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DIVISION II

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Court of Appeals No. 49671-2-II

STATE OF WASHINGTON

IN THE WASHINGTON STATE COURT OF APPEALS, ^{BY} DIVISION II

LARSON MOTORS, INC., a Washington corporation,
Plaintiff/Respondent,

vs.

PAUL SNYPP and JANE DOE SNYPP, a married couple,
Defendants/Appellants.

APPELLANTS' REPLY BRIEF AND ANSWER TO CROSS-APPEAL

By:

Christopher M. Constantine, WSBA, No. 11650
Of Counsel, Inc., P. S.
Of Attorneys for Appellants
P. O. Box 7125
Tacoma, WA 98417-0125
(253) 752-7850

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III. ARGUMENT

A. Snypps object to any consideration of the illegal recordings of Paul Snypp's telephone conversations with Larson's employees.

Snypps renew their objection made in the trial court to any consideration of the illegal recordings made by Larson of telephone conversations between Snypp and Larson's employee.¹ The trial court declined to consider those recordings.² Notwithstanding RAP 9.12 and despite the trial court's refusal to consider them, those illegal recordings remain in the record on appeal. *Goodwin v. Wright*, 100 Wn. App. 631, 648, 6 P.3d 1 (2000). It is therefore appropriate for the Court to consider here Snypps' renewed objection to those illegal recordings. *Engstrom v. Goodman*, 166 Wn. App. 905, 909 n. 2, 271 P.3d 959, *review denied*, 175 Wash.2d 1004, 285 P.3d 884 (2012).

The recordings are illegal and inadmissible under RCW 9.73.030, which provides, in pertinent part, as follows:

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between

¹ CP 104-120; CP 169-171; CP182-83.

² VRP 08/19/2016 p. 18, l. 17-22; p. 19 l. 7-10.

points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, *without first obtaining the consent of all the participants in the communication;*

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated *without first obtaining the consent of all the persons engaged in the conversation...*

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: *PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded...* (Emphasis added).

The statute does not define what a private communication is. A communication is private (1) when parties manifest a subjective intention that it be private and (2) where that expectation is reasonable. *State v. Kipp*, 179 Wn. 2d 718, 729, 317 P. 3d 1029 (2014); *State v. Smith*, 196 Wn. App. 224, 235, 382 P. 3d 721, *review granted*, 2017 WL 1185863 (2017).

Factors bearing on the reasonableness of the expectation of privacy include the duration and subject matter of the communication, the location of the communication and the presence of third parties, and the role of the nonconsenting party and his or her relationship to the consenting party. *State v. Kipp*, 179 Wn. 2d 729. The determination of reasonableness calls for a case-by-case consideration of all the facts. *Id.*

A court will generally presume that conversations between two parties over the telephone are intended to be private. *Dillon v. Seattle Deposition Reports, LLC*, 179 Wn. App. 41, 60, 316 P.3d 1119 (2014) (*Quoting State v. Modica*, 164 Wash.2d 83, 89, 186 P.3d 1062 (2008)).

The three telephone conversations illegally recorded by Larson were initiated by Bryan Cabrera from Larson Motors' place of business to Paul Snypp.³ The calls were made by a service provider to its client. There is no suggestion anyone other than Mr. Cabrera and Paul Snypp was present at or participated in any of those three telephone conversations.

Paul Snypp testified he had an expectation of privacy in those telephone conversations with Bryan Cabrera: "*I expect my telephone conversations to be private regardless of who I am walking with. When I was talking with Mr. Cabrera, I had no idea he was recording our*

³ CP 128-29.

*telephone conversation and he never told me that he intended to record our calls.”*⁴

Larson attempts to undermine Paul Snypp’s testimony with excerpts from his deposition in this case.⁵ None of those excerpts contain any reference to any of the three telephone conversations between Bryan Cabrera and Paul Snypp.⁶ Larson’s attempt to discredit Paul Snypp therefore fails.

