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NO. 70494-0-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARK HAFFNER, an individual,

Appellant,

vs.

IVAR R. ALM et al,

Respondents.

APPELLANT'S BRIEF

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INTRODUCTION

Appellant Mark Haffner owned two bulldozers that Respondent Ivar Alm caused to be cut into scrap and hauled away. For several years, the bulldozers were stored by agreement on Mr. Alm's property in Fall City, Washington and were used by both Haffner and Alm to make improvements on the land. In 2007, Alm became upset and told Haffner to remove the bulldozers which led to a dispute over wages and storage rental fees. In 2008, the parties submitted their disputes as a small claims action in King County District Court.

Alm elected to pursue the remedy of storage fees and led the district court to believe the bulldozers were still on the property. The district court offset the claims and awarded no money damages to either party, giving as parting advice: "If it belongs to him, sir you need to get it off of there and you need to let him get it off." At trial in King County Superior Court, Alm testified that actually the equipment had already been seized and removed three weeks before Haffner served Alm the small claims papers. When Haffner learned the bulldozers were not on the site, he had filed the Complaint in King County Superior Court for conversion related to Alm's self-help. The trial court failed to properly rule on the self-help and conversion claims and instead erroneously adopted the district court decision without findings or conclusions.

ASSIGNMENTS OF ERROR AND ISSUES

1. The trial court erred in its holdings regarding the prior district court decision and committed reversible error.
 - (a) Trial court decided the wrong issue. Much of the trial court's April 25, 2013 letter ruling dealt with wage claims that were not even pursued at trial and the superfluous ruling that the district court's decision "is *res judicata* as to the work claims" casts substantial doubt over whether issues were fairly considered, reviewed, and decided at trial.
 - (b) Trial court failed to enforce election of remedies. The trial court failed to rule that Alm had made an election of remedies at the district court by pursuing storage rental fees. That election resulted in the district court judgment of no money damages to either party. Washington law precludes Alm from a double recovery that results by prevailing on contradictory defenses after already receiving storage rental fees.
2. The trial court erred by failing to enter any Findings of Fact or Conclusions of Law about conversion, trespass, or abandonment, and the language in the court's letter ruling misstates Washington law and the factual record.
 - (a) Trial court failed to find conversion. Respondent admits he seized possession of the bulldozers by causing them to be cut up and hauled off, constituting undisputed *prima facie* conversion unless there is a valid defense. The trial court erred by failing to include or address the elements of conversion, despite having received proposed Findings of Fact and Conclusions of Law from Appellant, and instead erroneously relied on the following explanation:

With regard to the claim of conversion, the evidence clearly supports that Mr. Haffner leaving his equipment on the Alms property constituted a

trespass and that they gave him ample notice to remove the equipment. The notice was repeated for several years and Mr. Haffner was clearly advised to remove the equipment. The Alms even went to the extent of having Plaintiff's brother speak to him about the removal.

The trial court's explanation reveals that the court erred by considering disputed arguments about notice that may or may not have been given in prior years. Those communications, if they occurred, were legally irrelevant following the district court judgment allowing storage rental fees and admonition that Alm must allow Haffner to remove the bulldozers: "If it belongs to him, sir you need to get it off of there and you need to let him get it off." In truth, the equipment had already been converted.

- (b) Trial court erroneously held "trespass" to be a defense. It was error, unsupported by any authority, to hold "trespass" as a defense to conversion. On the contrary, there are prescribed remedies for trespass and seizing chattel is not one of them; rather, the remedies are injunctive relief and damages for injury to property. If the trial court or Respondent had considered Findings of Fact and Conclusions of Law on that inapplicable legal theory, it would have been plain that the elements of trespass cannot be met even if the theory applied.
- (c) Trial court did not and could not have found "abandonment." If Respondent had not already elected the remedy of storage rental fees under an alleged oral agreement, the proper defense to conversion would have to have been "abandonment." The trial court never used the word, but the trial court's letter ruling will be argued as an implied ruling on "abandonment." Alm argued entitlement to storage fees under an oral agreement which is contrary to abandonment. Also, the evidence establishes active efforts to recover the bulldozers and no timeline for removing the bulldozers after the district court admonition on September 15, 2008, at which date the bulldozers had actually already been destroyed.

STATEMENT OF THE CASE

Appellant Mark Haffner, plaintiff at trial (“Haffner”) is an individual who resides in Washington.¹ Respondent Ivar Alm, defendant at trial (“Alm”) is a married individual who resides in Washington and owns property in Fall City, Washington.²

Haffner and Alm agree that at one point in time, around 2003 or 2004, there was an agreement to store Mr. Haffner’s bulldozers on Mr. Alm’s property.³ While there are disputes about the scope of work performed on the Alm property by Haffner, Alm admits that Haffner performed some services and also that Alm himself used Haffner’s equipment to improve the land.

