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

AUBOL INVESTMENTS, LLC

Respondent

v

AMUND BRUCE TAYLOR

Appellant

ON APPEAL FROM THE SUPERIOR COURT FOR COWLITZ
COUNTY

The Honorable Marilyn Haan
Superior Court No. 15 2 00404 3

RESPONDENT'S OPENING BRIEF

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RESPONSE TO ASSIGNMENTS OF ERROR	
1.	The trial Court did not err by striking Taylor’s demand for a jury trial.	2
2.	The trial Court did not err by entering Finding of Fact number 19 as Aubol and the Cowlitz County Sheriff’s Department followed the proper procedures.	2
3.	The trial Court did not err by entering Finding of Fact number 20 as the trial Court believed that Taylor had left the property.	2
4.	The trial Court did not err by entering Finding of Fact number 23 as the trial Court believed the testimony supporting such Finding.	2
5.	The trial Court did not err by entering Finding of Fact number 25 as Aubol had taken legal possession of the personal property and Taylor failed to take action.	2
6.	The trial Court did not err by entering Conclusion of Law number 4 as Taylor signed a Waiver and Release of liability in favor of Aubol.	2
7.	The trial Court did not err by entering Conclusion of Law number 6 as the parties did not reach any de facto leases or storage agreements.	2

8.	The trial Court did not err by entering Conclusion of Law number 8 as Taylor failed to take action to protect his personal property.	3
9.	The trial Court did not err by entering Conclusion of Law number 9 as a proper Notice of Storage and Sale was served.	3
10.	The trial Court did not err by entering Conclusion of Law number 10 as Aubol conducted a proper sale and properly applied the proceeds.	3
11.	The trial Court did not err by entering Conclusion of Law number 12 as Taylor failed to prove the nature and extent of his personal property.	3
12.	The trial Court did not err by entering Conclusion of Law number 13 as Taylor's personal property was of no value.	3
13.	The trial Court did not err by entering Conclusion of Law number 15 as Taylor failed to prove any damages and did not prevail.	3
14.	The trial Court did not err by entering Conclusion of Law number 18 as Aubol prevailed and is entitled to judgment and attorney's fees.	3
III.	STATEMENT OF THE CASE	5

IV.	ARGUMENT	7
4.1	The trial Court did not err in denying Taylors' jury demand	8
4.1.1	Standard of review	8
4.1.2	Statutory right to jury	9
4.1.3/4.1.3.1	Taylor's claims are not wholly legal and thus do not require preservation of his right to a jury trial	11
4.1.3.2	Taylor's request for damages is not necessarily a legal action	12
4.1.4	Taylor's claims were equitable he should not have had a jury	12
4.2	The trial Court made no error because the procedures under RCW 59.18.312 were followed	12
4.3	Mootness	13
4.4	Attorney's fees	14
V.	CONCLUSION	15

TABLE OF AUTHORITIES

Washington cases

<i>Burgess v Crossan</i> , 189 Wn.App. 97 (2015)	8
<i>Scavenius v Manchester Port Dist.</i> , 2 Wn.App. 126, 129 (1970)	9
<i>Brown v Safeway</i> , 94 Wn.2d 359, 368 (1980)	9, 12
<i>Housing Authority of Pasco v Pleasant</i> , 126 Wn.App. 382 (2005)	10, 11
<i>First Union Management, Inc. v Slack</i> , 36 Wn.App. 349 (1984)	10
<i>Excelsior v Schroeder</i> , 171 Wn.App. 333 (2012)	10
<i>Consulting Overseas Management, Ltd. v Shtikel</i> , 105 Wn.App. 80 (2001)	11
<i>Re Kelly and Moesslang</i> , 170 Wn.App. 722 (2012)	12
<i>Foster v Gilliam</i> , 165 Wn.App. 33, 46 (2011)	12
<i>Auburn Mech., Inc. v Lydig Constr., Inc.</i> , 89 Wn.App. 893, 897 (1998)	12
<i>Robel v Roundup Corp.</i> , 148 Wn.2d 35 (2002)	14
<i>King Aircraft Sales, Inc. v Lane</i> , 68 Wn.App. 706 (1993)	14
<i>Harbor Lands LP v City of Blaine</i> , 146 Wn.App. 589 (2008)	14

