No. 09-CV-139

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT TOWING,
Appellant,

v.

VICTORIA JOHNSON,
Appellee.

On Appeal from the Superior Court of the District of Columbia
Civil Division
Small Claims and Conciliation Branch

BRIEF OF THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA AS *AMICUS CURIAE* SUPPORTING AFFIRMANCE

David Reiser (No. 367177)
Zuckerman Spaeder LLP
1800 M Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 778-1800
Fax (202) 822-8106

Eric Angel (No. 444731)
Bonnie I. Robin-Vergeer (No. 429717)
Wendy Weinberg (No. 445460)
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
(202) 628-1161
Fax (202) 727-2132

Counsel for Amicus Curiae

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RULE 28(a)(2)(B) DISCLOSURE STATEMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

REGULATIONS

COURT RULES

LEGISLATIVE HISTORY

MISCELLANEOUS

STATEMENT OF ISSUES PRESENTED

1. Whether a towing company is liable for conversion of a motor vehicle and its contents when the company sells the vehicle for salvage before the expiration of the minimum 28-day period provided by statute to reclaim a vehicle towed from the scene of an accident, and when the towing company refuses to grant access to the vehicle so that it can be appraised for insurance purposes, contrary to regulations.

2. Whether a towing company is liable for conversion of personal property in a motor vehicle when it refuses to allow the owner to retrieve her property without paying towing and storage fees, in the absence of a statutory or common-law lien on that personal property.

3. Whether plaintiff/appellee Victoria Johnson's pro se Statement of Claim, filed in the Small Claims Branch of the Superior Court, alleges a claim for conversion.

4. Whether defendant/appellant District Towing preserved an objection to the trial court's taking of judicial notice of the current blue book value of Johnson's vehicle, and, if so, whether the trial court erred in doing so.

The Court's February 13, 2009 order allowing this appeal and appointing *amicus curiae* states that the notice requirements underlying the trial court's judgment for conversion appear to be unknown. The Court need not decide what notice requirements apply in this case because District Towing's sale of Johnson's vehicle for salvage before the end of the statutory 28-day reclamation period provides an independent basis for the judgment. However, in response to the Court's order, Legal Aid will address the following additional question:

5. Whether a towing company is liable for conversion of a vehicle and its contents when the company sells the vehicle for salvage, when the vehicle's owner has not received notice of the statutory 28-day period to reclaim the vehicle before the towing company may apply for a scrap title and sell the vehicle.

INTEREST OF AMICUS CURIAE

Legal Aid was founded in 1932 to "provide aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better serve their needs." Legal Aid By-Laws, Art. II. Legal Aid is the oldest general civil legal service program in the District of Columbia and represents hundreds of litigants each year before the District's courts and administrative agencies. It submits this amicus brief pursuant to appointment by this Court.

Legal Aid's staff members work on a range of legal issues affecting persons living in poverty in the District. The program's principal practice areas are housing, family, public benefits, and consumer law. Its consumer practice, founded in 2008, seeks to protect low-income residents of the District of Columbia from unfair, deceptive, exploitative, or otherwise unlawful consumer practices and transactions. These may include the failure of businesses to adhere to consumer protection requirements of the D.C. Municipal Regulations and the D.C. Consumer Protection Procedures Act.

STATEMENT OF THE CASE

A. Procedural History

On September 2, 2008, Victoria Johnson filed a pro se Statement of Claim in the Small Claims and Conciliation Branch of the Superior Court, seeking $3,000 in damages from District Towing. Joint Appendix ("J.A.") 5. District Towing, which was named as a defendant, *id.*, was served on September 15, 2008. *Id.* at 3 (Docket Sheet). The Statement of Claim takes up the entire space provided on Small Claims Form 11:

> I was in car accident July 16, 2007 and Beebo towed my car to the lot, he spoke to me over the phone and didn't tell me or it's not on the receipt that "I had 28 days to pick up my car," and Beebo told me that I couldn't get anything from out of my car only if I was paying the car off the lot. My car was not there for pay out.

Id. at 5. After District Towing failed to appear or to respond to the complaint, the court entered a

default judgment in Johnson's favor, which was vacated on December 9, 2008. *Id.* at 2-3.

The matter came to trial before Judge Wright on January 16, 2009. After an introductory colloquy between Johnson and the trial court, District Towing moved to dismiss Johnson's claim for failure to state a claim. The trial court denied the motion. *Id.* at 18-19. That same day, at the conclusion of the trial, Judge Wright entered judgment in Johnson's favor in the amount of $1,200. *Id.* at 6, 135-36.

District Towing filed an application for allowance of appeal on January 23, 2009. This Court allowed District Towing's appeal in an order issued on February 13, 2009. The same order appointed Eric Angel, Legal Director of Legal Aid, as *amicus curiae* in support of appellee, Victoria Johnson.

B. The Towing of Victoria Johnson's Car and the Destruction of Her Car and Personal Property After a Car Accident

On July 16, 2007, Johnson was involved in a car accident at 23rd Street and Alabama Avenue, S.E. She was seriously injured, and her car was damaged and inoperable. J.A. 22-23, 28, 34, 89. Although the record is not explicit on this point, repeated references to the other party's insurer suggest that Johnson was not at fault in the accident. *E.g.*, *id.* at 13-14, 35. The police arrived, and rescue workers cut Johnson out of her car and put her in an ambulance. *Id.* at 23. She was hospitalized for three days. *Id.* at 25. After she was released, Johnson went to stay at her mother's house, which had fewer stairs than her own home. *Id.* at 26. She remained incapacitated for almost five months. *Id.* at 71.

The Department of Public Works ("DPW") called District Towing to remove Johnson's car from the accident scene. *Id.* at 84. Brahim Ghaleb Aburish (who goes by "Beebo," *id.* at 83), the owner of District Towing, picked up the car and left a receipt for the car with a police officer at the scene. *Id.* at 89-90. Beebo then called DPW and provided the required information

so that DPW could generate a letter notifying the owner of the location of the car. *Id.* at 90.

Johnson's sister went to Johnson's home after the accident to retrieve clothing and other things for Johnson. *Id.* at 26. There, her sister found the receipt that Beebo had left with the police officer, which was admitted as Plaintiff's Exh. 1. *Id.* at 26, 31; *see also id.* at 85-86 (Beebo's identification of receipt). The receipt identifies the car and provides a telephone number and address for District Towing. *Id.* at 28, 86-87. The receipt does not state that the car must be claimed within 28 days or warn that the car will be sold, or otherwise disposed of, if the car is not reclaimed within that period. *Id.* at 27, 109, 119; *see also id.* at 133 (court findings); Plaintiff's Exh. 1 (Amicus Addendum).[1]

Johnson also received a notice from DPW in the mail, dated July 17, 2007, about the towing of her car. J.A. 30-31; Plaintiff's Exh. 2 (Amicus Addendum). The notice from DPW likewise did not inform Johnson that she was required to reclaim her vehicle in 28 days or warn her that vehicle would be sold, or otherwise disposed of, if she did not reclaim her vehicle within that period. Plaintiff's Exh. 2 (Amicus Addendum); J.A. 133-34 (court findings).

