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7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF ALAMEDA

9 CITY OF OAKLAND,

10 Plaintiff,

11 v.

12 1989 Ford Ranger, California License Plate No.
13 3W31432, VIN 1FTCR11T4KUB96411,

14 Respondent,

15 ERIC KINNEY,

16 Claimant/Real Party
in Interest.

Case # 803932-7

SUPPLEMENTAL
MEMORANDUM ON THE
ISSUE OF CLAIMANT'S
LIABILITY FOR STORAGE
AND TOWING COSTS

Department 18
Judge Carl Morris

17 Claimant, Eric Kinney, through undersigned counsel, submits this supplemental
18 memorandum on the issue of claimant's liability – or, more accurately, the lack thereof – for the
19 City of Oakland's storage fees and towing costs associated with the detention of his vehicle in
20 this forfeiture case.

21 **Statement of Facts**

22 The City of Oakland Deputy City Attorney Pelayo Llamas, in his letter dated April 5,
23 2000, told Kinney's counsel that should Kinney elect to forfeit \$2,500 and recover his vehicle --
24 instead of allowing it to be sold at forfeiture auction and have the proceeds in excess of \$2,500
25 distributed to him -- Kinney would have to pay the City \$6,006 instead of \$2,500, because he
26 would be liable for the City's storage and towing costs.

1 Mr. Llamas now contends in his April 21 letter that \$3,766 in storage and towing costs
2 “should be imposed against Kinney.” This would bring the total amount required to redeem the
3 vehicle to \$6266 – more than the blue book value of the vehicle. Mr. Llamas give no clue as to
4 the legal reasoning he used to arrive at his conclusion that Kinney would be liable for the City’s
5 storage costs.

6 **1. Storage and towing are not recoverable costs under the California Code of Civil
7 Procedure**

8 Even the most rudimentary research into this issue would have uncovered the fact that
9 there is no legal support for the City’s claim for storage fees.

10 If this claim could be thought of as part of a request for “costs” for the prevailing party
11 under CCP §1032, the simple answer is that, even if the City could be awarded “costs” under
12 that statute, allowable costs do not include storage and towing fees in a forfeiture case. CCP
13 §1033.5 lists all of the items statutorily allowable as costs, and “storage and towing fees in a
14 forfeiture case” are not included in that list.

15 California case law is equally clear: the right to recover costs is purely statutory, and in
16 the absence of a statute authorizing the assessment of one party’s costs of a particular type
17 against another party, such costs cannot be recovered. *See* generally the cases cited in the
18 annotation to CCP§ 1032 at ¶6, including *Agnew v. Cronin* (1959, 2nd Dist) 167 Cal.App.2d
19 154, 334 P.2d 256 and *Danley v. Merced Irrigation Dist.* (1925) 76 Cal. App. 52, 243 P. 676.

20 In fact the California courts have considered this very question. In *People v. One 1950*
21 *Ford Sedan* (1956, 1st Dist.) 140 Cal.App.2d 647, 295 P.2d 486 the court held that
22 disbursements made for storage of a vehicle seized for forfeiture for transporting contraband
23 could not be taxed against the claimant as costs. That case was decided on an earlier version of
24 the “costs” statute, but *People v. One 1950 Ford Sedan* is still cited today for the proposition
25 that “[t]he court ... could not award costs that were not authorized by statute.” *Perko's*
26 *Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 243.

1 Today's code section listing chargeable costs – CCP §1033.5 -- still does not include
2 storage and towing fees incurred by the government in forfeiture cases.

3 If the City tries to stretch §1033.5(a)(5) -- “expenses of attachment including keeper’s
4 fees” -- to include storage fees in forfeiture cases, that argument was also rejected in *People v.*
5 *One 1950 Ford Sedan*, 140 Cal.App.2d at 650:

6 The case can be distinguished because the storage costs in that case were costs in
7 aid of execution regulated in sections 1032.6 and 1033.7 of the Code of Civil
8 Procedure which expressly permit the recovery of costs and disbursements
reasonably and necessarily incurred in aid of collection of judgment and because
said costs were incurred by the sheriff and had to be paid to him.

