

47905-2-II

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

LARRY D. RILEY,

Appellant,

Vs.

**IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L.
ARONSON; EVE ARONSON TRUST; PRIME COMMERCIAL
PROPERTY, INC.; all dba IRON GATE SELF STORAGE; dba
IRON GATE STORAGE – CASCADE PARK,**

Respondents.

BRIEF OF APPELLANT
(Amended)

James L. Sellers
WSBA #4770
415 East Mill Plain Blvd
Vancouver, WA 98660
(T) (360) 695 0464
(F) (360) 695 0466
Email: jsellers@sellerslawoffice.com

Attorney for Appellant,
Larry D. Riley

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I. INTRODUCTION

This case arises out of Iron Gate Self Storage's¹ ("Iron Gate") seizure and sale of Larry Riley's storage unit contents to satisfy late storage unit rent payments. The statute requires a 14-day written auction notice to a storage unit tenant and the opportunity during that period to correct any deficiency before the tenant's property is sold at auction. However, Iron Gate only gave Mr. Riley a six-day auction notice, which he received by mail on the eighth day. The property had already been sold at auction by Iron Gate when Mr. Riley contacted Iron Gate on that eighth day.

Mr. Riley sued Iron Gate in Clark County Superior Court for damages for conversion, breach of contract, and violations of the Consumer Protection Act, alleging the invalidity of the statutorily-required lien and auction notices, and the invalidity of the limitation on liability (\$5,000), indemnity, and risk shifting provisions in Iron Gate's standard form, non-negotiable rental agreement, which he asked the Trial Court to declare unenforceable and void as ambiguous, unconscionable and a contract of adhesion.²

¹ All defendants are collectively referred to as Iron Gate Self Storage, or Iron Gate.

² Mr. Riley also originally requested a writ of replevin for the return of his property.

The Trial Court, the Hon. David E. Gregerson presiding, entered an order of partial summary judgment and a final judgment on July 17, 2015 in favor of Iron Gate “limiting any recovery of damages by Plaintiff, under any theory or theories pled, to a maximum of \$5,000”. (CP 306 & 308) All of the money that Mr. Riley could have recovered under that limitation had been tendered to Mr. Riley by Iron Gate’s payment of the funds into the Clerk of the Court.

II. ASSIGNMENTS OF ERROR

Assignments of Error:

No. 1. The Trial Court erred in entering the Order on Defendant’s Motion for Summary Judgment and Alternative Motion for Partial Summary Judgment (CP 305-306) limiting any recovery of damages by Mr. Riley, under any theory or theories pled, to a maximum of \$5,000.

No. 2. The Trial Court erred in entering Final Judgment of Dismissal with Prejudice (CP 307-308) adjudging: (1) that plaintiff’s recoverable damages under any theory or theories pled are limited to a maximum of \$5,000; and that Final Judgment of Dismissal with Prejudice as to all claims is appropriate.

No. 3. The Trial Court erred in entering an Order Denying Plaintiff’s Motion for Reconsideration (CP 303-304).

Issues on Assignments of Error:

(All issues pertain to all assignments of error.)

1. Did the trial court commit error when it held that Iron Gate’s liability should be limited to \$5,000 although Iron Gate’s liability arose on

account of Iron Gate's own volitional act, which was also the intentional tort of conversion?

2. Should Iron Gate's rental agreement \$5,000 limitation on liability provisions be interpreted to include intentional acts or intentional torts by the wrong doer although the agreement expressly limits liability only for "active of [sic] passive acts, omissions or negligence"? Does the specific word "negligence" limit the words "active of [sic] passive acts, omissions" to those that constitute negligence, and exclude intentional torts and Iron Gate's intentional conduct?

3. Does a strict and narrow interpretation of the rental agreement's exculpatory language exclude intentional acts or torts by the wrong doer because there is no express inclusion of intentional acts or intentional torts as compared to the express, specific mention of "negligence?"

4. Is it against public policy established by the notice requirements in RCW 19.150.040 & 060 so as to prevent Iron Gate from contractually exculpating itself for its own intentional torts and acts in violating those notice requirements?

5. Can the exculpatory language in a rental agreement that Iron Gate caused to be drafted or did draft protect Iron Gate from liability for Iron Gate's intentional torts and acts?

6. Can exculpatory language in Iron Gate's standard form rental agreement be enforced against Iron Gate's violations of the Consumer Protection Act?

7. Is it unconscionable for exculpatory language in a storage unit rental agreement to limit Iron Gate's liability to \$5,000 for its intentional and wrongful seizure and sale of over \$1,500,000 of storage unit occupant's property?

III. STATEMENT OF THE CASE

Larry Riley rented storage unit 028 from Iron Gate Self Storage on December 1 2003.³ The storage unit was located in a fenced and lighted storage unit facility⁴, with surveillance cameras⁵, vehicle access to which was controlled by a drive-through gate requiring a code to open it, and to open individual storage units.⁶ This facility was operated by Iron Gate in Vancouver⁷, Washington as one of several such facilities Iron Gate had in the area.⁸ The rental to Larry Riley occurred late at night upon Mr. Riley's arrival in a 24-foot U-Haul box truck loaded with his personal possessions from his move from California to Vancouver to continue treatments for head and spinal injuries.⁹ Mr. Riley was required to sign Iron Gate's standard form, non-negotiable rental agreement containing exculpatory language that purported to limit Iron Gate's liability to \$5,000.¹⁰ The alleged limitation language from the rental agreement on Iron Gate's liability reads as follows [text, spelling and grammatical errors from the original Ex. 1 are left unchanged]:

³ See Ex. 1, the Rental Agreement; CP 142-147.

⁴ CP 245, 246 & 247.

⁵ CP 172, pg 68/13-25.

⁶ CP 146 (#18); CP 245-246.

⁷ CP 142; Ex. 1.

⁸ CP 237 & 245

⁹ CP 112, lines 25 & 26. CP 113, lines 1-9.

¹⁰ Ex. 1; CP 142-147; CP 170 (p.27). CP 172 (p.86/17- pg. 88/6).

5. . . . It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near \$5,000. It Is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement. . . .

7. LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY.

Operator and Operators Agent shall not be liable to Occupant for any damage or lose to any person. Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators Agents: except that Operator and Operator's Agents, as the case may be, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Oocupanties Property resulting from Operator's fraud, willful injury or willful violation of law.

Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring In, on or about the Premises arising in any way out of Occupants use of the Premises, whether occasioned by Operator or Operators Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, orexpense In connection with Operator or Operator's Agent's fraud, willful injury or willful violation of law. Notwithstanding anything contained in this Rental Agreement, In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of \$5,000 for any damage or lose to any person, Occupant or any properly stored in, on or about the Premises or the Project arising from any cause whatsoever, Including, but not limited to, Operators Agents' active of passive acts, omissions or negligence. . . .

Thereafter, during the term of the rental agreement Mr. Riley was occasionally late with his lease payments.¹¹ On one occasion in 2009 when an earlier rent arrearage was resolved, Mr. Riley was assured by the Iron Gate District Manager that Iron Gate would never seize and auction his property, and that if Mr. Riley's future arrearages were not satisfactorily resolved he would be allowed to take his storage unit contents with him and pay a reduced balance if the lease was terminated.¹² However, after an arrearage arose in 2010, Iron Gate commenced measures to terminate the lease and auction Mr. Riley's storage unit contents.¹³

Auctioning storage unit contents to recover rent is a statutory two-step process that requires two separate, consecutive 14-day prior notices. RCW 19.150.040 & 060. Ex. 8 contains copies of those two sections as they appeared in the RCW in 2010, when notices were sent, and section 050 showing a sample of an acceptable form of a lien notice.

A July 1, 2010 preliminary lien notice that was sent by Iron Gate to Mr. Riley is attached as Ex. 3. (CP 149). This notice failed to state as required by RCW 19.150.040(2) that Mr. Riley's access to the storage unit would terminate on a specified date not less than fourteen days after the

¹¹ CP 116 (14)

¹² CP 116-118 (14)

¹³ CP 149, 151; Ex 3 & 4; CP 158, 160, 161, 162.

mailing of the notice if all sums due had not been paid; there was no “specified date” in the notice as required by the statute. Iron Gate’s preliminary lien notice suspended Mr. Riley’s access to the storage unit immediately, contrary to 040(3).¹⁴

A 14-day final auction notice and the auction are only permitted if there has first been compliance with RCW 19.150.040. Only if there is compliance with 040 does the storage owner’s lien attach pursuant to that section. Upon compliance with 040, RCW 19.150.060(3) requires an additional 14-day mailed notice of the auction date (auction notice¹⁵) before the property can be sold at auction.

Katy Johnston (née Wagnon), the Iron Gate resident manager in charge of the facility where Larry Riley’s storage unit number 028 was located,¹⁶ was informed by her computer screen at Iron Gate to send out the lien and auction notices to Larry Riley.¹⁷ She retrieved a form of the auction notice prepared for unit 028 by Iron Gate, and hand wrote in the July 14, 2010 date as the deadline for him to make payment and July 15th as the date on which the auction would occur. Her eventual husband, Chuck Johnston, the co-resident manager, testified in deposition that he

¹⁴ Ex. 3, CP 149.

¹⁵ Ex. 4; CP 151

¹⁶ CP 158, pg 9/2-5 & 11/1-20.

¹⁷ CP 160, pg 17/2-162, pg 25/20.

intentionally put the notice in an envelope addressed to Larry Riley and intentionally sent it to him by mail.¹⁸

The auction notice (Ex. 4) was sent by certified mail on July 8, 2010, seven days before expiration of the 14-day notice period for the lien notice (Ex. 3), contrary to the terms of RCW 19.150.040(2) and 060.¹⁹ Further, Iron Gate's 060 auction notice required that payment be made by July 14, 2010, a day before what would have been the end of the preliminary lien notice period required by 040(2).²⁰

The auction was set to occur on July 15, 2010 by the auction notice (Ex. 4). The auction notice sent was a six-day notice rather than the 14-day notice required by the statute. The auction was conducted by Iron Gate on July 15, 2010 and the contents of Mr. Riley's storage unit were sold²¹, including his personal papers and personal photographs,²² which Iron Gate was required to hold for him for six months and not sell at the auction. RCW 19.150.060(3) & (5), & 070.

Mr. Riley actually received the auction notice in the mail on July 16, 2010, the day after the auction.²³ Mr. Riley contacted Iron Gate by phone on the same day, and at that time he was told by Iron Gate's

¹⁸ CP 164, pg, 9/21-10/9.

¹⁹ CP 151.

²⁰ Ex. 8.

²¹ CP 119, (20) lines 9-13

²² CP 124, (28); CP 120 (24)

²³ CP 119, (20) lines 9-13

resident manager in charge, Katy Wagon, that his storage unit contents had been sold and unit 028 was now completely empty.²⁴ Mr. Riley appeared on the Iron Gate premises on July 16th to tender payment for the arrearage,²⁵ and to seek the return of his property²⁶, at which time Mr. Riley was again told by Katy Wagon that the unit was completely empty and the contents sold,²⁷ and that the buyer had his lock on the unit.²⁸

On July 17, 2010, a letter from Mr. Riley's attorney was delivered to the Iron Gate resident managers.²⁹ It explained the invalidity of the auction, demanded access to the storage unit, and the return of Mr. Riley's storage unit contents. There was no response to this letter or acknowledgement of its receipt by Iron Gate until December 2010, five months after the auction.³⁰

At the time of the auction, Iron Gate had in effect an agreement (Buyers Agreement) with the purchaser of Mr. Riley's storage unit contents that entitled Iron Gate to repurchase the storage unit contents from the buyer for a period of sixty days following the auction.³¹ Most of

²⁴ CP 119 (21) lines 13-22.

²⁵ CP 154 (paragraph 5)

²⁶ CP 122 (26); CP 54 (paragraph 5)

²⁷ CP 119-120 (22) (21)

²⁸ *Id.*

²⁹ Ex. 5, CP 153-154; CP 120 (23)

³⁰ CP 137 (3)

³¹ Ex. 6, CP 156; CP 170, page 25/1-26/6; CP 168 pg 67/25-pg 68/23.

