



Roll Door Review

The only newsletter that gives a "HOOT" about the self storage industry in Arkansas

18 Freeway Drive, Suite 3 Little Rock, AR 72204 | 501-607-4775 | www.arssa.org | March 2019

The Frivolous Litigant



It is not often that a court labels a litigant's claim as frivolous. In fact, courts seem all too willing to treat even the most specious claims seriously. It takes a lot of work for a claimant to try the patience of the court to such an extent that they dismiss a lawsuit and brand it frivolous. However, Mr. McIntosh, a self storage tenant, was so branded by the Civil Court of New York City, in *McIntosh v. U-Haul Moving & Storage*, 2018 NYLJ LEXIS 3729.

McIntosh filed suit against U-Haul after receiving notices that the contents of his space would be sold to satisfy U-Haul's lien if he did not pay his rent and other charges. When the court date arrived, U-Haul was present but Mr. McIntosh was not. However, McIntosh had an excuse for failing to appear. He was involved in another lawsuit that day. The trial judge was not impressed with McIntosh's excuse and his order stated, "Petitioner asserts he was not present in court on September 21, 2018, because he had another court proceeding that morning. Petitioner states he was in Brooklyn Supreme Court on an order to show cause he brought against the City of New York to stay it from auctioning his motor vehicle based upon a lien for unpaid parking tickets." The problem was that McIntosh did not bother to inform the trial court or U-Haul that he could not attend the hearing.

The court also found that the plaintiff's claim lacked merit. "Petitioner has failed to provide any proof of payment. Thus, petitioner has failed to establish a potentially meritorious defense. Petitioner is no stranger to the court system. He admitted in open court that he has commenced and maintained in excess of 20 litigations against various storage facilities in several counties within the City of New York. This Court is aware of petitioner's litigious history in this County, wherein has made similar specious claims. These other matters by and large were dismissed for failure of the petitioner to appear or settled presumably on the basis

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2019 ASSA State Convention & Expo - August 21st & 22nd Embassy Suites, Rogers, AR

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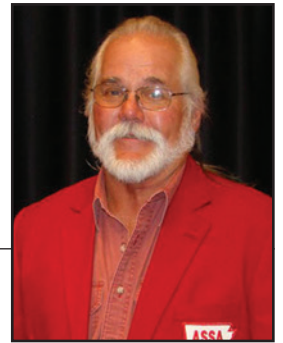
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Letter From the president



Charles Snapp

It's that time of year when we are all looking at our businesses strategically and asking ourselves how to raise our occupancy, improve our bottom line and take advantage of any possible tax break that may be available. Then again, with the Legislature currently in session we should be concerned about new tax laws, a variety of regulations and even the potential of additional liability, but that's where the ASSA steps in.

No, the Arkansas Self Storage Association does not have a vote in the State Legislature, but our membership does have open ears and a voice. One of the greatest values I've come to appreciate from the ASSA is the unified effort our membership and Board of Directors put forth when an issue comes up in the Legislature. Issues that impact our industry may not be directed at the self-storage industry, but many times unforeseen consequences can come from Senate and House bills being proposed to regulate other industries. Nevertheless, your association and your Board of Directors are paying close attention and we are prepared to reach out to each and every one of you in the event a bill that would negatively impact our industry is introduced.

From the tax stand point, the Tax Reform Act of 2017 may provide some new benefits to you directly, especially if you operate with a Corporation, as was evident in the Tax Law-Cost Segregation Seminar that was provided in

January. Warren Dazzio with Cost Segregation Services (dazziow@costsegserv.com) and Leonard Hasson, CPA (lhasson@mannhasson.com) presented a seminar that was informative and well worth my travel time to Little Rock. To make sure you're getting information about these opportunities through the ASSA, please add sharris@arssa.org.

From a more unusual side of the self-storage industry, the February 2019 Issue of Inside Self-Storage included a piece about a storage owner in Maryland being "arrested and charged with maintaining a drug-related common nuisance and disorderly house"; for allegedly allowing people to live in units in exchange for cash. The police responded to calls about a stabbing, drug possession and overdose, and fighting. In the same article, a manager in New Jersey mistakenly opened a tenant's package and found two pounds of marijuana. After reporting the find, the tenant was arrested when he arrived to claim the package. My favorite piece was focused on a public sale in an undisclosed state, where a man purchased a unit for \$500 and found a safe containing \$7.5 million in cash, according to Dan and Laura Dotson who presided over the sale.

These stories are extreme, or out

See **Letter From the President**,
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Letter From the President

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of the ordinary occurrences in self-storage industry, but at the end of the day, we are managing a business that is dynamic and provides us all types of surprises. My job as ASSA President is to put strategies in place that allow our members to better prepare themselves for the occurrences they face. And that's why I hope you understand the value of your membership with the ASSA. Your Board of Directors and Executive Director want you to have the knowledge and resources to allow you to keep moving your business forward, with an increased bottom line.

Please make sure your dues are paid so you're on our 2019 mailing list, and save the date for the 2019 State Convention August 21st & 22nd in Rogers. This year's Expo is going to be one you'll always remember! On behalf of the Board of Directors, we hope your 2019 has started off with great success. Thank you for your continued support.

