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**Court of Appeals, Div. II,  
of the State of Washington**

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Aubol Investments, LLC,

Respondent,

v.

Amund Taylor,

Appellant.

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**Brief of Appellant**

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Kevin Hochhalter  
Attorney for Appellant

Olympic Appeals PLLC  
4570 Avery Ln SE #C-217  
Lacey, WA 98503  
360-763-8008  
kevin@olympicappeals.com  
WSBA # 43124

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## **1. Introduction**

Amund Taylor lost all of his property when he was evicted from the land and storage space he was renting. The landlord failed to serve all of the proper papers or properly complete the eviction process. The landlord stored Taylor's property, then deliberately failed to notify Taylor of the sale.

Taylor brought a claim for damages against the landlord. The trial court erroneously concluded that Taylor's claims were equitable and denied Taylor's demand for a jury trial.

Because Taylor's claim for damages caused by the landlord's breach of legal duties is a classic claim at law, the trial court abused its discretion in denying a jury trial. This Court should reverse the judgment and remand for a jury trial.

## **2. Assignments of Error**

### **Assignments of Error**

1. The trial court erred in striking Taylor's demand for a jury trial.
2. The trial court erred in entering Finding of Fact # 19 (which includes erroneous conclusions of law). CP 159.
3. The trial court erred in entering Finding of Fact # 20. CP 159.
4. The trial court erred in entering Finding of Fact # 23 (which includes erroneous conclusions of law). CP 160.
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6. The trial court erred in entering Conclusion of Law # 4. CP 162.
7. The trial court erred in entering Conclusion of Law # 6. CP 162.
8. The trial court erred in entering Conclusion of Law # 8. CP 162.
9. The trial court erred in entering Conclusion of Law # 9. CP 163.
10. The trial court erred in entering Conclusion of Law # 10. CP 163.
11. The trial court erred in entering Conclusion of Law # 12. CP 163.
12. The trial court erred in entering Conclusion of Law # 13. CP 163.
13. The trial court erred in entering Conclusion of Law # 15. CP 163.

14. The trial court erred in entering Conclusion of Law # 18. CP 163.

### **Issues Pertaining to Assignments of Error**

1. Under CR 38, constitutional or statutory rights to a jury trial must be preserved inviolate. Taylor had both a constitutional and statutory right to a jury trial under RCW 59.12.130 and because his claims were wholly legal in nature. Did the trial court err in denying Taylor's demand for a jury trial? (assignment of error # 1)
2. Under RCW 59.18.312, a landlord must provide the sheriff with a statutorily mandated form regarding storage of personal property, which gives the tenant the opportunity to provide a forwarding address to which the landlord must send any notice of sale of the personal property. Aubol did not provide the form and did not give Taylor notice of the sale of his personal property. Did the trial court err in concluding that Aubol complied with the statute and therefore was not liable to Taylor for the lost property? (assignments of error #2-14)

### **3. Statement of the Case**

Amund Taylor leased two parcels of land from Aubol Investments, LLC for over two years. CP 156. At the end of the second year, Aubol notified Taylor that it intended to allow the lease to expire. CP 157. However, Aubol allowed Taylor to remain on the property while a new lease was being negotiated. CP 157-58. Ultimately, Aubol revoked its offer and served Taylor with a Notice to Terminate Tenancy. CP 158.

Taylor did not vacate the premises by the deadline stated in the notice. CP 158. Aubol brought this unlawful detainer action and obtained an order for writ of restitution. CP 158-59. Aubol failed to provide the sheriff with the statutorily required form for storage of personal property. RP 390-91.<sup>1</sup>

The sheriff served the writ of restitution on Taylor on April 23, without the personal property storage form. RP 212; *see* RP 390-91. The form allows the vacating tenant to provide a forwarding address for notice of any sale of the tenant's personal property. RCW 59.18.312(6). Taylor never provided a forwarding address because he never received the form. *See* RP 212.