9 Although statutory law has changed over the past 44 years, including re-numbering of some of
10 these code sections, the language “the expenses of attachment including keeper’s fees” in the
11 cost shifting statute still refers only to the “keeper’s fees” incurred during the statutory process
12 of attachment, a process which is strictly regulated in the Code of Civil Procedure, such as
13 §483.010 which states:

14 (a) Except as otherwise provided by statute, an **attachment** may be issued only
15 in an action on a claim or claims for money, each of which is based upon a
16 contract, express or implied, where the total amount of the claim or claims is a
fixed or readily ascertainable amount not less than five hundred dollars (\$500)
exclusive of costs, interest, and attorney's fees.

17 Other code sections using the term “attachment” show that it is a term of art, referring to a
18 process which is strictly a creature of statute, and that it cannot be construed so broadly as to
19 refer to forfeiture cases under the Oakland ordinance.

20 21 **2. The Oakland Ordinance does not authorize the court to order claimants to pay 22 storage fees**

23 Mr. Llamas’ letter dated April 21 claims that “the disposition of costs, including towing
24 and storage, is already set forth in OMC 9.56.090 and liability for these costs is inherent in the
25 ordinance.” This is true. However, that section of the Oakland municipal code does not support
26 the City’s position, but only our position.

1 OMC 9.56.090 plainly states that the costs incurred by the City “for any necessary
2 repairs, storage or transportation of *any vehicle seized under this chapter*”¹ [OMC 9.56.090(B)
3 (emphasis added)] shall be paid out of the proceeds of the sale of vehicles forfeited to the city,
4 or cash payments made in settlement [OMC 9.56.090 first paragraph] after payment of bona
5 fide lienholders, innocent purchasers or sales vendors, etc. [OMC 9.56.090(A)], and before the
6 profits are split up between the City Attorney’s Office and local law enforcement entities.
7 [OMC 9.56.090(C).]

8 In the entire Ordinance, there is not a single provision that arguably entitles the court or
9 the city to force the claimant to pay the storage and towing costs incurred by the city in
10 enforcing this ordinance.

11 With clear language directing that the storage and towing costs for “any vehicles” seized
12 under this ordinance be paid out of the city’s gross revenues, and no language authorizing the
13 city or the court to force the claimant to pay those costs, there is no question that the claimant
14 can not be held liable for these costs. Under long-established canons of statutory construction,
15 the primary principle is that the plain meaning of the statute controls. This ordinance clearly
16 states that storage and towing costs come out of the city’s gross revenues from forfeitures before
17 the governmental entities split the profits.

18 The fact that there was no language authorizing the shifting of these expenses to the
19 property owner triggers another principle of statutory construction – the doctrine of *expressio*
20 *unius est exclusio alterius*, or “[t]he expression of some things in a statute necessarily means the
21 exclusion of other things not expressed.” *Dean v. Superior Court* (1998), 62 Cal.App.4th 638,
22 642, 73 Cal.Rptr.2d 70. Therefore, the fact that the City of Oakland, in drafting this ordinance,
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24
25 ¹ The inclusion of the word “any” in the phrase “*any vehicle seized under this chapter*”
26 makes it clear that all towing and storage fees -- for any and all vehicles seized under this
27 ordinance -- are to be paid by the City out of the gross revenues from sales of forfeited vehicles
and settlement of forfeiture cases. The ordinance does not authorize the shifting of these
substantial costs to the hapless property owner who had his car seized under this ordinance.

1 directed that storage and towing fees for all seized vehicles be paid out of gross revenues, and
2 did not specify any exceptions authorizing the shifting of these costs onto claimants, meant that
3 storage and towing costs should be paid out of the gross revenues generated by completed
4 forfeitures under this ordinance and *not* be assessed against an individual clamant, whether
5 successful or unsuccessful.

6 It is bad enough that the City Attorney's office would be making such unauthorized
7 demands for reimbursement of storage and towing costs to a claimant represented by counsel, as
8 Mr. Kinney is here.

9 More disturbing is this question: *what has the City Attorney's office been telling pro se*
10 *claimants* -- most of them incapable of doing even a fraction of the complex legal research we
11 have had to do in this case -- about their liability for towing and storage costs, in order to get
12 them to pay such costs as a condition of settlement?

13 For the foregoing reasons this Court should include in its published decision an
14 explanation of a claimant's non-liability for storage and towing costs under this ordinance.

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16 Respectfully submitted,

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I am a citizen of the United States and a resident of the County of Marin. I am over the age of eighteen years and not a party to the within, above-entitled action; my business address is: 20 Sunnyside Suite A-204, Mill Valley CA 94941.

Pelayo Llamas, Deputy City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612

I, Brenda Grantland, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this ____ day of April 2000, at Mill Valley, California.

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