On July 19, 2007, after receiving the notice and receipt from her sister, Johnson called District Towing and spoke to Beebo. *Id.* at 32-35. Beebo confirmed that District Towing had Johnson's car, described its condition, and told her that the towing fee was $125 and the daily storage fee was $20. *Id.* at 34. (Beebo testified that he told Johnson the towing fee was $100, *id.* at 92, and the towing receipt reflects a $100.00 charge. Plaintiff's Exh. 1 (Amicus Addendum)). Both Johnson and Beebo agree that Beebo did not tell Johnson that she had 28

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[1] Although, District Towing, as the appellant, was required to prepare a sufficient appendix, it did not include the trial exhibits in the Joint Appendix. For the Court's convenience, Legal Aid includes the three plaintiff's exhibits and one defendant's exhibit in an Addendum to this brief. Defendant's Exhibit 1 is not labeled but is the last document in the Addendum.

days to reclaim her car before it would be junked. *Id.* at 34-35, 102, 109, 111, 116. Both also agree that Beebo told her that she would "not be allowed to get anything out of her vehicle . . . whatsoever until the car is paid for and removed." *Id.* at 91-92; *see also id.* at 54. Beebo claimed that "D.C. rules states that we're not even allowed to give them any of their property actually at all as well." *Id.* at 92. He said that his refusal to allow owners to retrieve personal property from the car was "kind of a way of making sure they actually come to pay the bill." *Id.* at 109. Johnson's and Beebo's testimony conflicted about whether Johnson told him during this call that an insurer would contact him regarding inspecting the vehicle. *Compare id.* at 16, 35-36, *with id.* at 93.

As Beebo testified, an appraiser for the insurance company did contact him within "a couple of weeks" to "come down and appraise the vehicle." *Id.* at 94. Beebo refused to allow an appraisal on District Towing's lot. He "told them that they're more than welcome to have somebody come pay the tow charges and remove the vehicle if they want but we don't allow anybody to do any appraisals at all on our property." *Id.* He explained in court that he did not allow inspections on his lot to avoid being stuck with abandoned vehicles because the District government does not allow towing companies "to get any titles whatsoever" to vehicles left on their lots. *Id.* at 95.

When the appraiser next contacted Beebo, he "had already junked it. They had called and I said I'm sorry the vehicle is no longer here. We kept it for so and so days and nobody called and nobody showed up." *Id.* at 96; *see also id.* at 98. The insurer notified Johnson that it would pay her nothing because her car was not available for inspection. *Id.* at 36-38.

Johnson and Beebo offered conflicting accounts regarding when Johnson was told that her car was no longer on the lot. Johnson testified that she spoke to the insurer on July 27, 2007. *Id.* "They said when they got there they spoke with Beebo and Beebo said, he said ma'am that

the car is actually out of his possession and that he didn't have—no one came to pay the car out or something of that nature." *Id.* at 37. Beebo testified that he junked the car on August 23. *Id.* at 97; *see also id.* at 44-45; Plaintiff's Exh. 3 (Amicus Addendum). He said that "we usually wait 28 days before we junk a vehicle," but that, in this case, he decided to give the insurance company "a few more days." J.A. 97. District Towing received $125 as the salvage price for Johnson's vehicle. *Id.* at 99.

The trial court credited Johnson's testimony and found that her vehicle was gone by July 27, 2007, *id.* at 135—only eleven days after the car accident and ten days after DPW mailed its notice to Johnson regarding the towing of her car.

The trial court concluded that District Towing disposed of Johnson's property "without her permission and without her knowledge," *id.* at 133, determining that the company did not notify Johnson that her vehicle "would be disposed of within 28 days or any time period whatsoever" and that "[t]here also wasn't any letter sent to Ms. Johnson indicating that you either come . . . and get your vehicle or I will dispose of it." *Id.* at 133-34. Thus, the court found that District Towing had committed "a conversion of the plaintiff's property without right" and that Johnson was entitled to be compensated for her car's value before the accident. *Id.* at 134.

With respect to books in the car, the court found that District Towing's refusal to give Johnson access to her personal property was against public policy and that, even if the company had "a mechanics lien" against the vehicle itself, the company had "no authority under the law to retain a person[']s personal property and not permit them to come and get that." *Id.* at 134-35.

C. The Value of Johnson's Car and Her Personal Property

Johnson asked for $2,500 in damages for her car and $500 for her books in the car. *Id.* at 48. She testified that her car's blue book value when she bought it in 2005 was $2,500 and that she paid $2,000 for it. *Id.* at 48-49. District Towing offered no contrary evidence regarding the

value of her vehicle, arguing instead that the court should measure any damage by the car's salvage value after the accident. *Id.* at 129. The court rejected that argument, concluding that Johnson was entitled to be compensated for her car's value "before the accident" because, "[h]ad the vehicle not been disposed of and had there been an appraisal[,] the insurance company would have compensated Ms. Johnson for the value of the vehicle." *Id.* at 134.

However, rather than base its valuation of Johnson's vehicle on its blue book value in 2005, as Johnson requested, *id.* at 123, the trial judge asked his law clerk to check the current blue book valuation. *Id.* at 121-22; *id.* at 123 (referring to blue book value "today"). The court asked the parties whether they objected to its taking judicial notice of the car's current blue book value. *Id.* at 124. District Towing's counsel did not object on the grounds that judicial notice was improper or that the blue book value was not reasonable. Indeed, he conceded that "I don't think there's any question that everybody abides by blue book . . . So, obviously the court wouldn't be arbitrary in using it . . . ." *Id.* at 124. When asked whether he had any objection to the court's taking judicial notice of the blue book value, District Towing's counsel protested that Johnson "hasn't put any value on the record," *id.*, and objected. *See id.* at 125 ("Then I agree that blue book is . . . a reasonable and generally accepted method and we would object."). The court relied on the blue book value and determined that Johnson's car was worth $1,100. *Id.* at 122, 124, 135. The court declined Johnson's request to increase the blue book valuation because her vehicle was a supercharged "SSIE" [SSEi] model. *Id.* at 125.

In addition, Johnson testified that she had books in the car for her classes at the University of the District of Columbia. The books cost $625 to $650 when she bought them new the previous November. *Id.* at 46-48. The court valued Johnson's books at $400, making a total value of $1,500 of the property lost by Johnson when her car was destroyed. *Id.* at 135. From that total, the court deducted $100 for the towing charge and $200 for storage of the vehicle for

10 days at $20 per day. *Id.* However, the court did not credit against the towing and storage charges the $125 District Towing obtained from the sale of Johnson's car for salvage, *id.* at 99; *see id.* at 135-36. The net judgment entered in Johnson's favor was $1,200. *Id.* at 6, 135-36.

