No. 48451-0

COURT OF APPEALS, DIVISION II,
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

,

BRIEF OF APPELLANT HOWARD

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Port Orchard, WA 98366
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P/M: 4/22/16

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Washington Cases

Rules

Publications

I. INTRODUCTION

This case presents to the Court a question that could affect the future of how storage businesses auction off the contents of units where owners are in arrears in payments. Currently, the practice is to leave the unit undisturbed until the auction. Buyers are assured that, if there is anything of value inside, it has not been pilfered or removed. Buyers bid on the unit hoping that it contains valuable items. After the sale, the buyer has 48 hours to remove the contents. RCW 19.150.060 protects the renter from losing irreplaceable personal items by authorizing the sale of all items except for personal papers and photos, which must be kept for 6 months and returned to the owner if possible.

The Respondent, "Public Storage" sold the contents of Mr. Howard's unit because he was in arrears on rent. Per policy, it sold the personal papers and photographs in the unit along with all of the rest of the contents. Public storage claims that it asks buyers to return personal papers if they find any, and that, by doing this, they are not running afoul of the law. Mr. Howard was granted an Order for replevin. It was a pyrrhic victory, as Public Storage maintained that it was not in possession of the items, but had relied on the buyer to return any that were found.

Public Storage moved for summary judgment. It alleged that there were no photos or papers in the unit and pointed to language in its contract waiving liability except for willful violation of the law. Superior Court Judge Hull granted the summary judgment motion on all causes of action.

II. ASSIGNMENTS OF ERROR

1. The Superior Court erred in finding that there was no genuine issue of material fact as to whether Mr. Howard's unit contained personal photographs and personal papers, property protected under RCW 19.150.060 (3) and (5)

2. The Superior Court erred by interpreting the statutory language of RCW 19.150.060 (3) and (5) as allowing Public Storage to sell a client's personal property and photographs.

3. The Judge erred in finding that a clause in Public Storage's contract which disclaimed liability except in cases of willful injury or willful violation of law applied to release Public Storage from willfully violating RCW 19.150.060 (3) and (5)

4. The Superior Court erred when analyzing the contract by determining that the analysis was ripe for summary judgment when there was a significant portion of the contract which had not been presented, and in reading section 6 to be a release of all liability when the following section excepted willful violations of law.

5. The Superior Court erred in dismissing Mr. Howard's claim for replevin on summary judgment when a prior order in the case, from another Superior Court Judge had granted the relief sought.

III. APPELLANT'S STATEMENT OF THE ISSUES

1. Whether a genuine issue of material fact exists as to whether Mr. Howard's unit contained personal photographs and personal papers, property protected under RCW 19.150.060 (3) and (5) where Mr. Howard has testified that he placed this property in the unit, and no other admissible evidence in the record contradicts his testimony.

2. 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.

3. 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 willfully violating RCW 19.150.060 (3) and (5)

4. Whether the issue is ripe for summary judgment where the Court is asked to rule on the legal interpretation of a contract, but the full contract is not presented to the Court and the missing portions are relevant to the interpretation of the clause at issue.

5. Whether, when interpreting a contract which includes two liability waiver clauses, one with a specific exception, the Court should interpret the contract in a way so as to give meaning to the specific exception.

6. Whether summary judgment is appropriate on a claim for replevin where there has been a prior order granting the replevin in the case.

IV. APPELLANT'S 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)

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) 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) 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, which 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.

V. STANDARD OF REVIEW

In this appeal, the Appellant is asking the Court to review an Order granting Summary judgment on all of Mr. Howard's claims against the Respondent. Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). *Herskovits v. Group Health Coop.*, 99 Wash.2d 609, 613, 664 P.2d 474 (1983);*Wilson v. Steinbach,* 98 Wash.2d 434, 437, 656 P.2d 1030 (1982).