Mr. Riley's property was never returned to him.³² He estimated that the total value of the property in the storage unit, consisting substantially of art works of various mediums and historical archive photographs, exceeded 1.5 million dollars.³³

IV. ARGUMENT

A. Standard of Review

From *Trimble v Washington State University*, 140 Wn.2d 88, 9-93

(1), (2) (2000):

[1, 2] The standard of review on summary judgment is well settled. Review is de novo; the appellate court engages in the same inquiry as the trial court. *Benjamin v. Washington State Bar Ass'n*, 138 Wn.2d 506, 515, 980 P.2d 742 (1999). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993); CR 56 (c). All facts submitted and all reasonable inferences from them are to be considered in the light most favorable to the nonmoving party. *Clements*, 121 Wn.2d at 249. "The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion." *Clements*, 121 Wn.2d at 249 (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982)). However, bare assertions that a genuine material issue exists will not defeat a summary judgment motion in the absence of actual evidence. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

³² CP 124 (28)-125.

³³ CP 123, 124, lines 20-22; CP 121 & 125.

B. Iron Gate cannot escape liability for intentional acts based upon exculpatory language in a rental agreement that unfairly limits Iron Gate’s liability.

Iron Gate violated the Washington self-service storage facility act³⁴ and committed the intentional tort of conversion: (1) Iron Gate sent out statutorily deficient lien and auction notices as a part of the auction process that sold Mr. Riley’s property; (2) and Iron Gate seized and sold Mr. Riley’s storage unit contents when Iron Gate had no right to do so.

Exculpatory language in a contract, such as limitations on liability, are not enforced to protect wrongful intentional acts and Consumer Protection Act (CPA) violations.

1. Iron Gate intentionally violated the Washington self-service storage facility act.

That Iron Gate was aware of the requirements of the Act is evidenced by its citation to “RCW 19.150” in the title to its inclusion of a list of collection procedures on the second page of its Addendum to the Rental Agreement (CP 147), which effectively incorporates the Act’s provisions into the rental agreement.³⁵

Ch. 19.150 RCW, the Self-Service Storage Act, establishes requirements that must be followed in order to seize and sell the contents

³⁴ (Ch. 19.150 RCW; hereinafter “Self-Storage Act”)

³⁵ Ex. 1; CP 147.

of a tenant's leased storage unit to satisfy the storage unit owner's lien for arrearages in lease payments. Both RCW 19.150.040³⁶ and RCW 19.150.060 require the sending of separate, consecutive 14-day notices, giving the occupant the right to correct arrearages. The landlord doesn't even perfect a lien pursuant to RCW 19.150.040 until 14 days after the lien notice is given. RCW 19.150.060 states that *if the notice required by RCW 19.50.040* has been sent, and payment is not made by 14 days following, the landlord can then send a 14-day notice of an auction date, before the expiration of which the occupant can make payment and retain his storage unit contents.

Iron Gate grossly failed to comply with the notice requirements of RCW 19.50.040 and 060. The lien notice (Ex. 3) fails to state the specified 14 days of the lien notice period. Iron Gate sent the auction notice out (July 8th) before the 040-required 14-day lien notice period had elapsed (July 15th). In fact, the auction was conducted July 15th, on the last day of the preliminary lien notice period required by 040. But the most significant act of noncompliance by Iron Gate was the sending of a six-day auction notice when 19.150.060 (Ex. 8) clearly requires a 14-day auction notice. This six-day auction notice was sent on July 8th, before the 14-day lien notice period for the preliminary lien notice had expired even though

³⁶ Ex. 8

RCW 19.150.060 required compliance with the RCW 19.150.040 prior to the sending of the auction notice.

There was no response to, or acknowledgment of, the receipt of the July 17, 2010, attorney's letter (Ex. 5) that was delivered to the Iron Gate resident managers two days following the auction until December 2010, five months after the auction. (CP 137 (3)). However, Iron Gate had in effect an agreement with the purchaser of the storage unit contents that entitled Iron Gate to buy the contents back for a period of sixty days following the auction.³⁷ Clearly Iron Gate had the opportunity and ability to secure Mr. Riley's auctioned property; to restore it to the storage unit; and to give Mr. Riley the opportunity to make payment or re-auction the property after Iron Gate gave legally proper lien and auction notices. Iron Gate either intentionally chose not to do that or was grossly negligent in failing to do it.

2. To recover for conversion, Larry Riley need only show volition on the part of Iron Gate; plaintiff need not show motive or purpose.

(a) Iron Gate's sending of its lien/auction notices, and its auctioning of Mr. Riley's storage contents, were volitional (intentional) acts.

³⁷ Ex. 6, CP 156; CP 170, page 25/1-26/6; CP 168 pg 67, line 25-pg 68 line 23.

Iron Gate began a lien foreclosure/auction process against plaintiff's property, an act which is an elective process, because the auctioning process sanctioned in Ch. 19.150 RCW is not required to be done unless the party initiating it has elected to proceed to auction the storage unit contents; the landlord has other remedies, such as the move out agreement (CP 116-118 (14)) or a suit for the money damages. This lien/auction process can only be described as a willful choice and an intentional act that, if perfected, would eventually, and unquestionably, cause injury (damage) to any person whose property was auctioned. Mr. Riley does not need to prove Iron Gate knew it was violating the Ch. 19.150 RCW, only that he was deprived of possession of his property as the result of a volitional act.

An intentional act has two elements: (1) there must be a volitional act; (2) the harm to the plaintiff must be substantially certain to result from the volitional action. 16 D. Dewolf & K. Allen, *Wash. Prac. Tort Law & Practice* § 14:2 (4th Ed 2014).

“The word intent is used throughout the Restatement of this Subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.” (*Restatement (Second) Torts* § 8A (1965))

The consequences of sending the notices and conducting the auction would be to permanently deprive Larry Riley of his property that was in storage unit 028.

“If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result.” (*Restatement (Second) Torts* § 8A, comment b (1965)).

Iron Gate’s apparent intent was to sell Mr. Riley’s property to cover his rent obligation. However, Mr. Riley’s permanent loss of possession of the property was certain to result from the act of holding an auction and selling his property. Iron Gate necessarily knew that Mr. Riley would be deprived of his property when his storage unit contents were sold to a buyer, which they were.³⁸

(b) Iron Gate’s mistaken beliefs are not a defense to conversion.

Conversion is defined as “an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control that the actor may justly be required to pay the other the full value of the chattel.” *Restatement (Second) of Torts* § 222A (1965);

³⁸ CP 168 pg 67, line 25-pg 68 line 23.

Kruger v. Horton, 106 Wn.2d 738, 743, 725 P.2d 417 (1986). *Kruger v. Horton* cites *Judkins vs Sadler-MacNeil*, 61 Wn.2d 1, 3 (1962), one of the most often cited, notable cases on conversion in this state, which correctly states in quoting from that case:

It is said in *Salmond on the Law of Torts* (9th ed. 1936), § 78, p. 310:

"A conversion is the act of wilfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it."

* * * *

Proof of the defendants' knowledge or intent is not essential in establishing a conversion.

See also *Reliable Credit v Progressive*, 171 Wn.app 630, 640, (16) (2012); *Lowe v. Rowe*, 173 Wn.App. 253, 263, (24), 294 P.3d 6 (2012); *Brown v. Brown*, 157 Wn.App. 803, 819, (25), 239 P.3d 602 (2010) ("Wrongful intent is not an element of conversion, and good faith is not a defense."); *In re Marriage of Mangham*, 153 Wn.2d 533, 566, n. 8, 106 P.3d 212 (2005) ("Good faith is irrelevant in a conversion action.").

Comment C to §244 of the Restatement of Torts³⁹ covers nearly the exact circumstance of Iron Gate's seizure and sale of Larry Riley's storage unit contents:⁴⁰

³⁹ "An actor is not relieved of liability to another for trespass to chattel or for conversion by his belief, because of a mistake of law or fact not induced by the other, that he:

- (a) Has possession of the chattel or is entitled to its immediate possession, or
- (b) Has the consent of the other or of one with power to consent for him, or
- (c) Is otherwise privileged to act."

A, the owner of a garage, receives an automobile from B for storage. B demands the return of the automobile. After the expiration of a reasonable time for inquiry, A refuses to return the car because he honestly and reasonably believes that his storage charges have not been paid, and that he has a lien against the car. In fact B has paid A's employee, who has failed to report the payment. A is subject to liability for conversion.

If Iron Gate sold the property because it didn't realize that its lien/auction notices were defective, this fact would come under the "universal maxim" that ignorance of the law is not an excuse. *Senn v. Northwest Underwriters, Inc.*, 74 Wn. App. 408, 416, 875 P.2d 636 (1994). Iron Gate's alleged good faith in selling the property is not a defense; Iron Gate intended to sell Mr. Riley's property.

C. The rental agreement does not contain a limitation on liability for an intentional act, and in any event it should not be construed to those effects.

"... (C)ontract language subject to interpretation is construed most strongly against the party who drafted it, or whose attorney prepared it. *Underwood. Sterner, supra; Wise v. Farden*, 53 Wn.2d 162, 332 P.2d 454 (1958); Restatement, Contracts § 236(d) (1932)." *Stickney v Underwood*, 67 Wn.2d 824, 827 (1966).⁴¹

Restatement (Second) of Torts § 244 (1965).

⁴⁰ Restatement (Second) Torts § 244, Comment C, Illustration 5 (1965)

⁴¹ Cited, *Rouse v. Gascam Builders*, 101 Wn.2d 127, 135, 677 P.2d 125 (1984).

The rental agreement is a standard form agreement that was furnished by Iron Gate for this transaction.⁴² It represents an agreement, or one like it, that Iron Gate had used in all transactions, dating back to 2000.⁴³ It was a take-it-or-leave it contract; in its dealings with the consuming public, the use of Iron Gate's standard form rental agreement was "not negotiable".⁴⁴ It contained exculpatory language, meaning limitations on, and releases and indemnification from, liability on the part of the storage facility operator, Iron Gate.⁴⁵

1. Exculpatory clauses are strictly enforced and narrowly applied.

"Exculpatory clauses are strictly construed under Washington law and are enforceable only if their language is sufficiently clear." *Chauvlier v. Booth Creek Ski Holdings*, 109 Wn.App. 334, 339-40, 35 P.3d 383 (2001) (citing *Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992)). Ambiguities are resolved against the drafter or furnisher of the agreement. To eliminate liability for negligence, the exculpatory clause must use "clear and unambiguous exculpatory language." *Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992).

It is worthy of note that the above quote from *Scott* invalidates an exculpatory clause as a defense to negligence, whereas in the case before this Court Mr. Riley seeks to invalidate an exculpatory clause as a defense against an intentional act and a CPA violation.

⁴² Ex. 1 CP 142-147; CP 170 (p.26 line 21-p. 28, line 25); CP 172 (p.87 line 13- p. 88 line 6)

⁴³ CP 172, pg 86, line 17-88, line 6.

⁴⁴ *Id.*

⁴⁵ Ex, 1, section 7.

The language of Iron Gate's exculpatory language in the section 7 (Ex. 1) clause is hampered by grammatical and punctuation errors, inappropriate word usage ("Occupanties"), and certainly does not clearly release Iron Gate from liability for its own intentional acts by express language. In fact, "Operator or Operator's Agents' fraud, willful injury or willful violation of law" appear to be expressly excluded from at least the release and indemnity provisions of section 7 of the rental agreement (Ex. 1), although section 7 is so poorly worded and punctuated that it is impossible to make complete sense of what is written. The strongest possible statement contained in the rental agreement in favor of a limitation on liability would be this sentence at the end of section 7 [with text errors included]:

Notwithstanding anything contained in this Rental Agreement, In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of \$5,000 for any damage or lose to any person, Occupant or any properly stored in, on or about the Premises or the Project arising from any cause whatsoever, Including, but not limited to, Operators Agents' active of passive acts, omissions or negligence.

This sentence from section 7 does not contain the express exclusion of "willfull injury or willful violation of law" that appears twice on two previous occasions in section 7, in two incomplete phrases or sentences that precede the above-quoted sentence. However, by its express language, the liability limitation extends to any cause whatsoever,

including “active of (sic) passive acts, omissions or negligence”.

Negligence is specifically mentioned; volitional acts are not. It seems clear from this section that any release or limitation from liability does not apply to volitional actions by Iron Gate that cause injury or violate the law. That interpretation would be the interpretation that is most consistent with the rule that construes the rental agreement against the party who caused its preparation and the rule of the narrow construction of exculpatory language. The reference to the general terms to “any cause whatsoever, including active of (sic) passive acts” and “omissions” would be limited in character to the specific term “negligence” in accordance with rules of both statutory and contract construction regarding specific and general terms. *Burns v Seattle*, 161 Wn.2d 129, 148 (36), 164 P. 3d 475 (2007); *State v. R.J. Reynolds Tobacco Co*, 151 Wn. App 775, 211 P.3d 448, (2009) *rev. den.* 168 Wn.2nd 1026. That means the limitation does not pertain to intentional torts because there is no reference to intentional torts, and general terms used would be of the same character as the only specific term used, “negligence”.