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<sup>1</sup> The Verbatim Report of Proceedings in this case consists of one pre-trial hearing on January 27, 2016, regarding Aubol's motion to strike the jury demand, and a three-day trial on May 12, 13, and 26, 2016. The volumes are not numbered, but the pages of the VRP as a whole are sequentially numbered. Citations in this brief will be to the page numbers, without reference to the volumes.

The sheriff was scheduled to return on May 6 to escort Taylor off the property. RP 155. Taylor was told by Brenda Aubol that Aubol's owner had granted permission for him to store his personal property in the mobile home until he found a new place to live. RP 294-95. The sheriff never arrived. RP 155. Taylor continued packing his property. RP 155.

On May 12, Taylor had three or four of his boats, a flatbed trailer, and a box trailer loaded up with a significant portion of his property, ready to haul away. RP 103, 160-61. Aubol called the sheriff to arrest Taylor for trespass. CP 159; RP 157. Aubol refused to allow Taylor's friends to haul away Taylor's property. RP 16-18, 51, 76-77. While his friends unloaded the trailers, Aubol's manager was overheard talking about what she planned to do with various items of Taylor's property. RP 77.

On May 13, Aubol posted a 30-day notice of sale on the premises and sent a copy by certified mail to the premises. CP 159; RP 336, 338-39. Aubol knew how to reach Taylor through Brenda Aubol, the former manager, but apparently made no effort to give Taylor actual notice of the sale. RP 211. Taylor only learned of the sale after the fact. RP 163, 204-05.

Aubol held two garage sales attempting to sell Taylor's property. CP 160; RP 204. Whatever didn't sell was thrown away or given to Aubol employees/contractors. RP 204; *see* RP 114, 184-85. When Taylor requested to get his property back, Aubol

informed him that it was sold or stolen, or otherwise evaded the question. CP 37.

In October, Taylor made a claim in the unlawful detainer action for the return of his property or for damages equal to the value of the property, plus sanctions and attorney's fees allowed by statute. CP 35. Aubol argued that Taylor's claim was one for replevin, which should have been brought in a separate action. *See* CP 75. Taylor responded that the unlawful detainer action was a proper forum to resolve disputed personal property issues between landlord and tenant. CP 76. At this point, both parties understood that most, if not all, of the personal property was beyond reach and could not be returned. *See* CP 37, 77.

In December, Taylor filed a demand for a 12-person jury trial. CP 78. One week later, the trial court set the matter for a jury trial. CP 79. Aubol moved to strike the jury trial, arguing that Taylor's claims "sound in equity." CP 83. Taylor disagreed and argued that because Taylor's claim was brought under the unlawful detainer statutes, a jury trial was required. CP 88. The trial court found that Taylor's claim was "purely an equitable issue," and ordered that the trial would be to the bench. RP 5; CP 112-13.

After a three-day bench trial, the trial court entered judgment against Taylor, including an award of attorney's fees

in favor of Aubol. CP 165. Taylor appeals the judgment and the trial court's denial of his jury demand.

#### **4. Argument**

The trial court erred in denying Taylor's demand for a trial by jury. Taylor's statutory right to a jury trial under RCW 59.12.130 should have been preserved inviolate under CR 38 without regard to the legal or equitable nature of the claims. But even under the constitutional standard, Taylor's claims were purely legal, requiring preservation of his right to a jury trial. Even if Taylor's claims raised some equitable issues in theory, the only real issue for trial was Taylor's legal claim for damages for the lost property, which should have been heard by a jury. This Court should reverse the judgment and remand for new trial, this time with a jury.

If this Court disagrees with Taylor on the jury issue, this Court should review the merits of the trial court's findings of fact and conclusions of law. The trial court entered numerous erroneous findings and conclusions, stemming largely from the trial court's erroneous conclusion that Aubol complied with statutory requirements. Aubol did not comply and did not make any good faith effort to return Taylor's property or notify him of the sale. Taylor should have been entitled to compensation for the property that Aubol wrongfully withheld.

