

No. 67715-2-1

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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RICHARD AZPITARTE Appellant  
v.  
GAYLE SAUVE, JANE DOE SAUVE, BURIEN COLLISION  
CENTER, INC.  
SUPERIOR COURT  
King County No. 10-2-42874-7

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**BRIEF OF RESPONDENT**

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STATE OF WASHINGTON  
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## **INTRODUCTION**

Plaintiff, Richard Azpitarte is appealing the Superior Court Summary Judgment ruling that his Summons and Complaint were filed beyond the statute of limitations.

## **ASSIGNMENT OF ERROR**

1. The Trial Court did not err in granting the summary judgment that the Statute of Limitations had run on Plaintiff's claim for conversion.
2. The Trial Court did not rule on the number of vehicles Plaintiff claims Defendant purchased at auction and therefore did not err.

## **ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR**

1. Whether the Trial Court abused its discretion by granting a Summary Judgment based upon the Statute of Limitations on behalf of Defendant/Respondent when no material issue of fact or law was in dispute?
2. Whether Plaintiff can properly appeal a Trial Courts ruling of Summary Judgment for violating the Statute of Limitations for Conversion, on the

basis of an allegation of Fraud when Plaintiff did not plead Fraudulent  
Conversion or Fraudulent Conveyance?

TABLE OF AUTHORITY

CP= Clerks papers

RP=Summary judgment transcript of hearing

1. Cases: *Crisman v. Crisman*, 85 Wn.App. 15, 931 P.2d 163 (1997)

CITED ON PAGE 8

*Douchette v. Bethel Sch. Dist. No. 403*, 117 Wash.2d 805, 813, 818  
P.2d 1362 (1991). *Douchette*, 117 Wash.2d at 813, 818 P.2d 1362.

CITED ON PAGE 6

2. Civil Rules: King County Civil Rule 56 ( c) -CITED ON PAGE 6

3. RCW 4.16.080-CITED ON PAGE 6

## **STATEMENT OF THE CASE**

This entire matter began in August of 2004 when Plaintiff's vehicles were towed by Cedar Rapids Towing to their storage yard. **CP-79** On June 28<sup>th</sup>, 2005 Cedar Rapids Towing conducted a salvage tow auction where Defendant purchased one of those vehicles, a 1970 Chevelle. **CP-9** Defendant purchased the vehicle sight unseen from Cedar Rapids Towing for \$5,000.00. **CP-12** Defendant registered the vehicle in his name on August 5<sup>th</sup>, 2005. **RP-2** Plaintiff filed his action against Defendant on December 10, 2010 for Replevin and Conversion, 5 years and 4 months after Defendant registered the vehicle. **CP-1** Defendant Answered Plaintiff on March 23<sup>rd</sup>, 2011, and Discovery followed, whereby Defendant delivered all information in their possession to Plaintiff. **CP-4** On June 8<sup>th</sup>, 2011 Defendant moved for Summary Judgment, and a hearing was held on July 29<sup>th</sup>, 2011 whereby the Court granted Summary Judgment to Defendant. **RP**

## **DISPUTED FACTS:**

Defendant continues to dispute the facts alleged in Plaintiffs brief.

**CP 11-12** Defendant purchased only one car at auction. **CP-12** That car was not in drivable condition. **CP-12** Defendant did not take possession of the 1970 Chevelle until after June 28<sup>th</sup>, 2005. **CP-11-12**

## ARGUMENT

### Statute of Limitations.

CR 56( c) indicates that based upon the pleadings, and discovery on file together with the affidavits, show that there is no material issue of fact and that the moving party is entitled to a judgment as a matter of law. The Trial Court correctly ruled that the vehicle was titled and registered on August 5<sup>th</sup>, 2005. Plaintiff admitted this fact was true. The Court found that registering the car is a public record accessible to all parties. Plaintiff admitted having access to the public record by relicensing the vehicle in April of 2005. The Plaintiff pled conversion. The Statute of Limitations for Conversion is 3 years. RCW 4.16.080 Plaintiff filed his case after the three statute had run. Douchette v. Bethel Sch. Dist. No. 403, 117 Wash.2d 805, 813, 818 P.2d 1362 (1991). When plaintiffs sleep on their rights, evidence may be lost and witnesses' memories may fade. Douchette, 117 Wash.2d at 813, 818 P.2d 1362.