D. The District of Columbia's Statutory Scheme for Public Towing

Two somewhat overlapping statutes, both codified in Title 50, govern the towing, impoundment, and disposition of unclaimed motor vehicles in the District of Columbia: the first, in Chapter 24, governs the removal, impoundment, and disposal of abandoned or dangerous vehicles; the second, in Chapter 27, governs private towing companies' removal and storage of, and issuance of scrap titles for, abandoned, accident, or recovered stolen vehicles.[2]

District of Columbia law authorizes "[t]he District government, or any towing company at the direction of the Department," to remove abandoned or dangerous vehicles from public space or vehicles obstructing private property. D.C. Code §§ 50-2421.04 & 50-2421.05.[3] Such a removal is called a "public tow." 16 DCMR § 406. A "dangerous vehicle" includes any motor vehicle that is in a "wrecked, dismantled, or irreparable condition," *id.* § 50-2421.02(2), and may be removed immediately from an accident scene. *Id.* § 50-2421.04(a)(2); 16 DCMR § 406.6. A motor vehicle "towed from the scene of an accident pursuant to section 406 of Title 16 of the [DCMR]" is also called an "accident vehicle" under D.C. Code § 50-2701(2).

The regulations place liability for "[a]ny loss or damage sustained by a vehicle as a result of a public tow by a towing business" solely on the towing business, which is also required

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[2] Chapter 27 was added in 2006 to address the abandonment of vehicles on towing lots, where they took up valuable space. The Council created a process to dispose of such vehicles for scrap. At the same time, the Council limited the provision governing reclamation of impounded vehicles (D.C. Code § 50-2421.09) to District government lots. *See* D.C. Council, Comm. on Public Works & Environment, Report on Bill 16-206, at 4 (Dec. 19, 2005) ("Comm. Rpt.").

[3] "Department" means the Department of Public Works ("DPW"). "Director" means the Director of DPW. *See* D.C. Code § 50-2421.02(3) & (4); *see also id.* § 50-2701(3).

"assume all liability for the vehicle and the property inside the vehicle, from the point of hook-up until the vehicle is released to its owner or authorized representative." 16 DCMR § 406.8.

The statute authorizes the Director of DPW "to impound any vehicle removed from public space or private property pursuant to any District law or regulation." D.C. Code § 50-2421.07(a). An impounded vehicle "shall be taken to a District government impoundment facility, or a storage lot owned or operated by a towing company, as shall be determined by the Department." *Id.* Similarly, § 50-2702(a) provides: "An abandoned, accident, or recovered stolen vehicle may be removed from public space or private property and stored by a private towing company at a storage facility consistent with chapter 4 of Title 16 of the [DCMR]."

Under either Chapter, DPW must send a notice by first class mail to the owner(s) and any lienholders of record within five days after the vehicle is received at an impoundment or storage facility. *Id.* § 50-2702(a); *id.* § 50-2421.07(b) & (c). Among other things, DPW's notice must:

> (4) Advise the owner and lienholders of the procedures for reclaiming the vehicle, including:
>
> (A) The payment due for the towing charges and storage fees imposed pursuant to § 50-2421.09;
>
> (B) The time period in which the vehicle may be reclaimed; and
>
> (C) A warning that a scrap title shall be issued to the private towing company if the vehicle is not reclaimed by the expiration of the reclamation period.

Id. § 50-2702(a)(4).[4] DPW's notice here did not provide any of these three required pieces of information. *See* Plaintiff's Exh. 2 (Amicus Addendum); J.A. 133-34.

Under either Chapter, the applicable reclamation period is 28 days after the date of the

[4] *See also* D.C. Code § 50-2421.07(c)(4) & (5) (requiring that DPW issue an impoundment notice advising owners and lienholders of the reclamation procedures and "the applicable reclamation period" and warning that the vehicle "will be sold, or otherwise disposed of" if the procedures are not completed by the expiration of the reclamation period).

notice sent by DPW. *See* D.C. Code § 50-2703; *id.* § 50-2421.08(a). An owner is entitled to reclaim an accident vehicle "that was towed by a private company and is stored on a private lot at any time before the expiration of the reclamation period," by appearing at the facility where the vehicle is located and providing proof of entitlement to possession and paying the applicable towing and storage charges. *Id.* § 50-2704; *see also* 16 DCMR § 408.7 (requiring towing companies to release vehicles upon presentation of proper identification and "payment of all towing and storage charges due"); *id.* §§ 409.6, 409.7. The statute and regulations set a maximum towing fee of $100 and storage fee of $20 per day (unless special equipment is needed). D.C. Code § 50-2421.09(a)(6); *see also id.* § 50-2702(a)(4)(A) (incorporating the towing and stowing charges imposed by § 50-2421.09); 16 DCMR § 408.1(b). No statutory provision or regulation bars a towing company from releasing *personal property* in a vehicle without payment of towing and storage charges.

During the time a vehicle remains in the possession of a towing service before payment of outstanding charges, D.C. regulations prohibit a towing service from "refus[ing] the right of physical inspection of the towed vehicle when requested by the owner, an authorized agent of the owner, the lien holder, or the insurer of the vehicle." 16 DCMR § 410.13.

Chapter 24 provides that "[f]ines and penalties due for parking tickets issued to a vehicle and the towing and storage fee charges due . . . shall constitute a continuing lien against the impounded motor vehicle," and that the resulting lien has priority and is preferred over all other liens. D.C. Code § 50-2421.09(b). "The Department" (that is, DPW) is authorized to sell or otherwise dispose of unclaimed vehicles, *id.* § 50-2421.10(a), and is required to retain from the proceeds of the sale or disposition "an amount that represents reimbursement for the costs of sale, the costs of towing and storing the vehicle," along with other costs. *Id.* § 50-2421.10(c). The purchaser of a vehicle sold by DPW obtains "title to the vehicle free and clear of all liens

and claims of ownership by others" and is entitled, if otherwise eligible, "to a certificate of title and registration." *Id.* § 50-2421.10(b).

The Chapter specifically applicable to a private towing company, on the other hand, does not mention a lien and confers only limited authority to sell an unclaimed vehicle. If a vehicle is not reclaimed within the 28-day period, a towing company

> may submit an application for a scrap title to the Director, along with any information or documents that the Director may reasonably require in order to establish that the vehicle was properly towed and was not properly reclaimed. If the Director concludes that the vehicle was properly towed and was not properly reclaimed, the Director shall request that the Department of Motor Vehicles issue a scrap title to the towing company upon payment of any fees required for the issuance of a scrap title, and the Department of Motor Vehicles shall issue that title.

Id. § 50-2705(a). The resulting scrap title does not give the towing company full authority to sell the vehicle but instead "give[s] the holder of the title the right to possess the vehicle and to use or sell some or all of the vehicle for parts only." *Id.* § 50-2705(c). After a scrap title is issued for a vehicle, that vehicle may not be registered in the District of Columbia, and all future titles for the vehicle must be scrap titles. *Id.* § 50-2705(d) & (e). No evidence was presented at trial that District Towing applied for and received a scrap title to Johnson's vehicle. Beebo implicitly confirmed that the company did not when he testified that in D.C., towing companies are "not allowed to get any titles whatsoever." J.A. 95.

