specifically restrict what can be sold. The Respondent has admitted, in the Answer, that RCW 19.150.060 placed upon it a statutory duty to preserve photographs and personal papers.

4.2 Defendants Public Storage owed Plaintiff a duty, imposed by Washington statutory law, to preserve photographs and personal papers for 6 months after the sale of the personal property in his storage unit and to return that property to him.

(CP 149)

4.2 In answer to Paragraph 4.2 of Plaintiff's Amended Complaint, Public Storage admits that it had a statutory duty, but specifically denies that plaintiff had such photographs and personal papers.

(CP 158)

It is important to note that RCW 19.150.060 has two separate duties that it places on storage facility owners. It not only requires that the storage facility maintain the personal papers and photographs for six months after a sale, but it actually prohibits the storage facility from selling the items in the first place "(3) That all the property, **other than personal papers and personal photographs**, may be sold" It is undisputed in the record that Public Storage has a policy of prohibiting its employees from ever entering a storage space being rented by a customer. (CP 200) When Public Storage auctions off the contents of a storage unit under this policy, it sells ALL of the items in the storage unit without having inspected them or having made any effort to determine whether the unit contains any items which they are prohibited from selling under the statute. This policy is a willful and knowing violation of the first duty imposed by the statute.

Of course, once all of the property is sold, it is impossible for the seller, Public Storage, to maintain personal papers and photographs for six months so that they can be returned to the customer. The first and only person to enter the storage space is the purchaser, who has 48 hours to clear out all of the items inside. (CP 200) Public Storage relies on the

purchaser, then, to return anything that might be personal photos or papers. This policy is a willful and obvious side-stepping of the duty to protect those types of items. Although Public storage may argue that this is substantial compliance, it is not. Public Storage cannot simply avoid its obligations under the law by saying it was the customer's duty to clearly mark such items, and the purchaser's duty to return them after purchase. The statute specifically imposes the affirmative duty NOT to sell such items and affirmative duty to keep those items for six months upon the storage facility, not the customer and not the purchaser.

Applying the law to the undisputed facts of this case leaves us with only one possible conclusion. Public Storage has willfully engaged in a policy which will violate the statute in cases where there were personal photographs or papers in a unit put up for auction. Although every sale may not violate the statute, every single one has the potential for a violation, and a violation is absolutely guaranteed any time a unit is sold which contained photographs or papers covered by the statute. This decision by public Storage to simply not even make an attempt to comply with the law violates the clear language, the intent, the public policy considerations, and the spirit of RCW 19.150.060. It takes advantage of the all of the rights afforded to the business under the law while blatantly ignoring the narrow protections that it affords the customer.

C. Because Public Storage willfully violated Washington statutory law, its contract provision which excepts it for liability for its own negligence, or for conversion, except in cases of *willful injury or willful violation of law*, does not act to bar Plaintiff's claims.

The Superior Court granted Respondent's motion for summary judgment, apparently finding that paragraph #7 of its rental contract acts as a release for the claims that Mr. Howard has made against Public Storage and that there was no evidence of a willful violation of the law. The Appellate Opinion stated that Howard "provides no meaningful analysis to support this conclusion." Respectfully, the undersigned must disagree and ask this Court to consider the potential public policy implications of allowing a party to a contract to simply void specific duties imposed by the legislature, especially when those duties were imposed to protect the public. Here is the provision of the contract at issue:

7. LIMITATION OF OWNER'S LIABILITY; INDEMNITY. **Owner and Owner's Agents will have no responsibility to Occupant or to any other person for any loss, liability, claim, expense, damage to property or injury to persons ("Loss") from any cause, including without limitation, Owner's and Owner's Agents active or passive acts, omissions, negligence or conversion, unless the Loss is directly caused by Owner's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Owner and Owner's Agents harmless from any loss incurred by Owner and Owner's Agents in any way arising out of Occupant's use of the Premises or the Property including, but not limited to, claims of injury or loss by Occupant's visitors or invitees. Occupant agrees that Owner's and Owner's Agents' total responsibility for any Loss from any cause whatsoever will not exceed a total of $5,000.** By INITIALING HERE_____. Occupant acknowledges that he understands and agrees to the provisions of this paragraph.

