

FILED

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NO. 308278

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

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

Plaintiffs,

v.

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

Defendants.

APPELLANTS' REPLY BRIEF

SCOTT M. KANE, WSBA #11592
Attorney for Appellants/Plaintiffs
Lacy Kane, P.S.
300 Eastmont Avenue,
East Wenatchee, WA 98802
(509) 884-9541

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RCW 4.24.630 1, 2, 3, 4

I. ARGUMENT

Undisputed facts of record in the Superior Court's Judgment and the explicit admissions of Defendants Michael Sutton ("Sutton") and Bulldog Trucking and Excavation, LLC ("Bulldog") establish Respondents Sutton and Bulldog entered upon land not owned by them, and knowingly destroyed personal property not owned by them or Cindy Beavert ("Beavert"). The Superior Court erroneously concluded Sutton and Bulldog were liable only for simple conversion, and Beavert alone was liable for treble damages under RCW 4.24.630.

Respondents' sworn deposition testimony, a part of the court record, confirms they knew the yarder they destroyed was not Beavert's. Sutton testified, "(Beavert) said it was [owned by] some loggers that had done some work for her and just left it."¹ Don Eldredge confirmed, "(Sutton) wasn't sure who owned it, but something about they owed her money. . ."² Respondents use the absence of a Verbatim Report of Proceedings to imply Respondents Sutton and Bulldog contradicted their sworn deposition testimony at trial, to avoid treble damages. This never occurred.

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

² CP 445, Deposition of Don Eldredge, p. 20, ll. 9-11.

Anticipating appeal, the Court considered both parties' arguments regarding wording of the Court's Judgment. The trial judge inter-lineated the following finding of fact (here italicized) in his judgment, to reflect Respondents' knowledge regarding ownership of the yarder: "Michael Sutton did not know who owned the yarder, but understood from Cindy Beavert *that she did not own the yarder*, that the yarder had been abandoned by whoever owned it, and that they owed her money."³ The trial judge recognized that Respondents knew the yarder was not theirs but destroyed it anyway and Respondents made no further inquiry regarding ownership of the yarder.⁴ The Superior Court properly found Beavert liable under the statute, but erroneously failed to apply the statute to the remaining Respondents Sutton and Bulldog.

RCW 4.24.630 only requires the "entering the land of another" and subsequently "wrongfully injuring personal property." Respondents undeniably entered U.S. Forest Service land, which neither they nor Beavert owned. There is no *mens rea*, or "wrongful" intent requirement in the act of entering the land of another, yet the trial court required this as an added factor to trebling. A statute in derogation of common law must be

³ CP 575, Findings of Fact and Conclusions of Law, Paragraph 15.

⁴ CP 558, Deposition of Michael Sutton, p. 43, ll. 16-19.

liberally construed so as to accomplish its intended purpose, yet strictly construed by not adding terms to its language. *Staats v. Brown*, 139 Wn.2d 757, 991 P.2d 615 (2000); *McNeal v. Allen*, 95 Wn.2d 265, 269, 621 P.2d 1285 (1980). The court was not free to add a scienter requirement to the statute where none existed.

In this regard, Beavert's opinion regarding land ownership is irrelevant. The only issue for resolution was whether Respondents lacked authorization to destroy the yarder. The Superior Court misapplied the statute, by inserting its own requirement that Respondents must have engaged in the conduct of "*wrongfully* entering the land of another." The statute does not so read. The statute only requires entry upon the land of another, (here, U.S. Forest Service land) and thereafter wrongfully injuring personal property.

Respondents argue they "believed the yarder was located on Cindy Beavert's property."⁵ This may or may not be true, but it does not bear upon the language of RCW 4.24.630, requiring only that the Respondents *enter* the land of another and then wrongfully injure property.

Under RCW 4.24.630, the Respondents acted "wrongfully" if they

⁵ Motion on the Merits, p. 4.

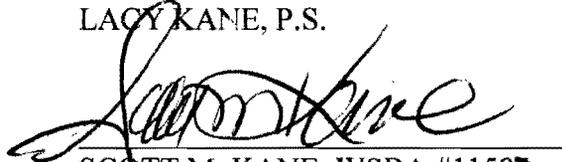
knew or had reason to know they lacked authorization to act as they did.⁶ Respondents admit they knew Beavert did not own the yarder. They admit they made no effort to ascertain who actually did own it.⁷ The Superior Court confirmed this in its Findings of Fact.⁸ There is no dispute nor record of any dispute regarding these facts.

II. CONCLUSION

The Superior Court erred by failing to apply RCW 4.24.630, as written, to the undisputed factual record. Treble damages under RCW 4.24.630 are appropriate.

Respectfully submitted this 13th day of May, 2013.

LACY KANE, P.S.



SCOTT M. KANE, WSBA #11592
Attorney for Plaintiffs/Appellants

⁶ RCW 4.24.630(1).

⁷ CP 558, Deposition of Michael Sutton, p. 43, ll. 16-19.

⁸ CP 575, Findings of Fact and Conclusions of Law, Paragraph 15.