SUMMARY OF ARGUMENT

The trial court correctly held District Towing liable for conversion of Johnson's car and her personal property in the car. As the trial court found, District Towing sold Johnson's car for salvage on July 27, 2007, before the end of the statutory 28-day reclamation period. Regardless of whether Johnson received notice of the reclamation period and the impending disposal of her vehicle, the fact that the towing company junked Johnson's car only eleven days after the car accident ends the matter there, subjecting District Towing to liability for conversion (although

the company is also liable for conversion for denying access to the car to an insurance appraiser). Johnson's pro se Statement of Claim, filed in the Small Claims Branch, amply stated a claim.

Even if District Towing had waited 28 days to sell Johnson's car for salvage, the company still would have been liable for conversion. Chapter 24 of Title 50 authorizes only DPW—not a private towing company—to sell unclaimed vehicles outright to obtain payment of outstanding charges. Chapter 27 authorizes a private towing company to apply for a scrap title for an unclaimed vehicle, but the record contains no suggestion that District Towing applied for, much less received, a scrap title. Indeed, DPW would have been barred, both by statute and by due process, from issuing District Towing a scrap title because DPW did not provide the required notice to Johnson—even apart from the fact that the reclamation period had not yet expired.

Moreover, District Towing had no possessory lien, either by statute or at common law, that would authorize it to sell a vehicle to recover towing and storage charges. That a private towing company has no such lien is confirmed by Chapter 24, which gives a lien to the District, not to a towing company, and by the fact that Chapter 27 restricts a towing company's ability to obtain a title when a vehicle goes unclaimed and then limits the scope of that title. And even if the Court were to conclude that a towing company involved in a public tow obtains a lien against the vehicle, District Towing would have been required to provide the owner with notice before selling the vehicle. With respect to Johnson's personal property in the car, there is no even arguable statutory or regulatory authority that would give District Towing a lien against an owner's personal property contained in the car.

Finally, the trial court did not err in taking judicial notice of the current blue book value of Johnson's car. District Towing is incorrect in arguing that Johnson presented no evidence about the value of her car. Johnson testified regarding both the car's purchase price and its blue book value when she bought it in 2005. J.A. 48-49. The trial court's decision to rely instead on

the current blue book value benefited District Towing, given that the only evidence of the car's value was its higher value when purchased two years before the accident. District Towing's counsel conceded that the blue book was "a reasonable and generally accepted method" of valuing vehicles, and its objection to the court's consideration of evidence that had not been offered by the pro se plaintiff was insufficient to preserve its argument on appeal that the court erred in taking judicial notice of the car's blue book value. In any event, it is commonplace for courts to take judicial notice of automobiles' blue book values. Finally, the court's reliance on the current blue book valuation was not prejudicial. The judgment should be affirmed.

ARGUMENT

I. DISTRICT TOWING CONVERTED VICTORIA JOHNSON'S PROPERTY BY SELLING IT FOR SALVAGE.

A. District Towing Converted Johnson's Car by Selling It for Salvage Only Ten Days after DPW Issued Its Notice and Also by Denying the Insurer the Right to Inspect the Car on the Lot.

Conversion is the "unlawful exercise of ownership, dominion and control over the personalty of another in denial or repudiation of his right to such property." *Fotos v. Firemen's Ins. Co.*, 533 A.2d 1264, 1267 (D.C. 1987) (citation omitted); *see also* Restatement (2d) of Torts § 222A(1) ("Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel."). District Towing converted Johnson's vehicle when it sold it for salvage only ten days after DPW's notice was sent to Johnson. The company's refusal to allow the insurance company to inspect the vehicle on its lot (resulting in the insurer's denial of Johnson's claim) also was a conversion.

1. A towing company's authority to tow and hold a privately-owned motor vehicle at the direction of a police officer derives from District statutes and regulations governing public

tows and impoundments. That scheme authorized District Towing to tow Johnson's vehicle from the accident scene in response to a request from the District police on the scene, *see* D.C. Code § 50-2421.04(a); 16 DCMR § 406.6, and to store Johnson's vehicle. D.C. Code § 50-2421.07(a); *id.* § 50-2702(a).

Judge Wright made a factual finding, however, that District Towing sold Johnson's vehicle for salvage on July 27, 2007, J.A. 135—only eleven days after the accident and ten days after the DPW's July 17, 2007 impoundment notice. District Towing ignores that factual finding on appeal. Both the Chapter 24 and Chapter 27 provisions set a minimum vehicle reclamation period of 28 days after the notice sent by DPW. D.C. Code § 50-2703; *id.* § 50-2421.08(a). An owner is entitled to reclaim an accident vehicle "that was towed by a private company and is stored on a private lot at any time before the expiration of the reclamation period." *Id.* § 50-2704; *see also id.* § 50-2421.09(a) (governing reclamation of impounded vehicles stored at a District government impoundment facility). Thus, District Towing's destruction of Johnson's car and its contents before the end of the reclamation period violated the statute and was an "unlawful exercise of ownership, dominion and control" of the car inconsistent with Johnson's own ownership interest in it. *See, e.g.*, Restatement (2d) of Torts § 226 ("One who intentionally destroys a chattel or so materially alters its physical condition as to change its identity or character is subject to liability for conversion to another who is in possession of the chattel or entitled to its immediate possession."). The trial court was correct in ruling that District Towing was liable for conversion because it disposed of Johnson's car "without right." J.A. 134.

2. District Towing was liable for conversion for the additional reason that it refused to allow the insurer to inspect the vehicle for purposes of paying Johnson. Johnson testified that in her initial conversation with Beebo on July 19, 2007, she told him that either her insurer or the other driver's insurer would contact him regarding her car. J.A. 16, 35-36. The insurer did

contact Beebo about inspecting the car, but Beebo denied the insurer access to the car while it was parked on his lot. J.A. 94. Beebo informed the appraiser than "we don't allow appraisal companies on our lot. We don't allow them to do any appraisals whatsoever." *Id.* He told the appraiser that it was "more than welcome to have somebody come pay the tow charges and remove the vehicle if they want," but they could not do an appraisal on the property. *Id.*

District Towing's refusal of access to the insurer violated 16 DCMR § 410.13, which states: "Prior to payment of fees and release of a vehicle, no towing service provider may refuse the right of physical inspection of the towed vehicle when requested by the owner, an authorized agent of the owner, the lien holder, or the insurer of the vehicle."[5] The company's refusal of access was thus a second "unlawful exercise of dominion or control over the personalty of another in denial of his right to such property." *First Am. Bank, N.A. v. District of Columbia*, 583 A.2d 993, 998 (D.C. 1990). District Towing's refusal to allow the insurer access to the car to inspect it was a direct cause of Johnson's loss of the insurance proceeds for the vehicle, which, as the trial court recognized, would have been based on the car's pre-accident value, J.A. 134, and constituted a conversion independent of the company's later sale of the car for salvage.

