

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center, 7325 South Potomac Street, Centennial, Colorado 80112	DATE FILED: March 28, 2018 12:49 PM HEARING ID: C610409949273 CASE NUMBER: 2018CV30718
Plaintiffs: ANDREW VOGT and DRENA VOGT v. Defendants: JOSEPH W. O'ROURKE; BARGAIN STORAGE, LLC; BARRETT ANDREW PALOMBO; STORAGE AUCTION KINGS LLC; and GABE BACCA	▲ COURT USE ONLY ▲
Attorney: Name: William M. Banta, Esq. Address: 8101 East Prentice Avenue Suite 650 Greenwood Village, Colorado 80111 Phone Number: (303) 741-6700 FAX Number: (303) 741-4803 E-mail: billbanta@msn.com Atty. Reg. No. 2718	Case No.: Div.: Ctrm.
COMPLAINT	

THE PLAINTIFFS, ANDREW VOGT and DRENA VOGT ("the Plaintiffs" or "the Vogts"), by and through their attorney, William M. Banta, state as follows for their Complaint.

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiffs reside at 14895 Lyons Ridge Drive, Morrison, Colorado.

2. The Plaintiffs own certain handmade, antique, historic, old growth cherrywood furniture consisting of a

matching cabinet and buffet set with protective glass ("Cherrywood Furniture").

3. Upon information and belief, before and during the Civil War the Cherrywood Furniture belonged to the Culp family and was located at the Culp family farm, which is just north of Culp's Hill, Gettysburg, Pennsylvania.

4. Upon information and belief, the value of the Cherrywood Furniture is \$10,000.00.

5. Defendant Joseph W. O'Rourke ("O'Rourke") is a furniture refinisher. O'Rourke resides at 14851 East Purdue Place, Aurora, Colorado but his business address is unknown.

6. Defendant Bargain Storage, LLC ("Bargain Storage") is a foreign limited liability company, which withdrew its Colorado authority on June 2, 2017. Bargain Storage's business address is 1331 NW Lovejoy St., Suite 755, Portland, OR 97209.

7. Defendant Storage Auction Kings LLC ("Auction Kings") is a Colorado limited liability company. Auction Kings' business address is 3620 W 10th St., Unit B #158, Greeley, CO 80634.

8. Defendant Barrett Andrew Palombo ("Palombo") is an employee and agent of Auction Kings. Palombo resides at 1534 South Growers Drive, Milliken, Colorado and his business address is 3620 W 10th St., Unit B #158, Greeley, CO 80634.

9. Upon information and belief, Defendant Gabe Bacca ("Gabe Bacca") is a resident of the State of Colorado.

FACTUAL ALLEGATIONS

10. On or about February 15, 2016, O'Rourke contracted with the Vogts to pick up, refinish, store, and redeliver the Cherrywood Furniture.

11. The agreement is evidenced by O'Rourke's Invoice #2843, a copy of which is attached as "Exhibit A".

12. The Vogts paid O'Rourke as agreed.

13. O'Rourke then refinished the Cherrywood Furniture and promised to store it for a year or more until the Vogts moved into a new home.

14. O'Rourke stored the Cherrywood Furniture at a self-storage unit located near his refinishing shop.

15. At the time, O'Rourke's refinishing shop was located in Unit G, 401 North Laredo Street, Aurora, Colorado.

16. The self-storage unit (Unit No. 929) was located at Bargain Storage, 443 Laredo Street, Aurora, Colorado.

17. O'Rourke rented Unit No. 929 from Bargain Storage.

18. In 2017, Bargain Storage claimed a lien against the contents of Unit No. 929 on account of unpaid rent.

19. Bargain Storage hired Palombo and Auction Kings to auction, sell, and transfer the contents of Unit No. 929 in order to satisfy the lien claim and in partial payment of unpaid rent.

20. On March 7, 2017, without notice to the Vogts, Palombo and Auction Kings auctioned the contents of Unit No. 929, which included the Cherrywood Furniture.

21. On March 7, 2017, Palombo and Auction Kings sold and transferred the Cherrywood Furniture to Gabe Bacca for \$540.00.

22. On June 7, 2017, the Vogts demanded possession of the Cherrywood Furniture from O'Rourke.

23. On June 12, 2017, O'Rourke agreed to redeliver the Cherrywood Furniture to the Vogts.

24. The Cherrywood Furniture has not been redelivered to the Vogts.

25. The location of the Cherrywood Furniture is unknown to the Vogts.

FIRST CLAIM FOR RELIEF
(Replevin - Gabe Bacca)

26. The Plaintiffs incorporate paragraphs 10 through 25 and reassert them by this reference.

27. The Plaintiffs own the Cherrywood Furniture through inheritance and are entitled to possession.

28. Upon information and belief, Gabe Bacca is in possession of the Cherrywood Furniture.

29. Documents and other information needed to locate Gabe Bacca and the Cherrywood Furniture are being detained by Palombo, Auction Kings, and other persons against the Plaintiffs' ownership and possessory rights.

