

FILED

JUL 18 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 308278

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

EAGER BEAVER, INC., a Washington Corporation,
and SARA GRONLUND,

Appellants

v.

BULLDOG TRUCKING & EXCAVATION, LLC,
a Washington Limited Liability Company,
CINDY AND "JOHN DOE" BEAVERT, individually,
and MICHAEL AND "JANE DOE" SUTTON, individually,

Respondents

BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	<u>Page</u>
I. ASSIGNMENT OF ERROR	1
1. The Superior Court erred in failing to apply RCW 4.24.630, a treble damages statute, against two of the three involved defendants, after rendering judgment in Plaintiffs'/Appellants' favor.	
II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
1. Where RCW 4.24.630 implicates “Every person who goes onto the land of another and who . . . wrongfully injures personal property,” did the trial court err by considering Sutton’s and Bulldog’s knowledge whether they were “going onto the land of another”?	
2. Did the Trial Court err by holding Sutton and Bulldog did not know they lacked authorization to destroy Plaintiffs'/Appellants' property, where they knew the property did not belong to Beavert, knew it was on USFS land, did not pursue any further inquiry with USFS, and did not demand Beavert tell them who owned the property?	
III. STANDARD OF REVIEW	1
IV. STATEMENT OF THE CASE	2
V. ARGUMENT	7
a. Bulldog and Sutton “Entered the Land of Another.”	8
b. Bulldog and Sutton Wrongfully Injured Personal Property.	9

c.	Sutton Acted as a Supervisor and Agent of Bulldog. . . .	11
d.	It is Incongruous to Hold Beavert Liable under RCW 4.24.630, and not Bulldog or Sutton.	14
VI.	ATTORNEY FEES AND EXPENSES	15
VII.	CONCLUSION	15

TABLE OF AUTHORITIES

Washington Cases

<u>Morales v. Westinghouse Hanford Co.</u> , 73 Wn.App. 367, 869 P.2d 120 (1994)	1
<u>Apostolis v. City of Seattle</u> , 101 Wn.App. 300, 306, 3 P.3d 198 (2000) .	12
<u>Standing Rock Homeowners v. Misich</u> , 106 Wn.App. 231, 23 P.3d 520 (2001)	1

Washington Statutes

RCW 4.24.630	1, 7, 8, 9, 10, 11, 14, 15, 16
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I. ASSIGNMENTS OF ERROR

The Superior Court erred in failing to apply RCW 4.24.630, a treble damages statute, against two of three involved defendants, after rendering judgment in Plaintiffs'/Appellants' favor.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where RCW 4.24.630 implicates "Every person who goes onto the land of another and who . . . wrongfully injures personal property," did the trial court err by considering Sutton's and Bulldog's knowledge whether they were "going onto the land of another"?

2. Did the Trial Court err by holding Sutton and Bulldog did not know they lacked authorization to destroy Plaintiffs'/Appellants' property, where they knew the property did not belong to Beavert, knew it was on USFS land, did not pursue further inquiry with USFS, and did not demand Beavert tell them who owned the property?

III. STANDARD OF REVIEW

Appellate review is de novo, where it involves review of a trial court's decision where facts are essentially undisputed and the decision involves only application of law.¹

¹ Morales v. Westinghouse Hanford Co., 73 Wash.App. 367, 869 P.2d 120 (1994).

IV. STATEMENT OF THE CASE

Plaintiffs/Appellants acquired a yellow Washington Iron Works TL-6 Track Yarder (“Yarder”) in 2003, using it extensively for its logging operations.² Plaintiffs/Appellants used the Yarder extensively until November, 2004, when Stacy Gronlund suffered a disabling injury.³ The Plaintiffs/Appellants parked the Yarder on U.S. Forest Service (“USFS”) land adjacent to the property of Defendant Cindy Beavert (“Beavert”).⁴ Plaintiffs/Appellants had been hired by Beavert to log numerous acres of her land.⁵

Defendant Bulldog Trucking & Excavation, LLC (“Bulldog”) is owned by Don Eldredge (“Eldredge”).⁶ Defendant Michael Sutton (“Sutton”), Beavert’s tenant, was one of Bulldog’s Employees.⁷

John Loomis (“Loomis”) has cohabited with Beavert since

² CP 137, Declaration of Stacy Gronlund, Paragraphs 4-5.

³ CP 390, Court’s Memorandum Decision dated May 20, 2011, Findings of Fact.

⁴ CP 575, Findings of Fact and Conclusions of Law, April 6, 2012.

⁵ CP 286, Declaration of John Loomis, Paragraph 3.

