

67715-2

67715-2

Court of Appeals No. 67715-2-I
King County Superior Court No. 10-2-42874-7 KNT

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2017 APR - 5 PM 4:58

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

RICHARD AZPITARTE, *appellant*

v.

**GAYLE SAUVE, JANE DOE SAUVE and the marital community composed thereof and
BURIEN COLLISION CENTER, INC., *respondents***

**ON APPEAL FROM KING COUNTY SUPERIOR COURT
STATE OF WASHINGTON, THE HONORABLE HOLLIS HILL**

OPENING BRIEF

Richard Azpitarte
pro se

TABLE OF CONTENTS

	Page
<u>ASSIGNMENT OF ERROR AND ISSUES PRESENTED FOR REVIEW</u>	1
<u>A. ASSIGNMENTS OF ERROR</u>	1
<u>B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR</u>	1
<u>STATEMENT OF THE CASE</u>	
A. PROCEDURAL FACTS	2
B SUBSTATIVE FACTS	3
ARGUMENT	14
<u>1. THE LAWSUIT IS WITHIN THE STATUTE OF LIMITATION BECAUSE OF FRAUDULENT CONCEALMENT BY THE DEFENDANTS.</u>	14
<u>2. THE COURT DID NOT CONSIDER ALL THE CLAIMS ASSERTED IN THE COMPLAINT.</u>	21
CONCLUSION	22

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<u>1000 Virginia Ltd. P'ship v. Vertecs Corp.</u> , 158 Wn.2d 566, 575--76, 146 P.3d 423 (2006)	14, 15
<u>Beatty v. Western Pacific Insurance Co.</u> , 74 WA.2d 530, 543, 445 P.2d 325	16
<u>Champagne v. Thurston County</u> , 163 Wn.2d 69, 84, 178 P.3d 936 (2008).	21
<u>Crisman v. Crisman</u> , 931 P.2d 163, 85 Wash.App. 15 (Wash.App.Div.2 01/03/1997)	14, 15
<u>Douglass v. Stanger</u> , 101 Wn. App. 243, 256, 2 P.3d 998 (2000)	15
<u>Enterprise Leasing, Inc. v. City of Tacoma</u> , 139 Wn.2d 546, 551, 988 P.2d 961(1999)	19
<u>Favors v. Matzke</u> , 53 Wash. App. 789, 796, 770 P.2d 686 review denied, 113 wash. 2d 1033, 784 P.2d 531 (1989)	16
<u>Interlake Porsche & Audi, Inc. v. Bucholz</u> , 45 Wash. App. 502, 516-17, 728 P.2d 597 (1986)	14
<u>King County v. Azpitarte</u> , 130 Wash.App. 1047 (Wash.App.Div.1 12/19/2005)	9
<u>King County v. Azpitarte</u> , 136 Wash.App. 1021 (2006)	13
<u>Kruse v. Hemp</u> , 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)	20
<u>Oates v. Taylor</u> , 31 Wash. 2d 898, 902-03, 199 P.2d	

924 (1948) 15, 16

Stiley v. Block, 130 Wash.2d 486, 515,-16, P.ed 194 15

Viewcrest Co-op Ass'n, Inc. v. Deer, 70 Wash. 2d 290,
295, 422 P.2d 832 (1967) 15

Washington Mut. Sav. Bank v. Hedreen, 125 Wash.
2d 521, 526, 886 P.2d 1121 (1994) 16

STATUTES

RCW 46.55.120 8

RCW 46.55.120(2)(a) 6

RCW 46.55.120(2)(b) 6

RCW 46.55.130(2)(b) 11

RCW 46.55.130(2)(f) 16

COURT RULES

CR 11 21

CR 56(c) 20

**ASSIGNMENT OF ERROR AND ISSUES PRESENTED FOR
REVIEW**

A. ASSIGNMENTS OF ERROR

1. The trial court erred in ruling that that the statute of limitations had run for conversion and for replevin on an automobile that was converted from possession of the plaintiff.