B. Even if District Towing Had Waited 28 Days, the Company Still Would Have Been Liable for Conversion for Selling Johnson's Car for Salvage.

In its order allowing this appeal, this Court stated that "it appear[s] that the notice requirements underlying the trial court's judgment for conversion in this context are unknown" and thus "present a novel question this court should decide." Feb. 13, 2009 Order (citing *Snowder v. District of Columbia*, 949 A.2d 590 (D.C. 2008); *First Am. Bank, N.A. v. District of*

[5] District Towing did not contend below or in its appellate brief that its refusal of access, which was unqualified, was based on a lack of proper authorization from Johnson. To the contrary, Beebo testified that to compel owners to reclaim their vehicles, his policy was not to allow "any appraisals whatsoever" on his lot. J.A. 94-95.

Columbia, 583 A.2d 993 (D.C. 1990); 16 DCMR §§ 406, 409).[6] The Court need not decide that question in this case because District Towing's sale of the car for salvage before the end of the 28-day reclamation period provides an independent basis for the judgment. Nonetheless, Johnson was entitled to notice before District Towing disposed of her car.

Chapter 27 circumscribes District Towing's right to sell an unclaimed car for salvage, allowing a private towing company to apply for and obtain only a scrap title before a sale, which the company evidently did not do here. In any event, DPW would have been barred, both by statute and by due process, from issuing such a scrap title, given that it failed to provide the required notice. District Towing also can claim no common-law or other statutory lien against the car, and even if District Towing had a lien against the vehicle, the company still would have been required to provide notice to Johnson before disposing of her vehicle.

1. District Towing Had No Statutory Authority to Dispose of Johnson's Car.

Under Chapter 24, only "[t]he Department" (that is, DPW) is authorized to sell outright or otherwise dispose of unclaimed vehicles. D.C. Code § 50-2421.10(a). The purchaser of a vehicle sold by DPW obtains "title to the vehicle free and clear of all liens and claims of ownership by others" and is entitled, if otherwise eligible, "to a certificate of title and registration." *Id.* § 50-2421.10(b).

The authority of a private towing company to sell an unclaimed vehicle off its lot is more limited. Chapter 27 permits a towing company in possession of a vehicle not claimed within the 28-day reclamation period to apply to the Director of DPW for a scrap title. *Id.* § 50-2705(a). If

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[6] The Court's determination in *Snowder* that the plaintiffs there had failed to establish that the towing companies were required to provide notice is inapposite. There, the Court was considering whether the towing companies were obligated to provide notice *of impoundment* to vehicle owners, 949 A.2d at 605-606—not whether the companies were required to provide notice before selling or otherwise disposing of the vehicles.

the Director "concludes that the vehicle was properly towed and was not properly reclaimed, the Director shall request" that the Department of Motor Vehicles ("DMV") issue a scrap title upon payment of required fees. *Id.* No evidence was presented at trial that District Towing applied for and obtained a scrap title, and that it did not do so is implicit in Beebo's testimony that in D.C., towing companies are "not allowed to get any titles whatsoever." J.A. 95.

Even if District Towing had applied for a scrap title, DPW would have been prohibited from authorizing its issuance. The scrap title statute imposes a detailed notice obligation upon DPW, requiring it, among other things, to "[a]dvise the owner . . . of the procedures for reclaiming the vehicle," including "[t]he time period in which the vehicle may be reclaimed," and "[a] warning that a scrap title shall be issued to the private towing company if the vehicle is not reclaimed by the expiration of the reclamation period." D.C. Code § 50-2702(a)(4)(B) & (C). Similarly, the public towing and impoundment statute requires DPW to "[a]dvise" the owner of an impounded vehicle "of the procedures for reclaiming the vehicle and the applicable reclamation period for doing so," and to "[w]arn" the owner that the vehicle will be sold, or otherwise disposed of, if those procedures are not completed by the expiration of the reclamation period." *Id.* § 50-2421.07(c)(4) & (5). DPW's notice to Johnson lacked these required notifications and warnings. *See* Plaintiff's Exh. 2 (Amicus Addendum); J.A. 133-34.

Without having provided the required notice, then, DPW would not have been permitted under the statute to authorize DMV to issue a scrap title. First, under either Chapter 24 or 27, the 28-day reclamation period runs from the date or sending of the DPW notice, *see* D.C. Code § 50-2703; *id.* § 50-2421.08, and so the reclamation period would not have begun to run until the required notice was provided. Put another way, DPW is not permitted to authorize issuance of the scrap title unless the Director "concludes that the vehicle . . . was not properly reclaimed." *Id.* § 50-2705(a). No such conclusion could be drawn if the registered owner and lienholders of

a vehicle were not provided the required notice by DPW.

Equally important, the issuance of the scrap title would have divested Johnson of her ownership interest in her car. The notice DPW is required by statute to afford an owner before it may authorize the sale of her vehicle is also required by the Fifth Amendment Due Process Clause. *See Jones v. Flowers*, 547 U.S. 220, 223 (2006) (before a state may take property and sell it for back taxes, due process requires the government to provide the owner "notice and opportunity for hearing appropriate to the nature of the case") (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)); *Propert v. District of Columbia*, 948 F.2d 1327, 1334-36 (D.C. Cir. 1991) (District of Columbia must provide pre-destruction process, including notice, to vehicle owners). Thus, DPW could not have authorized, and DMV could not have issued, a scrap title in this case without violating due process, when, as here, the District has failed to provide the owner notice of the applicable reclamation period and that her vehicle is subject to sale or disposal if not reclaimed within that period.

2. District Towing Had No Possessory Lien Authorizing It To Dispose of Johnson's Car, and Even If It Had a Lien, It Could Not Dispose of Johnson's Car Without First Providing Notice.

Not only did District Towing have no statutory authority to sell Johnson's vehicle, but it had no possessory lien permitting it to sell the car to obtain payment of outstanding towing and storage charges.[7] Although this Court has recognized that both the District and a towing service are bailees who owe a duty of ordinary care when they tow and impound vehicles, *see First Am.*, 583 A.2d at 995-97; *accord Snowder*, 949 A.2d at 605, neither decision established that the towing companies acquired possessory liens against the vehicles at issue.

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[7] *See District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 539 (D.C. 1979) ("[A] person in possession of property under a lien is the owner of it against all the world and even against the actual owner until his claim is paid; and no one, not even the actual owner, has any right to disturb his possession, without previous payment of such claim.") (citation omitted).