On summary judgment motion, the reviewing court takes the position of the trial court, assuming facts most favorable to the nonmoving party. *Wilson v. Steinbach,* supra at 437, 656 P.2d 1030; *Highline Sch. Dist. 401 v. Port of Seattle*, 87 Wash.2d 6, 15, 548 P.2d 1085 (1976); *Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co.,*81 Wash.2d 528, 503 P.2d 108 (1972); *Wood v. Seattle,* 57 Wash.2d 469, 473, 358 P.2d 140 (1960). The burden is on the moving party, in the original motion for Summary Judgment to prove there is no genuine issue as to a fact which could influence the outcome at trial. *Jacobsen v. State,* 89 Wash.2d 104, 108, 569 P.2d 1152 (1977). See also *Klinke v. Famous Recipe Fried Chicken, Inc.,* 94 Wash.2d 255, 256-57, 616 P.2d 644 (1980) (summary judgment is not appropriate when reasonable minds might reach different conclusions); *Rounds v. Union Bankers Ins. Co.,* 22 Wash.App. 613, 617, 590 P.2d 1286 (1979) (if there is a genuine issue of credibility, summary judgment should be denied).

The Appellate Court reviews summary judgment orders de novo. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). An order granting summary judgment will be affirmed only if, viewing the evidence in the light most favorable to the nonmoving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ranger*, 164 Wn.2d at 552.

VI. ARGUMENT FOR REVERSAL

A. The record shows that Mr. Howard placed in his public storage unit included personal papers and personal photographs, items protected under RCW 19.150.060 (3) and (5), which prohibits a storage facility from selling personal photographs and personal papers.

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). In fact, earlier in this case, Mr. Howard's declaration was considered sufficient to support an order of replevin for those same items. (CP 140) It appears that, despite this evidence and the law of the case established by Judge Forbes' previous Order, the Court found that Mr. Howard did not actually have any of the items he describes in his declaration in the storage facility. The Appellate Court should recognize that, in fact, 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. Public Storage alleged, in its Answer, that Mr. Howard had not stored the items he claimed to have stored in his storage unit. Respondent's argument, which appears to have been accepted by the Court was that, since there were no protected items, Respondent did not breach its duty under the statute to refrain from selling the items. Even if there was some evidence to support Respondent's

position, this would have only presented a genuine issue of material fact, and precluded summary judgment. The record, however, is devoid of any actual admissible evidence to support Respondent's claim. The Court is not supposed to consider inadmissible evidence when reviewing a summary judgment. CR 56(e); *see also Dunlap v. Wayne,* 105 Wn.2d 529, 535, 716 P.2d 842 (1986). 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:

INTERROGATORY NO. 12: Please identify the person or entity who purchased Plaintiff's personal property from Defendant. Please include full legal name, address, phone number, and any and all other information which would identify the person or entity that Defendant has in its possession.

ANSWER:

Objection. The information sought violates the purchaser's right to privacy under the U.S. Constitution and the Washington State Constitution.

Kathleen A. Nelson, WSBA # 22826

The only evidence that Public storage has offered, relating to what was or was not in unit 302 is hearsay. Public Storage's attorney, who represented the Respondent in the Superior Court action, Ms. Nelson, has

submitted a declaration stating that she spoke with the purchaser, who she will not identify, and that he told her that there were no personal papers or photographs in the items he purchased from unit 302. (CP 218) Ms. Hunter, the Respondent's employee, offers double hearsay, stating that she spoke with Mr. Clark (a district manager for Public Storage) and that he called the purchaser (who she refused to identify) who then told him that there were no personal papers or photographs in the unit. (CP 200) The Washington evidence rule on hearsay is simple. Hearsay, a statement made by a declarant who is not the witness, offered to prove the truth of the matter asserted, is not admissible. ER 802 Ms. Nelson and Ms. Hunter are offering the statement of an unidentified declarant, the purchaser, to prove the truth of the matter asserted in the alleged statement, that Mr. Howard did not have any personal effects in unit 302. This is a classic example of why hearsay is not admissible. The purchaser has every reason to lie, not only because he is a long-time customer of the Respondent's auctions of former clients' personal property, and because he has clearly destroyed the irreplaceable photos and personal papers that Mr. Howard placed in the storage unit, but a ruling from the Court finding that the procedures for auction (guaranteeing that the purchaser is the first one to have access to the items in the unit) violate RCW 19.150.060 (3) and (5 would require the Public Storage facilities of the State to sift through the items for sale before selling them. The titillating allure of purchasing a unit to which nobody has ever had access before the buyer is that it may