The paragraph clearly states that the owner (Public Storage) is denying all responsibility... "unless the Loss is directly caused by Owner's fraud, ***willful injury or willful violation of law.***" Public Storage has admitted that RCW 19.150.060 (a law) imposed a duty on it. (CP 149, 158) The record is undisputed showing that the items in the unit included personal papers and photographs specifically protected under RCW 19.150.060.

Mr. Howard has testified that it contained personal papers and photographs, the very property protected under the law. Public Storage has failed to produce any admissible evidence to the contrary. It is uncontroverted that Public Storage, following its own policy and practice, sold the entire contents of unit 302 to an undisclosed purchaser without having any of its employees ever even inspect the contents to identify and remove items protected under RCW 19.150.060. RCW 19.150.060 clearly requires that such an inspection be done and that the protected property not be sold:

> ***RCW 19.150.060***
>
> Attachment of lien—Final notice of lien sale or notice of disposal.
> If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following:
> (1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.
> (2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.
> (3) That ***all the property, other than personal papers and personal photographs, may be sold*** to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage

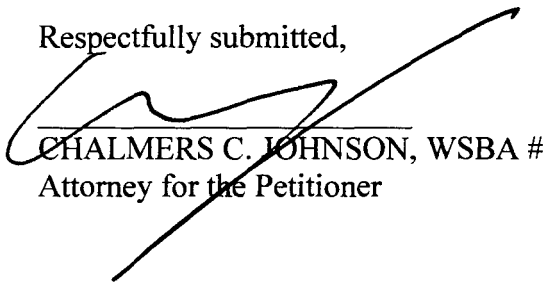
> space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.
> (4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.
> ***(5) That any personal papers and personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property*** and that thereafter the owner may dispose of the personal papers and photographs in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).
> (6) That the occupant has no right to repurchase any property sold at the lien sale.

Public Storage has never alleged that the sale of the personal photographs was the result of some mistake. In fact, it has been very candid in describing its policies on how an auction is conducted. It is clear that there is a reason behind the policy, and the reason is that the policy is economically advantageous to Public Storage. Public Storage's sale of Mr. Howard's personal papers and personal photographs and the subsequent failing to retain them for six months is a willful violation of law, and is certainly willful injury. Not only does public policy prohibit a party from obtaining a prior release from the victim of the releasee's future violation of law, the very language of the contract raised by the Respondent clearly excepts violation of the law from the scope of the release.

VII. CONCLUSION

Based on the argument set forth in this brief, and the record presented to the Court, the Petitioner, Mr. Howard, respectfully requests that the Supreme Court accept this case for review on the issues raised herein. Specifically, the Petitioner is seeking relief in the form of a finding that RCW 19.150.060 does place an affirmative duty on a Public Storage facility seeking to sell a customer's property under that statute to take some reasonable action to inspect the contents of the unit and remove personal photographs and Personal papers **before** selling the contents of the unit. If the Court makes this finding, then the Petitioner would ask that the Superior Court Order granting Summary judgment to the Defendant be reversed and this case be remanded to the Superior Court of Kitsap County for further litigation and trial on the merits.

Respectfully submitted,



CHALMERS C. JOHNSON, WSBA # 40180
Attorney for the Petitioner

February 16, 2017

CERTIFICATE OF SERVICE

SIGNED at Seattle, Washington

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, hereby certifies that on the 16th day of February, 2016, the documents to which this certificate is attached, Petition for Review and Appendix, were hand delivered to Respondent's counsel as follows:

Kathleen A. Nelson
Lewis Brisbois Bisgaard & Smith, LLP
1111 3rd Ave, Suite 2700
Seattle, WA 98101

And was also emailed to counsel at
Kathleen.Nelson@lewisbrisbois.com

Chalmers Johnson, WSBA 40180

No. 76025-4-I

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

ROBERT HOWARD,

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PSCC, INC. d/b/a PUBLIC STORAGE, SHURGARD STORAGE CENTERS, LLC, d/b/a PUBLIC SOTRAGE; JOHN DOE

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APPENDIX TO

APPELLANT'S PETITION FOR REVIEW BY THE SUPREME COURT

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ROBERT HOWARD, Appellant, v. PSSC, INC., d/b/a PUBLIC STORAGE SHURGARD STORAGE CENTERS, LLC, d/b/a PUBLIC STORAGE; JOHN DOE, Respondent.	)	No. 76025-4-I UNPUBLISHED OPINION FILED: January 17, 2017

VERELLEN, C.J. — After Robert Howard defaulted on his monthly self-storage rental unit payment, Public Storage mailed him a notice of lien sale and later sold the contents of the unit to satisfy the lien. Howard sued Public Storage, alleging causes of action for negligence, conversion, replevin, and civil conspiracy. He appeals the summary judgment order dismissing his claims. Because Howard fails to establish any genuine issue of material fact, we affirm.