Exculpatory clauses are construed narrowly. This quoted limitation clause does not expressly exculpate Iron Gate from liability over \$5,000 for intentional torts and does not specifically address Iron Gate’s illegally selling Mr. Riley’s property without following the legally

required procedures. That which is not explicitly stated should not be read into this provision. There is no reason that in reading this sentence Mr. Riley would ever believe he was limiting his damages in the event that Iron Gate illegally converted his property, which Mr. Riley did not.⁴⁶ Such an act fundamentally undermines the very purpose for which this lease was made in the first place: to safely store property at the facility in exchange for rent.

The invalidity of exculpatory language as to intentional acts is recognized in other jurisdictions:

“[A] general clause in an exculpatory agreement or anticipatory release exempting the defendant from all liability for any future negligence will not be construed to include intentional or reckless misconduct or gross negligence, unless such intention clearly appears from the circumstances.” *Murphy v. North American River Runners, Inc.*, 186 W.Va 310, 316, 412 S.E.2d 504 (1991) (citing *Restatement (Second) of Torts* § 496B comment d (1963, 1964); *Prosser and Keeton on the Law of Torts*, § 68, at 483-84 (W. Keeton 5th Ed. 1984); 57A Am.Jur.2d Negligence §65 (1989)).

⁴⁶ CP 132, line 6-133, line 24.

“Valid releases, however, are generally not construed to cover willful negligence or intentional torts.” *Lee v. Beauchene*, 337 N.W.2d 827 (S.D. 1983)

“Prosser finally notes that exculpatory agreements are not construed to cover the more extreme forms of negligence or any conduct which constitutes an intentional tort.” *LaFrenz v. Lake City Fair Bd.*, 172 Ind. App. 389, 360 N.W.2d 605 (1977) (citing *Prosser, Law of Torts* § 68 at 442 (4th Ed. 1971).

2. The total exculpatory clause in section 7 of the rental agreement specifically excludes intentional torts from any limitation on liability in the agreement.

In paragraph 7 of the rental agreement for Larry Riley⁴⁷, in two different spots the agreement expressly excludes from the limitations on liability any loss resulting from “willful injury or willful violation of law.” The willful injury is the selling of Larry Riley’s storage unit contents. The willful violation of law is engaging in notice procedures resulting in the sale that were in violation of RCW 19.150.040 & 060.

“Willful” is defined as ‘done deliberately: not accidental or without purpose: intentional, self-determined.’ *In re Disciplinary Proceeding*

⁴⁷ *Id.*

Against Lopez, 153 Wn.2d 570, 106 P.3d 221 (2005) (citing to Webster’s Third New International Dictionary and Black’s Law Dictionary).

The term “willful” implies only “volitional action”. It requires “merely that the person knows what he is doing, intends to do what he is doing, and is a free agent.” *Schilling v. Radio Holdings, Inc*, 136 Wn.2d 152, 160, 961 P.2d 371 (1998); *Kloepfel v. Bokor*, 149 Wn.2d 192, 199, 200, 66 P.3d 630 (2003) (noting distinction between negligent and “willful, i.e. intentional” acts); *Stevens v. Murphy*, 69 Wn.2d 939, 947, 948, 421 P.2d 668 (1966) (“Willful” conduct “necessarily involves deliberate, intentional, or wanton conduct,” while negligence “conveys the idea of neglect or inadvertence”).

“Willful misconduct is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has the duty to do when he or she [has actual knowledge of the peril that will be created and intentionally fails to avert injury] [or] [actually intends to cause harm.] WPI 14.01.

“[W]illful or wanton misconduct falls between simple negligence and an intentional tort.” *Condradt v. Four Star Promotions, Inc.*, 45 Wn.App. 847, 852, 728 P.2d 617 (1986)

The term “willful” is used interchangeably with “intentional.” The dictionary definition of the term only requires a volitional action that is

purposely performed. It does not require specific intent to cause illegal harm to Mr. Riley. It is enough that Iron Gate performed a volitional action which is in fact contrary to law. Again, there can be no reasonable dispute that Iron Gate intentionally sold Mr. Riley's property and that in doing so it violated both notice statutes. Iron Gate's alleged good faith belief that it had a legal privilege to do so does not transform its intentional act into one including negligence only. Even the WPI definition which indicates a need for "actual knowledge of the peril" appears to be present because bad faith on the part of Iron Gate is not an element of the claim, only that Iron Gate sold the property without a legal privilege to do so. "Actual knowledge of the peril" refers only to actual knowledge that Mr. Riley would be deprived of his property.

3. Mr. Riley did not unambiguously agree not to store more than \$5,000 worth of property in the storage unit.

Iron Gate's claim that Mr. Riley agreed not to store more than \$5,000 worth of property in the storage unit is not supported by evidence.

The lease agreement states [with errors]:

"It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that

the aggregate value of all such personal property is, will be, or is expected to be, at or near \$5,000.”⁴⁸

This sentence encompasses two parts. In the first half Mr. Riley may store property with “substantially less or no aggregate value.” However, the value term is undefined in this part of the sentence. The second half of the sentence states that there is no evidence of any agreement by the Operator that the aggregate value of the property is worth more than \$5,000. These are distinct statements. Iron Gate’s refusal to agree that the property is worth more than \$5,000 is not on its face a limitation on the value of property to be stored in the unit. When a lease agreement is ambiguous, it is construed against the drafter. *Diversified Realty, Inc. v. McElroy*, 41 Wn.App 171, 173, 703 P.2d 323 (1985) (citing *McGary v. Westlake Investors*, 99 Wn.2d 280, 287, 661 P.2d 971 (1983)). This lease agreement leaves the maximum value of property to be stored undefined and is thus ambiguous. As a result it should be construed against Iron Gate.

Iron Gate argued to the trial court that it is unfair to render the liability limitations unenforceable because Iron Gate asserts that it relied on the contract language whereby Mr. Riley ostensibly agreed to limit the value of the property in the storage unit, which he never expressly agreed

⁴⁸ Ex. 1, § 5; CP 142.

to do. However, Iron Gate breached its agreement with Mr. Riley by failing to conduct the auction in accordance with the statute (RCW 19.150.040 & 060), which Iron Gate had included by reference in the agreement. (CP 147)

Generally contract terms which provide for stipulated or liquidated damages must be entered into by experienced, equal parties with a view to just compensation for any anticipated loss. *Wallace Real Estate Investment, Inc. v. Groves*, 124 Wn.2d 881, 886-87, 881 P.2d 1010 (1994). Without a clear agreement not to store more than \$5,000 worth of property in the storage unit, the limitation of damages to \$5,000 is not crafted as a reasonable forecast of just compensation for anticipated losses and should be considered invalid. *Minnick v. Clearwire U.S. LLC*, 174 Wn.2d 443, 449, 275 P.3d 1127 (2012).

4. Washington State case law has only upheld exculpatory language as a defense to ordinary negligence unless a public interest or policy is vitiated.

W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* § 68, at 482 (5th ed. 1984), cited by Iron Gate:

It is quite possible for the parties expressly to agree in advance that the defendant is under no obligation to care for the benefit of the plaintiff, and **shall not be liable for**

the consequences of conduct which would otherwise be negligent. [bolding added for emphasis.]

W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* § 68, at 482 (5th ed. 1984, cited by Iron Gate in its motion for summary judgment states that “In Washington, contracts of release of liability for **negligence** are valid unless a public interest is involved.” [Bolding added]

Boyce v. West, 71 Wn.App. 657, 662-664, 862 P.2d 592 (1993), held that “In Washington contracts of release of liability for **negligence** are valid unless a public interest is involved.” [Bolding added]

In *Eifler v. Shurgard Capital Management Corp.*, 71 Wn.App. 684, 861 P.2d 1071 (1993), the rental agreement only exculpated the owner from negligence, not from intentional acts. The Court begins its analysis by noting: “generally a party to a contract can limit liability for damages resulting from **negligence.**” *Id.* at 690. Eifler asserted claims for “breach of contract, negligence, restitution, and violation of the consumer protection act.” *Id.* at 688. On appeal “The trial Court granted the motion on grounds that Shurgard has effectively limited its liability for **ordinary negligence** by means of the lease.” However, the trial Court submitted the issue of gross negligence to the jury.” *Id.* at 689. [Bolding added]

The *Eifler* Court applied an evaluation criterion from *Wagenblast v. Odessa School Dist. No. 105*, 110 Wn.2d 845 848, 852-856, 758 P.2d 968 (1988) to determine the enforceability of exculpatory language only to the claims for “breach of contract and negligence.” *Wagenblast* at 848. The *Wagenblast* evaluation criterion is inapplicable to the evaluation of the enforceability of limitations against liability for the intentional tortious conduct of the party seeking to raise its own exculpatory language as a defense against that conduct.

The general rule in Washington is that exculpatory clauses are enforceable *against simple negligence claims* unless (1) they violate public policy [*Wagenblast* factors], or (2) the **negligent** act falls greatly below the standard established by law for protection of others, or (3) they are inconspicuous. (*Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992)). [Bolding added.]

5. An exculpatory clause which releases liability from intentional torts is void under public policy.

Washington courts have for decades found preinjury releases that purport to extend to gross negligence and intentional torts unenforceable. *Boyce*, 71 Wn. App. at 665; *McCutcheon v. United Homes Corp.*, 79 Wn.2d 443, 447, 486 P.2d 1093 (1971).

Other authorities view intentional conduct similarly:

“Contract provisions that exculpate the author for wrongdoing, especially intentional wrongdoing, undermine the public good.” *Scott v. Cingular Wireless*, 160 Wn.2d 843, 854 161 P.3d 1000 (2007).

“A term exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy.” *Restatement (Second) of Contracts* § 195(1) (2007)

Washington Courts have also held that actions which fall “greatly below the standard established by law for the protection of others” may not be subject of an exculpatory clause. *McCutcheon v. United Homes Corp.*, 79 Wn.2d 443, 447, 449, 486 P.2d 1093 (1971). In so holding the *McCutcheon* court relied on the original Restatement of Contracts. This principle has been applied as an additional and separate basis, apart from the *Wagenblast* criteria, to find exculpatory clauses invalid as against public policy. It is clearly a generally accepted principle that one may not exculpate oneself from liability for future intentional torts. This principle is consistent with the statement in *Scott v. Cingular Wireless* that such a clause would undermine the public good. The principle that exculpatory clauses may not be enforced to limit liability for intentional torts is also commonly accepted in the law of other states.⁴⁹

⁴⁹ *Loewe v. Seagate Homes, Inc.*, 987 So.2d 758 (Fla.App. 2008); *Barnes v. Birmingham International Raceway, Inc.*, 551 So.2d 929 (Ala. 1989); *Reece v. Finch*, 562 So.2d 195 (Ala. 1990); *Anderson v. McOskar Enterprise, Inc.*, 712 N.W.2d 796 (Minn.App. 2006); *Tayar v. Camelback Ski Corp.*, 616 Pa. 385, 47 A.3d 1190 (2012); *Elmer v. Coplín*, 485 So.2d 171 (La.App. 1986); *Enron Oil Trading & Transp. Co. v. Underwriters of Lloyd’s*

Iron Gate did not cite any authority to the Trial Court from Washington State courts that support the enforcement of an exculpatory clause against a plaintiff who has been the victim of an intentional tort. Intentional conduct carries a greater degree of culpability than does any kind of negligence, including gross negligence. In *Condradt v. Four Star Promotions, Inc.*, 45 Wn.App. 847, 852, 728 P.2d 617 (1986) the Court discussed the gross negligence exception for the enforceability of exculpatory limitations on liability, stating “willful or wanton misconduct falls between simple negligence and an intentional tort.” This should mean that Washington courts would also include intentional conduct in the same category as gross negligence in refusing to enforce exculpatory clauses which prohibit liability for the wrong doer’s own intentional acts.