⁶ CP 431-32, Deposition of Don Eldredge, p. 6, ll. 24-25, p. 7, l. 1.

⁷ CP 435, 442, 465, Deposition of Don Eldredge, p. 10, ll. 19-21, p. 17, ll. 22-23, p. 40, ll. 9-16.

1984.⁸ In late Summer or Fall of 2007, Beavert asked Loomis to talk with Sutton about the Yarder because Sutton had previously asked Beavert about the Yarder.⁹ Loomis went to Sutton's house and explained that the Yarder was on USFS land, and that if Sutton wanted the Yarder, Sutton "would have to talk to the Forrest (sic) Service about the Yarder."¹⁰ Loomis told Sutton a neighbor, Dwayne Kaasa ("Kaasa"), knew more about the Yarder and Sutton may want to speak with Kaasa.¹¹ No evidence indicates Sutton ever spoke with Kaasa.

Bulldog performs many operations, and began doing excavation projects in 2006.¹² In June, 2008, Eldredge began instructing Bulldog employees to keep an eye out for scrap metal, due to an extreme recent rise in its value.¹³ Eldredge offered Sutton a bonus for scrap metal

⁸ CP 286, Declaration of John Loomis, Paragraph 2.

⁹ CP 287, Declaration of John Loomis, Paragraph 6.

¹⁰ CP 287, Declaration of John Loomis, Paragraph 6.

¹¹ CP 287, Declaration of John Loomis, Paragraph 6.

¹² CP 433, Deposition of Don Eldredge, p. 8, ll. 14-15.

¹³ CP 554, CP 556, Deposition of Michael Sutton, p. 39, ll. 9-11, p. 41, ll. 14-17; CP 470-71, 477, Deposition of Don Eldredge, p. 45, ll. 13-17, p. 46, ll. 8-14, p. 52, ll. 1-4.

jobs brought to Bulldog.¹⁴ Sutton had spoken with Loomis, and was aware of the Yarder on USFS land near Beavert's property.¹⁵ Previously, Beavert had personally asked Sutton about removing the Yarder, in approximately 2005.¹⁶ Sutton testified, "She said it was [owned by] some loggers that had done some work for her and just left it."¹⁷ Beavert knew Plaintiffs/Appellants owned the Yarder.¹⁸ "I asked her several times. And all she could say was some people who had logged her property, had left it."¹⁹

In late August, 2008, Eldredge drove with Sutton to the site of the Yarder.²⁰ Eldredge testified, "I went up to make sure that the trucks and equipment could get in and get turned around because when you're going up a canyon, you never know what you're going to get into."²¹

¹⁴ CP 554, Deposition of Michael Sutton, p. 39, ll. 12-14; CP 471, Deposition of Don Eldredge, p. 46, ll. 17-19.

¹⁵ CP 287, Declaration of John Loomis, Paragraph 6.

¹⁶ CP 525, Deposition of Michael Sutton, p. 10, ll. 21-22.

¹⁷ CP 525-26, Deposition of Michael Sutton, p. 10, ll. 24-25, p. 11, l. 1.

¹⁸ CP 388, Court's Memorandum Decision dated May 19, 2011.

¹⁹ CP 528, Deposition of Michael Sutton, p. 13, ll. 11-19.

²⁰ CP 452, Deposition of Don Eldredge, p. 27, ll. 8-12.

²¹ CP 439-40, Deposition of Don Eldredge, p. 14, ll. 22-25, p. 15, l. 1.

Eldredge expected both Bulldog and Sutton to profit from the operation.²²

Sutton expected to split the profits from the Yarder with Bulldog.²³

Subsequently, on August 29, 2008, Sutton and other Bulldog employees destroyed and removed much of the Yarder. “Two days, (we) cut on the machine. The third day, the police showed up.”²⁴ When police arrived, Sutton immediately called Eldredge, who drove up and met Sutton at the site.²⁵

Both Sutton and Eldredge admit they knew the Yarder did not belong to Beavert.²⁶ Sutton knew it was “some loggers,” and did not inquire further with Beavert or USFS.²⁷ Eldredge testified “(Sutton) wasn’t sure who owned it, but something about they owed her money . . .”²⁸

²² CP 444, Deposition of Don Eldredge, p. 19, ll. 14-23.

²³ CP 449, Deposition of Don Eldredge, p. 24, ll. 9-19.

²⁴ CP 542, Deposition of Michael Sutton, p. 27, ll. 18-20.

²⁵ CP 548, Deposition of Michael Sutton, p. 33, ll. 7-9.