The prevailing rule at common law was that, because of the owner's lack of consent, a towing service that tows and stores a vehicle at the government's request does not obtain a lien against the vehicle for the payment of towing and storage costs. As a Maryland appellate court explained: "The basis of [a common-law possessory] lien is an agreement, express or implied, between the parties." *T. R. Ltd. v. Lee*, 465 A.2d 1186, 1190 (Md. Ct. Spec. App. 1983). In the absence of such an agreement, a towing company acting at the direction of the police obtained no common-law lien against the towed vehicle for towing and storage charges. *Id.* at 1191.[8]

Nor do private towing companies involved in a public tow acquire a lien by statute. The Council knew how to create a lien provision, as it did in D.C. Code § 50-2421.09(b), which gives the *District*, not towing companies, a priority lien against impounded vehicles. The Council did not enact parallel lien language for towing companies, and it did not confer on towing companies a right to sell an unclaimed vehicle with good title, as it did for the District in § 50-2421.10(b). Instead, a towing company may apply only for a scrap title, *id.* § 50-2705, and once a scrap title is issued, the vehicle may not be registered in the District of Columbia, and future titles for the vehicle are also limited to scrap titles. *Id.* § 50-2705(d) & (e). These limitations on a towing company's right to sell a vehicle to obtain payment of towing and storages charges cannot be squared with a lien. *See Franklin Inv. Co.*, 404 A.2d at 539 ("An essential characteristic of . . .

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[8] *See also, e.g., Younger v. Plunkett*, 395 F. Supp. 702, 707-11 (E.D. Pa. 1975) (because of absence of owner consent, towing companies that towed vehicles at police request acquired no common-law liens against vehicles for towing and storage charges); *Murrell v. Trio Towing Serv.*, 294 So. 2d 331, 333 (Fla. Dist. Ct. App. 1974) ("Generally, it has been held that there being no lien at the common law upon an automobile for the towage and storage charges thereon, in the absence of a statute creating such a lien or in the absence of an agreement, express or implied with the owner of a motor vehicle or someone authorized by him, a garageman acquires no lien therefor."); *Kunde v. Biddle*, 353 N.E.2d 410, 413 (Ill. App. Ct. 1976) ("Liens can be created only by agreement or by statute. . . . A garagekeeper does not create a common law lien by the mere unauthorized towing of a vehicle to a garage to repair or store the vehicle.").

statutory liens is the right to enforce the lien by sale of the involved property.").[9]

The specific regime governing vehicles towed and stored at police direction overrides two general statutes concerning liens for storage. The District has a "garage keeper" statute: "All persons storing, repairing, or furnishing supplies of or concerning motor vehicles . . . shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner . . . of such motor vehicle." D.C. Code § 40-102. Leaving aside whether the *owner* can be said to have "incurred" the charges for a public tow and storage without the consent generally required to create a mechanic's lien, this statute, with its distinct procedures, must give way to the more recent scrap vehicle title statute that specifically governs the situation in which, at the direction of the District, a private towing company tows a vehicle from the scene of an accident and stores it. *See District of Columbia v. Gould*, 852 A.2d 50, 55 (D.C. 2004) (where two statutes conflict, "the more specific statute governs the more general one, and the later supersedes the earlier"). For similar reasons, District Towing was not a "warehouseman" with a lien against the car under the Uniform Commercial Code ("UCC").[10]

Even if District Towing had a possessory lien against Johnson's car—whether as a garage

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[9] As the legislative history of Chapter 27 reflects, private towing companies sought authority to obtain full title to unclaimed vehicles but were rebuffed. The more limited authority for towing companies to obtain scrap titles was a compromise. *See* Comm. Rpt. at 4.

[10] Under the UCC, a "warehouseman" obtains a lien against the bailor on goods covered by a warehouse receipt for storage or transportation charges, D.C. Code § 28:7-209, which may be enforced against the bailor in accordance with specific procedures and notice requirements. *See id.* §§ 28:7-206, 7-210. Apart from the fact that Chapters 24 and 27 of Title 50 govern the disposition of unclaimed vehicles involved in public tows, District Towing presented no evidence that it is a "warehouseman"—*i.e.*, one "engaged in the business of storing goods for hire." *Id.* § 28:7-102(1)(h). In any event, courts have not treated towing businesses towing vehicles at police request as "warehousemen" with liens against the towed vehicles. *See, e.g.*, 78 Am. Jur. 2d Warehouses § 2 ("A mere garage keeper is not a 'warehouseman' within the meaning of U.C.C. Article 7."); *Fitzhugh v. City of Douglas*, 596 P.2d 737, 738 (Ariz. Ct. App. 1979); *Candler v. Ash*, 372 N.E.2d 617, 618-19 (Ohio Ct. App. 1976).

keeper or a warehouseman—it would have been required to give Johnson notice before selling her car to pay the outstanding charges. *See* D.C. Code §§ 40-102 & 40-103 (notice provisions of garage keeper statute); *id.* §§ 28:7-206 & § 28:7-210 (notice and procedural requirements for warehousemen enforcing liens). District Towing provided no notice to Johnson of the 28-day reclamation period or the impending sale of her car for salvage; neither did it satisfy the notice requirements to enforce a garage keeper or warehouseman's lien. *See, e.g.*, *Kearns v. McNeill Bros. Moving & Storage Co.*, 509 A.2d 1132, 1138 (D.C. 1986) (a warehouseman has the burden of proving a valid foreclosure of its lien; willful failure to comply with the notice and other requirements of § 28:7-210 constitutes conversion).

Thus, even if District Towing had waited for 28 days before disposing of Johnson's car—which it did not—it would have been liable for conversion.[11]

C. District Towing Converted Johnson's Personal Property.

The trial court also correctly ruled that District Towing was liable for conversion of Johnson's personal property, her books. Beebo, the owner of District Towing, specifically told Johnson that she would not be permitted to retrieve any of her personal property from the vehicle until the outstanding charges were paid and the car removed. J.A. 54, 91-92. The bailment of a receptacle also entails liability for the contents if they are known to the bailee, regardless of their value. *First Am.*, 583 A.2d at 996 n.3. The regulations likewise imposed a duty on District

[11] Although not argued by Johnson, who appeared pro se, District Towing was also subject to liability under the D.C. Consumer Protection Procedures Act ("CPPA"), which provides that "[i]t shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to . . . fail to state a material fact if such failure tends to mislead." D.C. Code §§ 28-3904 & 28-3904(f). District Towing's failure to notify Johnson that it would junk her car after 28 days (or even less) was a material and misleading omission. It is also a CPPA violation for any person to "violate any provision of title 16 of the [DCMR]." Id. § 28-3904(dd). A person found to be in violation of the CPPA is liable for treble damages, or $1,500 per violation, whichever is greater. *Id.* § 28-3905(k)(1)(A).

Towing to safeguard the contents of Johnson's car. *See* 16 DCMR § 406.8 ("The towing business shall assume all liability for the vehicle and the property inside the vehicle, from the point of hook-up until the vehicle is released to its owner or authorized representative.").[12] District Towing knew that Johnson had personal property in her car because Beebo refused her request to retrieve it. Because it destroyed Johnson's vehicle and its contents before the end of the reclamation period, it is liable for converting both the car and its contents.