Even if it had merit, Larson’s singular reliance upon a conflict in Paul Snypp’s testimony fails to consider the host of other factors that inform the court’s determination whether Paul Snypp’s expectation of privacy in his telephone conversations is reasonable under RCW 9.73.030. That determination requires consideration of all the facts. *State v. Kipp*, 179 Wn. 2d 729.

Larson’s passing discussion of those other factors fails to contain a single citation to the record or to any authority.⁷ Larson’s argument should therefore not be considered. RAP 10.3 (a) (6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 809, 828 P. 2d 49 (1992).

⁴ CP 183.

⁵ Brief of Respondent, p. 6-7.

⁶ *Id.*

⁷ Brief of Respondent, p. 17.

Larson argues as the telephone conversations at Bryan Cabrera's end took place at Larson's dealership, any third party could have heard the conversation.⁸ Larson fails to establish any such third parties were near enough to hear or did hear any of those conversations. Larson thus offers no more than speculation as to whether anyone else heard any part of those conversations. Mere speculation is not substantial evidence. *Little v. King*, 160 Wn. 2d 696, 705, 161 P. 3d 645 (2007). Larson also overlooks that Bryan Cabrera placed the three telephone calls to Paul Snypp. Mr. Snypp had no way of determining whether third parties were present on Mr. Cabrera's end of the conversation. Moreover, as in *Dillon and Modica, supra*, Paul Snypp was entitled to rely on the presumption those telephone conversations were private.

Nor does Larson offer any explanation for its failure to obtain Paul Snypp's prior consent to recording of those telephone conversations, as required by RCW 9.73.030 (1) (a), (b), or to include in the recording an announcement that it is being recorded, as required by RCW 9.73.030 (3).

As the three recorded telephone conversations violate RCW 9.73.030, they are inadmissible in evidence in this case. RCW 9.73.050 ("Any information obtained in violation of RCW 9.73.030... shall be inadmissible in any civil or criminal case in all courts of general or

⁸ *Id.*

limited jurisdiction in this state...”). Bryan Cabrera’s perceptions based upon those recorded telephone conversations are also inadmissible.

Schonauer v. DCR Entertainment, Inc., 79 Wn. App. 808, 818-19, 905 P.2d 392, *review denied*, 129 Wash.2d 1014, 917 P.2d 575 (1996).

In light of the foregoing, the Court should conclude, as did the trial court, that the recordings of the three recorded telephone conversations between Bryan Cabrera and Paul Snyppe violate RCW 9.73.030 and are inadmissible. Because they are inadmissible, any use by Larson of those illegal recordings constitutes improper briefing under RAP 10.7.

B. The trial court did not err in denying Larson’s motion for sanctions.

Larson’s argument on sanctions rests upon a comparison of Paul Snyppe’s answer and deposition testimony with statements he allegedly made in the three illegally recorded telephone conversations.⁹ By using those illegally recorded telephone conversations for comparison, Larson violated RCW 9.73.050, *supra*. Larson’s use of such illegally obtained evidence to make a comparison constitutes improper argument under RAP 10.7.

⁹ Brief of Respondent, p. 14.

Larson makes no attempt to explain how any of Paul Snypp's actions amounted to perjury. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. RAP 12.1 (a); *Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P. 2d 413 (1996).

Proof of perjury requires direct evidence of falsity. Paul Snypp's statements, by themselves are insufficient to establish perjury. *State v. Wallis*, 50 Wn. 2d 350, 354-55, 311 P. 2d 659 (1957) ("*Contradictory statements, sworn or unsworn, are not direct evidence of the falsity of the testimony which the law requires.*"); *Nessman v. Sumpter*, 27 Wn. App. 18, 24, 615 P.2d 522 (1980).

Here, because its argument is based upon illegally obtained evidence and because it fails to provide direct evidence of falsity, Larson's argument that Snypp committed perjury should be rejected. The trial court did not err in denying Larson's motion for sanctions.