2. Did the trial court err in claiming the suit was only about one automobile instead of at least four?

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does knowledge that a title has been transferred, as a matter of law, begin the statute of limitations on conversion when prior to that time the vehicle was fraudulently concealed from the plaintiff?

2. Can due diligence in conducting a search for a fraudulently concealed automobile be determined as a matter of law for the purposes of staying a statute of limitations of conversion?

3. Did the plaintiff's pleadings put the defendant on notice that more than one car was at issue?

STATEMENT OF THE CASE

A. PROCEDURAL FACTS

1. The plaintiff filed suit on December 10, 2010, for causes of action of conversion and repleven against the defendants. The complaint explicitly mentions one automobile and states by information and belief that there are others as well as parts that are in the possession of the defedants. (CP 3,4).

2. On March 23, 2011, the defendants answered, denying the allegations filed by the plaintiff. (CP 6-8)

3. On June 8, 2011, the plaintiffs' moved for summary judgment. (CP 9-12). A hearing was set for July 29th, 2011. (CP 13, 14)

4. The plaintiff brought a motion to compel on July 1, 2011. (CP 24-52). An amended motion to compel was filed on July 8, 2011 . (CP 58-74). The motions were scheduled for 7-12-2011 and 7-15-2011 respectively. (CP 23-23, 56-57)

5. A hearing was held on July 29, 2011 on the summary judgment motion. (Tr. 1-7)

6. On August 1, 2011, the court denied the motion to compel and granted a motion to dismiss on summary judgment. (CP 317-320).

7. On August 11, 2011, the plaintiff filed a timely motion for reconsideration. (CP 321-328).

8. On August 22, 2011 the court denied the motion for reconsideration. (CP 329-330)

9. On September 21, 2011 a timely notice of appeal was filed. (CP 348-351).

B. SUBSTATIVE FACTS

1. Before August of 2004, Richard Azpitarte (Azpitarte) was a collector of older cars. (CP 78). He collected his first one when he was fifteen and had been continually collecting them for over 40 years. (CP 78). His specialty was the so-called “muscle cars” that were made by United States manufacturers between 1964 and 1972. (CP 78). Cars in good condition in this era typically sold for between \$25,000 up to \$200,000 in 2004. (CP 78). The 70 Chevelle that is one of the subjects of this suit was one of these. (CP 78). It was a gold 70 Chevelle Super Sport 454. VIN # is 136370R231345. (CP 78). He had approximately 30 cars of this caliber and maybe another 30 cars of the same vintage but not quite as rare. (CP 78). He also had a number of cars that he referred to as “runners”. (CP 78). Runners were cars that ran, that he picked up at auctions, but were

not collector cars. (CP 78). He bought them because they were bargains, and legal running cars. (CP 78). He also had other vehicles such as tow trucks ramp trucks, trailers and tow dollies that were that were used to service the collection. (CP 78-79). The value of service vehicles ranged from \$25,000 on up. (CP 79).

2. The collector cars he had were valuable, not only because of their condition, but because they were “number matching vehicles.” (CP 79). This means that all major components were from the original car. (CP 79). Also, the rest of the vehicle was made up of Original Equipment by the Manufacturers (hereinafter referred to as “OEM” parts.) (CP 79). Since the cars were more correct and desirable if they were “number matching” and entirely OEM parts, he also collected OEM parts. (CP 79). The OEM parts are also collector items by themselves. (CP 79). Each of the collector cars had valuable OEM parts in their trunks. (CP 79). In addition, he had two school buses that were packed entirely with carefully cataloged OEM parts. (CP 79). Also included in the school buses were original titles for most of the cars. (CP 79). At the time, the value of the OEM parts in the school buses was approximately \$500,000. (CP 79).