FACTS

Robert Howard signed a rental agreement with Public Storage for a self-storage rental unit on September 2, 2014. Howard provided a Port Orchard address on Lincoln Avenue, a telephone number, and an email address for contact, and also provided alternate contact information for Salvie Howard. A "change of physical address" provision in the agreement required that Howard notify Public Storage of any change in

his place of residence or a change in the alternate's name or address within 10 days of the change.[1]

Howard agreed to pay a monthly rental fee of $129 for the storage unit, paid in advance on or before the first of each month, plus additional late fees for late payment. In the event of nonpayment, he agreed that property stored in the unit would be subject to a lien in favor of Public Storage:

> When any part of the Rent or . . . other charges remains unpaid for six (6) consecutive days, Owner may deny Occupant the right to enter the Premises and to access the personal property being stored therein. If Occupant is still in default forty-two (42) days after the date when Rent and/or other charges become due, the Owner may then enforce the lien and the personal property stored in the Premises (except boxes clearly labeled "personal property" and/or "personal effects") may be sold or otherwise disposed of to satisfy the lien. Prior to the lien sale, Owner will mail Occupant lien notices.[2]

Howard initialed this paragraph, acknowledging that he read, understood, and agreed to it.

The agreement further stated, "Occupant agrees that under no circumstances will the total value of all personal property stored in the Premises exceed, or be deemed to exceed, $5,000."[3] Paragraph 5 specifically advised that the storage unit was

> not suitable for the storage of heirlooms or precious, invaluable or irreplaceable property such as, but not limited to, books, records, writings, contracts, documents, personalized or other DVDs or videos, works of art, objects for which no immediate resale market exists, objects which are claimed to have special or emotional value and records or receipts relating to the stored goods.[4]

Howard acknowledged this limitation by initialing the paragraph.

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[1] Clerk's Papers (CP) at 41.

[2] CP at 40.

[3] CP at 40.

[4] CP at 40.

Paragraph 7 of the agreement further limited Public Storage's liability in the event of loss:

> Owner and Owner's Agents will have no responsibility to Occupant or to any other persons for any loss, liability, claim, expense, damage to property or injury to persons ("Loss") from any cause, including without limitation, Owner's and Owner's Agents['] active or passive acts, omissions, negligence or conversion, unless the Loss is directly caused by Owner's fraud, willful injury or willful violation of law. . . . Occupant agrees that Owner's and Owner's Agents' total responsibility for any Loss from any cause whatsoever will not exceed a total of $5,000.[5]

Howard also initialed this paragraph, acknowledging that he understood it.

On an addendum to the rental agreement, Howard acknowledged his understanding that the company was not responsible for any loss to his property stored on the premises and agreed to insure his property from a third-party insurer. Howard elected to purchase the lowest level of coverage offered, $3,000, for an additional $11.00 per month.

Howard authorized Public Storage to automatically charge his credit card for his monthly rent payment. On December 2, 2014, Howard's credit card payment was declined. Howard does not dispute that he defaulted on his payment to Public Storage.

Public Storage attempted to advise Howard his account was past due by calling both his primary number and his alternate contact's number five times between December 3 and December 31, 2014. Public Storage was unsuccessful. Public Storage also emailed Howard on December 18, 2014. It called Howard and his alternate contact seven more times between January 4 and January 31, 2015. Howard never answered his phone and he did not have his voicemail set up, and he listed a disconnected phone number for his alternate contact.

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[5] CP at 41.

Public Storage sent Howard preliminary delinquency notices on December 31, 2014, January 8, 2015, and January 12, 2015. On January 20, 2015, Public Storage mailed Howard a notice of a lien sale to advise him that it intended to sell the contents of his unit because his account was overdue. Public Storage sent the lien notice to Howard's Lincoln Avenue address via certified, return receipt mail. The United States Post Office returned the unclaimed letter on February 17, 2015 after making three attempts to deliver it.

