

No. 47065-9-II

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

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STEVEN CHASE and IVA HAUKENES,

Appellants,

v.

GARAGE PLUS STORAGE, LLC,  
a Washington limited liability company,

Respondent.

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BRIEF OF APPELLANT

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## **I. INTRODUCTION**

Steven Chase and Iva Haukenes (collectively “Chase”) purchased a high-end storage unit at a facility built, owned, and operated by Respondent Garage Plus Storage, LLC (“Garage Plus”). The unit was acquired by a 30-year real estate contract. Shortly after the purchase, the relationship between the parties deteriorated due to Nick Simon’s default on other contracts with Chase. Ultimately, the principals of Garage Plus engaged in a pattern of harassment that precluded Chase from peacefully accessing their unit. Chase sued and alleged a breach of contract, breach of warranties, fraud, assault, and malicious harassment. Pursuant to the Case Scheduling Order, Chase timely filed a request for jury trial and paid the applicable fee. On the morning of trial, the trial court granted Defendants’ Motion to Strike Jury Demand.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred by striking Plaintiffs’ jury demand when the main issues of the case are legal in nature.

## **III. ISSUES ON APPEAL**

1. When a Plaintiff alleges claims both legal and equitable, but the main issues are primarily legal, does a trial court abuse its discretion by striking the Plaintiff’s jury demand? **Yes.**

#### IV. STATEMENT OF THE CASE

On or about February 1, 2009, Appellant Chase sold two pieces of real property to Nick Simon on a real estate contract. RP 71-72. To establish his ability to pay for the real property, Nick Simon represented that he was part owner of Garage Plus, a high-end storage facility where purchasers acquired an ownership interest in the condominium unit, with a percentage ownership interest in the common spaces such as a community clubhouse. RP 71, 84-85.

After entering into the real estate contracts with Nick Simon, Nick Simon and Garage Plus approached Chase about buying a unit at Garage Plus. RP 76.

On or about March 19, 2011, Chase entered into an agreement with Garage Plus to acquire a 630 square foot storage unit at its facility (“the Unit”). RP 77.

In late 2012, Chase began having problems with Nick Simon regarding the purchase of the properties in 2009. RP 76.

In September 2012, Nick Simon defaulted on both real estate contracts with Chase. RP 72-73. Thereafter, Nick Simon offered to trade Chase a large unit from Garage Plus for the parcels he defaulted on buying from Chase. RP 73, 74. Chase was not interested and threatened foreclosure. *Id.*

On October 22, 2012, Chase filed suit to recover damages for breach of contract and breach of warranties against Garage Plus Storage, LLC. CP 81-85.

Chase alleged that beginning in October 2012, Defendants began to constructively and actively exclude Chase from the Unit. RP 126-127; CP 89. The initiating event was when “Mr. Chase and his mother were chased out of the Garage Plus facility by Nicholas and Jeremy Simon and followed in their vehicle by Jeremy Simon.” *Id.* The Amended Complaint further alleged that “on or about October 6, 2012, Garage Plus sent an individual to [Chase’s] home. The individual refused to provide his name or why he was there, and repeatedly pounded on the [Chase’s] door yelling their names.” CP 89-90; RP 127. The assault, malicious harassment, and exclusion from the unit supported the breach of contract and fraud claims.

On February 25, 2013, Chase filed a demand for a twelve person jury, and paid the \$250.00 fee. CP 86.

On May 24, 2013, Chase filed an Amended Complaint naming the members of Garage Plus, Danny Thomas Simon, Jeremy T. Simon, Nicholas Richard Simon, and Clair Jenkins (collectively “Defendants”)<sup>1</sup>, as additional Defendants alleging breach of the Unit contract, breach of

warranties, fraud in the inducement, misrepresentation, assault and malicious harassment. CP 87-93. As the relief sought, Chase prayed for damages arising from each cause of action and a recession. *Id.*

The Amended Complaint primarily related to Defendants' harassment of Chase and restriction of Chase's access to the Unit. As such, Defendants' assault and malicious harassment claims were central to Chase's access restriction and breach of contract claim.

On September 25, 2014, Garage Plus filed an answer alleging conversion, tortious interference with economic relations, and breach of contract. CP 101-08.