3. For years the county had been claiming that his collector car collection was a “nuisance”. (CP 79). They tried for several years to make him get rid of his collection. (CP 79). The county was generally unsuccessful until early 2002 when the County passed an ordinance that put a limit on the number of cars a property owner could have on his lot. (CP 79). Richard Azpitarte immediately made an agreement with county officials vehicles to fix up his property by getting rid of all excess junk tires and reducing the number of vehicles on his property. (CP 79). The agreement was to reduce the number of vehicles to 12 or less. (CP 79).

4. By late August of 2004 he had moved virtually all of the tires and refuse and approximately 20 cars, when unexpectedly and in violation of the agreement, the police showed up to seize all his remaining cars on August 26th and 27th. (CP 79). The county had Jony McCall of Cedar Rapids towing supervise the towing of all the vehicles off Azpitarte’s property. (CP 79).

5. By this date, Azpitarte had already given the county the Vin numbers, make and model of twelve vehicles that were intended to be stored on the property. (CP 79). It was also his understanding that a number of other vehicles would be allowed to be parked in the right of way around his

property. (CP 79). When the tow began, he told the towing co-ordinator, (CP 79-80). Bill Turner that he was actually entitled to 18 cars because there were three lots total. (CP 80). However, Turner ignored him completely, and ordered all the cars towed on his property and on the right of way surrounding his property. (CP 80).

6. Jony McCall, Cedar Rapid Towing, CW Williams Construction Company, were there and were contracted to tow the cars. (CP 80). The supervising tow company, Cedar Rapids Towing LLC never gave him any notices of right to appeal the tows as required by RCW 46.55.120(2)(a). (CP 80). Therefore, there was no way for him to appeal the tows before the vehicles were sold, as required by RCW 46.55.120(2)(b). (CP 80). Whenever he attempted to get an appeal form whether it be from the Towing companies or agents of the county, he was refused. (CP 80).

7. When the county had all the vehicles towed, Azpitarte immediately took steps to regain possession of them, with the goal of storing most of them elsewhere and coming into compliance with the new county code. (CP 80). He immediately went to the tow lot where Cedar Rapids Towing was supposed to have towed the vehicles. (CP 80). None of the vintage muscle cars were there. (CP 80). Jony McCall refused to allow him to

redeem the parts that were in the cars or buses that were in the lot. (CP 80).

8. Azpitarte attempted to redeem the vehicles but all the agents for the county claimed that he would have to go through Cedar Rapids Towing LLC to redeem them. (CP 80). On September 24th, 2004, he paid \$25,000 to Cedar Rapids Towing, which should have been more than enough to pay for redemption rights for all vehicles and property stored within vehicles. (CP 80). Jony McCall and Cedar Rapids Towing assured him personally that \$25,000 was sufficient to redeem all the vehicles. (CP 80). In fact, he stated that it would pay for the entire abatement, with only approximately \$10,000 being used to pay for the tows. (CP 80).

9. However, after paying the \$25,000, Azpitarte only received a fraction of the vehicles and none of his valuable muscle cars. (CP 80). Whenever he went to the yards to view the cars, the more valuable collector cars were always missing. (CP 80).

10. Azpitarte knew several people involved in the industry including defendant Gayle Sauve. (CP 80). He asked all of them in early 2005, including Gayle Sauve if they knew where his cars were. (CP 80). Azpitarte was very specific about mentioning the 70 gold Chevelle SS. 454.

(CP 80-81). All of them, including Sauve, responded in the negative. (CP 81). Azpitarte told all of them, including Gayle Sauve about the \$25,000 credit card payment he had given Jony McCall to redeem the cars. (CP 81). He also told everyone that he was contesting the tows through an appeal. (CP 81).

11. Unbeknownst to Azpitarte, defendant Sauve had already obtained possession of the vehicle that is the subject of this suit and was storing it at his house. (CP 84).

12. In March of 2005, when Azpitarte or his associates attempted to exercise his redemption rights under RCW 46.55.120, Cedar Rapids Towing, and Jony McCall, (who had done all the towing under the contract of CW Williams Construction Company) refused to allow Azpitarte or his agents on the property before the auction. (CP 81). None of the agents for Cedar Rapids would tell Azpitarte where his cars were. (CP 81).