Iron Gate cited authority and argued to the trial court that the plaintiff must establish gross or serious negligence affirmatively to avoid enforcement of a release. Iron Gate committed the intentional tort of conversion, which is a step more culpable than any kind of negligence because conversion requires an intent to do an action, although not necessarily understanding that it is wrongful. Further, a reading of the

of London, 47 F. Supp. 2d 1152 (D. Mont. 1996); *Rowan v. Vail Holdings, Inc.*, 31 F. Supp.2d 889 (D. Colo. 1998); *Quinn v. Mississippi State University*, 720 So.2d 843 (Miss. 1998); *Hatch v. V.P. Fair Foundation, Inc.*, 990 S.W.2d 126 (Mo. Ct. App. E.D. 1999); *Werdehoff v. General Star Indem. Co.* 229 Wis.2d 489, 600 N.W.2d 214 (1999); *Kuzmiak v. Brookchester, Inc.*, 33 N.J. Super 575, 111 A.2d 425 (1955).

description of the many instances of blatant noncompliance with the statutory notice of lien/auction covered in the Statement of the Case hereinbefore, the failure of Iron Gate to reacquire Mr. Riley's property after receiving the July 17, 2010 letter from Mr. Rileys' attorney defining Iron Gate's violations of the law⁵⁰, which its contract with it buyer entitled it to do⁵¹, would constitute intentional conduct more culpable than gross negligence.⁵²

6. Exculpatory clauses are not enforceable for conduct that "falls greatly below the standard established by law for the protection of others".

It is clear that RCW 19.150.040 and 060 of the Self Storage Act were legislated to protect the occupants of self storage units from the summary seizure and sale of their property except after compliance with the lien and auction notice requirements of the Act. These statutes are "the standard established by law for the protection of others", in this instance, storage unit tenants.

In *Scott v. Pac. W. Mt. Resort*, 119 Wn.2d 484, 492, 834 P.2d 67 (1992), the Court held that one of the exceptions to the general rule in Washington that exculpatory clauses are enforceable is unless the "negligent act falls greatly below the standard established by law for

⁵⁰ CP 120 (23)

⁵¹ Ex. 6; CP 156

protection of others”. The standards for the protection of tenants from the summary seizure and sale of their property by owners is established by the notice procedure outlined in 040 and 060. Iron Gate’s intentional acts certainly fell woefully below those standards.

7. It is against public policy to allow Iron Gate to exculpate itself from liability for violating Chapter 19.150 RCW.

Chapter 19.150 RCW is a clear statement of public policy by the legislature. The statute applies specific restrictions (RCW 19.150.040 & 060) on the use of liens by self-storage facilities. Mr. Riley falls squarely within the class of people the statute is intended to protect. This is a clear statement of public policy by the legislature and any attempt to contract around liability for violating this statute is contradictory to that public policy. Iron Gate’s argument constitutes an attempt to preclude the imposition of any consequence as a result of Iron Gate’s intentional tort and its failure to follow the requirements of the lien statute.

“Contract terms are unenforceable on grounds of public policy when the interest in its enforcement is clearly outweighed by a public policy against the enforcement of such terms.” *State v. Noah*, 103 Wn.App. 29, 50, 9 P.3d 858 (2000) (citing *Restatement (Second) of Contracts* §178). See also *Scott v. Cingular Wireless*, 160 Wn.2d 843, 851-854, (11-16), 161 P.3d 1000 (2007) (citing *Restatement (Second) of Contracts* §178); *LK Operating LLC v. The Collection Group LLC*, 181 Wn.2d 48, 85, 331 P.3d 1147, 1164 (2014) (citing *Restatement (Second) of Contracts* §178).

“The underlying inquiry when determining whether a contract violates public policy is whether the contract ‘has a tendency’ to be against the public good, or to be injurious to the public.” *LK Operating LLC v. The Collection Group LLC*, 181 Wn.2d 48, 86, 331 P.3d 1147, 1164 (2014).

“Whether something can be a source of public policy in the context of enforceability should depend on whether it is primarily intended to promote the public good or protect the public from injury, and whether it was issued by an entity with the legal power and authority to set public policy in the relevant context.” *LK Operating LLC v. The Collection Group*, at 1164 (holding RPC for attorneys is a source of public policy).

This is the evaluation criterion of the Restatement:

“(1) A promise or other term of an agreement is unenforceable on ground of public policy if legislation provides it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms

(2) In weighing the interest in the enforcement of the term, account is taken of:

- (a) the parties justified expectations
- (b) any forfeiture that would result if enforcement were denied, and
- (c) any special public interest in the enforcement of the particular term.

(3) In weighing a public policy against enforcement of a term, account is taken of:

- (a) the strength of that policy as manifested by legislation of judicial decisions
- (b) the likelihood that a refusal to enforce the term will further that policy;
- (c) the seriousness of any misconduct involved and the extent to which it was deliberate; and
- (d) the directness of the connection between the misconduct and the term.”

Restatement (Second) of Contracts § 178 (2007).

“[A] plaintiff’s agreement to assume the risk of a defendant’s violation of a safety statute enacted for the purpose of protecting the public will not be enforced” *Murphy v. North American River Runners, Inc.*, 186 W.Va 310, 316, 412 S.E.2d 504 (1991) (citing *Restatement (Second) of Torts* § 496B comment d (1963, 1964); *Prosser and Keeton on the Law of Torts*, § 68, at 483-84 (W. Keeton 5th Ed. 1984); 57A Am.Jur.2d Negligence §65 (1989)).

Finally, in *Friedman v. Hartmann*, 787 F. Supp. 411 (S.D.N.Y. 1992), the U.S District Court held that clients who wrongfully concealed a commission agreement could not enforce an indemnity agreement against their allegedly negligent attorneys because to do otherwise would be inconsistent with the availability of sanctions against the concealment. The court stated at 421-422, in part that

It is well established that contracts providing for indemnity for losses incurred as a result of intentional misconduct are void and unenforceable as against public policy. *See, e.g., Acosta v. Honda Motor Co.*, 717 F.2d 828, 838 n. 14 (3d Cir.1983) . . . "This rule is based on the simple principle long ago stated by Judge Cardozo, that `no one shall be permitted to take advantage of his own wrong.'" *Solo Cup*, 619 F.2d at 1187 (quoting *Messersmith v. American Fidelity Co.*, 232 N.Y. 161, 133 N.E. 432 (1921)). Enforcement of a contractual obligation to provide contribution or indemnity to a party for that party's intentional misconduct would contravene the public policy of deterring and penalizing intentional

misconduct through civil lawsuits brought by those persons injured by the misconduct.

D. An exculpatory clause in the Iron Gate rental agreement is not enforceable as a defense to limit Mr. Riley’s ability to seek relief under the Consumer Protection Act [CPA].

1. An exculpatory clause which disclaims liability under the CPA is void under public policy.

The *Scott v. Cingular Wireless* Court held that a clause which “on its face . . . does not exculpate Cingular from anything” to be invalid because it might limit the ability of private citizens to enforce the CPA. Under this rationale, the public policy explicitly stated by the legislature in the CPA and the intent that individual citizens “act as private attorneys general” precludes any attempt to exculpate a party from liability for a violation of the CPA. A similar rationale was used to invalidate a forum selection clause that limited the plaintiff’s right to assert a CPA claim in *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 837, 840-841, 161 P.3d 1016 (2007). To the extent Iron Gate’s exculpatory clause exculpates it from liability for a violation of the CPA it goes much farther than the clause rejected by the Court in *Scott* or *Dix*. To the extent that Iron Gate’s exculpatory clause undermines the ability of Mr. Riley to enforce the CPA it is contrary to public policy as a matter of law.

“Exculpation from any potential liability for unfair or deceptive acts or practices in commerce clearly violates public policy.” *Scott v. Cingular Wireless*, 160 Wn.2d 843, 854-55, 854 P.3d 1000 (2007) (citing RCW 19.86.920); *Discover Bank v. Superior Court of Los Angeles*, 36 Cal4th 148, 113 P.3d 1100 (2005).

In the *Scott v. Cingular Wireless* the Court invalidated an arbitration provision that limited the ability of consumers to assert small damage claims for violations of the CPA. The Court emphasized “the CPA is designed to protect consumers from unfair and deceptive acts and practices in commerce. RCW 19.86.020. To achieve this purpose, the legislature requires that the CPA be ‘liberally construed that its beneficial purposes may be served.’ RCW 19.86.920.” *Id.* at 853.

“We conclude that without class actions, consumers would have far less ability to vindicate the CPA . . . But by mandating that claims be pursued only on an individual basis, the class arbitration waiver undermines the legislature’s intent that individual customers act as private attorneys general by dramatically decreasing the possibility that they will be able to bring meritorious suits.” *Scott*, 160 Wn.2d at 854.

“On its face, the class action waiver does not exculpate Cingular from anything; it merely channels dispute resolution into individual arbitration proceedings or small claims court. But in effect, this exculpates Cingular from legal liability for any wrong where the cost of pursuit outweighs the potential amount of recovery.” *Scott*, 160 Wn.2d at 855.

“We agree and conclude that since this clause bars any class action, in arbitration or without, it functions to exculpate the drafter from liability for a broad range of undefined wrongful conduct, **including potentially intentional wrongful conduct**,

and that such exculpation clauses are substantively unconscionable.” *Scott*, 160 Wn.2d at 857. [Bolding added.]

“The private right of action to enforce RCW 19.86.020 is more than a means for vindicating the rights of the individual plaintiff. In order to prevail in a private action under the CPA, the plaintiff must show that the challenged acts or practices affect the public interest.” *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 837, 161 P.3d 1016 (2007).

“It is clear that the legislature’s addition of the private right of action to enforce RCW 19.86.020 was intended to encourage individuals to enforce the act and fight restraints of trade, unfair competition, and unfair deceptive, and fraudulent acts or practices. This public policy is violated when a citizen’s ability to assert a private right of action is significantly impaired by a forum selection clause . . .” *Dix v. ICT Group, Inc.*, 160 Wn.2d at 840-41.

In *Eifler v. Shurgard Capital Management Corp.*, 71 Wn.App. 684, 861 P.2d 1071 (1993) the Court did not specifically state whether the exculpatory clause applied to the CPA, but the Court upheld the exculpatory clause while simultaneously overturning the trial court’s dismissal of the CPA claim, and remanding it for trial. The Court impliedly rejected its application to the CPA claim.

The CPA permits the Court to award damages, punitive damages and attorneys’ fee for violations of the act. RCW 19.86.090. If the rental agreement were construed to limit liability to \$5,000 in all cases for all causes of action, the partial exculpatory clause would limit Iron Gate’s potential liability for violating the CPA. To the extent it attempts to do so

it is invalid. The policy of allowing full enforcement of the CPA is stated in detail in the CPA and the same policy would be applied to the damages limitation provision. This provision cannot be permitted to limit the enforceability of the CPA and Iron Gate may not avoid the remedies for violation of the CPA via contract.

In *Saleemi v. Doctor's Associates, Inc.*, 176 Wn.2d 368, 383, 292 P.3d 108 (2013) the court wrote that a provision limiting remedies under franchise agreements “may well be unenforceable under Washington law” due to Supreme Court’s reluctance to allow CPA rights to be waived pre-contract. “This Court has been reluctant to allow CPA rights to be waived by pre-injury contract.” 176 Wn.2d at 383.

2. Iron Gate’s conduct violated the Consumer Protection Act.

“Under the Act, ‘unfair or deceptive acts or practices in the conduct of any trade or commerce’ are unlawful. RCW 19.86.020. To prevail in a private claim under the Act, a plaintiff must establish five elements: (1) unfair or deceptive act or practice (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff in his or her business or property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Whether particular actions give rise to a violation of the Act is a question of law that we review de novo. *Svendsen v. Stock*, 143 Wn.2d 546, 553,” *Bloor v Fritz*, 143 Wn.App. 718, 735 180 P.3d 805 (2008).

“To show that a party has engaged in an unfair or deceptive act or practice, a plaintiff “need not show that the act in question was *intended* to deceive, but that **the alleged act had the capacity to deceive** a substantial portion of the public.” *Hangman Ridge*, 105

Wn.2d at 785 (citing *State v. Ralph Williams' NW Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 553 P.2d 423 (1976)).” *Id.* [Bolding added for emphasis.]

“The court then considered whether the buyer had established the public interest element. It addressed the following factors: (1) whether the acts were committed in the course of defendant's business, (2) whether the defendants advertised to the public, (3) whether the defendant actively solicited the plaintiff, and (4) whether the parties occupied unequal bargaining positions. *Svendsen*, 143 Wn.2d at 559 (citing *Hangman Ridge*, 105 Wn.2d at 790-91). If present, these factors show a likelihood that additional plaintiffs have been or will be injured in the same manner. *Hangman Ridge*, 105 Wn.2d at 790-91. No single factor is dispositive, nor is it necessary that a buyer prove all factors. *Hangman Ridge*, 105 Wn.2d at 791. The *Svendsen* court concluded that the buyer had established a public interest impact. *Svendsen*, 143 Wn.2d at 559.” (*Id.* at 736-737). *See also Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986); *Svendsen v. Stock*, 143 Wn.2d 546, 553, 23 P.3d 455 (2001).