On October 23, 2014, Garage Plus filed a Motion to Strike Chase's jury demand. CP 33-35.

On November 3, 2014, the trial date, the Court granted Garage Plus's motion and struck Chase's jury demand. RP 45. The case was tried to the bench thereafter and this appeal followed.

## V. ARGUMENT

### A. Standard of Review

The denial of a jury trial by a trial court is reviewed for an abuse of discretion. *Brown v. Safeway Stores, Inc.*, 94 Wn.2d 359, 365, 617 P.2d 704 (1980). When the trial court abuses its discretion, the Court of

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<sup>1</sup> Garage Plus Storage, LLC remained a named Defendant.

Appeals may reverse the trial court's decision and remand for a jury trial. *Lopez-Stayer v. Pitts*, 122 Wn. App. 45, 51, 93 P.3d 904 (2004).

**B. Chase Timely and Properly Requested A Jury.**

The right to a jury trial is guaranteed by Article 1, Section 21 of the Washington State Constitution. See *Knudsen v. Patton*, 26 Wn. App. 134, 137, 611 P.2d 1354 (1980). Failure to comply with court rules to file a jury demand can waive the right to a jury trial. See *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 563, 800 P.2d 367 (1990). In a civil case, a party must make a timely demand for a trial by jury. CR 38(b).

In our case, the timing for filing a jury demand is governed by Pierce County Local Civil Rule 38. Under PCLR 38(b), a jury demand must be filed pursuant to the case scheduling order. The case scheduling order jury demand deadline was February 25, 2013. On February 25, 2013, Chase timely filed the jury demand and paid the applicable \$250.00 fee.

**C. The Trial Court Abused Its Discretion When It Struck The Jury Demand.**

Whether a party has a right to a jury trial turns on the type of action. See *Auburn Medical, Inc. v. Lydig Const., Inc.*, 89 Wn. App. 893, 951 P.2d 311 (1998). A right to a jury trial is a constitutional guarantee when the civil action is legal in nature, but not where the action is

equitable in nature. *Id.* (citing *Knudsen v. Patton*, 26 Wn. App. 134, 137, 611 P.2d 1354 (1980). “At its core, the right of trial by jury guarantees litigants the right to have a jury resolve questions of disputed material facts.” *Davis v. Cox*, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.3d \_\_\_ (May 28, 2015).

When an action is neither purely legal nor purely equitable in nature, the trial court must determine whether it is primarily legal or equitable in nature. *Brown*, 94 Wn.2d at 365. “Any doubt should be resolved in favor of a jury trial in deference to the constitutional nature of the right.” *Auburn Medical, Inc.*, 89 Wn. App. at 898. “The right to a jury trial when such exists is a substantial right and a denial thereof is prejudicial error.” *Reed v. Reeves*, 160 Wash. 282, 294 P. 995 (1931) (citing *Northern Life Ins. Co. v. Walker*, 123 Wash. 203, 212 P. 277 (1923) (ruling that the defense of fraud was a purely legal defense and the appellant had a right to a jury trial).

When examining the primary character of an action, the court considers several factors:

- (1) who seeks the equitable relief;
- (2) is the person seeking the equitable relief also demanding trial of the issues to the jury;
- (3) are the main issues primarily legal or equitable in their nature;
- (4) do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury;
- (5) are the equitable and legal issues easily separable;
- (6) in the exercise of such discretion, great weight should be given to the constitutional right of trial by jury and if the nature of the action is doubtful, a jury trial should be allowed;
- (7) the trial court should

go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.

*Brown*, 94 Wn.2d at 368. This list is non-exhaustive, and the court should examine the remedy sought. *Id.*

In *Auburn Medical*, the plaintiff sued for a quasi-contractual claim, and included subordinate counts for quantum meruit. When the plaintiff's lien claim was withdrawn, the trial court no longer had discretion to determine whether the action was primarily legal or equitable. *Id.* at 905. The plaintiff in *Auburn Medical* was entitled to a jury trial. *Id.*

In cases where the issue is a measure of damages, the court has determined that a jury trial is appropriate.