#### **4.1 The trial court erred in denying Taylor’s jury demand.**

##### **4.1.1 A mixed standard of review applies to this issue.**

Interpretation of constitutional provisions, statutes, and court rules are legal issues reviewed de novo. *E.g., FPA Crescent Associates, LLC v. Jamie’s LLC*, 190 Wn. App. 666, 674, 360 P.3d 934 (2015). A trial court’s determination of whether to allow a jury trial in a case with mixed legal and equitable issues is reviewed for abuse of discretion. *E.g., Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 129, 467 P.2d 372 (1970). However, any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501, 79 S.Ct. 948, 952, 3 L.Ed.2d 988 (1959). As Taylor will show, below, this case can be resolved on legal issues subject to de novo review.

##### **4.1.2 Taylor has a statutory right to trial by jury in this unlawful detainer action, which should have been preserved inviolate under CR 38.**

Civil Rule 38 preserves both constitutional and statutory rights to trial by jury: “The right of trial by jury as declared by article 1, section 21 of the constitution **or as given by a statute** shall be preserved to the parties inviolate.” CR 38 (emphasis added); *State ex rel. Dept. of Ecology v. Anderson*, 94 Wn.2d 727, 728-29, 620 P.2d 76 (1980) (“In civil cases, a jury is available if a

statute so provides or if the matter is one which was triable before a jury when the constitution was adopted”).

The constitutional right to trial by jury is enshrined in Wash. Const. art. I, § 21: “The right of trial by jury shall remain inviolate.” This provision guarantees those rights to trial by jury which existed at the time of the adoption of the constitution in 1889. *Durrah v. Wright*, 115 Wn. App. 634, 637, 63 P.3d 184 (2003). Thus, the constitution guarantees a right to a jury trial in a civil action that is purely legal in nature, but not where the action is purely equitable in nature. *Auburn Mechanical, Inc. v. Lydig Const., Inc.*, 89 Wn.App. 893, 897, 951 P.2d 311 (1998). When a plaintiff seeks both legal and equitable relief, the constitutional right does not attach, but a trial court has discretion under CR 38 and 39 to allow a jury trial for some or all issues. *See Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 129, 467 P.2d 372 (1970).

The Legislature has, from time to time, enacted statutes giving litigants additional rights to trial by jury in specific types of cases. In unlawful detainer cases, “Whenever an issue of fact is presented by the pleadings it **must be tried by a jury**, unless such a jury be waived as in other cases.” RCW 59.12.130 (emphasis added). This provides a statutory right to trial by jury, above and beyond the constitutional right.

Although the boundaries of the constitutional right depend on the equitable/legal distinction that governed the right at the time the constitution was enacted, this statutory right does not. Rather, the statute uses mandatory language. Disputed issues of fact **must** be tried by a jury. The only exception is if a jury is waived. A jury may be waived under CR 38 by a party's failure to properly make a jury demand. CR 38(d). Taylor followed all required procedures in making his jury demand.<sup>2</sup> Taylor did not waive a jury. He had a statutory right to have his claim tried by a jury. The trial court erred in denying Taylor's jury demand.

#### **4.1.3 Taylor's claims were wholly legal, requiring preservation of his right to a jury trial.**

Even if Taylor's statutory right to a jury trial is subject to the legal/equitable distinction that governs the constitutional right, Taylor still had a right to a jury trial because his claims were wholly legal in nature. Where all of the claims are legal,

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<sup>2</sup> Aubol argued to the trial court that Taylor had failed to serve the jury demand, but admitted that Aubol received notice of the demand "at the trial setting on December 16, 2015." CP 83. This is all the rule requires. Under CR 38(b), any party may demand a trial by jury by serving and filing the demand "**at** or prior to the time the case is called to be set for trial." CR 38(b) (emphasis added). Taylor filed the demand and paid the jury fee prior to the trial setting and delivered notice to Aubol either prior to or at the trial setting. CP 83; RP 2-3. Taylor did not waive his right to a jury trial.

“the right to a jury trial is clear.” *Auburn*, 89 Wn. App. at 898-99.

Taylor’s claim sought, in the alternative, return of his personal property or money damages, stemming from Aubol’s breach of its legal duties under the landlord-tenant act (particularly RCW 59.18.312 dealing with the disposition of personal property following eviction). Aubol made the bare argument that these were equitable claims. The trial court agreed, without providing any reasoning. The trial court was wrong.

