

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

NO. 37958-9-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

KENNETH W. BLAKE

Plaintiff,

CITY OF BONNEY LAKE, a Municipal Corporation

Defendants.

APPELLANT'S REPLY BRIEF

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I. COUNTER-STATEMENT OF THE CASE

Litigants have an obligation not to mislead the Court. The Defendant advises the Court that “the City ‘tagged’ vehicles in the public right-of-way and provided notice to Mr. Blake that the vehicles would be towed”. (Resp. Brief, 1) What the Defendant does not tell the Court, however, is that this “tagging” process took place under the City’s junk vehicle ordinance. (CP 33-47) At no time before the Trial Court did the City even advance an argument that the vehicles had been properly tagged pursuant to RCW 46.55.085. (CP 33-47) The Plaintiff had already prevailed on several occasions in the Bonney Lake Municipal Court under the City’s junk vehicle ordinance and when he was cited into the Municipal Court subsequent to and pursuant to the “tagging” referred to by the Defendant, for having junk vehicles on his property, he entered a plea of not guilty and was actively contesting these citations on September 6, 2005 when his vehicles were towed away. (CP 33-47)

II. COUNTER-ARGUMENT

The Defendant raises several arguments why RCW 46.55.120 should not be the exclusive remedy available to a property owner whose vehicles have been unlawfully towed. RCW 46.55.120 is meant to apply to situations where the police authority has provided notice required by RCW 46.55.085 but, for some reason, the property owner did not move the vehicle prior to the time allotted by the notice for removal of the vehicle. The statute itself is clear on this point. RCW 46.55.120 provides:

“(1) Vehicles or other items of personal property registered or titled with the Department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

....”

Obviously, if vehicles are impounded “pursuant to RCW 46.55.085” the notice provided for therein must be given.

To hold as the Defendant would have the Court do, would simply destroy the Constitutional protections for private property afforded under the State and Federal Constitutions. Further, as Mr. Blake stated, he did not have the \$3,000 demanded of him by the towing company.

To follow Defendant’s argument to its logical conclusion, police could, whenever the impulse motivated them, simply take from a person any item of personal property he or she may be carrying on a particular occasion, seize any motor vehicle at any place and any time and, assumedly, seize a person’s home, with or without cause, so long as a hearing was provided subsequent to the seizure to enable the owner to retrieve the property! Such are not the laws of this state and country.

Respectfully Submitted this 3rd day of October, 2008.



Richard F. DeJean WSBA #2548
Attorney for Plaintiff/Appellant

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

KENNETH W. BLAKE)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF BONNEY LAKE, a municipal)
 corporation)
)
 Defendants.)

Court of Appeals Cause No. 37958-9-II

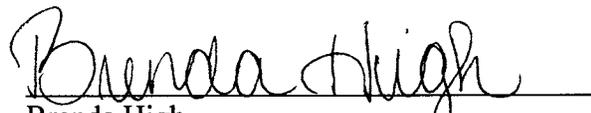
CERTIFICATE OF SERVICE

I, Brenda M. High, certify under penalty of perjury under the laws of the State of Washington that on October 6, 2008, I served the documents; namely, Appellant's Reply Brief, to which this is attached to the party listed below in the manner shown:

Mary Ann McConaughy
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175

- By United States Mail
- By Legal Messenger
- By Facsimile
- By Overnight Fed Ex Delivery

DATED this 6th day of October, 2008.


Brenda High
Legal Secretary for Richard F. DeJean

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