Plaintiff cannot claim fraud after pleading conversion.

Plaintiff claims that he does not need to plead the elements of fraud, fraudulent concealment or fraudulent conversion. Instead, Plaintiff believes that if a Plaintiff discovers the elements of a case during discovery, the cause of action materializes, without amending his pleadings, and the pleadings would conform to the evidence. The Trial Court commented that the evidence, allegations and declarations submitted by Plaintiff did not give rise to a claim of fraud or conversion. Washington Law requires that the complaint of Fraud be pled in order to provide notice to the Defendant. Plaintiff contends that Cedar Rapids Towing has engaged in fraudulent conduct by keeping the vehicle from him after it was towed. However Cedar Rapids is not a party to the action.

Plaintiff further believes that Defendant breached an affirmative duty to Plaintiff, which gives rise to his fraud cause of action and further allows his case to fall outside the statute of limitations.

Defendant does not owe Plaintiff any duty. Defendant is a third party purchaser who purchased a non driveable vehicle at a vehicle impound auction. Defendant registered the vehicle because it is a requirement under the law not because he owed Plaintiff a duty. However, under Plaintiff's theory, If Defendant had a duty to inform, once Defendant registered the car he had completed his fictional duty to disclose to Plaintiff since the records are public. Our case is clearly distinguishable from

*Crisman v. Crisman*, 85 Wn. App. 15 931 P.2d 163 (1997). In *Crisman* the Defendants were managers of a jewelry store who embezzled funds and jewelry from the store. As the owners agent they owed the owner a fiduciary duty to disclose. Defendant owes no duty to Plaintiff in our case.

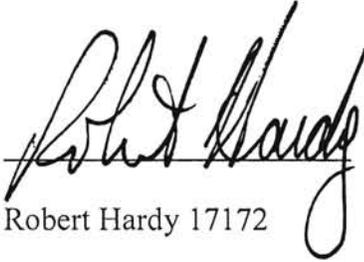
Plaintiff's theory of fraudulent concealment is flawed. Plaintiff's spends a great deal of energy and resources explaining the concealment of a rusted vehicle that he claims is worth \$25,000. He admits that the vehicle was registered in August 5<sup>th</sup>, 2005 and that he was familiar with the registration process. Plaintiff freely admits titling the car into his name after the car had been auctioned and sold to Defendant. Even though the vehicle registration and titling is a public record and Plaintiff had access to those records as a member of the general public he argues the vehicle was concealed from him.

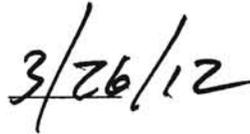
Plaintiff neglected to plead an allegation that Defendant purchased additional vehicles, and a description of the vehicles. Plaintiff claims in his brief that there are other cars that were purchased by Defendants and that the trial Court should have taken judicial notice of this fact. However if the purchase of one car is beyond the statute of limitations then the purchase of additional vehicles the same day is beyond the statutory time limitation. Nevertheless, Plaintiff provides evidence that the other

vehicles were purchased at auction by parties other than Defendants, yet he still believes that my Defendants are responsible.

**CONCLUSION**

Defendant believes that this was a frivolous lawsuit with a frivolous appeal. The trial Court did not err in ruling that the statute of limitations had run for conversion and replevin.

  
Robert Hardy 17172

  
Date

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

Richard Azpitarte

Plaintiff(s),

vs.

Gayle Sauve Et Al

Defendant(s).

COURT OF APPEALS 67715-2-I  
NO.10-2-42874-7KNT

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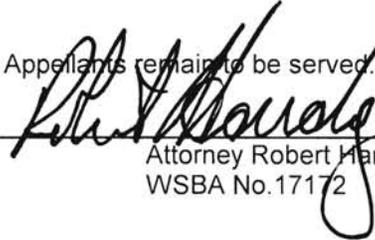
All the named Plaintiff/Appellant have been served with Defendant Brief.

Service was by regular mail at the address provided by Plaintiff.

No other named Plaintiffs or Appellants remain to be served.

Date

3/26/12



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WSBA No.17172

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