**4.1.3.1 Taylor’s request for the return of his property is legal, not equitable.**

Taylor’s request for the return of his property is not equitable. As Aubol argued to the trial court, his request is akin to a claim for replevin. Replevin is, historically, an action at law triable by jury. *Theodore v. Washington Nat. Inv. Co.*, 164 Wash. 243, 249, 2 P.2d 649 (1931). Resolution of the claim as part of the unlawful detainer action does not change the nature of Taylor’s request for the return of his property—it is still a wholly legal claim. *See FPA Crescent*, 190 Wn. App. at 675.

In *FPA Crescent*, the court noted that an unlawful detainer action is a streamlined statutory substitute for the more expensive and lengthy common law action of ejectment.

*Id.*, 190 Wn. App. at 675. Ejectment, like replevin, is historically an action at law to which the constitutional right of trial by jury attaches. *Durrah*, 115 Wn. App. at 639 (in contrast to the equitable claim of quiet title), 644. Taylor’s request was properly heard under the unlawful detainer action. *See Excelsior Mortg. Equity Fund II, LLC v. Schroeder*, 171 Wn.App. 333, 344, 287 P.3d 21 (2012) (holding that an unlawful detainer action is a proper forum to resolve the issue of personal property left behind after eviction).

Both replevin and ejectment are “action[s] for the recovery of ... specific real or personal property,” which “shall be tried by a jury.” RCW 4.40.060 (codifying the common law in existence at the time of statehood, *see Auburn*, 89 Wn. App. at 902). Taylor’s request for the return of his property was in the nature of a claim for replevin, wholly legal in nature, triggering the constitutional right to jury trial.

#### **4.1.3.2 Taylor’s request for damages was also legal.**

Taylor’s request for damages if the property could not be returned was also legal. An action for money damages resulting from breach of a legal duty is the classic example of a claim at law. *See Auburn*, 89 Wn. App. at 901 (“Money damages is exactly the remedy juries traditionally determine.”); RCW 4.40.060 (“an action for the recovery of money only...shall be tried by a jury”).

Taylor's claim for money damages is of the same nature as a claim for negligence or breach of contract: Aubol had certain legal duties to Taylor in regards to the personal property; Aubol breached those duties; and the breach caused Taylor to suffer damages.

The only issues Taylor raised in his request were the return of the personal property, in the nature of replevin, and recovery of money damages, for breach of a legal duty. Taylor's claims were wholly legal in nature. He has a constitutional right to a jury trial. The trial court erred in concluding the claims were equitable. The trial court erred in denying Taylor's jury demand.

**4.1.4 Even if Taylor's claims could be found to raise some equitable issues, the only real issue for trial was Taylor's legal claim for damages, which should have been heard and decided by a jury.**

Even if Taylor's claims could be found to raise some equitable issues, the trial court's denial of the jury demand was still an abuse of discretion. Where a plaintiff brings both legal and equitable claims, the constitutional right to trial by jury does not attach because of the equitable claims. *Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 128, 467 P.2d 372 (1970) ("if a main issue was equitable there was no right of trial by jury on any of the issues presented"). However, CR 38 and 39 granted

trial courts discretion to allow a jury trial in a case involving equitable issues. *Id.* at 129.

In exercising that discretion, trial courts must consider a number of factors. *Scavenius*, 2 Wn. App. at 129-30. The trial court must go “beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.” *Id.*

Here, the only “real issue” in dispute was Taylor’s claim for money damages—a purely legal issue. By the time of the jury demand and Aubol’s motion to strike it, the parties had already acknowledged before the court that most or all of the personal property was already unrecoverable because it had been sold, stolen, or otherwise disposed of. *E.g.*, RP 204 (Aubol stated that two sales were held and what didn’t sell was thrown away); CP 37 (Aubol told Taylor that his property was sold or stolen); *see* CP 77 (“[Aubol] admits that much of [Taylor’s] personal property was stolen”).