30. The Cherrywood Furniture was not taken for a tax assessment or fine pursuant to statute, or seized under an execution against the Plaintiffs' property.

WHEREFORE, the Plaintiffs, Andrew Vogt and Drena Vogt, pray for judgment against Gabe Bacca for possession of the Cherrywood Furniture, attorney's fees, costs, expenses, damages shown by the evidence, interest, and such other and further relief as the Court may deem just and proper.

SECOND CLAIM FOR RELIEF
(Conversion - Bargain Storage, LLC, Storage Auction Kings LLC,
Barrett Andrew Palombo, and Gabe Bacca)

31. The Plaintiffs incorporate paragraphs 10 through 25 and reassert them by this reference.

32. The Plaintiffs did not authorize the auction, sale, or transfer of the Cherrywood Furniture.

33. The Plaintiffs never authorized Bargain Storage, Palombo, Auction Kings, or Gabe Bacca to possess, control, or have dominion over the Cherrywood Furniture.

34. The Plaintiffs received no prior notice of the auction, sale, or transfer of the Cherrywood Furniture.

35. The Plaintiffs have demanded that their Cherrywood Furniture be returned to them.

36. The Plaintiffs have diligently demanded that documents, data, and other information needed to locate Gabe Bacca and the Cherrywood Furniture be delivered to them or preserved.

37. By their actions and without authority, Bargain Storage, Palombo, Auction Kings, and Gabe Bacca have deprived the Plaintiffs of the rightful use, benefit, and enjoyment of their Cherrywood Furniture.

38. Bargain Storage, Palombo, Auction Kings, and Gabe Bacca are liable to the Plaintiffs for conversion of the Cherrywood Furniture.

39. The auction, sale, transfer, and detention of the Cherrywood Furniture violate the Plaintiffs' rights of ownership and possession.

WHEREFORE, the Plaintiffs, Andrew Vogt and Drena Vogt, pray for judgment against Bargain Storage, LLC, Barrett Andrew Palombo, Storage Auction Kings LLC, and Gabe Bacca for the value of the Cherrywood Furniture plus interest thereon from March 7, 2017, plus attorney's fees, costs, expenses, additional damages shown by the evidence, and such other and further relief as the Court may deem just and proper.

THIRD CLAIM FOR RELIEF

(Breach of Contract - Joseph W. O'Rourke)

40. The Plaintiffs incorporate paragraphs 10 through 25 and reassert them by this reference.

41. O'Rourke breached his agreement with the Plaintiffs by failing to store or redeliver the Cherrywood Furniture as promised.

42. O'Rourke's breach of contract injured the Plaintiffs by the loss of their Cherrywood Furniture and their payments for the refinishing job plus interest.

43. The value of the Cherrywood Furniture that O'Rourke failed to redeliver is \$10,000.00 and the payments for pickup, refinishing, storage, and redelivery total \$2,375.00.

44. O'Rourke owes the Plaintiffs in excess of \$12,375.00 plus interest.

WHEREFORE, the Plaintiffs, Andrew Vogt and Drena Vogt, pray for judgment against Joseph W. O'Rourke for damages shown by the evidence, interest, attorney's fees, costs, expenses, and such other and further relief as the Court may deem just and proper.

FOURTH CLAIM FOR RELIEF
(Conversion - Joseph W. O'Rourke)

45. The Plaintiffs incorporate paragraphs 10 through 25 and reassert them by this reference.

46. Subsequent to the auction, sale, and transfer of the Cherrywood Furniture on March 7, 2017, O'Rourke was no longer storing the Cherrywood Furniture.

47. Yet, on June 12, 2017, O'Rourke's employee, Roberto, and O'Rourke each assured the Plaintiffs that their Cherrywood Furniture pieces were "safe" and stored behind O'Rourke's shop.

48. On June 16, 2017, the Plaintiffs text-messaged O'Rourke to schedule redelivery of the Cherrywood Furniture and O'Rourke responded as follows:

I will. We have to dig it out one day next week.
After a year it is buried behind many things.
Get them cleaned up and find a delivery time.
Later in the week is more likely.

49. Not until September 13, 2017, after the Plaintiffs had made numerous demands for possession, did O'Rourke admit (to an attorney at law) that the storage unit in which the Cherrywood Furniture was stored had been "given up."

50. O'Rourke had dominion and control over the Cherrywood Furniture as well as information concerning the Plaintiffs'

rights of ownership and possession and the violation of those rights.

