

Honorable John C. Coughenour  
Hearing Date: February 26, 2016

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CURTISS WILSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA, JOHN OR  
JANE DOE, Director of the Department of  
Licensing, a subdivision of the State of  
Washington, In his/her official capacity and the  
STATE OF WASHINGTON, and HORTON'S  
TOWING, a Washington Corporation,

Defendants.

No. 2:15-cv-00629-JCC

DEFENDANT HORTON'S TOWING'S  
REPLY IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT

WHATCOM COUNTY SUPERIOR  
COURT CAUSE NO.: 14-2-02821-7

Plaintiff's opposition to Horton's Towing's ("Horton's") Motion for Summary Judgment focuses primarily upon facts and jurisdictional arguments relating to actions taken by the Lummi Nation and Lummi Nation Officer Brandon Gates. None of these arguments are relevant; the Plaintiff has not shown that there is a genuine issue for trial with respect to his conversion claim against Horton's. Indeed, the Plaintiff only briefly mentions his lawsuit against Horton's Towing, stating that his conversion claim is based solely on Horton's release of the vehicle to the Lummi Tribe.

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1           The Plaintiff contends that the Lummi Tribe was not lawfully authorized to seize the  
 2 vehicle and, as a consequence, Horton's acted without lawful justification when it "gave away  
 3 plaintiff's truck" pursuant to the Lummi Tribal Court Notice of Seizure. (Dkt. #61, p.7).  
 4 Plaintiff further argues that Horton's breached a "duty to keep custody of the 1999 Ram  
 5 Pickup" and "should have advised Lummi Nation Officer Gates that [it] would not honor the  
 6 Lummi Nation seizure process." (Dkt. #61, p.6). None of these arguments are supported by  
 7 the facts or the law.

8           To be sure, the Plaintiff's citations to the Washington impound statute, RCW 46.55, *et*.  
 9 *seq.*, are correct. This is the controlling statutory authority regarding duties owed by tow truck  
 10 operators. Under the express terms of the statute, towing companies are authorized to remove  
 11 vehicles at the direction of law enforcement. *See, First Class Cartage, Ltd. v. Fife Serv. &*  
 12 *Towing, Inc.*, 121 Wn. App. 257, 264, 89 P.3d 226, 230 (2004) citing, Laws of 1969, 1st Spec.  
 13 Sess., ch. 42, § 7. After a vehicle is impounded, a tow truck operator must then provide notice  
 14 within twenty-four hours to the last known registered and legal owners of the vehicle. RCW  
 15 46.55.110(1).

16           In all respects, Horton's Towing fully complied with statutory requirements. First,  
 17 there is no dispute that Horton's impounded the vehicle at the direction of the Washington State  
 18 Patrol after Plaintiff was arrested under suspicion of DUI on October 23, 2014. *See Exh. 1* to  
 19 the Declaration of Daniel J. Johnson, Sr., Owner, Horton's Towing ("Johnson Decl.") –  
 20 *Impound Call Receipt*. Second, there is no dispute that Horton's Towing issued a Notice of  
 21 Vehicle Impound to Mr. Wilson that same day, as required under RCW 46.55.110(1). *Id.*, **Exh.**  
 22 **2 - Notice of Vehicle Impound**. The Notice was sent by first-class mail and included the  
 23

1 identity of the agency authorizing the impound; the name of the impounding tow firm, its  
2 address, and telephone number; and the location and time of the impound, and by whose  
3 authority the vehicle was impounded. Id. The Notice also included the written notification of  
4 the right of redemption and opportunity for a hearing to contest the validity of the  
5 impoundment. Id.

6 Finally, there is no dispute that Lummi Nation Officer, Brandon Gates, appeared at  
7 Horton's Towing on the same day the vehicle was impounded and presented an official Lummi  
8 Tribal Court Notice of Seizure. Id., **Exh. 3 - Notice of Seizure.** At the direction of Officer  
9 Gates, Horton's Towing complied with the Lummi Nation Notice of Seizure and released the  
10 vehicle. Id. Horton's had no further involvement in this matter.

11 Contrary to plaintiff's assertions, there is absolutely no legal authority to support a  
12 ruling that a tow truck operator is under an affirmative duty to conduct an independent  
13 investigation into jurisdictional issues, or to advise law enforcement on such matters. In truth,  
14 Washington courts have specifically rejected similar arguments regarding the scope of the  
15 impound statute and the duty to investigate. *See, First Class Cartage, Ltd. v. Fife Serv. &*  
16 *Towing, Inc.*, 121 Wn. App. 257, 89 P.3d 226, 231 (Div. 2, 2004). In *First Class*, the registered  
17 owner of an impound vehicle brought claims for negligence regarding notice and conversion  
18 against a towing company that sold a vehicle at auction. Id. The plaintiff argued that the  
19 towing company was under a duty to investigate and independently determine the lawful legal  
20 owner prior to providing notice and selling the vehicle. Id. at 258. The court examined the  
21 impound statute and ruled, in pertinent part, that that the tow truck operator was ***under no duty***  
22 ***to conduct an independent investigation*** and ***had a right to rely on information provided by***  
23

1 *law enforcement agencies* and the Department of Licensing. *Id.*, at 258-259, 267. Although  
 2 the issue raised in First Class related to notice rather than jurisdiction (as in this case), the  
 3 reasoning of the court is equally applicable. Just as the court noted in First Class, “. . . [w]hile  
 4 it is *conceivable* that the legislature could require a towing company to investigate  
 5 [jurisdiction] it has not done so.” *Id.*, at 266.

6 Here, reasonable minds can only agree that Horton’s Towing complied with the  
 7 impound statute and acted under the direction of law enforcement when the vehicle was  
 8 impounded at the request of the WSP. Reasonable minds can only agree that Horton’s released  
 9 the vehicle to Lummi Nation Officer Gates pursuant to a Lummi Nation Trial Court Notice of  
 10 Seizure. Horton’s Towing was under no duty to conduct an independent jurisdictional  
 11 investigation, but rather was entitled to rely upon information provided by both law  
 12 enforcement agencies. The Plaintiff has failed to present *any* evidence that could possibly lead  
 13 a rational trier of fact to conclude that Horton’s Towing acted without lawful justification. The  
 14 Plaintiff’s conversion claim, therefore, fails as a matter of law.

15  
 16 DATED this 25<sup>th</sup> day of February, 2016.

17 FORSBERG & UMLAUF, P.S.

18 By: /s/Robert W. Novasky  
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 Attorneys for Defendant Horton’s Towing

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing DEFENDANT HORTON'S TOWING'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT on the following individuals in the manner indicated:

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**SIGNED** this 25<sup>th</sup> day of February, 2016, at Tacoma, Washington.

/s/Myia McMichael  
Myia O. McMichael