C. The trial court erred in entering a final judgment based upon its order granting Larson's motion for summary judgment.

In support of its argument that written findings were not required to support the trial court's finding of no just reason for delay, Respondent misplaces reliance upon *Pepper v. King County*, 61 Wn. App. 339, 350, 810 P. 2d 527 (1991).¹⁰ In *Pepper*, the Court of Appeals dismissed the appeal, as the trial court's order in that case met none of the requirements

¹⁰ Brief of Respondent, p. 25.

of either CR 54 (b) or RAP 2.2 (d). “[W]e hold that the April 1990 order denying reconsideration cannot be reviewed because it meets none of the requirements of CR 54 (b) or RAP 2.2 (d).” 61 Wn. App. 353.

In *Pepper*, the Court of Appeals concluded that where the trial court’s opinion or the record clearly demonstrates the reasons for determining there is no just reason for delay, and where there is a written determination and direct for a final judgment, the Court of Appeals has jurisdiction to entertain the appeal and consider whether those reasons satisfy the test for immediate review. 61 Wn. App. 351.

Here, in contrast, Larson makes no effort to establish the trial court considered any of the reasons for determining no just reason for delay. Larson’s reliance upon *Pepper v. King County* is therefore misplaced.

Larson argues that RAP 2.2 (d) expressly states the appellate court has discretion to review entry of a final judgment as to less than all claims that is unsupported by written findings.¹¹ RAP 2.2 (d) provides, in pertinent part, “*In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the*

¹¹ Brief of Respondent p. 25.

parties.” Here, neither party sought discretionary review of the trial court’s judgment. Larson’s reliance upon RAP 2.2 (d) is therefore misplaced.

Larson also misplaces reliance upon *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association*, 156 Wn. 2d 253, 126 P. 3d 16 (2006).¹² In *Kershaw*, the court noted deficiencies in the trial court’s finding of no just reason for delay were not jurisdictional, and therefore the Court of Appeals nevertheless had authority to accept review pursuant to RAP 2.3 (b). 156 Wn. 2d 261 n. 4. Once again, neither party has raised an issue under RAP 2.3 (b) in this case. *Kershaw* therefore does not support Larson’s argument.

Larson’s discussion of the factors announced in *Schiffman v. Hanson Excavating Co., Inc.*, 82 Wn. 2d 681, 513 P. 2d 29 (1973)¹³ does not excuse the trial court’s failure to address those factors. As in *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 523, 6 P. 3d 22 (2000), by failing to address those factors, the trial court abused its discretion in certifying the judgment as final under CR 54 (b). 101 Wn. App. 526.

¹² *Ibid.*

¹³ Brief of Respondent, p. 25-28.

Larson's discussion of *Schiffman's* first factor, the relationship between the adjudicated and unadjudicated claims, fails to address the overlap in the evidence relied upon by Larson with the evidence supporting Appellant's claims. In *Nelbro*, the court noted the facts considered on summary judgment also supported the unadjudicated claims, and therefore the court considered the claims dismissed on summary judgment and the unadjudicated claims as closely intertwined. 101 Wn. App. 527-28. Here, many of the documents and other evidence relied upon by Larson are also relevant to Snypp's counterclaims. Thus, consideration here of *Schiffman's* first factor does not support the trial court's perfunctory finding of no just reason for delay.

Larson mentions *Schiffman's* second factor only in passing.¹⁴ In *Nelbro*, the court considered whether questions that would be reviewed on appeal are still before the trial court for determination in the unadjudicated portion of the case. 101 Wn. App. 528. Here, as in *Nelbro*, even if this Court affirms the summary judgment, much of the evidence presented on Snypp's remaining claims will be the same. Thus, as in *Nelbro*, even if questions resolved by the summary judgment in this case will not be raised again in the trial court, this factor does not weigh heavily in favor of a finding of no just reason for delay. 101 Wn. App. 528.