²⁶ CP 551, Deposition of Michael Sutton, p. 36, ll. 6-8; CP 445, Deposition of Don Eldredge, p. 20, ll. 9-11; CP 575, Findings of Fact and Conclusions of Law, Paragraph 15.

²⁷ CP 551, Deposition of Michael Sutton, p. 36, ll. 6-8; CP 575, Findings of Fact and Conclusions of Law, Paragraph 15.

²⁸ CP 445, Deposition of Don Eldredge, p. 20, ll. 9-11.

On November 6, 2009, the Court entered summary judgment against all three defendants for conversion, with trial to proceed on damages.²⁹ At trial on May 12, 2011, the Superior Court determined the Yarder's market value at the time of destruction to be \$11,000.00.³⁰ The Court applied RCW4.24.630 against Beavert and Sutton, awarding treble damages against each, concluding Beavert and Sutton "knew or had reason to know who owned the Yarder and they failed to make inquiry of the owner, they lacked authorization to scrap the Yarder."³¹ Each party moved the Court to reconsider application of the statute.

After hearing further testimony from Sutton and Eldredge on November 8, 2011, the Court applied the treble damages statute to Beavert, but declined to apply it to Bulldog or Sutton: "Since neither Mr. Sutton nor Bulldog Trucking knew who owned the Yarder, and reasonably believed the Yarder was on the property owned by Cindy Beavert, their actions were not wrongful."³²

²⁹ CP 349, Order Granting Plaintiff Sara Gronlund's Motion for Partial Summary Judgment, p. 2.

³⁰ CP 387, 390, Court's Memorandum Decision dated May 19, 2011.

³¹ CP 392, Court's Memorandum Decision dated May 19, 2011.

³² CP 578, Findings of Fact and Conclusions of Law, Paragraph 6.

V. ARGUMENT

RCW 4.24.630(1), in its entirety, provides as follows:

Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

RCW 4.24.630 does not require a Defendant know he is entering upon the land of another, but only that he do so, and while doing so "wrongfully injures personal property."

The Trial Court erred by applying RCW 4.24.630 only to Beavert. Beavert told Sutton, an agent of Bulldog, that the Yarder did not belong to her but to "some loggers." Loomis knew the Yarder was on USFS land, and told Sutton if he wanted the Yarder he would have to talk to the USFS about it.³³ As a Supervisor of Bulldog, Sutton's knowledge was imputed to Bulldog.

³³ CP 287, Declaration of John Loomis, Paragraph 6.

a. Bulldog and Sutton “Entered the Land of Another.”

The Trial Court erroneously applied RCW 4.24.630 in a manner which reads a knowledge element into the requirement that one “enter the land of another.” With regard to Beavert, the Court noted, “She knew or should have known the Yarder was not on her property.”³⁴ With regard to the Yarder, the Court also noted, “[I]t was located on USFS land. However, neither Bulldog Trucking & Excavation, LLC, nor Michael Sutton was aware of that fact.”³⁵ To the contrary, Loomis had told Sutton to talk to the USFS or Kaasa. Sutton and Eldredge themselves drove up to the site to inspect the location of the Yarder, before its destruction, without further inquiry as to its location or ownership.³⁶

The Court erroneously believed Sutton did not know the property was on USFS land, but the Court’s belief is irrelevant - there is no location knowledge element in the statute. Sutton and Bulldog need not have known the Yarder was on USFS land, but only have entered it. They undisputedly did.

³⁴ CP 575, Findings of Fact and Conclusions of Law, April 6, 2012.

³⁵ CP 575, Findings of Fact and Conclusions of Law, April 6, 2012.

³⁶ CP 287, Declaration of John Loomis, Paragraph 6; CP 439, Deposition of Don Eldredge, p. 14, ll. 22-25, p. 15, l. 1.

b. Bulldog and Sutton Wrongfully Injured Personal Property.

Had the Yarder been located on Beavert's land, RCW 4.24.630 would not apply. None of the Defendants would be entering onto the land of "another," and Beavert could have given purported authorization to destroy it. Each Defendant would still be liable for simple conversion. However, the Yarder was not located on Beavert's land, and Sutton knew or should have known he lacked authorization to destroy it. Sutton and Bulldog are each liable under the statute.