13. Azpitarte closely monitored the public auctions that occurred after that. (CP 81). The first one he learned of was in March. (CP 81). Gayle Sauve was there. (CP 81). Azpitarte told the police and Jony McCall that he was there to redeem a vehicle he had paid the tow fees with the \$25,000 credit card payment. (CP 81). He had the title in hand in his name, and his

registration. (CP 81). He was also prepared to pay any disputed fees in order to redeem the car. Gayle Sauve witnessed this. (CP 81).

14. There was another auction in April. (CP 81). Again Azpitarte was not allowed to attend, even though he had paid for the redemption rights. (CP 81). He had a list of VIN numbers of the cars that were on his property. (CP 81). He gave them to Officer Helton, the tow coordinator for the Washington State Patrol. (CP 81). Helton told Azpitarte that he would be entitled to the overages once the cars were auctioned, but Azpitarte never received any. (CP 81). Helton could not locate Azpitarte's cars either even though Helton told him he had looked them up in the state's computer system. (CP 81).

15. Even though Azpitarte was monitoring all of the community newspapers in the area, there was never any notice given of the June 28, 2005 auction where the 70 gold Chevelle SS 454 that is one of the subjects of this suit was auctioned. (CP 81).

16. In December of 2005, the Court of Appeals partially reversed the actions of the Superior Court in King County v. Azpitarte, 130 Wash.App. 1047 (Wash.App.Div.1 12/19/2005). This decision ruled that the tows on the right of way were improper. (CP 81).

17. It was not until late December of 2007 that Azpitarte finally learned that Gayle Sauve had acquired one of his cars. Azpitarte had confronted him with a rumor that Sauve had purchased one of his cars and Sauve admitted that he purchased it and it was not through a legal auction. (CP 81-82).

18. Later, Azpitarte learned in March of 2009 that Darren Helton had finalized a report and obtained a copy of it. (CP 81). According to that report, Jony McCall claimed in May of 2005, that the Gold 1970 Chevelle SS 454 had been returned to Richard Azpitarte. Helton made a notation on the AVR for that car “claimed released to Richard.” (CP 170). Helton made the inspection on May 18th, 2005.

19. The AVR claims that the car was sold for \$10.00 to Gayle Sauve on June 28th, 2005. (CP 289). It appears that the practice of Cedar Rapids Towing was to have the buyers write their names and addresses on AVR’s at the time of Auction. (See CP 143, 146, 148, 150, 153, 157, 160, 163, 165, 168)(See also, AVR’s obtained through public disclosure.) The printed name of Gayle Sauve on the signup list (CP. 137) is similar to the signed name and addresses on two cars (CP 168) and the AVR for the 70 Chevelle SS 454 that is the subject of this suit. (CP 289). Sauve claims to

have made a phone bid from Alaska on the 70 Chevelle SS 454, even though phone bids are not allowed under RCW 46.55.130(2)(b). (CP 17). Unexplained is how this phone bid could have been placed from Alaska while the Notary on that date was certifying an AVR stating that Sauve purchased the vehicle, with his name and address written in his handwriting. Also unexplained is how this car, at a public auction, sold for only \$10.00 for a car worth in excess of \$25,000. (CP 289). Even Sauve realized the lack of credibility of this price by later claiming that he paid \$5000. (CP 1). But if this is true, why did he knowingly turn in an affidavit stating a purchase price of \$10.00 and paying only \$.84 in tax instead of the over \$400.00 that was actually due?

20. According to the interrogatory answers of Gayle Sauve, the only vehicle he knew about purchasing that belonged to the defendant was the 70 Chevelle SS. (CP 279). The Defendants counsel certified the same answers on behalf of the other two defendants. (CP 285). In a letter to the plaintiff, defendants counsel also claimed that Burien Collision and Jane Doe Sauve did not have “any relationship” with the cars in the original set of interrogatories or the followup. (CP 307).