Regardless of the reclamation period, however, District Towing was not entitled to deny Johnson access to her personal property in her car. Even if D.C. law is construed to give a towing company a lien against the vehicle *itself* to secure payment of towing and storage charges after a public tow, nothing in the statutes or regulations even arguably would give District Towing a lien against the *personal property* in a vehicle. District Towing converted Johnson's personal property in the car by denying her access to that property, without right. *See, e.g.*, Restatement (2d) of Torts § 237 ("One in possession of a chattel as bailee or otherwise who, on demand, refuses without proper qualification to surrender it to another entitled to its immediate possession, is subject to liability for its conversion.").

District Towing makes much of Judge Wright's comment that District Towing violated "public policy" in withholding Johnson's personal property. J.A. 134; *see* Appellant's Br. 7-8. Judge Wright's comment about public policy, however, was just another, informal way of stating what the court ruled—that even if District Towing was entitled to retain Johnson's car "under a mechanics lien theory" until payments have been made, "that does not permit [it] to prohibit people from coming to get their personal property. The court finds that the defendant had no

[12] The receipt from District Towing states at the bottom: "Towing Company not responsible for vehicle left at storage lot." Plaintiff's Exh. 1 (Amicus Addendum). This disclaimer of liability is at odds with the regulation governing public tows.

authority under the law to retain a person's personal property and not permit them to come and get that." J.A. 134-35. In other words, the court found a conversion because District Towing denied Johnson access to (and ultimately disposed of) her personal property without any statutory authority or lien against that property. That ruling was correct and should be affirmed.

D. The Trial Court Properly Construed Johnson's Pro Se Statement of Claim to Allege a Claim for Conversion.

District Towing argues that the trial court should have granted its motion to dismiss for failure to state a claim. Appellant's Br. 4-6. The court was right to deny its motion. The Statement of Claim alleges:

> I was in car accident July 16, 2007 and Beebo towed my car to the lot, he spoke to me over the phone and didn't tell me and it's not on the receipt that "I had 28 days to pick up my car," and Beebo told me that I couldn't get anything from out of my car only if I was paying the car off the lot. My car was not there for pay out.

Id. To comply with the pleading requirements of Superior Court Rule of Civil Procedure 8, "[a]ll that is required . . . is a short and plain statement of the claim showing that the pleader is entitled to relief." *Solers, Inc. v. Doe*, 977 A.2d 941, 948 (D.C. 2009) (citation omitted). "The purpose of this statement is to 'give the defendant fair notice of what the [pleader's] claim is and the grounds upon which it rests[.]'" *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation omitted)). Johnson's Statement of Claim meets this standard, even apart from the fact that it was filed pro se in the Small Claims Branch.

District Towing was named as a defendant in the Statement of Claim, J.A. 5, and was served. *Id.* at 3 (Docket Sheet). It is clear from the Statement of Claim that "Beebo" was acting as District Towing's agent. Indeed, Beebo is District Towing's owner, and he testified at trial that he goes by the name of "Beebo." J.A. 83. District Towing apparently was not confused as to who Beebo was or whether it was the defendant in this case, as it appeared and defended the action. Unlike the complaint in *Elmore v. Stevens*, 824 A.2d 44, 46 (D.C. 2003), cited in

Appellant's Br. 4, 6, which "never alleges that [the defendant] did anything," Johnson's Statement of Claim provides the factual background of her claim and explains what District Towing did: that on July 16, 2007, its agent Beebo towed Johnson's car to a lot; that neither Beebo nor the receipt for the car told Johnson that she had 28 days to pick up her car; that Beebo told her she was not permitted to retrieve her belongings from the car; and that her car "was not there for pay out." J.A. 5. It also specified that Johnson was seeking $3,000 in damages. *Id.* The Statement of Claim states a claim for conversion, as well as for violation of the CPPA.

To be sure, Johnson's claim could have been more artfully written, but "[i]t is settled law that the allegations of such a [pro se] complaint, however inartfully pleaded are held to less stringent standards than formal pleadings drafted by lawyers." *Norris v. United States*, 927 A.2d 1034, 1039 n.8 (D.C. 2007); *see also Sikora v. Brenner*, 379 F.2d 134, 136 n.4 (D.C. Cir. 1967) ("[A] court is liberal when it views the pleading *pro se* of one unskilled in the law.").

Furthermore, the rules governing pleading and procedures in the Small Claims Branch are deliberately flexible. Superior Court Small Claims Rule 12(b) provides that the court "shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the provisions or rules of practice, procedure, pleading or evidence, except such provisions relating to privileged communications." Citing this "liberal rule of procedure," the Court has recognized that its purpose is "to give the Small Claims court flexibility to resolve questions before it expeditiously and to eliminate procedural barriers that may hinder parties without counsel." *Bradley v. Johnson*, 462 A.2d 1135, 1136 (D.C. 1983); *see also Mgt. P'Ship, Inc. v. Crumlin*, 423 A.2d 939, 940 (D.C. 1980) ("[T]he relevant inquiry is whether 'substantial justice' has been achieved.") (citations omitted); *Ellerbe v. Goldberg*, 60 A.2d 232, 234 (D.C. 1948) ("[T]he procedure in the Small Claims Branch . . . is of a simplified nature and strict rules of pleading and practice do not apply.").

Johnson's Statement of Claim must be viewed in the context in which it was written. Proceeding pro se, Johnson used the one-page form provided to her by the Small Claims Branch, which allots only four lines for a plaintiff to state her claim. Here, Johnson squeezed five lines of text into the space provided and could not have expanded on her claim using the form provided by the Court. In no sense does reading Johnson's Statement of Claim to allege an action for conversion deny District Towing "substantial justice."

Finally, if District Towing actually had not understood the nature of Johnson's claim, it could have moved for a more definite statement under Superior Court Rule of Civil Procedure 12(e), which is applicable in the Small Claims Branch pursuant to Small Claims Court Rule 2. It did not do so. Moreover, District Towing's motion to dismiss, J.A. 18-19, came after a colloquy between the trial court and Johnson. *Id.* at 12-18. That colloquy amplified the factual basis of Johnson's claim and cleared up any remaining ambiguities. The trial court properly found that Johnson's Statement of Claim alleged a claim for conversion.

II. DISTRICT TOWING'S ARGUMENT THAT THE TRIAL COURT IMPROPERLY TOOK JUDICIAL NOTICE OF THE CURRENT BLUE BOOK VALUE OF JOHNSON'S VEHICLE WAS NOT PRESERVED, AND, IN ANY EVENT, THE COURT DID NOT ERR.

District Towing argues that the trial court erred in taking judicial notice of the blue book value of Johnson's car. Appellant's Br. 6-7. Its argument is not preserved for appeal, and, in any event, the trial court did not err.

Johnson asked for $2,500 in damages for her car. J.A. 48. District Towing is wrong when it argues that Johnson put in no evidence about the value of her car. *See* Appellant's Br. 6. Johnson testified that the car's blue book value when she bought it in 2005 was $2,500 and that she actually paid $2,000 for it. J.A. 48-49. District Towing offered no contrary evidence regarding the value of Johnson's vehicle before the accident.