The Trial Court recognized that USFS land does constitute the "land of another," based on another similar case, Standing Rock Homeowners v. Misich:

"At the request of defendant, Cindy Beavert, Defendants, Mike Sutton and Bulldog Trucking, went onto 'land of another' i.e. USFS land, and salvaged a significant portion of a yarder. The yarder was personal property. It was on the land of another. Therefore, RCW 4.24.630 may apply, see Standing Rock Homeowners v. Misich, 106 Wn.App. 231 (2001). However, plaintiff must also prove defendants' actions were 'wrongful' as defined in the statute."³⁷

After trial, the Court applied the statute against Beavert and Sutton,

³⁷ CP 391, Court's Memorandum Decision dated May 19, 2011.

holding each Defendant's actions were in fact wrongful, but declined to apply the statute against Bulldog:

“Because both Ms. Beavert and Mr. Sutton knew or had reason to know who owned the yarder and they failed to make inquiry of the owner, they lacked authorization to scrap the yarder. Their actions were wrongful. However, Mr. Eldredge had no reason to know his company lacked authorization. The yarder was accessed through Ms. Beavert's locked gate, no indicia of ownership were present, and the yarder's condition suggested it had been abandoned.”³⁸

Both parties moved the Trial Court to reconsider, and it heard further testimony from Sutton and Eldredge in November, 2011. It then determined the statute only applied to Beavert, basing this determination upon the faulty beliefs (a) Defendants in fact did not know the Yarder was on USFS land, and (b) the Defendants needed to know they were “entering the land of another” for RCW 4.24.630 to apply. “It was located on United States Forest Service land. However, neither Bulldog Trucking & Excavation, LLC, nor Michael Sutton was aware of that fact.”³⁹

Sutton and Bulldog knew the Yarder did not belong to

³⁸ CP 392, Court's Memorandum Decision dated May 19, 2011.

³⁹ CP 575, Findings of Fact and Conclusions of Law, April 6, 2012.

Beavert because she told Sutton it belonged to “some loggers.” She did not specifically tell them *who* owned the Yarder, but that is irrelevant - both knew it wasn’t Beavert’s. Each acted wrongfully, as each knew or should have known they lacked authorization to destroy the Yarder.

c. Sutton Acted as a Supervisor and Agent of Bulldog.

As an agent and Supervisor of Bulldog, Sutton’s liability under RCW 4.24.630 may not be segregated from Bulldog’s. Sutton’s entering the land of another and destroying property he knew did not belong to Beavert made his employer as liable as he. Bulldog and Sutton each knew or should have known it did not belong to Beavert.

Sutton and Bulldog were each found guilty of conversion at step of litigation. Sutton could not have been acting outside the scope of his employment for purposes of violating RCW 4.24.630, and inside the scope of his employment for purposes of committing conversion. Bulldog controlled all major aspects of the operation. Pieces of the Yarder were driven from the site to Seattle by another Bulldog employee, Richard Swain (“Swain”), and the check was written to Bulldog.⁴⁰ Sutton was to divide profits will Bulldog.⁴¹ Sutton was acting within the scope of his

⁴⁰ CP 537-38, Deposition of Michael Sutton, p. 23, ll. 9-12.

⁴¹ CP 449, Deposition of Don Eldredge, p. 24, ll. 9-19.

employment, and under the direction of Eldredge as a matter of law, because the Court held as much when it held all three defendants liable for conversion at summary judgment.

Whether it be Sutton, Eldredge, or another person, Bulldog is charged with knowing what its supervisors know. A supervisor's knowledge of employee activities is imputed to his employer.⁴² Sutton supervised the yarder project, including all work done by himself and Bulldog employees David Dronen ("Dronen"), Swain, and Keith Martin ("Martin"). He admits he knew the Yarder was not Beavert's but belonged to "some loggers."⁴³

Even if Bulldog was not automatically charged with knowing what Sutton knew, as a Supervisor, Eldredge still knew or should have known the Yarder was not Beavert's. He admitted at deposition, "(Sutton) said that his landlady, it was abandoned a long time ago and that he wasn't sure who owned it, but something about they owed her money, it was abandoned there, and she gave it to him."⁴⁴ The USFS knew who

⁴² Apostolis v. City of Seattle, 101 Wash.App. 300, 306, 3 P.3d 198 (2000) (citing Dr. Phillip Megdal, 267 NLRB 82, 1983 WL 24783 (1983)).

⁴³ CP 525-26, Deposition of Michael Sutton, p. 10, ll. 24-25, p. 11, l. 1; CP 575, Findings of Fact and Conclusions of Law, Paragraph 15.

⁴⁴ CP 551, Deposition of Michael Sutton, p. 36, ll. 6-8; CP 445, Deposition of Don Eldredge, p. 20, ll. 9-11.

owned the Yarder, and had inquired with the Plaintiffs/Appellants about removing it.⁴⁵ A call to USFS by any of the Defendants would have confirmed its ownership by Plaintiffs/Appellants. Eldredge admitted scoping out the site of the destruction days prior to the yarder's removal.⁴⁶ Like Sutton, Eldredge knew it was not Beavert's yarder and did not contact USFS or inquire further into who owned it.