21. However, according to the Helton report defendant Burien Collision bought two vehicles belonging to Azpitarte on February 24, 2005. (CP 143, 148). Compare to Azpitarte lists of vehicles he got towed (CP. 186, 187). The AVR for the 69 Chevelle on CP 143 is extremely interesting. It shows up again in the public disclosure AVR for Daniel Spino with Daniel Spino's name forged over the notarized signature of the notary, who was certifying McCalls affidavit that Burien Collision, not Spino, bought the vehicle. (CP 297). Also suspicious is why the handwriting for Burien Collision is obviously different than that of the address, which looks like it was written by Gayle Sauve. (CP 297) The fact that Sauve gave the AVR to Spino rather than title it in his own name and then transfer it, leads to an inference that Sauve knew about the disputed nature of the title and was trying to keep his name off the chain of title to avoid a lawsuit like the present suit.

22. Similarly, the Chev Nova purchased on February 24, by Burien Collision has not been titled either. (CP 148), compare VIN with public disclosure request of March 27, 2009 showing no record for vehicle with that VIN.) (CP 293)

23. He also bought an Azpitarte vehicle in his own name on April 20th, 2005 (See CP 148, compare with VIN of last car on CP 163). But according to documents obtained under public disclosure two years later, he still had not titled the vehicle even though the law requires it be done within 15 days. (See 69 Chevelle with this VIN titled to Legal owner Shannon Shipp last transferred on 9-6-1996). (CP 294). This failure to title a vehicle within 15 days after the auction, likewise indicates knowledge that the ownership of the car was in dispute.

24. While it is true that Azpitarte litigated the original tows in King County v. Azpitarte 136 Wn. App. 1021, 2006 that suit did not deal with the redemption rights he attempted to exercise against Jony McCall.

25. There is another problem with this “auction” that supposedly was held on June 28 of 2005. Another vehicle, an 84 Chevrolet ramp truck was supposedly purchased by Jason Biscay on that date. (CP 302). However, according to Azpitarte, he talked to Biscay who claimed he bought it directly from Cedar Rapids Towing and not through an auction.

ARGUMENT

1. THE LAWSUIT IS WITHIN THE STATUTE OF LIMITATION BECAUSE OF FRAUDULENT CONCEALMENT BY THE DEFENDANTS.

Traditionally, the discovery rule has been applied in cases where the defendant fraudulently conceals a material fact from the plaintiff and thereby deprives the plaintiff of the knowledge of accrual of the cause of action. Application of the discovery rule tolls the limitation period until such time as the plaintiff knew or, through the exercise of due diligence, should have known of the fraud. **Interlake Porsche & Audi, Inc. v. Bucholz**, 45 Wash. App. 502, 516-17, 728 P.2d 597 (1986), review denied, 107 Wash. 2d 1022 (1987).

In **Crisman v. Crisman**, 931 P.2d 163, 85 Wash.App. 15 (Wash.App.Div.2 01/03/1997) the Washington Court of Appeals applied the discovery rule to the tort of conversion where fraudulent concealment was involved. Under the discovery rule, "a cause of action accrues when the plaintiff discovers, or in the reasonable exercise of due diligence should discover, the elements of a cause of action. **1000 Virginia Ltd. P'ship v. Vertecs Corp.**, 158 Wn.2d 566, 575--76, 146 P.3d 423 (2006)," This does not mean that the action accrues when the plaintiff learns that he or

she has a legal cause of action; rather, the action accrues when the plaintiff discovers the salient facts underlying the elements of the cause of action.

Id. Though the question of due diligence is ordinarily a question of fact, the issue can be decided as a matter of law if reasonable minds could reach but one conclusion. **Douglass v. Stanger**, 101 Wn. App. 243, 256, 2 P.3d 998 (2000)

Azpitarte's causes of action are subject to a three year statute of limitations and the discovery rule applies. RCW 4.16.080(2), **Crisman v. Crisman**, 85 Wn. App. 15, 19, 931 P.2d 163 (1997).