contain valuable items worth more than what the buyer paid for the unit. If employees went through each unit before sale, there could be no guarantee that valuable items were not removed prior to sale, and the integrity of these auctions would be destroyed.

Without any admissible evidence in the record to contradict Mr. 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." The Court's finding

that there was no such property in the unit, and the Order granting summary judgment on this basis should be reversed.

B. Public Storage had a statutory duty, under RCW 19.150.060, to Mr. Howard, which it breached, by selling the entire content of Mr. Howard's storage container to a third party without first removing personal papers and photographs. The Court therefore erred in dismissing Mr. Howard's claims for conversion, negligence, and conspiracy.

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. This necessarily includes any personal papers or photographs that may be in it. This policy is a willful and knowing violation of the first duty imposed by the statute. If no employee of Public Storage ever looks into a storage unit before it is sold, and the entire contents are sold, then any time there are personal papers or photographs inside a storage unit that is auctioned off, a violation will have occurred.

The second breach of duty necessarily caused by this intentional policy and practice is that, 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. 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. In a case where personal papers and personal photographs were stored in a public storage unit, and that unit is sold at auction, Public Storage's policies and practices result, necessarily, in the violation of the first duty imposed by the statute, and therefore makes the execution the second statutory duty imposed impossible. Public storage violates the clear language, the intent, the public policy considerations, and the spirit of RCW 19.150.060 with each and every auction, every time there is a photo or one scrap of personal paper sold with the contents of a storage unit under its current policies.

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. 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.

Respondent 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. 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 will full violation of law, and is certainly willful injury. The Court should not have granted summary judgment to the Respondent on this issue. If anything, it should have granted Mr. Howard's summary judgment motion. 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.

D. Paragraph 6 of the Public Storage contract does not release Public Storage from liability for a violation of law. It only waives claims for losses arising from damages which would have been covered by a particular insurance policy. The addendum regarding insurance or the policy relevant to the clause was not presented to the Court.

Respondent argued that Paragraph 6 of its contract is a general waiver of liability. In fact, on its face, it is not. It is a notice that the Defendant has offered the customer the opportunity to purchase insurance on the contents of the unit. It says that the customer acknowledges that he has been offered the opportunity to purchase insurance, and that, should he decline, there will be no insurance coverage for liability claims regarding the property. To argue that section #7 limited liability EXCEPT as to willful acts and violations of the law by Public Storage and then assert that

#6 limits all liability would fail to give effect to the exception for willful violation of the law in #7. The court cannot ignore the language agreed upon by the parties, or revise or rewrite the contract under the guise of construing it. *Wagner v. Wagner*, 95 Wash.2d 94, 621 P.2d 1279 (1980). In construing a contract, the court should apply that construction that will give each part of the instrument some effect. *Safeco Ins. Co. v. McManemy*, 72 Wash.2d 211, 432 P.2d 537 (1967); *Bremer v. Mount Vernon School Dist. No. 320*, 34 Wash.App. 192, 660 P.2d 274 (1983). In this case, it is clear that section #6 applies to an offer for insurance, not as a general limitation of liability.