Public Storage made multiple attempts to contact Howard and his alternate contact by telephone between February 5 and February 19, 2015. It sent two additional emails to Howard on February 8 and February 17, 2015. The morning of the February 20, 2015 public auction, Public Storage made one final attempt to reach Howard or his alternate contact by telephone. Public Storage was again unsuccessful.

Public Storage sold the contents of Howard's storage unit at the auction. It is undisputed that there were no contents labeled "personal papers" or "personal effects."[6] The sale resulted in a credit of $60 to Howard and left a balance of $599.40 due to Public Storage. The purchaser of Howard's unit signed an agreement and a certification of public sale on the date of the sale, requiring the return to Public Storage of "photos, documents (e.g., birth certificates and passports), and other personal items ('Personal Property')."[7] The purchaser never left any contents from the sale behind with Public Storage.

On March 3, 2015, Howard appeared at Public Storage's office and demanded the return of his personal items.

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[6] CP at 202.

[7] CP at 277-80.

Howard sued Public Storage, asserting causes of action for negligence, conversion, replevin, and civil conspiracy.[8] He immediately filed a motion for order to show cause, requesting an order of replevin and the return of his personal property. The trial court issued an amended order to show cause on April 3, 2015, requiring Public Storage to "immediately return any personal effects as per RCW 19.50.060 to [Howard] should they come into [Public Storage's] possession at any time in the future as per RCW 19.50.060."[9] Thereafter, Public Storage moved for summary judgment on Howard's claims. The trial court granted Public Storage's motion with prejudice.

Howard appeals.

ANALYSIS

Howard contends the trial court erred by dismissing his claims against Public Storage for negligence, conversion, and civil conspiracy. We review a summary judgment order de novo, engaging in the same inquiry as the trial court.[10] We view the facts and all reasonable inferences in the light most favorable to the nonmoving party.[11] Summary judgment is proper if there are no genuine issues of material fact.[12] "A material fact is one that affects the outcome of the litigation."[13]

Paragraph 7 of Howard's rental agreement contained an exculpatory provision limiting Public Storage's liability unless the occupant's loss was caused by Public

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[8] Howard also sued the purchaser of the contents of his unit.

[9] CP at 52.

[10] Beaupre v. Pierce County, 161 Wn.2d 568, 571, 166 P.3d 712 (2007).

[11] Fulton v. Dep't of Soc. & Health Servs., 169 Wn. App. 137, 147, 279 P.3d 500 (2012).

[12] CR 56(c); Lowman v. Wilbur, 178 Wn.2d 165, 168-69, 309 P.3d 387 (2013).

[13] Janaszak v. State, 173 Wn. App. 703, 711, 297 P.3d 273 (2013).

Storage's "willful injury or willful violation of law."[14] Howard argues Public Storage willfully violated RCW 19.50.060 resulting in willful injury, but he cites no authority and provides no meaningful analysis in support of his conclusion.

The contract does not define "willful injury" or "willful violation of law." Undefined contract terms are given their plain meaning and are to be read in context of the other contract provisions.[15] The plain meaning of willful injury and willful violation of law both involve more than merely intentionally selling the contents of the storage unit.[16] And those terms must be read in context of other contract provisions imposing obligations upon the renter regarding personal papers and personal effects.[17]

Howard ignores the provision in his rental agreement that required him to segregate and "clearly" label any "personal papers" and "personal effects" stored in the unit.[18] He also ignores the provision that acknowledged the storage unit was "not suitable for the storage of heirlooms or precious, invaluable or irreplaceable property

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[14] CP at 41.

[15] Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha, 126 Wn.2d 50, 77, 882 P.2d 703 (1994) (undefined contract terms are given their "plain, ordinary and popular meaning" which "may be ascertained by reference to standard English dictionaries"); Viking Bank v. Firgrove Commons 3, LLC, 183 Wn. App. 706, 712, 334 P.3d 116 (2014) ("[W]e view the contract as a whole, interpreting particular language in the context of [the] other contract provisions."); Nishikawa v. U.S. Eagle High, LLC, 138 Wn. App. 841, 849, 158 P.3d 1265 (2007) ("Our goal is to interpret the agreement in a manner that gives effect to all the contract's provisions.").