¹⁴ Brief of Respondent, p. 26.

As to *Schiffman's* third factor, in *Nelbro*, the court considered the possibility that developments in the litigation may moot a claim. 101 Wn. App. 528. Here, the possibility Appellant may recover more damages on his counterclaims than was awarded to Larson militates against a finding of no just reason for delay.

As to *Schiffman's* fourth factor, the court in *Nelbro* also considered whether an immediate appeal will delay the trial of unadjudicated matters without any offsetting advantage in terms of the simplification and facilitation of that trial. In *Nelbro*, the court concluded the CR 54 (b) certifications in that case might complicate the proceedings and waste judicial resources by encouraging an appeal of the summary judgment order if the petitioner in that case prevailed on its other claims. 101 Wn. App. 529. The same concern operates here. Certification of Larson's summary judgment may ultimately result in a waste of judicial resources if Snypp prevails on his counterclaims. Thus, as in *Nelbro*, this factor does not weigh strongly in favor of a finding of no unjust delay.

As to *Schiffman's* fifth factor, in *Nelbro*, the court also concluded the trial court must consider the practical effects of allowing an immediate appeal. 101 Wn. App. 529. Larson argues the Court should decide its

claims now.¹⁵ Larson's claims are run of the mill breach of contract claims. The amount involved does not threaten Larson's operations.

Larson fails to address other practical reasons recognized by this Court to delay entry of a final judgment until all claims against all parties have been resolved. *See Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now*, 119 Wn. App. 665, 694, 82 P.3d 1199 (2004) ((1) to offset judgments favorable to each side before any enforcement activity takes place; (2) to preclude the disruptive effects of enforcement and appellate activity while trial court proceedings are still ongoing; and (3) to avoid a multiplicity of appeals.) Consideration of Loeffelholz' additional practical reasons militates against a finding of no unjust delay in this case. Delay of certification of Larson's summary judgment as final will allow the trial court to offset judgments favorable to each side following trial on Appellant's counterclaims, will preclude the disruptive effects of enforcement pending the trial on Appellant's counterclaims, and will avoid a multiplicity of appeals.

In light of the foregoing, as in *Nelbro*, without consideration of all the relevant factors, the trial court's finding of no just reason for delay in the Order Granting Plaintiff's Motion for Summary Judgment and the Judgment does not support the certification of either the Order or the

¹⁵ Brief of Respondent, p. 27.

Judgment as final. As in *Nelbro*, the trial court's certification of those documents is untenable and must be reversed.

D. Larson's failure to address Snypp's affirmative defenses and counterclaims leaves unresolved issues of material fact precluding entry of summary judgment or any final judgment in this case.

Among the affirmative defenses raised by Snypp was the defense of breach of contract in paragraph 2.5 of his Answer, Affirmative Defenses and Counterclaim, wherein Snypp alleged Larson materially breached its current relationship with him and equally breached its promises made to Snypp to repair the damages caused by Plaintiff to his Porsche in 2008.¹⁶ Snypp testified as to the parties' agreement to repair those damages, and his understanding as to the scope of that agreement.¹⁷ Snypp testified Larson's repairs of the 2008 damage to the Porsche continued from 2011 to 2015, and Larson failed to complete those repairs.¹⁸ Bryan Cabrera testified as to Larson's 2011 repairs of that damage, but he denied that any repair obligation for the 2008 damage continued into 2015.¹⁹ Snypp also testified as to additional damages to the Porsche following the service appointment at Larson in February, 2015.²⁰ Unresolved questions of fact therefore surround the scope of Larson's

¹⁶ *Ibid.*

¹⁷ CP 185.

¹⁸ CP 186.

¹⁹ CP 127, 129.

²⁰ CP 190.

obligation to repair the 2008 damage caused by Larson to Snypp's Porsche, and whether Larson breached that obligation.