Q. And he did dig that ditch for you?

A. Yes, he did.

Q. And you did use it for your driveway?

A. Yes, I did.

Q. And also for some work—you mentioned you also used it for some work around the barn. What was that?

A. I cleaned out the barn with it.

Q. Would you know how often Evron [Alm’s worker] used the John Deere 450?

A. No, I wouldn’t.⁴

¹ CP 1.

² CP 2.

³ RP, excerpted testimony of Ivar Alm (hereinafter “Alm”), at 8: 22-25.

⁴ RP, Alm, at 42: 1-2, 15-19 and 43: 8-9.

The bulldozers remained on the site until 2008. Haffner and Alm agree they had no written agreement and their agreement, whatever it was, was oral. The district court scolded their business practice:

When mature adults in the United States enter into a contract, they use a pen. This is a Bic pen worth about a quarter. Most people can afford a quarter and a piece of paper to write their agreement down. When they do not write their agreement down, I'll for work from some much an hour, or I will work off the rent, then it becomes an oral contract and in the law, we say an oral contract is worth the paper it is written on.⁵

Mr. Alm admits that at one point in time he became upset. "I told him, 'I'm going to get rid of this stuff. First guy that wants this stuff can have it.' I was really upset."⁶ Alm explains that occurred in 2007 when he saw Haffner repairing a motor of a bulldozer on the ground.⁷ Alm confirms that to be the event that caused him to "change my mind" about whether Haffner could store his bulldozers on Alm's property.⁸

That event led to a dispute between Haffner and Alm over how to settle competing wage and storage rental claims. Those disputes were submitted and resolved by King County District Court on September 15, 2008. The district court ruled that the claims for work and storage

⁵ CP, 62.

⁶ RP, Alm, at 31: 10-12.

⁷ RP, Alm, at 35: 3-8 and 47: 8-24.

⁸ RP, Alm, at 47: 5-15.

between 2004 and 2008 offset each other: “So, I’m going to give both of you a ‘zero.’”⁹ Judgment entered accordingly.¹⁰

The district court had heard argument about whether Alm was obstructing Haffner’s ability to remove the equipment and Alm failed to disclose that the equipment had already been destroyed, saying instead that “I want him to take the whole thing off.”¹¹ The district court confirmed her understanding: “I believe there is equipment on your property.”¹² As the removal of conversion of chattel was not submitted and was also outside the jurisdiction of the small claims proceedings, the district court gave the parting admonition: “If it belongs to him, sir you need to get it off of there and you need to let him get it off.”¹³

Haffner learned that his bulldozers were already gone and filed the Complaint that led to this appeal. Alm initially asserted a counterclaim for \$300,000 related to alleged petrochemical damage¹⁴. Because it lacked any factual basis and was asserted only to harass and intimidate, it was voluntarily dismissed before trial.¹⁵

⁹. CP, 62.

¹⁰. CP, 48.

¹¹. CP, 61.

¹². CP, 62.

¹³. CP, 62.

¹⁴. CP, 10.

¹⁵. CP, 36-37.

Haffner submitted a trial brief with proposed Findings of Fact and Conclusions of Law identifying conversion and the affirmative defense of abandonment as the issues for trial, not pursuing any wage claims.¹⁶ Alm submitted no Findings of Fact and Conclusions of Law and instead submitted a brief titled Defendant's Motion to Establish the Law of the Case, in which they argued *res judicata* of the district court's decision.¹⁷

During trial, Alm admitted to the elements of conversion through his worker Evron: "Q. You testified that—that you were really upset and you said, 'The first guy who wants it can have it.' I need to know, was that conversation with Evron? A. Yes."¹⁸ On Alm's direction, Evron destroyed and removed the bulldozers: "A...he told me they came in with these big torches and they just cut everything up and hauled it away."¹⁹ Alm confirmed that this had already occurred long before the district court hearing: "Q. Okay. How do you know when it was [the removal of the TD-25s]. A. Because it was about six weeks before he served me papers for the first trial."²⁰ Evidence of record establishes the small claims action was filed June 26, 2008²¹ and served by the Sheriff on

¹⁶. CP, 67-72.

¹⁷. CP, 38-43.

¹⁸. RP, Alm, at 45-46: 23-25 and 1.

¹⁹. RP, Alm, at 33: 14-16.

²⁰. RP, Alm, at 53: 21-23.

²¹. CP, 45.