There are two ways to establish fraudulent concealment or misrepresentation. The plaintiff may affirmatively plead and prove the nine elements of fraud, or may simply show that the defendant breached an affirmative duty to disclose a material fact. **Stiley v. Block**, 130 Wash.2d 486, 515,-16, P.ed 194; **Oates v. Taylor**, 31 Wash. 2d 898, 902-03, 199 P.2d 924 (1948). Either method of proof will activate the statutory discovery rule for fraud, RCW 4.16.080(4) **Viewcrest Co-op Ass'n, Inc. v. Deer**, 70 Wash. 2d 290, 295, 422 P.2d 832 (1967). In the present case, Azpitarte's evidence was sufficient to prove that Sauve owed him an affirmative duty of candor and breached that duty.

Absent an affirmative duty to disclose material facts, a defendant's silence does not constitute fraudulent concealment or representation.

Favors v. Matzke, 53 Wash. App. 789, 796, 770 P.2d 686, review denied, 113 Wash. 2d 1033, 784 P.2d 531 (1989). When a duty to disclose does exist however, the suppression of a material fact is tantamount to an affirmative misrepresentation. **Washington Mut. Sav. Bank v. Hedreen**, 125 Wash. 2d 521, 526, 886 P.2d 1121 (1994); **Oates**, 31, Wash. 2d at 902.

Here the tow truck company had a statutory duty to keep the vehicle in its lot, so the plaintiff could redeem it. Here defendant Saue concealed the location of the vehicle even though he, by his own admission is well acquainted with the statutory procedures for auctions where an auction must be held within 90 days (See RCW 46.55.130(3)) and then titled within 15. (See RCW 46.55.130(2)(f)). He also had a statutory duty to title the car after he obtained it. See **Beatty v. Western Pacific Insurance Co.**, 74 Wash. 2d 530, at 543, 445 P.2d 325 (Wa 09/26/1968). By not fulfilling this duty he was able to conceal the fact that he had gained possession of the vehicle from the plaintiff. He misrepresented to the defendant that he did not know anything about the vehicle even though he

knew where it was... in his garage. His story of obtaining the vehicle through a non-existent auction and remodeling and painting it within a month is unbelievable. His claim that he made an illegal phone bid is convenient because he does not have to explain who the witnesses to the non-existent auction were. However, his presence is in dispute because the handwriting on the AVR was his and he cannot explain how he could be both in Alaska on a phone bid, yet at the same time be in Seattle to write his name and address on the AVR.

It is a reasonable inference that there was no legal auction on June 28th. It is also a reasonable inference that there was no legal auction on February 24, 2005, because of the small number of bidders and the fact the sheet did not indicate there were any #2 bids on any of the auctions as required by RCW 46.55.130(2)(d). Also, with a small number of bidders it is suspicious that the three Sauve bids came in even amounts, unlike the other auctions where the bids came in at odd dollar amounts.

Furthermore, the evidence indicates multiple instances of fraudulent concealment to hide from the plaintiff where the other cars Sauve purchased were. The defendants have misrepresented to the court that they obtained possession of the vehicles through auctions of questionable

legality. On February 24, the second highest bids were not listed. There was no attempt to title the some of vehicles, so the plaintiff would not know where to look as to who had possession.

Also suspicious is Sauve's method of titling the 70 Chevelle SS 454. From the documents it can be seen that he obtained a duplicate rather than use the original AVR to obtain title. In the Helton report, a notation on the AVR would have revealed to potential buyers including Sauve of the disputed issue as to whether the AVR was even valid. Conveniently, the copy supplied by Jony McCall and Cedar Rapids towing does not contain the language added by Helton, yet purports to be a true copy.

The Superior Court determined that the plaintiff should have learned the ownership of the vehicle by continuing to monitor the ownership of 120 vehicles. Whether a diligent search would have required that is a question of fact that should be decided by a jury. The record shows that for ten months the plaintiff monitored car auction notices, and checked with Officer Helton in order to determine what happened to his cars. At that point there was no record of any of his cars being titled. He had no evidence of any cars being auctioned and Cedar Rapids Towing was closed up. He had no expectation that cars would turn up after that.