The unresolved issues of fact regarding Snypp's affirmative defense of breach of contract present proper grounds for application of the rule in *State ex rel Bond v. State*, 62 Wn. 2d 487, 383 P. 2d 288 (1963). Here, as in *Bond*, where the party opposing summary judgment supports its affirmative defense with facts, the moving party is obligated to establish no facts or reasonable inferences support that affirmative defense. Larson failed to do so, and therefore is not entitled to summary judgment.

Similarly, as indicated by paragraphs 3.1 through 3.21 of Snypp's counterclaim, the issues raised by the counterclaim are inextricably interwoven with the facts of Larson's complaint.²¹ Therefore, as in *Schorno v. Kannada*, 167 Wn. App. 895, 276 P. 2d 319, *review denied*, 175 Wn. 2d 1018, 290 P 3d 994 (2012), the improper granting of Larson's partial summary judgment all but eliminated Snypp's intertwined claims. 167 Wn. App. 903.

Larson argues the factual allegations on which Snypp based his counterclaims are separate and distinct from Larson's claim for breach of

²¹ CP 15-18.

contract and unjust enrichment.²² Once again, Larson fails to support its argument with any citation to authority, so it should not be considered. RAP 10.3 (a) (6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 809.

Larson argues no reasonable juror could conclude the parties entered into an oral contract in 2008 to perform repairs in 2015.²³ Larson once again fails to support its argument with any citation to authority, so it should not be considered. RAP 10.3 (a) (6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 809.

Larson complains Snyppl offered only his self-serving affidavit to support his claims.²⁴ In ruling on summary judgment, the court does not assess witness credibility. *American Exp. Centurion Bank v. Stratman*, 172 Wn. App. 667, 676, 292 P. 3d 128 (2012).

E. Triable issues of material fact on Snyppl's defense of breach of contract prevents summary judgment for Larson.

Larson argues Snyppl abandoned his defense of breach of contract in the trial court.²⁵ As Larson fails to cite any authority to support its argument, it should not be considered. RAP 10.3 (a) (6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 809.

²² Brief of Respondent, p. 21.

²³ Brief of Respondent, p. 23.

²⁴ Brief of Respondent, p. 22.

²⁵ *Ibid.*

Far from abandoning it in the trial court, in his declaration in response to Larson's motion for summary judgment and in his deposition, Snyppe testified to an agreement with Larson to make repairs to Snyppe's Porsche at no cost in exchange for Snyppe's promise not to sue Larson for the intentional damage to the Porsche caused by a Larson employee in 2008.²⁶ Larson's documents and actions, statements and writings by Larson's representatives corroborate the existence and terms of that agreement.²⁷ Snyppe also testified to Larson's refusal to honor that agreement.²⁸ Larson did not controvert this evidence.

Snyppe testified to the unauthorized work done by Larson on the Porsche during the February 11-13, 2015 and February 19-April 2, 2015 jobs.²⁹ Snyppe also testified to further damage to the Porsche that occurred to his Porsche after he delivered it to Larson in February, 2015 for a lube, oil and filter change.³⁰ Snyppe also testified as to the shoddy work done by Larson on his Porsche, as demonstrated by the oil that was negligently sprayed by Larson's employee on the engine belts of the Porsche, causing them to smoke heavily.³¹

²⁶ CP 185; CP 269-71.

²⁷ CP 186, 187-88, 211, 213-15.

²⁸ CP 186-87; CP 272.

²⁹ CP 187-89; CP 275-77; CP 280.

³⁰ CP 187-88; 190, CP 225-33; CP 273; CP 277-79.

³¹ CP 187; CP 275.

Larson argues Snypp's affidavit should be struck as it allegedly conflicts with Larson's illegally recorded telephone conversations with Snypp.³² To the contrary, it is Larson's illegally recorded telephone conversations that should be stricken or otherwise disregarded. RCW 9.73.050, *supra*. Larson's use of those illegally recorded conversations again constitutes improper argument under RAP 10.7.