51. O'Rourke intended that his actions and misrepresentations would misdirect the Plaintiffs away from recovery of the Cherrywood Furniture.

52. O'Rourke's actions, misrepresentations, and failures to protect the Cherrywood Furniture were attended by circumstances of fraud, malice, and willful, wanton, and reckless conduct or disregard of the Plaintiffs' rights of ownership and possession.

53. O'Rourke's actions, misrepresentations, and omissions foreseeably and proximately aggravated the Plaintiffs' losses, injuries, and damages.

WHEREFORE, the Plaintiffs, Andrew Vogt and Drena Vogt, pray for judgment against Joseph W. O'Rourke for the value of the Cherrywood Furniture plus interest thereon from March 7, 2017 plus attorney's fees, costs, expenses, and additional or special damages as shown by the evidence, and such other and further relief as the Court may deem just and proper.

FIFTH CLAIM FOR RELIEF

(Constructive Trust/Restitution/Unjust Enrichment -
All Defendants)

54. The Plaintiffs incorporate paragraphs 10 through 25 and reassert them by this reference.

55. At all relevant times, O'Rourke has had actual knowledge of the prior right, title, interest, claim, or equity that the Plaintiffs have in the Cherrywood Furniture.

56. Subsequent to the auction, sale, and transfer, Bargain Storage, Palombo, and Auction Kings had actual knowledge of the prior right, title, interest, claim, or equity that the Plaintiffs have in the Cherrywood Furniture.

57. Upon information and belief, after the auction, sale, and transfer, Gabe Bacca had actual knowledge of the prior

right, title, interest, claim, or equity that the Plaintiffs have in the Cherrywood Furniture.

58. Each of the Defendants received some benefit from withholding, concealing, disposing of, detaining, or receiving the Cherrywood Furniture.

59. Each Defendant appreciated and retained the respective benefit that it obtained.

60. Each Defendant has been unjustly enriched at the expense, damage, and injury of the Plaintiffs.

61. It would be inequitable for any Defendant to retain the benefits received or retained.

WHEREFORE, the Plaintiffs, Andrew Vogt and Drena Vogt, pray for judgment against Joseph W. O'Rourke, Bargain Storage, LLC, Barrett Andrew Palombo, Storage Auction Kings LLC, and Gabe Bacca for the respective benefits received or retained, for an accounting thereof, and for such other and further relief as the Court may deem just and proper.

SIXTH CLAIM FOR RELIEF

(Wrong of Another - Joseph W. O'Rourke)

61. The Plaintiffs incorporate paragraphs 10 through 25, 27 through 30, 32 through 39, 41 through 44, 46 through 53, and 55 through 61 and reassert them by this reference.

62. O'Rourke's wrongful acts, breaches, concealment, misrepresentation, and conversion have involved the Plaintiffs in litigation with the other Defendants.

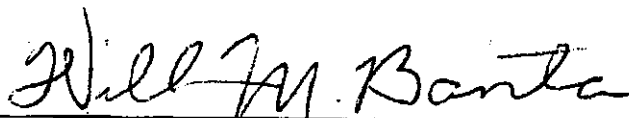
63. The Plaintiffs' involvement with the other Defendants in litigation was reasonably foreseeable.

64. O'Rourke is accountable, responsible, and liable for the reasonable expenses of the litigation that the Plaintiffs are incurring, including attorney's fees and costs.

WHEREFORE, the Plaintiffs, Andrew Vogt and Drena Vogt, pray for judgment against Joseph W. O'Rourke for the attorney's fees,

costs, and expenses incurred by the Plaintiffs in the immediate litigation commenced to recover their Cherrywood Furniture and other redress and for such other and further relief as the Court may deem just and proper.

DATED this 28th day of March, 2018.



William M. Banta, Reg. No. 2718

Attorney for Plaintiffs, Andrew and
Drena Vogt

Address of Plaintiffs:

14895 Lyons Ridge Drive
Morrison, Colorado 80465

Furniture Medic by Joey
 401 N. Laredo St.
 Unit G
 Aurora, CO 80011

Invoice

P.O. No.	Date	Invoice #
	2/15/2016	2843

PAID
02/22/2016

Bill To
22 Lindenwood Lane Littleton Co 80127

Ship To
22 Lindenwood Lane Littleton, CO 80127

Terms	Due Date
	2/15/2016

Quantity	Description	Rate	Amount
2	Antique Buffet with upper cabinet: Transport to the shop to be processed. Chemically strip, repair, sand, prep for color, stain, seal and top coats. Pick Up and Delivery	1,150.00	2,300.00
		75.00	75.00

50% due upon scheduling. 50% due upon completion. We accept all major credit cards.

Total	\$2,375.00
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