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Division II
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No. 52751-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

POTTS FAMILY MOTORS INCORPORATED, A Washington
Corporation

Appellant,

vs.

CITY OF LONGVIEW, a Washington Municipal Corporation

Respondent.

REPLY BRIEF

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A. ARGUMENT

I. Potts Family Motors, Inc., was entitled to notice of the forfeiture under RCW 69.50.505(3) which requires service on “the person in charge” of the property, as well as any person with a “known right or interest” in the property.

Notice of forfeiture to a corporation must be served “on the owner of the property seized and *the person in charge thereof* and any person having any known right or interest therein . . .” RCW 69.50.505(3) (emphasis added). Respondent argues Potts Family Motors, Inc., was not entitled to notice because it had no “known right or interest” in the property seized. The forfeiture statute requires service not only on any person with a known right or interest, but also on the owner of the property and *the person in charge of the seized property*. The property was seized from the Potts Family Motors, Inc., business lot. Potts Family Motors, Inc., was, for all intents and purposes, in charge of the property which was subject to seizure and therefore, arguably had an interest in the property as well, especially considering the number of items of property (vehicles) present on the lot. Potts Family Motors, Inc., therefore, was entitled to notice of forfeiture under RCW 69.50.505(3). The statutory provisions, which provide for notice to owner and any other interested parties, were written simultaneously to facilitate such notice as to allow an

opportunity to be heard. *Key Bank of Puget Sound v. City of Everett*, 67 Wash.App. 914, 841 P.3d 800 (1992).

II. Sidney Potts was not a managing agent of the corporation for purposes of the forfeiture notice requirements, and even if he was notice was only provided to Sidney Potts in his individual capacity, not in his capacity as managing agent for the corporation, and therefore was inadequate.

The term “managing agent” of a corporation, for purposes of RCW 4.28.080(9) includes a person who has a “substantial part in the management of [the] affairs” of a corporation. *Johanson v. United Truck Lines*, 62 Wn.2d 437, 440 (1963). In *Johanson* the court determined an employee was a managing agent because he had authority to hire and fire employees, had previously been served process on behalf of the corporation, and was in charge of the corporation’s facility. CP 123. The involvement of Sidney Potts in the management of Potts Family Motors, Inc., falls short of this standard.

Even if he was found to be a managing agent of the corporation, the City provided notice to Sidney Potts in his individual capacity only as to the property at issue here. The City understood the distinction between the corporation and Mr. Potts as evidenced by the differing forfeiture notices. The “purpose of serving notice is to advise a party his person or property is in jeopardy.” *Reiner v. Pittsburg Des Moines Corp.*, 35 Wn.App. 331, 333, 666 P.2d 396 (1983). The notice of forfeiture of the

vehicles and tools, which was served on Sidney Potts listed only his individual name, failing to implicate Potts Family Motors, Inc., and setting a hearing date for Sidney Potts only in his individual capacity. CP 122. The notice of forfeiture of the bank account was given separately and explicitly to Potts Family Motors, Inc. CP 122. The City clearly understood the distinction between the corporation and Sidney Potts as an individual. By reading “RCW 69.50.505(3) through (5) together, as we must, it is clear that the legislature intended that notice and an opportunity to be heard are bedrock principles underlying this statute.” *Snohomish Reg’l Drug Task Force v. Real Prop. Known as 20803 Poplar Way, Lynnwood, Wash.*, 150 Wn. App 387, 397, 208 P.3d 1189,1193 (Div. 1, 2009). The corporation is entitled to notice and an opportunity for it to be heard. By providing notice only to Sidney Potts in his individual capacity, the corporation was deprived of notice that its property was in jeopardy and was deprived of an opportunity to be heard at the forfeiture hearing.

III. Potts Family Motors, Inc., provided notice in writing of its interest in the property pursuant to RCW 69.50.505 and was therefore entitled to a hearing.

