

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT 1
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COUNTY OF MONROE) CAUSE NO. 53C01 1806 CT 001262

DANIEL H FROHMAN
Plaintiff,

V.

JEANNE WALTERS REALTY, LLC,
SPEEDY WRECKER SERVICE, LLC,
Defendants.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This case comes to the Court for decision on dueling motions for summary judgment.

The Court finds that there are two issues for the Court to decide at this juncture: 1.) Whether or not the Defendants violated the statute on abandoned vehicles by routinely and without any notice towing vehicles parked improperly on the property controlled by JWRE? 2.) What is the proper measure of damages for such a violation?

Indiana Statutes on towing of abandoned vehicles are contained in IC § 9-22-1-15 and § 9-22-1-16 as follows:

9-22-1-15. Vehicle abandoned on rental property — Notification procedures.

(a) A person who finds a vehicle believed to be abandoned on private property that the person owns or controls, including rental property, may:

(1) obtain the assistance of an officer under section 18 [IC 9-22-1-18] of this chapter to have the vehicle removed; or

(2) personally arrange for the removal of the vehicle by complying with subsection (b) and section 16 [IC 9-22-1-16] of this chapter.

(b) If the person wishes to personally arrange for the removal of the vehicle, the person shall attach in a prominent place a notice tag containing the following information:

(1) The date, time, name, and address of the person who owns or controls the private property and a telephone number to contact for information.

(2) That the vehicle is considered abandoned.

(3) That the vehicle will be removed after twenty-four (24) hours.

(4) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.

(5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within twenty-four (24) hours.

9-22-1-16. Disposition of vehicle abandoned on rental property — Emergencies.

(a) If after twenty-four (24) hours the person who owns a vehicle believed to be abandoned on private property has not removed the vehicle from the private property, the person who owns or controls the private property on which the vehicle is believed to be abandoned may have the vehicle towed from the private property.

(b) Notwithstanding subsection (a), in an emergency situation a vehicle believed to be abandoned on private property may be removed immediately. As used in this subsection, “emergency situation” means that the presence of the vehicle believed to be abandoned interferes physically with the conduct of normal business operations of the person who owns or controls the private property or poses a threat to the safety or security of persons or property, or both.

The Defendants JWRE and SWS businesses are covered under these sections in that JWRE owned and/or controlled the property on which the Plaintiff’s car was found and that SWS cooperated with JWRE to tow all vehicles that parked on the property without a proper permit. As normally read, the procedure for the towing of such a vehicle would require notice and a twenty-four-hour wait period prior to towing. IC § 9-22-1-15(5) even states that, “the person who owns the vehicle may avoid costs by removal of the vehicle or parts within twenty-four (24) hours.”

The problem here occurs under §9-22-1-16, which section creates an exception for an “emergency situation” that the code defines as “mean[ing] that the presence of the vehicle believed to be abandoned interferes physically with the conduct of normal business operations of the person who owns or controls the private property or poses a threat to the safety or security of persons or property, or both.”

The Defendants decided that because a vehicle is a physical presence and because it could theoretically take a space that a properly permitted vehicle might otherwise want, any vehicle not permitted found in the lot necessarily physically interferes with the normal business operations of JWRE. JWRE has a contract with each permit holder that states if the permit holder cannot find a parking spot, then that person is responsible for calling JWRE. This system would work well with the statute, because at the point at which a permit holder cannot find a space due to the presence of a non-permit vehicle, it could be rightfully said that the vehicle so abandoned is indeed interfering with the business of JWRE.