At issue in the present case is whether the measure of damages is a question of fact within the jury's province. Our past decisions show that it is indeed. The constitutional nature of the jury's damage-finding function is underscored by *Baker v. Prewitt*, 3 Wash. Terr. 595, 19 P. 149 (1888). In that case, the territorial Supreme Court stated: Sections 204 and 289 of the [territorial] Code seem to require that in all actions for the assessment of damages the intervention of a jury must be had, save where a long account may authorize a referee, etc. This statute is mandatory, and we are satisfied that where the amount of damages is not fixed, agreed upon, or in some way liquidated, a jury must be called, unless expressly waived. *Baker*, at 597–98, 19 P. 149. If our state constitution is to protect as inviolate the right to a jury trial at least to the extent as it existed in 1889, then *Baker's* holding provides clear evidence that the jury's fact-finding function included the determination of damages. This evidence can only lead to the conclusion that our constitution, in article 1, section 21, protects the jury's role to determine damages.

*Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 771 P.2d 711 (1989); compare *Jackowski v. Borchelt*, 151 Wn. App. 1, 209 P.2d 514 (2009) (when plaintiff sued for rescission, the trial court did not abuse its discretion in striking the jury demand); and *James v. Robeck*, 79 Wn.2d 864, 869, 490 P.2d 878 (1971) (“To the jury is consigned under the constitution the ultimate power to weigh the evidence and determine the facts—and the amount of damages in a particular case is an ultimate fact.”); *Worthington v. Caldwell*, 65 Wn.2d 269, 273, 396 P.2d 797 (1964) (“Questions of damages should be decided by the jury.”).

The constitutional importance of a right to a jury trial and the *Brown* factors weigh in favor of allowing a jury in this case. Chase, as Plaintiff, made a timely jury demand. The Complaint and Amended Complaint squarely raised legal claims with the primary issues being whether Defendants’ conduct amounted to fraud, misrepresentation, breach of contract, assault and/or harassment. As relief, Chase sought damages and rescission. The only equitable issue was rescission and it was only one of the forms of relief requested. When looking at the claims and relief sought, the issues were considerably more legal than equitable.

Additionally, although the potential remedy of rescission is equitable in nature, such a remedy is easily separable from the legal issues. A jury’s determination of questions of fact on the issues of assault, breach

of contract, and fraud could have easily been identified and dealt with by the court and jury without complexities that would impact the orderly determination of such an issue. In fact, had the jury determined that Chase had not met his burden on the legal claims, there would be no basis for damages or a rescission. In sum, this determination would have been easily disposed of without interference or disruption of the case.

The trial court's primary basis for its decision to deny the jury appeared to be more administrative and based on (1) the trial court's surprise that the case was scheduled as a jury trial; and (2) the length of time necessary for jury trials. *See* RP 3-4; 6-7; 9-10. However, none of these reasons are part of the *Brown* factors, and they certainly do not trump a party's constitutional right to have a jury of their peers make factual determinations.

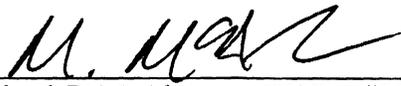
In exercising its discretion to strike the jury, the trial court failed to give adequate weight to Chase's constitutional right to a trial by jury. Under *Brown*, the court should have examined behind the pleadings to ascertain that the real issues were legal in nature: assault, breach of contract, fraud, and damages arising therefrom. Any doubt should have been resolved in favor of granting a jury trial. *See Auburn Medical, Inc.*, 89 Wn. App. at 898. The trial court abused its discretion when it struck the jury demand.

**VI. CONCLUSION**

For the reasons set forth herein, the trial court abused its discretion when it struck the jury demand. Appellant respectfully requests the trial court's decision be reversed and the matter be remanded for trial by a jury.

DATED this 12<sup>th</sup> day of July, 2015.

SMITH ALLING, P.S.

By   
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Attorney for Appellants

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 13<sup>th</sup> day of July, 2015, served a true and correct copy of the foregoing document, via the methods noted below, properly addressed as follows:

***Court of Appeals***

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

DATED this 13<sup>th</sup> day of July, 2015, at Tacoma, Washington.

  
JULIE PEREZ