Despite the City’s failure to notify the corporation, Potts Family Motors, Inc., did in fact claim an interest in the property by way of a letter from Thomas Potts, President of Potts Family Motors, Inc. CP 118. The letter demanded the return of the seized property to Potts Family Motors,

Inc. RCW 69.50.505(4) requires any person claiming an interest to notify the seizing agency “in writing of the person’s claim of ownership or right to possession” of the seized items. “Nothing in the statute requires the written notice to the seizing agency to contain anything more than contact information so that further proceedings may be scheduled.” *Id.* (citing RCW 69.50.505). The letter from Thomas Potts included his contact information and demanded the return of the property. CP 118. It was sufficient to alert the City that Potts Family Motors, Inc., contested the forfeiture and that a hearing was required under the statute. *See Snohomish*, 150 Wn. App at 396, 208 P.3d at 1193.

IV. Potts Family Motors, Inc., provided evidence of ownership sufficient to establish a genuine issue of material fact and thus summary judgment is improper.

Summary judgment is proper only if it appears from the record that there is no genuine issue as to any material fact. CR 56(c). Potts Family Motors, Inc., presented evidence of its claim to ownership of the property at issue, articulated above, sufficient to establish a genuine issue of material fact as to the ownership of the seized property. Potts Family Motors, Inc., was required to notify the City, in writing, of its claim to ownership or right to possession, which it did in a letter from Thomas Potts in his capacity as President of the corporation. This writing need only include contact information and be sufficient to alert the City that it

contests the forfeiture. *See Snohomish*, 150 Wn. App at 396, 208 P.3d at 1193. The City is not entitled to summary judgment regarding the property when a genuine issue of material fact as to the ownership of the property exists.

V. The City is not entitled to summary judgment for governmental immunity under *Frost v. Walla Walla*.

Frost creates an improper standard by which the lower court held that the City was immune from liability. Respondent's contention that Petitioner did not provide any support for this is incorrect. Petitioner's initial brief cited *Savage v. State* where the Court stated that *Frost* "is not sound authority for the extension of qualified immunity from the agent to the state because they arrive at their holding in a manner which fails to engage the policy analysis the *Lutheran* court requires for deciding the question properly." 127 Wn.2d 434, 442, 899 P.2d 1270 (1995). The *Savage* Court relied on its holding in *Lutheran Daycare v. Snohomish Cy.*, 119 Wn.2d 91, 100 829, P.2d 746 (1992), where they "admonished against conclusory holdings which rely on ostensibly controlling cases while eschewing the detailed policy oriented factual inquiry which . . . is necessary to decide the immunity question." *Savage*, 127 Wn.2d at 440. The lower court in the case at bar improperly relied on conclusory holdings to establish summary judgment on the issue of immunity.

Petitioner argues that even if an officer is immune under RCW 69.50.506(c), the failure of the City to comply with the requirements of the forfeiture statute cannot be immune. The separate and distinct acts involved in complying with the forfeiture statute are not included in the officer's duties as held in *Frost* which would extend immunity to the City. This action was brought by Potts Family Motors, Inc., as a result of the failure of the City to comply with the notice requirements under the forfeiture statute. RCW 69.50.506(c) does not apply to extent qualified immunity of law enforcement action to the City for such failure.

B. CONCLUSION

For the foregoing reasons, the trial court's grant of summary judgment in favor of the City of Longview should be vacated.

DATED: May 29, 2019.

Respectfully submitted,

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FO JOSHUA J. BALDWIN, WSBA #36701
Of Attorneys for Appellant/Plaintiff

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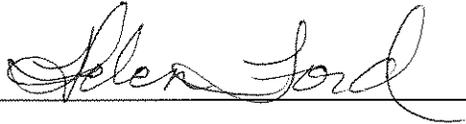
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CERTIFICATE

I certify that on this day I caused a copy of the foregoing REPLY BRIEF to be mailed, postage prepaid, to Respondent's/Defendant's attorney, addressed as follows:

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DATED this 29th day of May 2019, at Longview,
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