I. INTRODUCTION

Aubol Investments, LLC rented real property in Longview, Washington to Amund Taylor. Aubol served Taylor with a Notice Terminating Tenancy. Taylor refused to vacate even after receiving extensive additional time. A properly completed unlawful detainer action restored possession of the premises to Aubol.

The Cowlitz County Sheriff's Department served the Writ of Restitution and Personal Property Storage form. Taylor did not remove his personal property, provide a forwarding address or make demands on Aubol.

Taylor left a substantial amount of valueless personal property on the premises. Aubol properly provided Notice of Storage and Sale. Taylor did not pay or recover his personal property. After Taylor failed protect his rights, he filed a Motion for Return of Personal Property. Since seeking the return of personal property is an equitable claim that was brought beyond the function of the unlawful detainer statute, a jury trial was denied. The trial court found Aubol's procedures to have been performed correctly under the law and Taylor's personal property to be valueless. The denial of Taylor's Motion should be upheld.

II. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial Court did not err by striking Taylor's demand for a jury trial.

2. The trial Court did not err by entering Finding of Fact number 19 as Aubol and the Cowlitz County Sheriff's Department followed the proper procedures. CP 159.

3. The trial Court did not err by entering Finding of Fact number 20 as the trial Court believed that Taylor had left the property. CP 159.

4. The trial Court did not err by entering Finding of Fact number 23 as the trial Court believed the testimony supporting such Finding. CP 160.

5. The trial Court did not err by entering Finding of Fact number 25 as Aubol had taken legal possession of the personal property and Taylor failed to take action. CP 160.

6. The trial Court did not err by entering Conclusion of Law number 4 as Taylor signed a Waiver and Release of liability in favor of Aubol. CP 162.

7. The trial Court did not err by entering Conclusion of Law number 6 as the parties did not reach any de facto leases or storage agreements. CP 162.

8. The trial Court did not err by entering Conclusion of Law number 8 as Taylor failed to take action to protect his personal property. CP 162.

9. The trial Court did not err by entering Conclusion of Law number 9 as a proper Notice of Storage and Sale was served. CP 163.

10. The trial Court did not err by entering Conclusion of Law number 10 as Aubol conducted a proper sale and properly applied the proceeds. CP 163.

11. The trial Court did not err by entering Conclusion of Law number 12 as Taylor failed to prove the nature and extent of his personal property. CP 163.

12. The trial Court did not err by entering Conclusion of Law number 13 as Taylor's personal property was of no value. CP 163.

13. The trial Court did not err by entering Conclusion of Law number 15 as Taylor failed to prove any damages and did not prevail. CP 163.

14. The trial Court did not err by entering Conclusion of Law number 18 as Aubol prevailed and is entitled to judgment and attorney's fees. CP 163.

Issues Pertaining to Assignments of Error

1. Did the trial Court err in concluding that Taylor's claims were of such an equitable nature that a jury trial could be denied?
2. Was there a failure to provide the form regarding storage of personal property pursuant to RCW 59.18.312?
3. Are Taylor's claims now moot?
4. Is Aubol entitled to attorney's fees?

III. STATEMENT OF THE CASE

Amund Taylor rented residential real property from Aubol Investments, LLC located at 4322 and 4324 Ocean Beach Highway in Longview Washington. VRP 143. Taylor slept at both properties. VRP 226. This was contrary to the original purpose of the rental. Exhibit 7.

Taylor signed an Accident Waiver and Release of Liability regarding his occupation of 4322 Ocean Beach Highway. VRP 207, Exhibit 6. Taylor agrees that he is bound by the Waiver and Release. VRP 209. Aubol obtained the Release because Taylor was not to live there but was storing personal property on and in the condemned structure at 4322 Ocean Beach Highway. VRP 323.