6. INSURANCE; RELEASE OF LIABILITY. **ALL PERSONAL PROPERTY IS STORED BY OCCUPANT AT OCCUPANT'S SOLE RISK. OCCUPANT IS OBLIGATED UNDER THE TERMS OF THIS LEASE/RENTAL AGREEMENT TO INSURE HIS OWN GOODS AND UNDERSTANDS THAT OWNER DOES NOT PROVIDE ANY TYPE OF INSURANCE WHICH WOULD PROTECT THE OCCUPANT'S PERSONAL PROPERTY FROM LOSS BY FIRE, THEFT, OR ANY OTHER TYPE CASUALTY LOSS. IT IS THE OCCUPANT'S RESPONSIBILITY TO PROVIDE SUCH INSURANCE.** To the extent Occupant's insurance lapses or Occupant does not obtain insurance coverage for the full value of Occupant's personal property stored in the Premises, Occupant agrees Occupant will personally assume all risk of loss. **Owner and Owner's agents, affiliates, authorized representatives and employees ("Owner's Agents") will not be responsible for, and Occupant hereby releases Owner and Owner's Agents from any responsibility for, any loss, liability, claim, expense or damage to property that could have been insured (including without limitation any Loss arising from the active or passive acts, omission or negligence of Owner or Owner's Agents) (the "Released Claims").** Occupant waives any rights of recovery against Owner or Owner's Agents for the Released Claims, and Occupant expressly agrees that the carrier of any insurance obtained by Occupant shall not be subrogated to any claim of Occupant against Owner or Owner's Agents. The provisions of this paragraph will not limit the rights of Owner and Owner's Agents under paragraph 7. Occupant understands that if Occupant elects to obtain the insurance available at the Property, the additional amount for such insurance coverage must be included with the monthly payments as noted above. Further, all payments received will be applied as noted above. By **INITIALING HERE**_____, Occupant acknowledges that he understands the provisions of this paragraph and agrees to these provisions and that insurance is Occupant's sole responsibility.

This paragraph only limits liability for claims that "could have been insured" under the particular policy being offered as an addendum to the agreement. Interestingly, Mr. Howard did, in fact purchase the insurance referenced in this clause. The addendum has been signed by Mr. Howard. He elected to have $3,000.00 in coverage. A copy has been produced and attached to the undersigned's declaration. (CP 165) What it says is that the insurance policy is underwritten by New Hampshire Insurance Company,

and that it has "EXCLUSIONS and CONDITIONS." It seems that, since the liability limitation only applies to those claims that would have been covered by the insurance policy, a sufficiently supported summary judgment motion would have to include the actual policy, and examine the "EXCLUSIONS and CONDITIONS" mentioned in the addendum. The policy appears to be easily obtained. There is a phone number and address through which to contact a company called MARSH U.S., which will provide the policy, or at least something it refers to as a "complete specimen copy":

INSURANCE INFORMATION: I have received a copy of the literature provided and the Certificate of Storage Insurance. I understand that I may have a copy of the complete specimen policy for review by simply calling Marsh at 1-877-678-6730 or writing to the address below.

NOTICE TO WASHINGTON APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

Marsh U.S. Consumer, a service of Seabury & Smith, Inc.
In CA d/b/a Seabury & Smith Insurance Program Management (CA License # 0633005)
P.O. Box 14404
Des Moines, IA 50306-9686
www.perfectsolutionstorageinsurance.com Or by calling (877) 678-6730

Producer Signature

Date Signed 9-2-14 Tenant Signature R. Howard Print Name Rob Howard

WA0114 WHITE – *Property Copy* YELLOW – *Customer Copy*

As most insurance policies exclude coverage for willful acts or violations of law, this one likely does too. The Court clearly was not provided all of the information relevant to the Respondent's motion for summary judgment on this issue. Neither was the Appellant, although it was requested in discovery. As it appears that discovery is not complete on this matter, and a crucial portion of the contract at issue is missing, then the summary judgment motion should simply have been denied, as, obviously, discovery is not complete on the issues relevant to the motion. Even if the Court were to find that the section of the contract at issue is

complete on its face, then Washington law which guides the reading and construction of contracts should have led the Court to deny summary judgment based on the fact that the earlier liability waiver specifically excepts will violations of law.