In *Bloor v Fritz*, 143 Wn. App. 718, 180 P.3d 805 (2008), a real estate salesman marketed a house without disclosing that it had been used for the manufacture of methamphetamine. His defense to a CPA action was that it was an isolated private transaction not affecting the public interest. After noting that the salesman had shown the house to one other prospective purchaser and had failed to make the disclosure in the multiple listing of the house, the court found that the public interest element had been reached.

In *Svendsen, supra*, a real estate agent was found liable under the CPA for failing to disclose flooding problems she knew of, and in

instructing the seller to conceal the problem on the seller's disclosure form.

In *Panag v. Farmers Ins.*, 166 Wn.2d 27, 204 P.3d 885 (2009), the Supreme Court had little difficulty finding that letters by an insurer to policy holders requesting repayment of subrogation claims that masqueraded as a debt collection notice were an unfair and deceptive trade practice. The court stated that "a plaintiff need not show the act in question was intended to deceive, only that it had the capacity to deceive a substantial portion of the public. (at 47).

The deceptive use of traditional debt collection methods to induce someone to remand payment of an alleged debt is precisely the kind of "inventive" unfair and deceptive activity the CPA was intended to reach." (at 49)

Iron Gate sent out lien and auction notices that clearly misrepresented the legal requirements for the auctioning of Mr. Riley's storage unit contents, which at a minimum, tends to deceive.

In a separate incident, Iron Gate had sent a statutorily noncompliant auction notice to Mr. Riley a year earlier over a different rent arrearage, only at that time the auction notice was for ten days instead of the required 14, which demonstrates repetition of this conduct.⁵³ Further, at the time when that arrearage was being resolved, Iron Gate's

⁵³ CP 116-118 (14).

District Manager, Curtis Wilson, told Mr. Riley in December 2009, that “We would never sell your stuff, Larry, we would never do that...”

Wilson went on to say that the “worse case cenario would be that we would enter into a Move-Out Agreement whereby I [Mr. Riley] would pay a lesser amount that what was owed to bring my [Mr, Riley’s] account current.” (CP 116-118 (14)) The repetition of statutorily-invalid lien notices, the fact that the lien notices misapply, mistate and misuse the requirements for auctioning the storage unit contents, and Wilson’s representations regarding what would be done in the event of future arrearages tends to deceive.

Further, the notice form for the 2010 six-day noncompliant notice was Iron Gate’s notice form that was printed to the resident manager on her computer, requiring only that she write in the deadline for payment and the auction date.⁵⁴ She testified in deposition that she had never read the Self Storage Act although preparing and sending these notices was her responsibility; she set the notice period by reference to what Iron Gate told her was the auction date, without any reference to the 14-day period required for auction notices, which was what she was trained to do.⁵⁵ In other words, Iron Gate’s procedure was not designed to insure that a 14-day notice was sent; it was designed to schedule the payment deadline and

⁵⁴ CP 160-162.

⁵⁵ CP 161 page 23; CP 162, p, 25

auction with no consideration given at all to the statutory notice period. Iron Gate had sent these notices out periodically over the years, when tenants were delinquent.⁵⁶ By the admission of the manager at this facility, these notices were sent out to more tenants than just Mr. Riley – “a list”. (CP 160, p. 19). In any event, statutorily non-compliant notices were sent to Mr. Riley as a result of two, separate unrelated arrearages, approximately one year apart.

Further, Iron Gate was in the business of renting storage units to consumers and it heavily advertized the availability of these units to the general public.⁵⁷ Members of the general public were also directed to various Iron Gates locations at various times and dates to purchase storage unit contents at auction. (CP 168, p. 65-p. 67, line 24)

An ad in the phone book is what brought Mr. Riley to the Iron Gate facility.⁵⁸ When he arrived to make a rental, he was confronted with a storage unit rental contract that was “non-negotiable”⁵⁹, which he signed when he really couldn’t exercise any opportunity to go elsewhere.⁶⁰

⁵⁶ CP 168, p. 65/4-66/25.

⁵⁷ CP 118 (16); CP 119 (17).

⁵⁸ CP 119 (17).

⁵⁹ CP 170, p.. 26/21-27/16; CP 172, p. 86/17- 88/6.

⁶⁰ CP 119.

Mr. Riley's situation fits all of the five elements for a qualifying private action and the four elements for public interest (quoted above) that are set forth in *Hangman Ridge*.

But the CPA violations are not limited to the notices. The rental agreements would violate the CPA because of how they are erroneously and deceptively written and interpreted by Iron Gate. If, as Iron Gate argued to the trial court, the exculpatory language limited its liability for intentional torts, that is a CPA violation because that liability can only be limited for simple negligence. Further, the contract language (Ex. 1) is so rife with textual, grammatical and punctuation errors as to render it undecipherable, certainly by the average consumer if not by a lot of lawyers. Iron Gate acknowledged in deposition that Mr Riley's rental agreement, which contained the exculpatory language, was the form of the agreement that Iron Gate was using in other transactions at that time.⁶¹

Finally the case law has clarified the basis for a CPA violation under the circumstances of this case: “. . . *either unfair or deceptive* conduct can form the basis for a CPA action.” *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 787-788, 295 P.3d 1179, 1187 (2013). What could be more “unfair” than for a storage unit operator to seize and auction a tenant's storage unit contents without giving the notices required by law

⁶¹ CP 170, p. 26, line 25; p. 27, lines 1-2; p. 28, lines 19-25.

that are the tenant's only due process protection, before a valid lien attached, and then again after Iron Gate's acts were pointed out to them they proposed to ignore their Buyers Agreement, which could have easily remedied their wrongful conduct and prevented Mr. Riley's loss?

E. The rental agreement exculpatory provisions are void as unconscionable.

If the rental agreement were not unconscionable it would become so if the agreement were construed to provide a liability limitation against CPA relief or intentional torts.

“Agreements may be either substantively or procedurally unconscionable. *Zuver*, 153 Wash.2d at 303, 103 P.3d 753. Substantive unconscionability involves those cases where a clause or term in the contract is one-sided or overly harsh. *Id.* Substantive unconscionability alone is sufficient to support a finding of unconscionability. *Adler v Fred Lind Manor*, 153 Wn.2d 331, 346-347, 103 P.3d 773 (2004); *McKee v AT&T*, 164 Wn.2d 372, 191 P.3d 845 (2008)

It is submitted that if exculpatory terms are interpreted to allow a storage operator to auction \$1,500,000.00 of the occupant's storage unit's contents without following the procedures required to effectuate that result

and then have that liability limited to a mere \$5,000, then the terms are monstrously harsh and shocking.⁶²

“For contracts concerning leases, sales, real property, and retail installments, our legislature has adopted the *Restatement* position directing that in cases where these contracts are found to contain an unconscionable provision, courts may "enforce the remainder of the . . . contract without the unconscionable clause." RCW 62A.2A-108(1); RCW 62A.2-302; RCW 64.34.080; RCW 63.14.136. *Id* at 358.

“Either procedural or substantive unconscionability provides a basis to void a contract. *Gandee v. LDL Freedom Enters., Inc.*, 293 P.3d 1197, 1199 (Wash. 2013). Whether a contract is unconscionable is a question of law for the court”. *Adler*, 103 P.3d at 781.

‘In *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965), the court pronounced that procedural unconscionability was best described as a lack of "meaningful choice." In discussing the various factors to be considered in determining whether a meaningful choice is present, the court noted that consideration must be given to "all the circumstances surrounding the transaction," including “[t]he manner in which the contract was entered," whether each party had "a reasonable opportunity to understand the terms of the contract," and whether "the important terms [were] hidden in a maze of fine print . . .’ *Williams v. Walker-Thomas Furniture Co.*, *supra* at 449; *Reynolds v. Preferred Mut. Ins. Co.*, 11 U.C.C. Reporting Serv. 701 (Mass.App. 1972). It is readily apparent that both ‘conspicuousness’ and ‘negotiations’ are factors, albeit not conclusive, which are certainly relevant when determining the issue of conscionability in light of *all the surrounding circumstances*” *Schroeder v Fageol Motors*, 86 Wn.2d 256, 260 (1975).

"Procedural unconscionability is determined in light of

⁶² CP 122-125, line 4.

the totality of the circumstances, including (1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were 'hidden in a maze of fine print.'" *Torgerson*, 166 Wn.2d at 518-19 (internal quotation marks omitted) (quoting *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 391, 858 P.2d 245 (1993)). We do not apply these factors "mechanically without regard to whether in truth a meaningful choice existed." *Nelson v. McGoldrick*, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995). "[T]hat an agreement is an adhesion contract does not necessarily render it procedurally unconscionable," but an adhesion contract is procedurally unconscionable where the party lacks "meaningful choice." *Mattingly v Palmer Ridge Homes LLC*, 157 Wn. App 376, 388-389 (2010)

If there is any question about whether the terms are hidden in a maze of fine print one is only required to sort out these terms by reading the original rental agreement⁶³ and attempt to discern the meaning from what is written in the middle of the night after driving up from California in a truck loaded with his possessions. Mr. Riley stated that he understood what "it said", and certainly not what Iron Gate now contends what it said. (125-133 (29). This difficult contract renders it deceptive under the CPA because of its grammatical irregularities, nonsensical use of words ("Occupanties"), and ambiguity if it is interpreted to limit liability for intentional torts and CPA violations, which is precisely what the order granting summary judgment has done.

⁶³ CP 142-147.

F. The rental agreement is a contract of adhesion.

“We have established the following factors to determine whether an adhesion contract exists: ‘(1) whether the contract is a standard form printed contract, (2) whether it was prepared by one party and submitted to the other on a ‘take it or leave it’ basis’, and (3) whether there was ‘no true equality of bargaining power’ between the parties.” *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 393, 858 P.2d 245 (1993) (quoting *Standard Oil Co. of Cal. v. Perkins*, 347 F.2d 379, 383 n. 5 (9th Cir. 1965)). *Adler v Fred Lind Manor*, 153 Wn.2d 331, 347, 103 P.3d 773 (2004).

The opportunity to insure covered perils such as fire, flood or burglary do not contemplate insuring against the owner’s illegal seizure and sale of the storage unit contents if the agreement is construed, as the trial court’s decision would provide, to limit liability for intentional torts and for CPA violations. With that construction, it is a contract of adhesion. Exculpatory language in contracts of adhesion should not be enforced.

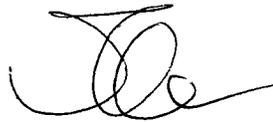
V. CONCLUSION

Larry Riley asks that the Court declare as a matter of law that any limitation on liability in the rental agreement is unenforceable against Larry Riley for the reasons outlined above. Alternatively Mr. Riley asks

the Court to conclude that Mr. Riley adduced sufficient evidence to create an issue of material fact regarding whether Iron Gate's conduct violated the Consumer Protection Act, and that the trial court erred in granting summary judgment limiting Mr. Riley's CPA monetary recovery.

February 2, 2016

Respectfully submitted,



James L. Sellers
Attorney for *Appellant*
Washington State Bar Association
membership number 4770

VII. APPENDIX

[Pages Following]

RENTAL AGREEMENT

PAY ON LINE: WWW.IRONGATESTORAGE.COM

Lease Number: 2035 Access Number: 5691164

THIS RENTAL AGREEMENT is executed in duplicate on December 1, 2003 by and between Iron Gate Self Storage the Owner ("Operator") whose business name and address is set forth below, 802 NE 112th Ave Vancouver WA 98684 and the Tenant Larry Riley (hereinafter referred to as the "Occupant") whose residence and alternate addresses are set forth below, for the purpose of leasing or renting certain space as described and with the express understanding and agreement that no bailment or deposit of goods for safekeeping is intended or created hereunder.