[16] See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2617 (2002) (defining "willful" as "governed by will without yielding to reason or without regard to reason"); see also Smith v. Behr Process Corp., 113 Wn. App. 306, 327, 54 P.3d 665 (2002) (discovery violation may be deemed willful it if is "done without reasonable excuse"); Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 674, 686-87, 41 P.3d 1175 (2002) ("A party's disregard of a court order without reasonable excuse or justification is deemed willful.");

[17] See Viking Bank, 183 Wn. App. at 712; Nishikawa, 138 Wn. App. at 849.

[18] CP at 40.

such as, but not limited to, books, records, writings, contracts, documents, personalized or other DVDs or videos, works of art, objects for which no immediate resale market exists," and "objects which are claimed to have special or emotional value."[19] Finally, Howard ignores the provision in the agreement that required him to give Public Storage written notice of a change in address or alternate name, address, and telephone number within 10 days of the change.

Here, it is undisputed that Howard did not segregate and label his personal effects, or provide Public Storage with updated contact information. It is also undisputed that Public Storage made diligent efforts to notify Howard about his default and the lien sale. Under these circumstances and on this briefing, Howard cannot establish a genuine issue of material fact as to any "willful injury or willful violation of law." Therefore, paragraph 7 bars Howard's claims.

Howard also argues the trial court erred in dismissing his claim for replevin because he "already prevailed on his cause of action for replevin," and the resulting order became the law of the case.[20] Howard misstates the nature of the trial court's April 3, 2015 order.

The April 3, 2015 Order on Amended Order to Show Cause did not grant Howard's request for replevin. Rather, it merely ordered Public Storage to return Howard's personal effects if they came into its possession. Washington's replevin statute provides that an order awarding possession shall

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[19] CP at 40.

[20] Appellant's Br. at 19.

> (a) State that a show cause hearing was held; (b) describe the property and its location; (c) direct the sheriff to take possession of the property and put the plaintiff in possession as provided in this chapter; (d) contain a notice to the defendant that failure to turn over possession of the property to the sheriff may subject the defendant to being held in contempt of court upon application to the court by the plaintiff without further notice; (e) if deemed necessary, direct the sheriff to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure; and (f) be signed by the judge or commissioner.[21]

Because the April 3, 2015 order did not contain this mandatory language, the order failed to satisfy the requirements of the replevin statute.

Accordingly, we affirm.

WE CONCUR:

Cox, J.

[21] RCW 7.64.035(2).

RCW 19.150.060

Attachment of lien—Final notice of lien sale or notice of disposal.

(1) If a notice has been sent, as required by RCW **19.150.040**, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner must provide the occupant a notice of final lien sale or final notice of disposition by personal service, verified mail, or email to the occupant's last known address and alternative address or email address. If the owner sends notice required under this section to the occupant's last known email address and does not receive a reply or receipt of delivery, the owner must send a second notice to the occupant's last known postal address by verified mail. The notice required under this section must state all of the following:

(a) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(b) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in (c) of this subsection.

(c) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the last date of sending of the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW **19.150.080**(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(d) That any stored vehicles, watercraft, trailers, recreational vehicles, or campers may be towed or removed from the self-service storage facility in lieu of sale pursuant to RCW **19.150.160**.

(e) That any excess proceeds of the sale or other disposition under RCW **19.150.080**(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW **63.29.165**.

(f) That any personal papers and personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and photographs in a reasonable manner, subject to the restrictions of RCW **19.150.080**(3).

(g) That the occupant has no right to repurchase any property sold at the lien sale.

(2) The owner may not send by email the notice required under this section to the occupant's last known address or alternative address unless:

(a) The occupant expressly agrees to notice by email;

(b) The rental agreement executed by the occupant specifies in bold type that notices will be given to the occupant by email;

(c) The owner provides the occupant with the email address from which notices will be sent and directs the occupant to modify his or her email settings to allow email from that address to avoid any filtration systems; and

(d) The owner notifies the occupant of any change in the email address from which notices will be sent prior to the address change.

[2016 sp.s. c 6 § 1; 2015 c 13 § 3; 2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

NOTES:

Application—1996 c 220: "This act shall only apply to rental agreements entered into, extended, or renewed after June 6, 1996. Rental agreements entered into before June 6, 1996, which provide for monthly rental payments but providing no specific termination date shall be subject to this act on the first monthly rental payment date next succeeding June 6, 1996." **[1996 c 220 § 4.]**