The Defendants are essentially arguing that because a non-permit vehicle could conceivably interfere with the parking business, it necessarily falls under the definition of “emergency situation” in IC §9-22-1-16(b). The Defendants have interpreted the statute in such a manner as to effectively render §9-22-1-15 and, §9-22-1-16(a) meaningless. Their interpretation is erroneous and in accordance with the decision in *Union Twp. Sch. Corp. v. State ex rel. Joyce*, 706 N.E.2d 183 at 191 (Ind. Ct. App. 1998): “[This interpretation] would violate the rule of statutory construction that every word must be given effect and meaning and no part is to be held

meaningless. Language used in a statute is deemed to have been used intentionally.” (internal citations omitted)

The Court finds that the Defendants had a procedure in place that would have comported with the statutes nicely. Instead they ignored all parts of the abandoned-vehicle statutes except those that fit best with SWS’ business interest and was easiest for JWRE as well. The Defendants turned their quotidian business circumstances into exceptional circumstances with their misinterpretation of these statutes.

Given that the Defendants violated the statute by towing vehicles that were not interfering with normal business operations and that were not given proper twenty-four-hour notice, the question for the Court becomes, “What is the proper measure of damages for this violation?”

Here the Plaintiff argues that because the Defendant violated the statutes, their violation had to have been deliberate with malicious intent such that it becomes an instance of criminal conversion allowing for up to treble damages and attorney’s fees and for punitive damages as well. With this issue, the Defendants’ intentions become paramount.

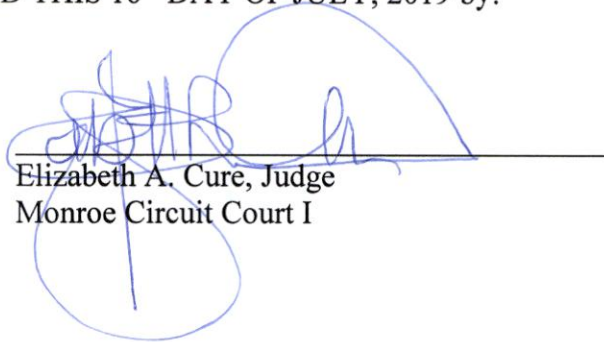
As the Indiana Court of Appeals held in *Kroger Co. v. WC Assoc.*, 967 N.E.2d 29, 38 *et seq* (Ind. Ct. App. 2012), a case that closely parallels the present case as it relates to the issue of intent with respect to breaches of contracts:

Under the Defendants’ argument, anytime a party to an unambiguous contract breaches the contract, the party’s criminal intent would be established. Not every breach of contract case results from a criminal intent. Our supreme court recently made the same observation when it held that a finding of breach of contract ‘does not lead inescapably to a finding of criminal fraud. Some additional evidence other than a simple breach of contract is necessary to establish criminal intent. For example, in *Midland-Guardian Co. v. United Consumers Club, Inc.*, 499 N.E.2d 792, 798 (Ind. Ct. App. 1986), Midland’s ‘pattern of unauthorized control over others money’ showed the high probability of awareness that its control over UCC’s funds was unauthorized.

Furthermore, we normally regard a finding of criminal intent as the sort of determination requiring intervention by a fact-finder. *White v. Indiana Realty Associates II*, 555 N.E.2d 454, 458 (Ind. 1990). The granting of summary judgment in a civil action involving criminal intent is a ‘rare situation.’ Our supreme court recently held that finding criminal intent in the absence of a confession invariably requires weighing evidence, judging witness credibility, and drawing reasonable inferences from the facts, all of which are improper in considering a motion for summary judgment.’ ‘[S]ummary judgment is almost never appropriate where the claim requires a showing that the defendant acted with criminal intent or fraudulent intent. (internal citations omitted)

The Court now Denies the Defendants' Motion for Summary Judgment. The Court Grants the Plaintiff's Motion for Summary Judgment on the issue of liability for the violation of the abandoned vehicles statute. The Court now sets this case for an evidentiary hearing on the issue of the Defendants' intent in their violation of the statute and the proper measure of damages for this violation on: September 26, 2019 at 9:00 A.M.

SO ORDERED THIS 16th DAY OF JULY, 2019 by:



Elizabeth A. Cure, Judge
Monroe Circuit Court I

Distribution:
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