It is agreed by and between Operator and Occupant as follows:

1 DESCRIPTION OF PREMISES. Operator leases to Occupant and Occupant leases from Operator Enclosed Lease

Space No. 028 (approximately 30 x 12) and/or Parking Leased Space No. 028 (hereinafter the "Premises") located at the below referenced address of Operator and included in a larger facility at such address containing similar leased real property and common areas for the use of Occupant and other occupants (the entire facility is hereinafter referred to as the "Project"). Occupant has examined the Premises and the Project and, by placing his INITIALS HERE (LR) acknowledges and agrees that the Premises and the common areas of the Project are satisfactory for all purposes, including the safety and security thereof, for which Occupant shall use the Premises or the common areas of the Project. Occupant shall have access to the Premises and common areas of the Project only during such hours and days as are regularly posted at the Project. BY PLACING HIS INITIALS HERE (LR) OCCUPANT ACKNOWLEDGES AND AGREES THAT OCCUPANT'S PERSONAL PROPERTY STORED ON OR ABOUT THE PREMISES WILL BE SUBJECT TO A CLAIM OF LIEN IN FAVOR OF OPERATOR FROM THE DATE RENT IS DUE AND UNPAID, FOR RENT, LABOR OR OTHER CHARGES AND FOR EXPENSES REASONABLY INCURRED IN THE SALE OF SUCH PERSONAL PROPERTY. OCCUPANT'S PERSONAL PROPERTY IN, ON OR ABOUT THE PREMISES MAY BE SOLD TO SATISFY SUCH LIEN IF OCCUPANT IS IN DEFAULT UNDER THIS AGREEMENT. IN ADDITION, AFTER THE LONGER OF EITHER THE MINIMUM PERIOD ALLOWED BY LAW OR FIVE (5) DAYS IN WHICH OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT, OPERATOR MAY DENY OCCUPANT ACCESS TO THE PREMISES. THIS REMEDY IS CUMULATIVE BOTH AND IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXISTING AT LAW OR IN EQUITY.

2. TERM: The term of this Rental Agreement shall commence as of the date first above written and shall continue from the first day of the month immediately following on (LR) OCCUPANT'S INITIALS) month-to-month tenancy, or (OCCUPANT'S INITIALS) for a period of one year and thereafter on a month-to-month tenancy.

3. RENT: Occupant shall pay Operator as a monthly rent, without deduction, prior notice, demand or billing statement, the sum of \$195.00 plus additional monthly rent of \$95.00 due pursuant to paragraph 12, together with sales tax of (if applicable) per month in advance on the first day of each month; provided however, that with respect to a term of one year the Occupant may, by placing his initials here (LR) prepay eleven months' rent on the commencement date and there shall be no rental charge for the twelfth (12th) month of the first year. If the terms of this Rental Agreement shall commence other than on the first day of a month, Occupant shall owe a pro rate portion of the first month's rent. However, Occupant shall pay, in advance, at least one full month's rent, and Occupant understands and agrees that under no circumstances will occupant be entitled to a refund of the first full month's rent. Any rent paid in excess of that owed for the first month shall be credited to rent payable for the month immediately following. With respect to any month-to-month tenancy, the monthly rent may be adjusted by Operator effective the month following written notice by Operator to Occupant specifying such adjustment, which such notice shall be given not less than thirty (30) days prior to the first day of the month for which the adjustment shall be effective. Any such adjustment in the monthly rent shall not otherwise affect the terms of this Rental Agreement and all other terms of this rental Agreement shall remain in full force and effect.

4. FEES AND DEPOSITS.

(a) Concurrently with the execution of this Rental Agreement, Occupant shall pay to Operator \$5.00 as a nonrefundable new account administration fee.

(b) All rent shall be paid in advance of the first day of each month and in the event Occupant shall fail to pay the rent by the 10th day of the month, Occupant shall pay, in addition to any other amounts due, a late fee of \$10.00

(c) Concurrently with the execution hereof, Occupant shall deposit with Operator \$10.00 to secure Occupant's performance pursuant to the provisions of this Rental Agreement; Operator may commingle the deposit with the funds in its general accounts, and may, at Operator's election, apply the deposit to any amounts due and unpaid by Occupant hereunder. The balance of the deposit shall be returned to Occupant, without interest, within two (2) weeks after the termination of this Rental Agreement providing that Occupant is not in default hereunder.

5. USES AND COMPLIANCE WITH LAW. Occupant shall not store on the Premises personal property in or to which any other person has any right, title or interest. By placing his INITIALS HERE (LR) Occupant states that there are NO LIEN OTHER THAN OPERATOR'S UPON THE PROPERTY STORED or to be stored except as follows:

(Name (LR) (address) (LR) It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near \$5,000. It is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement. Occupant shall not store any improperly packaged food or perishable goods, flammable materials, explosives or other inherently dangerous material, nor perform any welding on the Premises or in the Project. Occupant shall not store any personal property on the Premises which would result in the violation of any law of governmental authority and Occupant shall comply with all laws, rules, regulations and ordinances of any and all governmental authorities concerning the Premises or the use thereof. Occupant shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance to other occupants in the Project. Occupant acknowledges that the Premises may be used for storage only, and that use of the Premises for the conduct of business or human or animal habitation is specifically prohibited.

EXHIBIT 1

6. INSURANCE. OCCUPANT, AT OCCUPANT'S SOLE EXPENSE, SHALL MAINTAIN ON ALL PERSONAL PROPERTY, IN, ON OR ABOUT THE PREMISES, TO THE EXTENT OF ATLEAST 100% OF THE ACTUAL CASH VALUE OF SUCH PERSONAL PROPERTY, A POLICY OR POLICIES OF INSURANCE COVERING DAMAGE BY FIRE, EXTENDED COVERAGE PERILS, VANDALISM AND BURGLARY. Occupant may satisfy the Insurance requirement for personal property stored in the enclosed Space by electing coverage under the Insurance plan described in the Insurance brochure made available by Operator, or by obtaining the required coverage from any other Insurance company of Occupant's choice, in an amount equal to the value of the goods stored by Occupant in the Enclosed Space. Insurance coverage for goods stored in the Parking Space must be obtained from an Insurance company other than the one named in the brochure. To the extent Occupant does not maintain Insurance for the full value of the personal property stored in the Enclosed Space or Parking Space, Occupant shall be deemed to have "self-insured". To the extent that Occupant has "self-insured", Occupant shall, bear all risk of loss damage. As Initialed below, Occupant agrees to obtain Insurance coverage for 100% of the actual cash value of Occupant's property stored on or in the Premises or to be "self insured". OCCUPANT'S PERSONAL PROPERTY STORED IN OPERATOR'S LEASED SPACE OR ON OPERATORS PROJECT IS NOT INSURED BY THE OPERATOR AGAINST LOSS OR DAMAGE.

(OCCUPANT'S INITIALS - Initial only one)

- A. Occupant will obtain the Insurance policy described in the brochure provided by Operator.
- B. Occupant will obtain insurance coverage from a company other than the one named in the insurance brochure provided by Operator.
- C. Occupant elects to "self-insure" (personally assume all risk of loss or damage).

Occupant hereby releases Operator and Operators Agents and authorized representatives and employees (hereinafter collectively referred to as "Operators Agents") from any and all claims for damage or loss to the personal property in, on or about the Premises, that are caused by or result from perils that are, or would be, covered under required insurance policy and hereby waives any and all rights or recovery against Operator and Operators Agents in connection with any damage which is or would be covered by any such Insurance policy. While Information may be made available to Occupant with respect to insurance, Occupant understands and agrees that Operator and Operator's Agents are not Insurers, and do not assist and have not assisted Occupant in the explanation of coverage or in the making of claims under any Insurance policy. Nothing in this paragraph shall limit or reduce the rights and benefits of Operator under paragraph 7. By placing his INITIALS HERE (LR) Occupant acknowledges that he has read and understands the provisions of this paragraph 6.

7. LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY. Operator and Operators Agent shall not be liable to Occupant for any damage or loss to any person. Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators Agents; except that Operator and Operator's Agents, as the case may be, may, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Occupant's Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring in, on or about the Premises arising in any way out of Occupant's use of Premises, whether occasioned by Operator or Operators Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, or expense in connection with Operator or Operator's Agents' fraud, willful injury or willful violation of law. Notwithstanding anything contained in this Rental Agreement, in no event shall Operator or Operator's Agents be liable to Occupant in an amount in excess of \$5,000 for any damage or loss to any person, Occupant or any property stored in, on or about the Premises or the Project arising from any cause whatsoever, including, but not limited to, Operators Agents' active or passive acts, omissions or negligence. By placing his INITIALS HERE (LR) Occupant acknowledges that he has read, understands and agrees to the provisions of this paragraph 7.

8. INCORPORATION OF PROVISIONS ON PAGES THREE AND FOUR. By placing his INITIALS HERE (LR) Occupant acknowledges that he has read, is familiar with and agrees to all of the provisions printed on pages three and four of this Rental Agreement, and Operator and Occupant agree that all such provisions constitute a material part of this Rental Agreement and are hereby incorporated by reference. IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement the day and year first above written.

OCCUPANT: Larry D Riley
 Name: Larry Riley
 Street: 13105 NW 8th ave unit b
 City: Vancouver State: WA Zipcode: _____
 RESIDENCE BUSINESS
 Phone: 530-218-2717 Phone: _____

OPERATORS LIEN LAW(S) REFERENCES:
OPERATOR

By: Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684

SSN# 000-00-0000 Drivers Lic # _____
 ALTERNATE ADDRESS (if alternative information is refused,
 occupant will please sign here _____
 Name _____ Relationship _____
 Street: _____
 City: _____ State: _____ Zip: _____
 Residence Business
 Phone () _____ () _____

Received By:
Mike Nichols Manager

Signature

S. DEFAULT OPERATOR'S REMEDIES AND LIEN:

If Occupant shall fail to pay timely any rent or other charges required herein to be paid or shall fail or refuse to perform timely any of the covenants, conditions or terms of this Rental Agreement, Occupant shall be conclusively deemed in default under this Rental Agreement. OCCUPANTS PERSONAL PROPERTY IN OR ABOUT THE PREMISES WILL BE SUBJECT TO A CLAIM OF LIEN IN FAVOR OF OPERATOR FROM THE DATE RENT IS DUE AND UNPAID FOR RENT, LABOR OR OTHER CHARGES AND FOR EXPENSES REASONABLY INCURRED IN THE SALE OF SUCH PERSONAL PROPERTY OCCUPANTS PERSONAL PROPERTY IN OR ABOUT THE PREMISES MAY BE SOLD TO SATISFY SUCH LIEN IF OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT IN ADDITION, AFTER THE LONGER OF EITHER THE MINIMUM PERIOD ALLOWED BY LAW OR TEN (10) DAYS IN WHICH OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT, OPERATOR MAY DENY OCCUPANT ACCESS TO THE PREMISES. Operator may also enter the premises and remove Occupants personal property within it to a safe place. This remedy is cumulative with and in addition to every other remedy given hereunder, or now or hereafter exiting at law or in equity. Acceptance by Operator of payment of less than all amounts in default shall not constitute a cure such default nor a waiver by Operator prior to termination of the Rental Agreement unless Operator executes a written acknowledgment thereof. This Rental Agreement specifically incorporates by reference the provisions of applicable state and local laws (if any) relating to Owner's and/or Operator's lien for rental charges at a self-storage facility. Applicable lien law references are cited next to Operator's address on front page.

10. ABANDONMENT

Without limiting the right of Operator to conclude for other reasons that Occupant has actually abandoned the Premises and the Property located in or on the Premises, Occupant agrees that Operator may conclusively deem an abandonment by Occupant of the Premises and all Property within the fifteen (15) days following Operators written notice of belief of abandonment, which notice may be given and shall be deemed to be effective as provided with respect to the giving of notice as provided in Paragraph 19. If any personal property of Occupant shall remain in or on the Premises or at the Project after the expiration or termination of this Rental Agreement (other than the termination of this Rental Agreement while a default by Occupant exists) shall be considered abandoned at the option of Operator and if abandoned, Operator may sell, destroy or otherwise dispose of Occupants property in order to satisfy Operators lien.

11. ENTIRE AGREEMENT

There are no representations, warranties, or agreements by or between the parties which are not fully set forth herein and no representative of Operator or Operators agents are authorized to make any representations, warranties or agreements other than as expressly set forth herein.

12. USE OF ELECTRICITY

In the event there is an electrical outlet within the rented Premises, the Occupant is cautioned that power to such electrical outlet may be turned off at the option of the Operator, and that the Operator assumes no liability to Occupant or Occupant's property resulting from the failure or shut off of the electrical power supply to the Premises. Accordingly, Occupant is REQUIRED to turn off all lights and disconnect any electrical appliances before leaving the rented Premises and in the event they are not turned off, Occupant shall pay as additional rent a charge of \$50.00 per month. If continuous and/or intermittent electrical services is desired and available for powered tools and the like, Occupant shall pay the "additional monthly rent shown in Paragraph 3 above in addition to the basic monthly rent payable as also provided for in Paragraph 3 above.