Taylor knew that his tenancy had been terminated when he received a 20-Day Notice terminating his tenancy. VRP 216 - 217. Taylor admits that there was no pending negotiation for a new lease after February 13, 2015. VRP 221. Taylor knew that he had to vacate the premises by March 31, 2015. VRP 221, CP 30.

Taylor failed to timely vacate. CP 158. Aubol brought an unlawful detainer action and was granted an Order for a Writ of Restitution. CP 158 - 159. Aubol provided Writs of Restitution and a Storage Form to the Cowlitz County Sheriff who served the documents at the premises. CP 65 and CP 66.

Taylor failed to move his personal property from the premises by May 6, 2015. VRP 222. Taylor knew that the Writ of Restitution was to be executed on May 6, 2015. VRP 229. Taylor acknowledges that he received service of the Writ of Restitution on April 23, 2015. CP 36, line 18, VRP 155, line 9. Taylor's own witness, Cynthia Nielsen acknowledged that papers were received from the Sheriff indicating that Taylor must vacate by May 6, 2015. VRP 125. Taylor failed to understand the process of the execution of the Writ of Restitution. VRP 198. Taylor's counsel failed to understand when the RCW 59.18.312 request for storage of personal property was to be served. VRP 390 - 391. Taylor vacated the premises by May 6, 2015. VRP 242 - 243. Taylor was arrested for trespassing on May 12, 2015. VRP 346 - 347. Taylor's counsel acknowledged that the eviction in this case is not at issue. VRP 7 - 8.

On May 13, 2015, Aubol served Taylor with a Notice of Sale with a sale date of June 12, 2015. VRP 340. Aubol conducted a public sale of the stored personal property on June 12, 2015. VRP 341 - 342. Taylor never provided a forwarding address to Aubol. VRP 212. Taylor did not object to the storage of his personal property in writing. VRP 212. Taylor did not pay any storage costs to Aubol. VRP 213.

When Aubol took possession of the premises, drug paraphernalia, including needles, meth/crack smoking pipes and scales were found. VRP 350 - 352. The expert testimony of Glenn Moorhouse indicates that Taylor's personal property was valueless. VRP 260 - 261. Taylor understood that Brenda Aubol was not a part of the management of Aubol Investments, LLC. VRP 211. Brenda Aubol was, in fact, not part of the management of Aubol Investments, LLC. VRP 320.

After failing to protect his rights, Taylor filed a Motion for Return of Personal Property. CP 35. Taylor's Motion requests the return of his personal property or alternatively a Judgment for its value. CP 35. No authority from RCW 59.12 or RCW 59.18 is provided.

The trial Court heard argument regarding the equitable nature of Taylor's claims. VRP 2 - 4. The trial Court acknowledged that Taylor's issues were equitable in nature and not derived from the Landlord-Tenant Act. VRP 5. The trial Court struck the jury. VRP 5, CP 179 - 180. At trial, Taylor continued to pursue the equitable action of the return of his property. VRP 191 - 193.

IV. ARGUMENT

The trial Court made no error in denying Taylor's demand for a trial by jury. Taylor did not have a right to a jury trial under RCW 59.12.130 as the issues he presented were beyond the scope of the

unlawful detainer act. Under the constitutional standard, Taylor's claims were equitable and therefore not subject to a jury trial. This Court should affirm the trial Court order striking the jury in this cause.

The trial Court entered multiple Finding of Fact and Conclusion of Law that were supported by evidence and the trial Court's credibility determinations. Aubol complied with the statutory requirements of RCW 59.12 et seq. and RCW 59.18 et seq. Aubol made multiple good-faith efforts to return Taylor's property, even after the law no longer required. Taylor's property was valueless so there were no damages for Taylor to pursue.