Even disregarding Eldredge's statement of "something about they owed her money," Eldredge should have known the Yarder was not Beavert's because he controlled every aspect of the project, through his own and Sutton's actions. Beavert testified, "I asked (Eldredge and Sutton) if they would get it out of there. And Mike Sutton said, 'Yeah.' He said that Don Eldredge would take care of it."⁴⁷ Eldredge had instructed Bulldog employees to keep an eye out for scrap metal, due to an extreme rise in its value.⁴⁸ Days before the project began, Eldredge drove up to the site of the incident with Sutton, "to make sure that the trucks and

⁴⁵ CP 71, Declaration of Vaughan Marable in Support of Motion for Summary Judgment, Paragraph 2.

⁴⁶ CP 439-40, Deposition of Don Eldredge, p. 14, ll. 22-25, p. 15, l. 1.

⁴⁷ CP 270, Deposition of Cindy Beavert, p. 26, ll. 19-25, p. 27, l. 1.

⁴⁸ CP 554, 556, Deposition of Michael Sutton, p. 39, ll. 9-11, p. 41, ll. 14-17; CP 470-71, 477, Deposition of Don Eldredge, p. 45, ll. 13-17, p. 46, ll. 8-14, p. 52, ll. 1-4.

equipment could get in and get turned around because when you're going up a canyon, you never know what you're going to get into."⁴⁹ Eldredge estimated destruction of the Yarder would take 4 days to complete.⁵⁰ He admitted he expected to profit from the Yarder's destruction.⁵¹ Sutton, Martin, Dronen, and Swain were paid their regular wages by Bulldog for the yarder job.^{52,53} Bulldog and Sutton each entered the land of another, and each knew they lacked authorization to destroy the Yarder. Each is liable under RCW 4.24.630.

d. It is Incongruous to Hold Beavert Liable under RCW 4.24.630, and not Bulldog or Sutton.

The Trial Court erred by concluding Bulldog and Sutton committed simple conversion, and not violating RCW 4.24.630, despite entering the land of another and causing unauthorized destruction. Yet the Court maintained Beavert committed more than simple conversion, triggering RCW 4.24.630, despite that she never entered the land of

⁴⁹ CP 439, Deposition of Don Eldredge, p. 14, ll. 22-25, p. 15, l. 1.

⁵⁰ CP 536, Deposition of Michael Sutton, p. 21, ll. 4-7; CP 445, Deposition of Don Eldredge, p. 20, l. 4.

⁵¹ CP 444, Deposition of Don Eldredge, p. 19, ll. 14-23.

⁵² CP 541-43, Deposition of Michael Sutton, p. 26, ll. 17-18, p. 27, ll. 15-17, p. 28, ll. 1-5; CP 446-47, Deposition of Don Eldredge, p. 21, ll. 21-25, p. 22, ll. 1-3.

⁵³ CP 479, Deposition of Don Eldredge, p. 54, ll. 11-16.

another and had no lawful ability to authorize the Yarder's destruction. Surely if Beavert was guilty of violating RCW 4.24.630, where she never entered the land of another, Bulldog and Sutton are also guilty of violating RCW 4.24.630, where they did enter the land of another.

All Defendants were aware the Yarder was not owned by Beavert. Neither Sutton nor Bulldog ever did further investigation, or contacted the Plaintiffs/Appellants or the USFS, to determine the Yarder's actual ownership. Each Defendant is liable under RCW 4.24.630.

VI. ATTORNEY FEES AND EXPENSES

Pursuant to RAP 18.1, Plaintiffs/Appellants request their reasonable attorney fees and expenses on review before this Court. Costs and fees are properly awarded in this case under RCW 4.24.630.

VII. CONCLUSION

Declining to apply the statute to Sutton and Bulldog ignores the express terms of the statute and defies its purpose. RCW 4.24.630 does not require a Defendant know he is entering onto the land of another, only that he does so and destroys property he knows or should know he lacks authority to destroy. The Trial Court erred by considering whether Sutton and Bulldog knew they were "going onto the land of another."

Furthermore, the evidence clearly demonstrates Sutton and Bulldog knew they lacked authorization to destroy the Yarder. They knew it did not belong to Beavert, they knew it was located on USFS land, they did not pursue further inquiry with USFS, and they did not demand Beavert tell them who owned the property. The Court's Order should be reversed, with direction to award treble damages, reasonable litigation and investigative costs, and attorneys' fees, pursuant to RCW 4.24.630.

Respectfully submitted, this 16th day of July, 2012.



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