13. ALTERATIONS:

Occupant shall not make or allow any alterations of any kind or description whatsoever to the Premises without, in each instance, the prior written consent of the Operator.

14. LOCK:

Occupant shall provide, at Occupants own expense, a lock for the Premises which Occupant, in Occupant's sole discretion, deems sufficient to secure the Premises. Occupant shall not provide Operator or Operators agents with a key and/or combination to Occupant's lock.

15. RIGHT TO ENTER, INSPECT AND REPAIR PREMISES: Occupant shall grant Operator, Operator's agents or the representatives of any governmental authority including police and fire officials, access to the Premises upon three (3) days prior written notice to Occupant. In the event Occupant shall not grant access to the Premises as required or in the event of any emergency or upon default of any of Occupants obligations under this Rental Agreement, Operator, Operators agents or the representatives of any governmental authority shall have the right to remove Occupant's lock and enter the Premises for the purpose of examining the Premises or the contents thereof or for the purpose of making repairs or alterations to the Premises and taking such other action as may be necessary or appropriate to preserve the Premises or to comply with applicable law or enforce any of Operators rights. In the event of any damage or injury to the Premises or the Project arising from the active or passive RCW omissions or negligence of Occupant, all expenses reasonably incurred by Operator to repair or restore the Premises or Project shall be paid by Occupant as additional rent and shall be due upon demand by Operator.

16. NO WARRANTIES:

Operator hereby disclaims any implied or express warranties, guarantees or representations of the nature, condition, safety or as security, of the Premises and the Project and Occupant hereby acknowledges, as provided in paragraph 1 above, that Occupant has inspected the Premises and hereby acknowledges and agrees that Operator does not represent or guarantee the safety or security of the Premises or of any property stored therein. This Rental Agreement sets forth the entire agreement to the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto.

17. TERMINATION:

This Rental Agreement shall terminate at the expiration of any term of this Rental Agreement by the party desiring to terminate this Rental Agreement giving written notice by certified or registered mail to the other party of such party's intention to terminate not less than fifteen (15) days before expiration of the term. Further, this Rental Agreement may, at the option of the Operator be terminated upon any default by Occupant under the terms of this Rental Agreement or the abandonment of the Premises by Occupant or by Operator's acceptance of Occupant's oral offer to terminate given not less than two (2) days before the proposed date of termination.

18. CONDITIONS OF PREMISES UPON TERMINATION: Upon termination of this Rental Agreement, Occupant shall remove all Occupant's personal property from the Premises unless such personal property is subject to Operator's lien rights pursuant to Paragraph 9 above and shall immediately deliver possession of the Premises to Operator in the same condition as delivered to Occupant on the commencement date of this Rental Agreement, reasonable wear and tear excepted.

19. NOTICES:

Except as otherwise expressly provided in this Rental Agreement, any written notices or demands required or permitted to be given under the terms of this Rental Agreement may be personally served or may be served by first class mail deposited in the United States mail with postage thereon fully prepaid and addressed to the party so to be served at the address of such party provided for in this Rental Agreement. Service of any such notice or demand shall be deemed complete on the date delivered, or if mailed, shall be deemed complete on the date of deposit in the United States mail, with postage thereof fully prepaid and addressed in accordance with the provisions hereof and without regard to Occupant's actual receipt thereof.

20. NOTIFICATION OF CHANGE OF ADDRESS:

In the event Occupant shall change Occupant's place of residence or alternate name and address as set forth on this Rental Agreement, Occupant shall give Operator written notice of such change within ten (10) days of the change specifying Occupant's current residence and alternate name, address and telephone numbers. Failure to so notify Operator shall constitute a waiver by Occupant of any defense based on failure to receive any notice.

21. ASSIGNMENT

Occupant shall not assign or sublease the Premises of any portion thereof without in each instance obtaining the prior written consent of Operator.

22. SUCCESSION:

All of the provisions of this Rental Agreement shall apply to bind and be obligatory upon the heirs, executors, administrators, representatives, successors and assigns of the parties hereto.

23. CONSTRUCTION:

Whenever possible each provision of this Rental Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Rental Agreement shall be invalid or prohibited under such applicable law, such provision shall be ineffective only in the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Rental Agreement.

24. TIME:

Time is of the essence of this Rental Agreement.

25. RULES AND REGULATIONS:

The rules and regulations posted in a conspicuous place at the project are made a part of this Rental Agreement and Occupant shall comply at all times with such rules and regulations. Operator shall have the right from time to time to promulgate amendments and additional rules and regulations for the safety, care and cleanliness of the Premises, Project and all common areas, or for the preservation of good order and, upon the posting of any such amendments or additions in a conspicuous place at the project, they shall become a part of this Rental Agreement.

26. ATTORNEY'S FEES:

Occupant agrees to pay all cost, charges and expenses, including reasonable attorneys fees, incurred by Operator in connection with the collection of rent, the enforcement of any rights under this Rental Agreement or any litigation or controversy arising from or in connection with this Rental Agreement. All such costs, charges and expenses shall be made a part of any lien claimed by or judgement rendered for Operator. If no action is instituted by Operator such cost, charges and expenses shall be paid by Occupant along with any other claims by Operator.

27. Occupant agrees that operator may provide notice of any change in any of the foregoing by posting a notice of such change within the project.

END OF RENTAL AGREEMENT
Make check payable to IRONGATE STORAGE

ADDENDUM TO RENTAL AGREEMENT

Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Unit # 028 Unit Size 30 X 12 Gate Access # 1747
Contract # 2035

Welcome! The following information is for your reference. It contains some important suggestions and pertinent information about the policies of this self storage facility.

1. Your fee is \$195.00 and is due on the first (1st) of each month.
 2. We will not send you a bill. Please mail your payment or bring it into the office. A payment slot has been provided for your convenience.
 3. If we have not received your payment by day 6 of the month, your gate access will be denied. However, we will not charge a late fee and overlock your unit until day 11 of the month.
 4. A partial payment will not stop fees or official procedures. Any agreement between tenant and management to extend payment dates or defer sale of goods must be in writing and signed by both management and tenant to be binding.
 5. A \$25.00 fee is automatically charged for all returned checks as well as a \$10.00 late fee. All future payments must be made by money order.
 6. We require that tenant provide his/her own insurance coverage or self insure, and that tenant will be personally responsible for any loss.
 7. Iron Gate Storage is a commercial business renting space and is not a bailiff or warehousemen.
 8. Do not use the rental unit for anything but DEAD STORAGE. Do not store any flammable, explosive or illicit materials. The unit is to be used for storage only.
 9. Tenant agrees to reimburse Iron Gate Storage for the cost of disposal of articles left behind in unit in excess of \$10.00 cleaning fee. Tenant agrees to give managers a 10 DAY NOTICE PRIOR TO VACATING. Failure to give notice will result in a \$10.00 fee.
 10. The storage unit must broom clean, emptied, in good condition - subject only to wear and tear - and ready to re-rent. Upon managements inspection and approval of units condition, cleaning fee shall be returned.
 11. Tenant's lock must be removed upon termination of occupancy. Failure to remove lock will result in your being charged the next month's rental and late fees. Any units found unlocked, will be considered to have been abandoned, and contents will be disposed of.
 12. Tenant understands that, if the rental agreement commences after the 15th of the month, both the prorated rental amount for the first partial month, and payment for the next full month, is required, and the these amounts are not refundable.
 13. If tenant vacates on or before the 10th of the month, rent will be prorated. If tenant vacates after the 10th of the month, a full month's rent payment will be required.
 14. Upon move out, prepaid rents will be refunded for any full months not used.
 15. Gate hours are from 7 (A.M.) to 9 (P.M.), seven days a week. The gate will not open after 9 (P.M.), so please be out on time.
 16. Office hours are from 9 (A.M.) to 6 (P.M.), Monday through Saturday.
Office hours are from 9 (A.M.) to 5 (PM) Sunday
- Management is on the property after hours for security reasons only.
17. Only one lock is allowed per door latch. If more than one lock is found, you may be subject to a \$10.00 cut lock fee for the removal of that lock.
 18. Do not follow someone through the gate without first putting in your access code. The gate may close on you or you may not be able to exit. The code is required to disarm the alarm on your unit.
 19. Please keep us updated of any address changes and/or phone number changes. Until we are notified in writing with your signature, the only valid address and telephone number present is on the lease.
 20. Please leave aisles clear and do not block another tenant's door.
 21. We will strictly enforce all policies and conditions in our contract. We do not make exceptions!

5. USES AND COMPLIANCE WITH LAW. Occupant shall not store on the Premises [sic] personal property in or to which any other person has any right, title or interest. By placing his INITIALS HERE ____ Occupant states that there are [sic] NO LIEN [sic] OTHER THAN OPERATOR'S UPON THE PROPERTY STORED or to be stored except as follows:

(Name _____ (address) _____)

It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all such personal [sic] property is, will be, or is expected to be, at or near \$5,000. It is [sic] specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement. Occupant shall not store any improperly packaged food or perishable goods, flammable materials, explosives or other inherently dangerous material, nor perform any welding on the Premises on in the Project. Occupant shall not store any personal property on the Premises which would result In [sic] the violation of any law of governmental authority and Occupant shall comply with all laws, rules, regulations and ordinances of any and all governmental authorities concerning the Premises [sic] or the use thereof. Occupant shall not use the Premises [sic] in any manner that will constitute waste, nuisance, or unreasonable annoyance to other occupants in the Project. Occupant acknowledges that the Premises may be used for storage only, and that use of the Premises for the conduct of business or human or animal habitation is specifically prohibited.

INCONSISTENCIES & AMBIGUITIES IN SECTION 5:

- 1.) Please Note: The number 5 In this paragraph heading is not indented. The balance of the title numbers appearing on page 1 are all indented.
- 2.) Promises [sic] This word makes no sense in the context used.
- 3.) are [sic] If the word LIEN is meant to be singular, then the word are does not correspond.
- 4.) LIEN [sic] If the word are is meant to refer to the word LIEN, then the word LIEN is incorrectly used and should be pluralized (as in LIENS).
- 5.) (Name The word Name has no parenthesis behind it.
- 6.) (address) The a in address is not capitalized.
- 7.) "with substantially less" Substantially less than what?
- 8.) "or no aggregate value" Contradicts Section 6 of the Rental Agreement. One cannot insure contents that have no value.
- 9.) "administration" This word, used in the following word grouping "and nothing herein contained shall constitute or evidence, any... administration by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near \$5,000." leaves the meaning of this entire word grouping ambiguous, as used.
- 10.) suchpersonal [sic] The drafter probably intended to use two separate words (as in such personal)
- 11.) Is [sic]
- 12.) In [sic]
- 13.) Promises [sic] This word makes no sense in the context used.
- 14.) Promises [sic] This word makes no sense in the context used.

EXHIBIT: 2

7. LIMITATION OF OPERATOR'S LIABILITY: INDEMNITY. Operator and Operators [sic] Agent [sic] shall not be liable to Occupant for any damage or lose to any person. Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators [sic] Agents: except that Operator and Operator's Agents, as the case may be, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss [sic] to Occupant or Occupanties [sic] Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring In [sic], on or about the Premises arising in any way out of Occupants [sic] use of the Premises, whether occasioned by Operator or Operators [sic] Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, orexpense [sic] In [sic] connection with Operator or Operator's Agent's fraud, willful injury or willful violation of law. Notwithstanding anything contained in this Rental Agreement, In [sic] no event shall Operator or Operator's Agents be liable to Occupant In [sic] an amount In [sic] excess of \$5,000 for any damage or lose to any person, Occupant or any properly stored in, on or about the Premises or the Project arising from any cause whatsoever, Including [sic], but not limited to, Operators [sic] Agents' active of [sic] passive acts, omissions or negligence. By placing his INITIALS HERE ___ Occupant acknowledges that he has read, understands and agrees to the provisions in this paragraph 7.