The foregoing is sufficient to create triable issues of fact whether Larson breached its contract with Snypp.

F. Larson's multiple violations of the Automobile Repair Act prevent summary judgment for Larson.

Larson argues the customer quote dated February 11, 2015, attached as Exhibit 1 to Snypp's declaration, is a written estimate qualifying under RCW 46.71.025.³³ Larson fails to recognize in Exhibit 2 to Snypp's declaration, a Porsche of Tacoma form dated February 13, 2015, he authorized only a lube, oil, filter and routine maintenance and the car key he paid for in 2008, and he specifically deferred all other listed repairs.³⁴

Larson argues, again without citation to authority, Snypp's argument he had an agreement with Larson in 2015 to repair damage cause by Larson in 2008 is based on documents relating to services provided by

³² Brief of Respondent, p. 23.

³³ *Ibid.*

³⁴ CP 184, 201.

Larson in 2011, and is therefore unbelievable.³⁵ Larson overlooks Snyppl's testimony when he called Larson in 2015, Snyppl had a conversation with Bryan Cabrera, in which Cabrera confirmed the arrangement with Larson to finish the work on the Porsche and confirmed the list of remaining repairs.³⁶

Larson argues to the extent the February, 2015 repairs exceeded the initial estimate, it was entitled to and did obtain oral authorization for the additional repairs in the recorded telephone conversation of March 17, 2015.³⁷ Larson's reliance upon that illegally recorded telephone conversation is prohibited by RCW 9.73.050, *supra*. Larson's use of those illegally recorded conversations again constitutes improper argument under RAP 10.7.

Larson argues, again without authority, Snyppl's allegations regarding the improper use of Snyppl's Porsche by a Larson employee while the vehicle was in Larson's shop during the February, 2015 service appointment is a separate subject of Snyppl's counterclaim and has no bearing on whether he is obligated to pay for Larson's repair services.³⁸ Because it fails to support its argument with any authority, Larson's

³⁵ Brief of Respondent, p. 22-23.

³⁶ CP 271-72.

³⁷ Brief of Respondent, p. 24.

³⁸ *Ibid*.

argument should not be considered. RAP 10.3 (a) (6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 809.

To the extent Larson's argument merits a reply, both *Eastwood v. Horse Harbor Found., Inc.*, 170 Wash.2d 380, 389, 241 P.3d 1256 (2010) and *Landstar Inway, Inc. v. Samrow*, 181 Wn. App. 109, 325 P. 3d 327 (2014) recognize that under the independent duty doctrine, a party may pursue both contract and tort remedies if a breach of contract is simultaneously a breach of a tort duty arising independently of the terms of the contract. *Eastwood*, 170 Wn. 2d 389 (lead opinion by Fairhurst, J.); *Landstar Inway*, 181 Wn. App. 130.

Here, the misuse of Snyp's Porsche by a Larson employee, if proven, would give rise for breach of Larson's service contract with Snyp. The relationship between Snyp and Larson is that of a bailment for mutual benefit. *Eifler v. Sureguard Capital Management Corp.*, 71 Wn. App. 684, 690, 861 P.2d 1071 (1993). The relationship between a bailor and bailee is contractual in nature. *Freeman v. Metro Transmission, Inc.*, 12 Wn. App. 930, 932, 533 P.2d 130 (1975) ("A bailment arises generally when personalty is delivered to another for some particular purpose with an express or implied contract to redeliver when the purpose has been fulfilled.").

A bailee owes a tort duty of reasonable care, meaning such care as ordinarily prudent men, as a class, would exercise in caring for their own property under like circumstances. *Althoff v. Garage Systems, Inc.*, 59 Wn. 2d 860, 863, 371 P.2d 48 (1962); *Ramsden v. Grimshaw*, 23 Wn. 2d 864, 867, 162 P.2d 901 (1945); *Tacoma Auto Livery Co. v. Union Motor Car Co.*, 87 Wash. 102, 151 P. 243 (1915). A bailee also owes a contractual duty to redeliver the bailed article. *Freeman v. Metro Transmission, Inc.*, 12 Wn. App. 932.