Alm on July 23, 2008.²² By Alms own testimony, while payment disputes were pending, he had caused the seizure, destruction, and hauling off of the bulldozers in June 2008.²³

At trial, in support of testimony regarding purchase costs,²⁴ Haffner also presented written evidence of monetary damages resulting from the conversion in the form of salvage or scrap values.²⁵ On April 25, 2013, the trial court wrote a letter ruling.²⁶ The letter superfluously rules on wage claims not pursued and appears to accept Alm’s argument about *res judicata* and law of the case.²⁷ The letter fails to properly rule upon either the conversion claim or the only affirmative defense of abandonment, instead presenting “trespass” as a basis to deny relief which theory the court basis on disputed communications that preceded the district court resolution of the wage and storage claims.²⁸

On May 14, 2013, judgment was entered in favor of Alm with no supporting Findings of Fact and Conclusions of Law.²⁹ This appeal followed.

²². CP, 30.

²³. RP, Alm, at 53: 13-15.

²⁴. RP, excerpted testimony of Mark Haffner at 23: 18-25 and 24: 1.

²⁵. CP, 33-35.

²⁶. CP, 93-94.

²⁷. *Id.*

²⁸. *Id.*

²⁹. CP, 95-96.

ARGUMENT & AUTHORITY

The trial court failed to properly apply the law and failed to accurately handle the district court ruling.

A. The trial court mistook the district court’s ruling, failed to properly decide the submitted issues, and failed to issue Findings of Fact or Conclusions of Law

Our courts do not consider the absence of Findings of Fact and Conclusions of Law as automatically reversible error and have explained that that a trial court is “not required to enter separate findings and conclusions” when adopting a commissioner’s decision³⁰ However, this Court of Appeals should not excuse the trial court’s error where the district court had two explicit premises and the trial court missed each of them. First, the parties had an oral agreement regarding storage and the district court offset wages and storage rental fees. Second, based on Mr. Alm’s misrepresentations, the district court believed the equipment was still on the property and admonished the parties to cooperate to remove it. While the district court decision can be *res judicata* as argued, it is only for the wage and storage rent claims and the election of remedies made by Alm to cause that resolution.

Here, when combined with the trial court’s failure to properly handle the district court judgment, this Court of Appeals should hold the

³⁰. *Williams v. Williams*, 156 Wn. App. 22, 27-28, 232 P.3d 573 (2010).

failure to issue findings and conclusions to be reversible error. In light of the fact that the trial court spent time in the letter ruling addressing the moot wage claim for which no damages were even sought, it is not fair to assume that the trial court fairly considered the issues.

B. Alm made an election of remedies but obtained a double recovery as a result of the trial court's errors.

The trial court allowed Alm a double recovery because he was released from conversion liability after already obtaining the benefit of his election to pursue storage rental fees under an alleged oral agreement. These errors of law constitute reversible error. At the time of the district court hearing, Alm failed to disclose that he had already taken possession of the bulldozers. He could have elected to argue abandonment and pursue that as the remedy. Instead, he elected to pursue a counterclaim for monetary damages under a storage agreement.

The rule of election of remedies prevents a party from obtaining two different remedies from a single wrong.³¹ In order to be bound by an election of remedies: “Two or more remedies must exist at the time of the election; the remedies must be repugnant and inconsistent with each other; and the party to be bound must have chosen one of them.”³² Those elements are met here. Haffner was not abandoning his bulldozers if he

³¹. *Lange v. Town of Woodway*, 79 Wn.2d 45, 49, 483 P.2d 116 (1971).

³². *Id.*

was storing them pursuant to oral agreement. It was Alm who elected to pursue the remedy of monetary compensation and he must be bound to it.

1. Washington law mandates conversion liability in cases of self-help.

Alm had no right of ownership and no legal right to destroy property that was owed by Haffner. Alm's actions were a clear case of self-help. Our caselaw does not condone self-help and imposes liability for conversion, and consistently impose conversion liability on parties that execute self-help even when those parties had a security or other secondary legal interest in property, of which Alm has none.³³ When parties have attempted to justify self-help by arguing abandonment, our courts have ruled on the side of protecting property rights unless there has been strict compliance with statutory or notice procedures that become the basis of establishing "abandonment."³⁴ The trial court committed reversible error by not finding Alm liable for conversion.

2. "Trespass" is not a defense to conversion and there was no evidence to find trespass in the context of a disputed oral agreement over wages and storage rental fees.

There is no Washington authority holding that trespass is a defense to conversion. On the contrary, the remedy for trespass does not include self-help or conversion, rather: "The remedies for a continuing trespass

³³. See *Stone Machinery Co. v. Kessler*, 1 Wn. App. 750, 463 P.2d 651 (1970); see also *Carey v. Interstate Bond & Mortgage Co.*, 4 Wn.2d 632, 104 P.2d 579 (1940).