Whether a diligent search would require the plaintiff to do more should have been submitted to a jury.

Even if the plaintiff had discovered the car had been titled by Sauve, that still would not have given him knowledge he needed to know he had a claim or could initiate legal action against Sauve. As far as Azpitarte knew, even if he found out that Sauve was a purchaser, he was a bona fide purchaser would not have been liable. It was not until Azpitarte found out about the fraudulent auction that he learned he might have had a cause of action against Sauve. Even when he learned this, a suit would have been risky, because Sauve might change his story once suit was filed. The documents he eventually used to prove the fraud were hidden in AVR's that had not been converted into titles and would not be public records because they were in the sole possession of the tow yard. He did not obtain these documents until he got the Helton report in March, 2009.

In reviewing a summary judgment order, the appellate courts consider all facts and reasonable inferences from the facts in the light most favorable to the nonmoving party. **Enterprise Leasing, Inc. v. City of Tacoma**, 139 Wn.2d 546, 551, 988 P.2d 961(1999). They will affirm the summary order if no genuine issue of material fact exists and Sauve et al

are entitled to judgment as a matter of law. CR 56(c); Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993).

In this case, taking all reasonable inferences in favor of the non-moving party Azpitarte, the court should have concluded that it was a reasonable inference the defendants obtained possession of the car in the fall of 2004, remodeled it, while concealing it from the plaintiff in violation of the statutes concerning towed vehicles.

He diligently looked for the vehicles for ten months eventually giving up once the tow yard was closed up. Even if he had discovered the titling of the vehicle, the knowledge of that one fact alone would not have been enough to discover the facts needed to file suit. As Mr. Sauve himself admits in his pleadings, Mr. Azpitarte would need knowledge that Mr. Sauve was something other than a bona-fide purchaser. This did not occur until later when he learned from Mr. Sauve himself that the car was obtained through an illegal auction. It was later still when he obtained the Helton report, that he had documented evidence he needed to file suit.

**2. THE COURT DID NOT CONSIDER ALL THE CLAIMS
ASSERTED IN THE COMPLAINT.**

Washington follows notice pleading rules and simply requires a “concise statement of the claim and the relief sought.” **Champagne v. Thurston County**, 163 Wn.2d 69, 84, 178 P.3d 936 (2008).

Here the plaintiff pled the following in his complaint:

7. By information and belief, the plaintiff alleges that other automobiles and parts also were converted into the possession of Gayle Sauve and/or Burien Collision. During the course of discovery, Plaintiff intends to determine the automobiles and parts converted and the method by which it was accomplished and therefore, this paragraph is a provisional allegation under CR 11.

Here the defendant was put on notice that the plaintiff was seeking more than one car and in response to summary judgment, the plaintiff gave direct evidence that three more cars and with accompanying parts were converted and requested a continuance to seek more cars and parts as well as more information on the cars in question. The court did not even consider the issue of whether those cars fell within the statute of limitations claiming the only issue before the court was one car. (Tr. 6).

For these other cars and parts, there was direct evidence of fraudulent concealment and conversion. The court’s argument concerning statute of limitations does not hold for these items because there is no evidence in this record that any of these cars were titled.

CONCLUSION

For all the reasons stated above, the appellant requests that the ruling of the trial court be reversed and the case reinstated with the plaintiff being allowed to continue with discovery..

Dated this 5th day of March, 2012


Richard Azpitarte

I hereby certify that on March 5, 2012, I caused to be served a copy of the appellants opening brief by the method indicated below and addressed to the following:

Robert Hardy
153 SW 154th
Burien WA., 98166-2315

- Hand Delivered By: _____
- U.S. Mail first class postage prepaid
- Overnight Mail fees prepaid
- Federal Express fees prepaid
- Facsimile time of completion : _____


Richard Azpitarte