

# WASHINGTON CASE UPDATE

case in point...

## Contract Cannot Bar CPA Claim

**From the desk of Kyle Riley:** Under Washington law, contract provisions are generally enforceable unless they conflict with another law or public policy. Washington's Consumer Protection Act ("CPA") provides a private right of action to allow an individual citizen to enforce the CPA's protections against unfair or deceptive acts. But when a contract disclaims liability under the CPA, what is the result? Read on to find out.

**Claims Pointer:** In this case arising out the auction of the contents of a storage unit, the Washington Court of Appeals held that a limitation provision that seriously impairs a plaintiff from asserting a private CPA claim violates public policy. The case is an important notice that parties cannot avoid liability under the CPA via contractual provisions.

Riley v. Iron Gate Self Storage, No. 47905-2-II, Washington Court of Appeals, Div. II (April 18, 2017)

In December 2003, Larry Riley ("Riley") rented a storage unit from Iron Gate Self Storage ("Iron Gate"). The rental agreement included a cap of approximately \$5,000 on the value of personal property to be stored in the unit, as well as a limitation on liability and a \$5,000 cap on damages. The agreement also required the occupant to maintain an insurance policy covering at least the actual cash value of any stored personal property. Riley elected to self-insure, and he initialed each section to indicate he understood the terms of the agreement.

Over the course of the lease, Riley often fell behind on his rent payments, and Iron Gate sent past due notices in May, June, and July 2010. Iron Gate sent a pre-lien notice to Riley on May 21. On June 24, it notified Riley that it intended to cut his lock, and a week later, it sent Riley certified notice of a lien. Then, on July 8, 2010, Iron Gate mailed Riley a notice of auction. On July 15, 2010, it auctioned the contents of Riley's unit, and the winning bidder paid less than \$2,000 for items in his unit. Two days after the auction, on July 17, 2010, Riley delivered a letter to Iron Gate opposing the sale and stating his belief that the notices were invalid. He claimed he was prepared to pay outstanding rent, and he requested that his property be restored to him. Iron Gate successfully recovered many auctioned items

by buying them back from the winning bidder. Iron Gate also continued to store Riley's remaining property at no cost until he retrieved it several months later.

Riley filed suit, alleging a variety of claims, including that Iron Gate violated the Storage Act and the CPA. Riley sought actual damages of over \$1.5 million and treble damages under the CPA. (Riley also brought claims for breach of contract and conversion, and he alleged that the rental contract was a contract of adhesion and that its provisions were unconscionable.) Iron Gate moved for summary judgment against Riley's claims and, in the alternative, partial summary judgment against any recovery of damages in excess of \$5,000. Iron Gate also acknowledged that it mistakenly violated the Storage Act, which requires notice of an auction at least 14 days in advance of the action, but stated that it took steps to recover Riley's property. It argued that Riley failed to follow the terms of the rental agreement and the amount of damages he sought was barred by the agreement. The trial court deferred its ruling on the summary judgment motion, but it granted the motion for partial summary judgment and orally ruled that even if Riley successfully brought a claim, he would be bound by the contractual limitation of \$5,000 in damages. Iron Gate also tendered a \$23,000 check to Riley to be held by his attorney pending outcome of the appeal, which it stated reflected the maximum damages for which it could be liable, trebled, and with interest on

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the trebling, because of the CPA claim. The trial court subsequently entered an order on partial summary judgment and a final judgment of dismissal with prejudice. The final judgment stated that Riley's recoverable damages were limited to a maximum of \$5,000, and that the \$23,000 check payment represented an equal or greater amount than what Riley could potentially recover at trial.

The Court of Appeals moved quickly through each of Riley's arguments, ruling against him on all but the CPA claim. The CPA provides a private right of action to encourage individuals to fight restraints of trade, unfair competition, and unfair, deceptive, and fraudulent conduct. The court explained that barring Riley from bringing a CPA claim due to the limitation provisions of his rental agreement would contradict the purpose of the CPA's private right of action. As such, the court held that a limitation provision that seriously impairs a plaintiff from asserting a private CPA claim violates public policy.

The court further noted that CPA treble damages are capped at \$25,000. Thus, the trial court's final judgment stating that the \$23,000 check was equal to or greater than Riley's possible recovery was incorrect. Accordingly, the trial court's final judgment was reversed on the CPA claim, and the case was remanded for further proceedings.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/D2%2047905-2-II%20Published%20Opinion.pdf>

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