³⁴. See *Olin v. Goehler*, 39 Wn. App. 688, 693, 694 P.2d 1129 (1985).

are limited to injunctive relief and damages for injury incurred [to the land].”³⁵ Alm made no effort to pursue injunctive relief, voluntarily dismissed his counterclaim for injury to the property, and would be limited to only those remedies for a trespass action, which he did not pursue and for which there were no findings or conclusions.

There could have been no trespass here where there are no damages because Alm already recovered rental value, and the presence of a dispute over their oral agreement precludes the possibility of there being an intentional act constituting an invasion of property. Those are three of the four required elements for trespass, and Alm could not meet them here.³⁶ The trial court committed reversible legal error by ruling that “leaving his equipment on the Alms property constituted a trespass” and also that it justified Alms seizure and destruction of the bulldozers.³⁷

3. The trial court did not find “abandonment” and could not find abandonment on the record showing active efforts to recover chattel and the contrary election of Alm to claim rental fees subject to an oral agreement.

The only recognized affirmative defense to conversion is abandonment.³⁸ If that was to be Alm’s defense, he should not have concealed his acts from the district court and should not have elected to

³⁵. *Crystal Lotus Enterprises, Ltd. v. City of Shoreline*, 167 Wn. App. 501, 506, 274 P.3d 1054 (2012).

³⁶. *Id.*

³⁷. CP, 93.

³⁸. *Lowe v. Rowe*, 173 Wn. App. 253, 294 P.3d 6 (2013).

pursue a counterclaim for money damages for rental fees under an oral agreement. However, Alm elected that remedy and should be precluded from arguing abandonment later. The trial court did not use the word “abandoned” in the letter ruling, but Alm will argue that to be implied.

The trial court relied on his understanding that “notice was repeated for several years and Mr. Haffner was clearly advised to remove his equipment.”³⁹ However, that language demonstrates that the trial court was relying on testimony that preceded Alm’s election of remedies before the district court. Alm decided to not argue abandonment, and he should be precluded from doing so now having already obtained the benefit of his rental fee argument.

This case is unlike the abandonment case of *Lowe v. Rowe*,⁴⁰ where a party had been provided clear dates and timelines to remove vehicles received through inheritance. The court found abandonment there based on clear dates and stated deadlines combined with the absence of any evidence explaining why the equipment was not removed.⁴¹ Instead, this case is like *Olin v. Goehler*,⁴² where the court declined to find abandonment in the face of a party, like Haffner, who had “continually

³⁹. CP, 93.

⁴⁰. *Lowe v. Rowe*, 173 Wn. App. 253, 294 P.3d 6 (2013).

⁴¹. *Id.*, 173 Wn. App. at 263.

⁴². *See Olin v. Goehler*, 39 Wn. App. 688, 693, 694 P.2d 1129 (1985).

and unambiguously expressed their desire to resume possession.”⁴³ Haffner cannot be said to have abandoned his bulldozers when he was seeking to resolve payment disputes over wages and storage claims and then actively pursuing recovery of his property through legal actions. Moreover, Alm himself precluded an abandonment argument when he elected to pursue not that defense but monetary damages under an oral agreement.

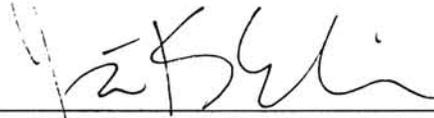
CONCLUSION

This is a simple appeal. The trial court simply failed to rule on the issues presented and erroneously handled a district court ruling that plainly left open the issue upon which Haffner went to trial. This Court should (a) vacate the judgment, (b) reverse the ruling and find that conversion has been established as a matter of law with no basis for the affirmative defense of abandonment given the election of remedies, resulting in an award of attorneys’ fees for appeal and trial as quantified by the trial court below and (c) remand for determination of damages resulting from the conversion.

DATED this 24th day of February 2014.

⁴³. *Id.*, 30 Wn. App. at 693.

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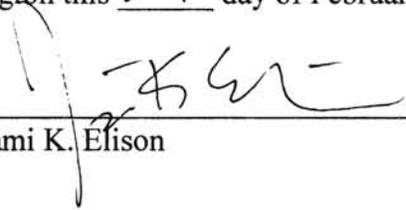
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I certify under penalty of perjury that on the 2nd day of December, 2013, I served a copy Appellant's Brief via email, per agreement of the parties, and U.S. Mail, postage prepaid on the following:

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