EXAMPLES OF INCONSISTENCIES & AMBIGUITIES IN SECTION 7:

- 1.) Please Note: The number 7. In this paragraph heading is not indented. The balance of the title numbers appearing on page 2 are all indented.
- 2.) Operators [sic] The possessive form of the word (as in Operator's) should have been used.
- 3.) Agent [sic] If the use of this word is to conform to the balance of the document, the word Agent needs to be pluralized (as in Agents).
- 4.) "...damage or any lose to any person." The meaning of this word grouping is ambiguous.
- 5.) "Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operator Agents: except that Operator and Operator's Agents, as the case may be, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Occupanties Property resulting from Operator's fraud, willful injury or willful violation of law." This word grouping, as punctuated, forms an incomplete sentence.
- 6.) Operators [sic] The possessive form of the word (as in Operator's) might be more appropriate.
- 7.) "of loss" This word grouping is ambiguous.
- 8.) "Ooccupanties" [sic] This word has no known definition within the English language. Its meaning is ambiguous.

- 9.) "...arising out of" A comma might be in order after the word "of" (as in of,).
- EXAMPLES OF INCONSISTENCIES & AMBIGUITIES IN SECTION 7: (cont.)
- 10.) "...or in connection with" A comma might be in order after the word "with" (as in with,).
- 11.) In [sic]
- 12.) Occupants [sic] The possessive form of the word (as in Occupant's) might be more appropriate.
- 13.) Operators [sic] The possessive form of the word (as in Operator's) might be more appropriate.
- 11.) orexpense [sic] The drafter probably intended to use two separate words (as in or expense)
- 12.) In [sic]
- 13.) In [sic]
- 14.) In [sic]
- 15.) In [sic]
- 16.) "...damage or any lose to any person." The meaning of this word grouping is just as ambiguous as this same word grouping's use in number 4 referenced above.
- 17.) "Occupant or any properly stored in," The meaning of this word grouping is ambiguous.
- 18.) Including [sic]
- 19.) Operators [sic] The possessive form of the word (as in Operator's) might be more appropriate.
- 20.) of [sic]

**Iron Gate Storage - Cascade Park
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800**

Notice of Lien

Tenant Larry Riley
Company
Address 13211 NE 76th St
City, State, Zip Vancouver WA 98682

Date of Notice Jul 01, 2010
Unit Number 028
Certified Mail # _____

Notice of Lien

Dear Tenant:

You are in default of your rental agreement for the unit(s) described below. Demand is hereby made that you pay the amount due immediately. Failure to pay will result in the sale of the contents of the unit(s). Access to the unit(s) has been suspended until payment is made in full.

Personal Effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. If you do not believe the contents of the unit should be sold, complete and return a Declaration in Opposition to Lien form. If the proceeds of the sale exceed the charge on the account, the excess proceeds must be claimed within 90 days or will be forfeited.

The property subject to the lien is:
Household Goods

<u>Charge Date</u>	<u>Description</u>	<u>Amount</u>			
05/01/2010	Rent	220.00	0.00	0.00	220.00
05/11/2010	Late Fee	10.00	0.00	0.00	10.00
05/21/2010	Pre Lien Fee	20.00	0.00	0.00	20.00
06/01/2010	Rent	220.00	0.00	0.00	220.00
06/11/2010	Late Fee	10.00	0.00	0.00	10.00
06/21/2010	Pre Lien Fee	20.00	0.00	0.00	20.00
06/24/2010	Lock Cut Fee	10.00	0.00	0.00	10.00
07/01/2010	Rent	220.00	0.00	0.00	220.00
07/01/2010	Lien Fee	25.00	0.00	0.00	25.00

Total Due 755.00

Sincerely,

Chuck Johnston & Katy Wagon
Resident Managers

*Rec'd
07/09/10
Fri
(8 days from due date)*

Iron Gate Storage - Cascade Park
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Auction

Larry Riley
13211 NE 76th St
Vancouver WA 98682

Date of Notice: Jul 08, 2010
Unit Number: 028
Certified Mail # 7008 3230 0000 2825 7708

Dear Tenant:

Iron Gate Storage - Cascade Park, 802 NE 112th Ave, Vancouver, WA 98684, pursuant to Washington Statute RCW 191.150 and your rental agreement number 2035 with Iron Gate Storage - Cascade Park, dated Dec 01, 2003, , for the above referenced storage unit number, hereby gives you notice that it is asserting a possessory lien on the property stored in the aforementioned unit. The lien is asserted for unpaid rental charges, late fees, and other associated charges incurred for the rent of the storage space. The amount of the lien is \$805.00.

Personal effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. Unless payment is made by 7/14/10 (month/day/year), the property will be sold at public auction on 7/15/10 (month/day/year) at 10:00 (A.M./P.M.) on the premises of the Iron Gate Self Storage to satisfy the lien.

This is Jul 08, 2010

Sincerely,

Chuck Johnston & Katy Wagnon
Resident Managers

Rec'd
07/16/10
Fri
(2 days from date sent)

EXHIBIT 4



July 17, 2010

Irongate Storage
12406 SE 5th Street
Vancouver, WA 98683

RE: Storage Agreement 2035
Space # 028
Space Tenant: Larry Riley

Dear Irongate:

I represent Larry Riley. He has had a storage unit (028) with you. He has had it for a considerable period of time. He was in arrears. He had been in arrears in the past and informally allowed to pay late. However, this time you have apparently elected to sell his property that was stored in the unit to satisfy a lien claim for his unpaid rent. At least that is what you have said and written. What you actually did may be determined later. However, this letter concerns what you didn't do and insists that you correct it.

The sale of personal property in a storage unit to satisfy a lien for unpaid rent is governed by Ch. 11.150 RCW. In order to sell property to satisfy a lien, you must strictly follow the requirements of that statute. Although I have not had sufficient time to compare all of the paperwork that you sent out to foreclose your lien claim, I have seen enough to see that you did not comply with the statute.

You failed to send a notice that met the requirements for a sale.

RCW 19.150.080(3) provides in pertinent part that after the sending of a preliminary lien notice, a final lien notice shall be sent **prior to sale** as follows:

"The owner shall then serve by personal service or send to the occupant, . . . by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following: . . .

"(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.**" [bolding and underlining added for emphasis]

I am looking at the final lien notice that you sent, which you title as "Notice of Auction". It is dated July 8, 2010. It gives notice of an auction to occur on July 15, 2010, which is the date that

you told Mr. Riley on Friday that his property was sold. July 15, 2010 is not 14 days from the date of the notice.

Not only did you fail to comply with the express language of the statute, you sent the notice to the wrong address. Several months ago, Mr. Riley came in and advised the then managers at this location of his change of address. However, you sent the notice to his old address. By the time that the postal authorities could deliver the notice to Mr. Riley, the so-called auction had already occurred on the previous day.

Mr. Riley's storage unit contained literally thousands of dollars in personal property. There was a pool table worth at least \$7,500, valuable works of art, and many items of Mr. Riley's that are irreplaceable, including his personal papers and photographs. Under the statute (RCW 19.150.080(4)), you are required to maintain his papers and photographs for a period of at least six months. However, you told him yesterday that you have gotten rid of everything.

Violations of this chapter are also violations of Washington's Consumer Act. In addition to collecting his actual damages from you, Mr. Riley is entitled to collect his damages trebled, plus attorneys fees and costs. Further, your actions create liability under the tort of outrage and intentional infliction of mental distress.

Demand is hereby made that you arrange for the return of Mr. Riley's property to him immediately. When he was last in your offices on Friday, he was prepared to pay the back rent. However, you had told him the property had already been auctioned and removed. (Since you are obligated to retain his papers and photographs for six months, I don't know how it could all be gone.) Hopefully that is either not the case or you can get it all back. The damages that Mr. Riley can expect to collect from you will be thousands of dollars more than what you likely netted from the auction. Although he is not obligated to do so, Mr. Riley is willing to let you off the hook if all of his property is returned to him early next week.

Feel free to call me. I would prefer that you immediately contact an attorney on your behalf and have the attorney contact me. What you have done is ill-advised and you would be well advised to consult with your own attorney immediately.

Very truly yours,



James L. Sellers

jsellers@sellerslawoffice.com

Cell: 360.921.0762

cc: Larry Riley

Buyers Agreement

Buyer Agrees to the following:

This is to inform the auction buyer prior to the sale that; Iron Gate Storage and/or auctioneer in their discretion, reserves the right to cancel any Auction.

Iron Gate Storage and/or the auctioneer may ask any person(s) to leave the property at any time for any reason.

When the buyer has been awarded the unit he/she must pay by cash before leaving the property. If not, the unit will be turned back over to Iron Gate Storage.

It is the buyer's responsibility to return all personal papers, photos, legal documents, tax returns, bank statements, year books etc. to Iron Gate Storage within 10 days of the auction. If Iron Gate Storage becomes aware of any personal items not returned by buyer within the 10 day time period, Iron Gate Storage reserves the right to prohibit buyers future attendance at their auctions.

The buyer acknowledges that he or she is bidding on all items within the unit and all items must be removed and unit left clean. If the auction unit is not cleaned and or the items removed within 24 hours the buyer agrees to pay all cost involved in cleaning the unit(s) and will not be able to return to Iron Gate Storage Auctions. (If the items are not removed within 24 hours, Iron Gate Storage reserves the right to claim said property).

The buyer also acknowledges that Iron Gate Storage and/or the auctioneer may contact the buyer, and request that the items be purchased back by Iron Gate Storage and/or the auctioneer in order to prevent any court action. Notice to buyer shall be made no longer than 60 days after said auction. Iron Gate Properties and /or the auctioneer at it's sole discretion will set a reasonable price for the purchase back of the auctioned units items. Buyer is aware if items are not returned to Iron Gate Storage as requested, buyer will agree to pay all damages assigned by court action and also agrees to pay Iron Gate Storage's legal costs.

This agreement pertains to any and all future Iron Gate Auctions which buyer attends.

Agreed and Accepted:

Ernie Dorian
Name


Signature

624-1888
Phone #

6918 NE 90th Ave
Address (Include State)

Dorian ER DORIAN
Driver License #

EXHIBIT 6

Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Auction

Larry Riley

13211 NE 76th St
Vancouver WA 98682

Date of Notice: December 3, 2009

Unit Number: 028

Certified Mail # 70083230-0002-2825-7951

Dear Tenant:

Iron Gate Self Storage, 802 NE 112th Ave, Vancouver, WA 98684, pursuant to Washington Statute RCW 191.150 and your rental agreement number 2035 with Iron Gate Self Storage, dated December 1, 2003, for the above referenced storage unit number, hereby gives you notice that it is asserting a possessory lien on the property stored in the aforementioned unit. The lien is asserted for unpaid rental charges, late fees, and other associated charges incurred for the rent of the storage space. The amount of the lien is \$785.00.

Personal effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. Unless payment is made by 12-13-09 (month/day/year), the property will be sold at public auction on 12-14-09 (month/day/year) at 10:00 (A.M./P.M.) on the premises of the Iron Gate Self Storage to satisfy the lien.

This is December 3, 2009

Sincerely,

John Myers & Annette Felton
Resident Managers

EXHIBIT 7

RCW 19.150.040: When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first-class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice. [2007 c 113 § 2; 1988 c 240 § 5.

[2007 c 113 § 2; 1988 c 240 § 5.]

RCW 19.150.050 A notice in substantially the following form shall satisfy the requirements of RCW 19.150.040:

"PRELIMINARY LIEN NOTICE

to (occupant)

(address)

(state)

You owe and have not paid rent and/or other charges for the use of storage (space number) at (name and address of self-service storage facility)

Charges that have been due for more than fourteen days and accruing on or before (date) are itemized as follows:

<u>DUE DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
		<u>TOTAL \$</u>

If this sum is not paid in full before (date at least fourteen days from mailing), your right to use the storage space will terminate, you may be denied, or continue to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

(Name)

(Address)

(State)

(Telephone)

(Date)

(Owner's Signature) "

[1988 c 240 § 6.]

EXHIBIT 8

RCW 19.150.060: 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. [2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7. [2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

SELLERS LAW OFFICE

February 18, 2016 - 12:01 AM

Transmittal Letter

Document Uploaded: 3-479052-Amended Appellant's Brief.pdf

Case Name: Larry Riley vs Iron Gate Self Storage; ESMA Partners LP; Glen L. Aronson; Eve Aronson Trust; Prime Commercial Properties, Inc.; all dba Iron Gate Self Storage; aba Iron Gate Storage - Cascade Park

Court of Appeals Case Number: 47905-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Amended Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Uploaded is the Amended Appellant's Brief.

Sender Name: Chris Tracy - Email: chris@sellerslawoffice.com

A copy of this document has been emailed to the following addresses:

chris@sellerslawoffice.com

jsellers@sellerslawoffice.com

larryirishriley@gmail.com

PXOCHIHUA@davisrothwell.com

cparker@davisrothwell.com

prothwell@davisrothwell.com