A bailee incurs liability in contract for failing to redeliver a bailed vehicle after the bailee's employee damages the vehicle after using the vehicle in an unauthorized manner. *Annot. Liability of Garageman for Theft or Unauthorized Use of Motor Vehicle*, 43 A.L.R. 2d 403 § 21 (1955).

In light of the foregoing, Larson's argument, that Snyp's allegation that a Larson employee drove Snyp's Porsche without permission in violation of RCW 46.71.045 (4) is a separate subject of his counterclaim and has no bearing on Larson's claim for repair services, is legally unsupportable. The unauthorized actions of Larson's employee in trashing Snyp's Porsche support both Snyp's defense of breach of contract and his claim for negligence.

G. The trial court erred in awarding attorney fees to Larson.

As Larson's defense of its final judgment fails, it follows Larson was not entitled attorney fees under RCW 4.84.250-280. *Alliance One Receivables Management, Inc., v. Lewis*, 180 Wn. 2d 389, 395, 325 P.3d 904 (2014). The trial court's orders granting summary judgment and fees and the judgment awarding attorney fees to Larson must therefore be reversed.

H. Snypp requests an award of attorney fees on appeal.

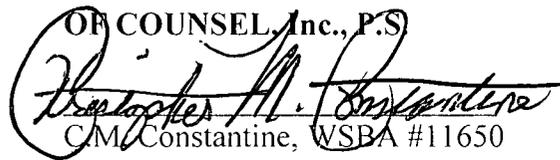
Pursuant to RCW 4.84.250-280, RCW 46.71.070 and RCW 19.86.090, Snypp requests an award of attorney fees on appeal. Alternatively, Snypp requests the Court pursuant to RAP 18.1 (i) to direct that the amount of attorney fees and expenses awarded to Snypp be determined by the trial court after remand.

IV CONCLUSION

In light of the foregoing arguments and authorities, no final judgment has yet been entered in this case. Triable issues of material fact prohibit entry of summary judgment for Larson on any claim at this time. The Judgment and the Order Granting Plaintiff's Motion for Summary Judgment must be reversed and the case remanded for trial on the merits.

The Court may direct that the amount of attorney fees and expenses awarded to Snypp be determined by the trial court after remand.

Respectfully submitted,

OF COUNSEL, Inc., P.S.

C.M. Constantine, WSBA #11650
Attorney for Snypp

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V CERTIFICATE OF MAILING

STATE OF WASHINGTON

The undersigned does hereby declare that on April 21, 2017, the undersigned delivered a copy of APPELLANTS' REPLY BRIEF AND ANSWER TO CROSS-APPEAL filed in the above-entitled case and served on the following individual(s) via the manner indicated below.

BY _____
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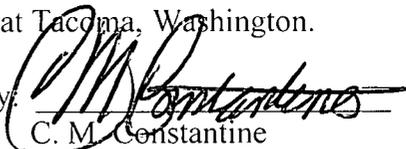
Via personal delivery

Clerk, Washington State Court of Appeals, Division II
950 Broadway, Suite 300 MS TB 06
Tacoma, WA 98402-4427
E: coa2filings@courts.wa.gov

Via E-mail to opposing counsel of record

Bryan C. Graff, Ryan, Swanson & Cleveland, PLLC, 1201 Third Ave, Suite 3400, Seattle, WA 98101-3034	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile
Curtis M. Burns 6915 SW Macadam Ave, Suite 300 Portland, Oregon 97219	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile

DATED this 21st day of April, 2017 at Tacoma, Washington.

By: 
C. M. Constantine