Because the parties and the court knew that the personal property could not be recovered, Taylor’s request for return of the property was not a real issue for trial. The only real issue for trial was Taylor’s claim for money damages—a wholly legal issue. The trial court’s denial of Taylor’s jury demand was based on untenable grounds or untenable reasons. There were no equitable issues to interfere with a jury trial on the legal issues

of liability and damages. The trial court abused its discretion in denying Taylor's jury demand. This Court should reverse the judgment and remand for a new trial, this time with a jury.

**4.2 Aubol was not entitled to claim protection under RCW 59.18.312 because Aubol failed to follow the statute's required procedures.**

If this Court disagrees with Taylor on the jury issue, this Court should review the merits of the trial court's findings of fact and conclusions of law. The trial court entered numerous erroneous findings and conclusions, stemming largely from the trial court's erroneous conclusion that Aubol complied with statutory requirements. Aubol did not comply and did not make any good faith effort to return Taylor's property or notify him of the sale. Taylor should have been entitled to compensation for the property that Aubol wrongfully withheld.

Aubol failed to provide the statutorily required form regarding storage of personal property. RCW 59.18.312(6) requires, "When serving a tenant with a writ of restitution under subsection (5) of this section, the sheriff shall also serve the tenant with a form **provided by the landlord** that can be used to request the landlord to store the tenant's property." The form is mandated by the statute and gives the tenant the opportunity to request storage of the tenant's personal property and to

provide a forwarding address to which the landlord “must” send any notice of sale. RCW 59.18.312(6).

Aubol, while claiming to be familiar with the statutory requirements, did not provide the sheriff with this form. RP 390-91. The trial court erred in concluding that Aubol could rely on the sheriff to deliver the form to Taylor, because the form must be “provided by the landlord.” RCW 59.18.312(6). Aubol did not provide a form. As a result, the sheriff did not deliver the form to Taylor. Because he did not receive the form, Taylor did not have the opportunity to provide a forwarding address to which Aubol would have been required to send the notice of sale.

The trial court erred in concluding that Aubol was justified in its actions in relation to the property. Aubol had failed to follow the requirements of RCW 59.18.312. As a result of Aubol’s failure, Taylor was deprived of his right to notice of the sale of his property. Aubol cannot hide behind a statute that it failed to obey. This Court should reverse the judgment and remand for entry of new findings and conclusions based on Aubol’s failure to comply with the statute.

## **5. Conclusion**

Taylor’s claims were wholly legal, not equitable. Taylor complied with the procedural requirements to demand a jury. The trial court erred and/or abused its discretion in denying

Taylor's jury demand. This Court should reverse the trial court's findings of fact, conclusions of law, and final judgment and remand for a new trial, this time with a jury.

Alternatively, this Court should find that Aubol failed to comply with RCW 59.18.312. This Court should reverse the trial court's findings of fact, conclusions of law, and final judgment and remand for entry of new findings and conclusions.

Respectfully submitted this 30<sup>th</sup> day of April, 2018.

/s/ Kevin Hochhalter  
Kevin Hochhalter, WSBA #43124  
Attorney for Appellant  
kevin@olympicappeals.com  
Olympic Appeals PLLC  
4570 Avery Ln SE #C-217  
Lacey, WA 98503  
360-763-8008

## **Certificate of Service**

I certify, under penalty of perjury under the laws of the State of Washington, that on April 30, 2018, I caused the foregoing document to be filed with the Court and served on Counsel listed below by way of the Washington State Appellate Courts' Portal.

Craig Michael McReary  
Craig M McReary PS  
PO Box 2340  
Longview, WA 98632-8409  
bfreynolds@qwestoffice.net  
lskeie@qwestoffice.net

DATED this 30<sup>th</sup> day of April, 2018.

/s/ Kevin Hochhalter  
Kevin Hochhalter, WSBA #43124  
Attorney for Appellant  
kevin@olympicappeals.com  
Olympic Appeals PLLC  
4570 Avery Ln SE #C-217  
Lacey, WA 98503  
360-763-8008

# OLYMPIC APPEALS PLLC

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