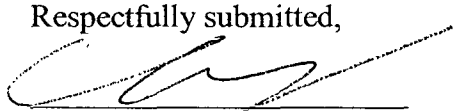
E. The Court erred in dismissing Howard's claim for replevin because Mr. Howard has already prevailed on his cause of action for replevin. Judge Forbes' Order of April 3, 2015, granting replevin was the law of the case.

Respondent moved for summary judgment as to Plaintiff's cause of action for Replevin. This motion should have been denied because Mr. Howard was successful in a rule to show cause on April 3, 2015 in which Replevin was granted by Judge Forbes. (CP 140) Because this Order has already been granted in this case, Mr. Howard is entitled, as a matter of law, to Replevin. It is the "law of the case." In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation. *Lutheran Day Care v. Snohomish County,* 119 Wash.2d 91, 113, 829 P.2d 746 (1992), (citing 15 Lewis H. Orland & Karl B. Tegland, Washington Practice: Judgments § 380, at 55-56 (4th ed.1986)). There was no call to relitigate an issue that has already been ruled upon by Judge Forbes in this case. Respondent's motion for summary judgment should have been denied. Even if there were some reason to consider such a motion, the fact that one Judge has already found the claim to be sufficiently meritorious to grant judgment and relief should have precluded summary judgment.

VII. CONCLUSION

Based on the argument set forth in this brief, and the record presented to the Court, he Appellant respectfully requests that the Appellate Court reverse the Order of the Trial Court and return this case to the Kitsap Superior Court for a trial on the merits.

Respectfully submitted,



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

April 22, 2016

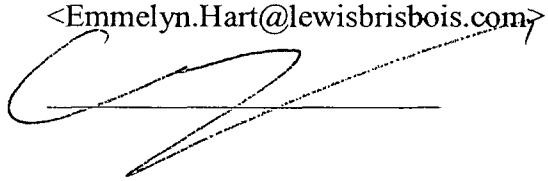
CERTIFICATE OF MAILING

SIGNED at Port Orchard, Washington

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, hereby certifies that on the 22nd day of April, 2016, the document to which this certificate is attached, Brief of Appellant, was placed in the U.S. Mail, postage prepaid, and addressed to Respondent's counsel as follows:

Emmelyn Hart
Lewis Brisbois Bisgaard & Smith, LLP
111 Third Avenue, Suite 2700
Seattle, WA 98101

And was concurrently emailed to counsel at Hart, Emmelyn <Emmelyn.Hart@lewisbrisbois.com>



COURT OF APPEALS, DIVISION II,
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

Respondent.

Court of Appeals No. 48451-0-II

Superior Court No. 15-2-00544-0

CERTIFICATE OF SERVICE FOR APPELLANT'S BRIEF

I, Chalmers C. Johnson, do hereby declare pursuant to the laws of the State of Washington and under penalty of perjury that on the April 22, 2016, I mailed the Appellant's Brief in this case to the Court and to opposing counsel with a copy by email to opposing counsel at:

Emmelyn Hart
Lewis Brisbois Bisgaard & Smith, LLP
111 Third Avenue, Suite 2700
Seattle, WA 98101

Hart, Emmelyn <Emmelyn.Hart@lewisbrisbois.com>

Chalmers C. Johnson, WSBA 40180
Attorney for the Appellant

DATED this 22nd day of April, 2016.

Chalmers C. Johnson, WSBA # 40180
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DAVID W. JONES
SYLVIA SEYBOLD
*of Counsel

April 22, 2016

Court of Appeals, Division II
Clerk's Office
950 Broadway #300
Tacoma, WA 98402

Re: Howard v. Public Storage
Court of Appeals No. 48451-0-II

Dear Clerk of Court:

Enclosed please find the following:

1. Appellant's Brief
2. Certificate of service

I have copied opposing Counsel on this letter and enclosures.

Sincerely,

Chalmers C. Johnson

Enclosure: 1) Appellant's Brief 2) Certificate of Service
Cc: With enclosure
Emmelyn Hart
Lewis Brisbois Bisgaard & Smith, LLP
1111 Third Avenue, Suite 2700
Seattle, WA 98101