The court did not give Johnson the amount she requested, however, which was based on the value of the car two years before the accident. *Id.* at 123 ("Obviously the court cannot accept the $2500 at the time it was purchased as a value."). Instead, the judge asked his law clerk to look up the current blue book value of Johnson's car, *id.* at 121-22, and asked whether District Towing had any objection to its taking judicial notice of it. *Id.* at 124. District Towing's counsel agreed that the blue book was a reasonable method for the court to use in valuing Johnson's vehicle. *Id.* at 124-25 (conceding that "I don't think there's any question that everybody abides by blue book"; that the blue book is "a reasonable and generally accepted method"; and that "obviously the court wouldn't be arbitrary in using it"). District Towing claims that it had no opportunity "to cross-examine the evidence in this regard." Appellant's Br. 7. However, its counsel did cross-examine Johnson on the value of her vehicle at the time of purchase, J.A. 75, and counsel did not ask for an additional opportunity to question Johnson about the condition of the car before the accident, even though he was invited by the court to do so. *Id.* at 123.

When asked for District Towing's position regarding using the current blue book value, its counsel stated an objection based on Johnson's supposedly having put in no evidence regarding the value of her car, but did not object to the court's taking judicial notice of the blue book itself. *Id.* at 124-25. ("[S]he hasn't put any value on the record. . . . I agree that blue book is . . . a reasonable and generally accepted method and we would object."). District Towing's objection that Johnson had not "put any value on the record"—apart from being incorrect—was insufficient to preserve for appeal the argument that the court erred in taking judicial notice of the car's current blue book value. In any event, there was nothing improper about the trial court consulting the current blue book value to measure the value of Johnson's car (although that value likely understated the value of her car at the time of the accident in July 2007), rather than accepting Johnson's testimony regarding the car's blue book value when purchased in 2005. As

noted above, proceedings in the Small Claims Branch are not bound by the strict rules of evidence. "Since proceedings in small claims cases are informal and unencumbered by formal rules of evidence . . . the field of possible errors available for correction by a grant of appeal is narrow indeed." *K.C. Enter. v. Jennings*, 851 A.2d 426, 427 (D.C. 2004).

The fair market value of comparable vehicles is accepted in D.C. courts as an appropriate measure of damages for the loss of a vehicle. In *Gamble v. Smith*, 386 A.2d 692 (D.C. 1978), this Court found that the fair market value of an auto before an accident (if lower than the cost of repairs) was an appropriate measure of damages, along with an award for loss of use of the car. *Id.* at 694-95; *see also Royer v. Deihl*, 55 A.2d 722, 724 (D.C. 1947) ("It is undisputed that if an automobile is practically destroyed or so completely destroyed as not to be susceptible of repair, then the measure of damages is its reasonable market value immediately before the accident, less its salvage value.").[13] In calculating the fair market value of a vehicle, it is commonplace for courts to take judicial notice of authoritative automobile pricing guides, like the Kelley Blue Book or the National Association of Auto Retailers ("NADA") Official Used Car Guide. *See, e.g.*, *United States v. Whitlow*, 979 F.2d 1008, 1012 (5th Cir. 1992); *ITT Commercial Fin. Corp. v. Unlimited Auto., Inc.*, 814 F. Supp. 664, 668 (N.D. Ill. 1992); *In re Juarez*, No. 05-10109,

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[13] Although "[t]he usual and 'traditional' measure of damages for conversion of property is 'the fair market value of the property at the time of the conversion,'" *Trs. of Univ. of District of Columbia v. Vossoughi*, 963 A.2d 1162, 1175 (D.C. 2009), which, in this case, would be the salvage car of Johnson's car, not its pre-accident value, "fair market value" at the time of the conversion "is not always the test." *Id.* As the Court recognized, "for purposes of awarding adequate compensation for the destruction of property, 'value means exchange value *or the value to the owner if this is greater*. . . ." *Id.* (emphasis in original); *see also* 18 Am. Jur. 2d Conversion §116 ("[T]he primary principle to be applied in awarding damages for loss of property through conversion is that the owner should be compensated for the actual loss sustained."). Here, as the trial court found, Johnson would have been compensated for her car's pre-accident value—not its salvage value—but for District Towing's conversion having prevented an inspection of the car. J.A. 134. In any event, District Towing does not argue on appeal that Johnson was entitled to no more than her car's value at the time of the conversion.

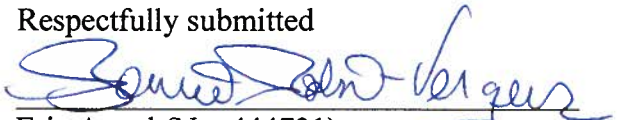
2005 Bankr. LEXIS 793, at *4 (Bankr. C.D. Cal. Apr. 25, 2005); *In re Wierschem*, 152 B.R. 345, 347 (Bankr. M.D. Fla. 1993); *Kaufman v. Comm'r*, 53 T.C.M. (CCH) 1348, 1987 Tax Ct. Memo LEXIS 350, at *45 n.21 (1987).

The trial court did not err in doing likewise here in this Small Claims Court case. Certainly, District Towing was not prejudiced by the court's damages determination. If anything, the court's calculation of damages benefited District Towing and should have been higher. First, the court's taking judicial notice of the current blue book value accrued to District Towing's benefit because the only evidence before the court was the higher value of Johnson's car from 2005. Second, the value the trial court used was for a less deluxe model than the one Johnson owned, J.A. 125, and the court used the blue book value at the time of trial, not the higher value at the time of the accident. Third, the court erred in not crediting the $125 District Towing received in junking the car, against the charges owed for towing and storage. Fourth, the court erred in offsetting the damages award by the towing and storage fees because District Towing did not file a counterclaim or otherwise present a set-off claim or defense. Finally, Johnson had other valid causes of action—such as under the CPPA—for which she should have been awarded additional damages. District Towing would do worse if there were a remand.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

Respectfully submitted



Eric Angel (No. 444731)
Bonnie I. Robin-Vergeer (No. 429717)
Wendy Weinberg (No. 445460)
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
(202) 628-1161 • Fax (202) 727-2132
Counsel for Amicus Curiae

David Reiser (No. 367177)
Zuckerman Spaeder LLP
1800 M Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 778-1800
Fax (202) 822-8106

Dated: January 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2010, I caused a true and correct copy of the foregoing Brief of the Legal Aid Society of the District of Columbia as Amicus Curiae in Support of Affirmance, to be served by first-class mail, postage prepaid, on:

Counsel for Appellant:

Gregory L. Lattimer
1200 G Street, N.W., Suite 800
Washington, D.C. 20005

Appellee:

Ms. Victoria Johnson
401 Orange Street, S.E., #22
Washington, D.C. 20032

Bonnie I. Robin-Vergeer