Inside Self Storage, February 2019. p. 6

The Importance of Clear Business Records

Businesses that create and maintain clear and understandable business records for each customer have a big advantage when disputes arise. Documents created at the time the event took place are often viewed as more reliable than the parties' recollections of those same events, which may now be months or even years in the past. The Seventh Circuit Court of Appeals opinion, in *Duncan v. Asset Recovery Specialists, Inc.*, 907 F. 3d 1016, demonstrates just how powerful a defense clear business documents can be when litigation strikes.



The suit arose when Danielle Duncan's car was repossessed. She was unable to pay the amount owed on the vehicle but sought to recover personal property that she left in the car. Ms. Duncan contacted Asset Recovery Specialists (ARS) to arrange to recover her property. Here is where the stories diverge. According to Ms. Duncan, ARS demanded that she pay a \$100 "assessment fee" to recover her personal property. This payment demand was a violation of the Fair Debt Collection Practices Act (FDCPA). ARS had a very different tale to tell. ARS contended that it never demanded payment of the "assessment fee" because the fee was a direct charge to the vehicle lender that it represented and not a charge to the vehicle owner.

Duncan brought a class action suit against ARS and the lender, alleging violation of the FDCPA. The trial court dismissed the suit: The court ruled that Ms. Duncan's allegations were in direct conflict with the documents produced by ARS. ARS only required Ms. Duncan to sign a document titled "Receipt for Redeeming Personal Property" to recover her personal property. It described the fee as a charge to the lender, not to the vehicle owner.

Duncan appealed. She argued that her testimony was enough to raise a factual question of whether ARS was working on behalf of the lender to collect \$100 to apply toward the defaulted loan. The appellate court disagreed. The court held:

The record on summary judgment shows that Duncan was not able to back her allegation that Asset Recovery demanded the \$100 fee of her with anything beyond her own say so. Asset Recovery, on the other hand, backed its contrary testimony with the Receipt for Redeeming Personal Property, which expressly established that Wells Fargo-not Duncan-would make the \$100 payment.

Collecting debts is never an easy endeavor but written documentation of each step of the process is important for any business that does so. Self storage operators have to be especially careful because when tenants fail to pay rent, the collection process may result in the tenant's property being sold. Documenting each step of this process is essential. The self storage facility's documents must prove that the tenant was delinquent on the rent and the facility complied with the lien law. Anything less makes a lien sale a risky business.

The Self Storage Legal Review. January/February 2019. (p. 1).

The Frivolous Litigant

Continued from page 1

of nuisance value. Some of these Queens County cases have had several orders to show cause wherein the petitioner repeatedly failed to appear on court dates."

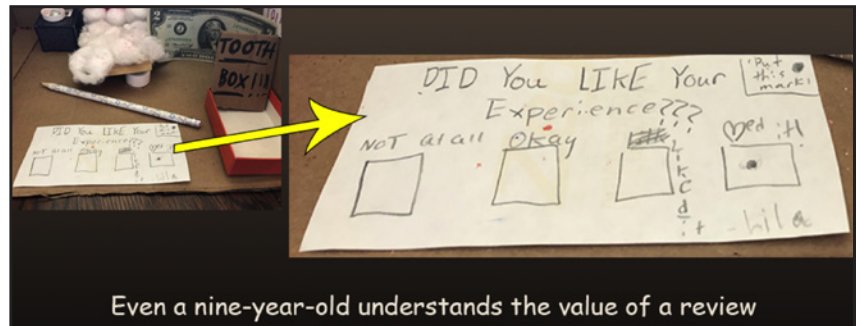
The trial judge not only dismissed McIntosh's lawsuit and ordered the sale of McIntosh's contents, it also awarded U-Haul \$1,600 in attorney fees. Collecting the fees may not be easy but at least the storage operator won a small victory in this very annoying lawsuit. Mr. McIntosh is clearly a troublesome tenant for several New York storage facilities.

The Self Storage Legal Review. January/February 2019. (p. 1).

Even a Nine-Year-Old Gets It

By Mike Roberts, EVP, Business Development and Sales, XPS Solutions

A few weeks ago, my goddaughter, who is nine, was about to lose a baby tooth. In preparation, she constructed a "Tooth Fairy box". It was quite the project and she was very creative and imaginative with the design. She selected a special box and added cotton balls, thread spools, and of course, glitter to place the baby tooth. My goddaughter was very proud and she was so excited to show me her project. It was all very nice. But one thing stood out: In the very front of the box there was a place for the tooth fairy to leave a review. "Did You Like Your Experience? Not at all, It was ok, Liked it, and Loved it". Of course, loved it was checked off!!!



My point is that reviews are very important in day-to-day life and especially in business. 92% of consumers now read online reviews. A business star rating is the number one factor in choosing a company to do business with; zero reviews are almost as damaging as bad reviews, and both Google and consumers tend to pass on a business that no one has bothered to review. It's a matter of trust. They want to know what to expect. My goddaughter is only nine and wants to grow up to be something different every week, but one thing is for sure, whatever life course she picks she will be well prepared and informed.



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