The fact that Taylor's personal property was valueless and the fact that error was not assigned to certain Finding of Fact and Conclusion of Law makes the issues raised by Taylor moot.

4.1 The trial Court did not err in denying Taylor's jury demand.

4.1.1 Standard of review

The trial Court determined that the issues presented by the facts in this case are primarily in equity. Challenges to factual Finding reviewed for substantial evidence to persuade a fair minded person of the facts truth. Burgess v. Crossan, 189 Wn.App. 97 (2015). There is substantial evidence in the record to support the trial Court. Review of the

denial of a jury in this case is based on an abuse of discretion. Scavenius v. Manchester Port Dist., 2 Wn.App. 126, 129 (1970). The trial Court is given broad discretion in determining if there is a right to a jury. *Id.* The Washington Supreme Court has taken the standard of review one step further to a clear abuse of discretion. Brown v. Safeway, 94 Wn.2d 359, 368 (1980). This Court should review the striking of the jury in this cause for a clear abuse of discretion.

4.1.2 Statutory right to jury.

The meaning and implications of CR 38 are well discussed in the Scavenius and Brown cases. The trial Court has broad discretion to grant or deny a jury trial. *Id.* The trial Court exercised its discretion in this case and determined that the matter was primarily one of equity. The Court in Brown, at 368, analyzes several factors: (1) *Who seeks the equitable relief?* Here it is Taylor. (2) *Is the person seeking the equitable relief also demanding trial of the issues to the jury?* Yes. (3) *Are the main issues primarily legal or equitable in their nature?* Taylor filed an ad hoc Motion for return of property that is not authorized by statute. His Motion was not for replevin, but rather a request that the Court go beyond the statute and find that Aubol had acted in bad faith. (4) *Do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury?* Yes, Taylor had several pages of

handwritten personal property lists and values. The location, quality, quantity and existence of the personal property items were all unknown. (5) *Are the equitable and legal issues easily separable?* No, Taylor's equitable requests of the Court were intertwined with any claims that could be considered legal in nature. (6) *In the exercise of such discretion, great weight should be given to the constitutional right of trial by jury and if the nature of the action is doubtful, a jury trial should be allowed.* The trial Court was briefed on the issue and had no doubt that Taylor's Motion was in equity. (7) *The trial Court should go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.* The trial Court's ruling suggests that broad consideration was given to these issues.

Taylor also claims a right to a jury under RCW 59.12.130. The purpose of RCW 59.12 et seq. is to provide a summary process for the restoration of possession in real property owners. Housing Authority of Pasco v. Pleasant, 126 Wn.App. 382 (2005); First Union Management, Inc. v. Slack, 36 Wn.App. 849 (1984). Other issues can be resolved by the Court within the action. Id. Specifically, a dispute over personal property is within the trial Court's jurisdiction in an unlawful detainer action. Excelsior v. Schroeder, 171 Wn.App. 333 (2012). The Court in Excelsior

includes personal property as part of a Court's jurisdiction in an unlawful detainer action pursuant to RCW 2.28.150. This means that the inclusion of personal property issues is not part of the unlawful detainer statute, but the Court of Appeals has given trial Courts the jurisdiction to resolve such issues. This is different than the court having direct jurisdiction under RCW 59.12 et seq. Since personal property issues are not part of the statutory jurisdiction of the trial court, the right to a jury trial under the statute should not extend to such issues. Additionally, the issue of possession is not contested in this case which means that the application of the statute is complete. Pleasant, supra.

4.1.3/4.1.3.1 Taylor's claims are not wholly legal and thus do not require preservation of his right to a jury trial.

