

A Wrongful Sale Lawsuit

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A recent California Court of Appeal unpublished opinion in *Milwicz v. Public Storage*, 2010 Cal. App. Unpub. LEXIS 1870, sheds some light on a number of legal issues that inevitably arise whenever a customer brings suit alleging wrongful sale of stored property.

Tom Milwicz rented a storage space at Shurgard Storage (Shurgard was subsequently purchased by Public Storage). Eventually his property was sold pursuant to the California Self-Service Storage Facility Act for failure to pay rent. Mr. Milwicz, his wife and daughter filed suit alleging negligence and conversion of goods, seeking \$250,000 for the property, punitive damages and attorney's fees. The plaintiffs claimed that Public Storage had wrongfully disposed of their property and had refused to identify the purchaser so they could recover the sold property.

Public Storage demurred to the complaint (A demur is a legal objection to the sufficiency of a complaint. It asserts that even assuming all alleged facts are true; the complaint fails to state a legal claim. It is used at a very early stage in the litigation process.) and moved to strike the request for attorney's fees and punitive damages. The trial court ultimately dismissed the lawsuit, concluding that the contract validly limited Public Storage's liability on all of plaintiffs' allegations. The plaintiffs appealed.

The court of appeal reversed in part. The court permitted the suit to proceed under three theories of liability. First, the court held that Public Storage's conduct may have been a breach of contract. The appellate court agreed with the trial court that the contract signed by Mr. Milwicz barred claims for ordinary negligence. However, the court pointed out that the California Supreme Court had drawn a distinction between ordinary negligence and gross negligence and that the plaintiffs could proceed on a gross negligence theory. The court also concluded that plaintiffs might be able to prove their claims of conversion and that the rental agreement did not bar such claims. Conversion is an intentional tort and California law prohibits the contractual waiver of intentional acts.

Only Tenant Can Bring Suit

The court then turned its attention to the claims of Mrs. Milwicz and her daughter Kimberly. Public Storage contended that neither was a party to the rental agreement and therefore had no right to bring suit based upon alleged contract breaches. The court also concluded that



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because neither Mrs. Milwicz nor Kimberly were a party to the contract they could not bring claims based upon negligence or conversion. There was simply no legal relationship between them and the storage operator upon which to base such claims. The trial court's dismissal of all their claims was affirmed.

The court of appeal's rulings on the conversion and gross negligence issues are not surprising. The court based its decision solely upon the plaintiffs' allegations and the application of the rental agreement release of liability provisions. The California Supreme Court ruled in 2007 that releases of liability do not bar claims for gross negligence and the Milwicz court concluded that the pleadings adequately raised this issue. Likewise, the conversion claim is based upon intentional conduct and in most instances would not be barred by a contractual release.

Disturbing Ruling

The court's ruling on the contract claims is disturbing. The rental agreement limited the value of the property Mr. Milwicz could store in the storage space. Public Storage pointed out that the plaintiff in his complaint admitted that he had violated the rental agreement by storing property far more valuable than permitted. The court said,

"The fact that Milwicz stored items having a value in excess of the contract does not excuse Public Storage's failure to comply with the terms of the SSSFA. The SSSFA is not, as Public Storage argues, advisory or discretionary. The statutes comprising the SSSFA set forth the requirements of a rental agreement and the steps a self-storage facility owner must take prior to availing himself or herself of the Act's provisions permitting foreclosure and sale of the tenant's property. (See, e.g., Bus. & Prof. Code § 21703 [notice of delinquency shall be sent by certified mail]; § 21704 [form of notice shall contain certain provisions]; § 21707 [advertisement of sale shall be published in newspaper of general circulation and shall include a general description of the goods].)"

The court's conclusion that the plaintiff's breaching of the contract by storing property far in excess of the value he had agreed to store did not excuse the storage operator from complying with the law is not totally unreasonable. However, to permit the plaintiff to recover damages for loss of property far in excess of the amount he had agreed to store is unreasonable. What is very interesting is the rental agreement permitted the tenant to store property with a value of \$5,000. This amount was increased to \$10,000. Mr. Milwicz may have suffered a loss; any loss beyond the contractual amount of \$10,000 was solely the result of his wrongful conduct.

The court's determination that Mrs. Milwicz and her daughter could not be plaintiffs in this suit is an important

ruling. This is one of the few appellate opinions to take a serious look at the rights of non-parties to a self storage rental agreement to bring suit. The court found that Public Storage had no notice or knowledge that the tenant's wife and daughter were also using the storage space and thus their claims were barred.

This suit is at a very early stage. It was decided solely upon the plaintiffs' allegations and the law and not upon the actual facts. Once back in the trial court the process of determining the facts will begin. It will be interesting to see how the court views the fact that the plaintiff signed a rental agreement that clearly stated he would not store property with a value in excess of \$10,000. ❖

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