Taylor's Motion for Return of Personal Property asks the trial Court to go outside of the unlawful detainer statute and residential landlord tenant act and fashion relief that is not found in the statutes. Since the evidence in this case supported the complete and correct completion of the unlawful detainer process, Taylor's claims must be for some type of constructive trust or other equitable demand for the return of personal property. Consulting Overseas Management, Ltd. v. Shtikel, 105 Wn.App. 80 (2001). After the June 12, 2015 sale by Aubol, Taylor had no further rights to the personal property. RCW 59.18.312. It is clear through

the Verbatim Report of Proceedings that Taylor did not comprehend this. Taylor continued to argue that Aubol was depriving him of his personal property in bad faith which sounds in equity. Another analogous equitable theory for the return of property arises in committed intimate relationships. In Re Kelly and Moesslang, 170 Wn.App. 722 (2012). Taylor's claims may have some legal components, but there are sufficient equitable issues for the trial court to exercise its broad discretion.

4.1.3.2 Taylor's request for damages is not necessarily a legal action.

Not all claims for damages are legal in nature. Foster v. Gilliam, 165 Wn.App. 33, 46 (2011). Accordingly, a claimant is not necessarily entitled to a jury for damages claims. Id. For the reasons set forth above, Taylor's damage claims are not legal in nature.

4.1.4 If Taylor's claims were equitable he should not have had a jury.

Equitable claims do not give rise to the right to a jury trial. Auburn Mech., Inc. v. Lydig Constr., Inc., 89 Wn.App. 893, 897 (1998); Brown supra. Taylor is incorrect to assert that if his claims were purely equitable he would be entitled to a jury.

4.2. The trial Court made no error because the procedures under RCW 59.18.312 were followed.

Taylor and his cohabitant admit that they received the service of the Writ of Restitution from the Sheriff. The Sheriff's Amended Returns on the Writs of Restitution indicate that the RCW 59.18.312 request for storage of personal property was served. This form is routinely provided to the Cowlitz County Sheriff's Department by Aubol's counsel and Writs of Restitution are not processed without it.

4.3 Mootness

By failing to assign error to Finding of Fact number 22, Taylor admits that Aubol's storage and sale of Taylor's personal property was proper. If storage and sale were properly completed, then Taylor no longer has a personal property interest to defend as RCW 59.18.312 allows the landlord to dispose of remaining property.

By failing to assign error to Finding of Fact number 26, Taylor admits that the personal property left on the premises was valueless. If there is no value to the property left on the premises, no damages can attach.

By failing to assign error to Conclusion of Law number 7, Taylor admits that the unlawful detainer action was properly prosecuted. If the unlawful detainer action was properly prosecuted, there are no defects in the process, i.e. the request for storage of personal property was properly given pursuant to RCW 59.18.312.

By failing to assign error to Conclusion of Law number 14, Taylor admits that Aubol was free to dispose of Taylor's personal property after the sale. If Aubol was free to dispose of the personal property, Taylor has no issue to raise.

Unchallenged Findings of Fact are verities on appeal. Robel v. Roundup Corp., 148 Wn.2d 35 (2002). Unchallenged Conclusions of Law become the law of the case. King Aircraft Sales, Inc. v. Lane, 68 Wn.App. 706 (1993). By failing to assign error to the above Findings and Conclusions, Taylor has rendered this appeal moot. A case is moot if a Court can no longer provide effective relief. Harbor Lands LP v. City of Blaine, 146 Wn.App. 589 (2008). Since Taylor's personal property was properly handled in the unlawful detainer action and the sale under RCW 59.18.312 was completed properly, he has no personal property on which to claim damages. This renders the Court unable to provide relief.

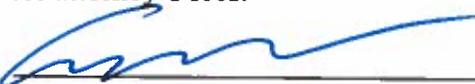
4.4 Attorney's fees.

Aubol should be awarded attorney's fees as a result of having to defend this appeal. RAP 18.1 and RCW 59.18.290. Based on the arguments set forth above, the Rules of Appellate Procedure and the substance of this case, Aubol requests that the Court award attorney fees for having to defend this appeal.

V. CONCLUSION

Based on the foregoing facts and authorities, Aubol respectfully urges this Court to affirm the trial Court. Aubol further respectfully urges this Court to grant its request for attorney's fees.

Dated July 31, 2018.



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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on July 31, 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.

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