

SUPREME COURT COPY

No. S232322

SUPREME COURT
FILED

OCT 11 2016

IN THE SUPREME COURT OF CALIFORNIA ^{Jorge Navarrete Clerk}

SAMUEL HECKART,
individually and on behalf of a Class of those similarly situated,
Plaintiff and Appellant,

Deputy

v.

A-1 SELF STORAGE INC., et al.

Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION ONE
CASE NO. D066831

**ANSWER TO AMICUS CURIAE BRIEF OF BAKER,
BURTON & LUNDY, PC, ZAKARI LAW, AND DALE E.
WASHINGTON, ESQ.**

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Enterprises, Inc.

Service on the Office of the Attorney General and the District
Attorney of the County of San Diego pursuant to Bus. & Prof.
Code § 17209

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Pursuant to California Rule of Court 8.520(f)(7), respondents A-1 Self Storage, Inc., Caster Properties, Inc., Caster Family Enterprises, Inc., and Caster Group LP (collectively, “A-1”) file this answer to the amicus curiae brief of Baker, Burton & Lundy, PC, Zakari Law, and Dale E. Washington, Esq. filed on September 22, 2016 (the “Baker Burton amicus brief”). A-1 raises three points in answer.

First, the Baker Burton amicus brief attaches certain unauthenticated material. Assuming this material were entitled to consideration, it in fact bolsters a principal element of A-1’s merits argument. A-1 argued that, unlike insurers, self-storage landlords face the risk of suit by unhappy tenants if tenant property is damaged while in storage; that the risk of damage to stored property is thus a shared risk as between A-1 and its tenants; and that the lease addendum at issue was designed to allocate and cap that risk, and thus furthered the parties’ principal object: a dispute-free lease. (A-1’s Answer Brief on the Merits, pp. 2, 11-13, 26-30.) Exhibit A to the Baker Burton amicus brief supports this argument by corroborating that unhappy self-storage tenants do sue their landlords when their property is damaged, and that small claims court judges sometimes ignore exculpatory provisions in leases and award damages to the tenant. (Ex. A to Baker Burton amicus brief, p. 1.)

Second, the Baker Burton amicus brief’s citation to California Public Utilities Commission proceedings is misplaced in two senses. The cited order R. 97-10-050 of October 22, 1997

does not contain the quoted remarks. It appears that the document the brief intends to cite is an opinion issued on February 19, 1998 in the same rulemaking matter. In any event, reliance on the opinion is misplaced because the regulator whose opinion deserves consideration here is the California Department of Insurance, not the California Public Utilities Commission. As shown in A-1's merits brief, the California Department of Insurance was twice asked to opine whether the lease arrangement at issue was subject to regulation as insurance, and both times it responded in the negative. That opinion is entitled to deference. (A-1's Answer Brief on the Merits, pp. 30-33.)

Third, Baker Burton's amicus brief reinforces A-1's argument that the decision of whether and how to regulate lease arrangements like those at issue here should be left to the Legislature. (A-1's Answer Brief on the Merits, pp. 33-35.) The cited proceedings of the California Public Utilities Commission constituted that regulator's recommendations for amendments to Senate Bill 1086, which ultimately became the California Self-Service Storage Facility Act, Business and Professions Code section 21700 *et seq.* Those recommendations constituted one viewpoint, and the Legislature presumably gave those recommendations whatever weight they deserved. But ultimately, the Legislature enacted the statute it deemed most appropriate for the regulation of self-storage operators. Both in the statute as enacted and as subsequently amended, the Legislature did not see fit to regulate the lease arrangements at issue here. If there is a public policy case to be made for the

regulation of such lease arrangements, that case should be made to the Legislature.

Dated: October 7, 2016

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

By



JOHN T. BROOKS

Attorneys for A-1 Self Storage, Inc., Caster
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PROOF OF SERVICE

Samuel Heckart v.A-1 Self Storage Inc., et al.

Supreme Court of California, Case No. S232322

Court of Appeal, Fourth Appellate District, Division One, Case No. D066831

San Diego Superior Court, Case No. 37-2013-00042315-CU-BT-CTL

I, Tamara Siemers, declare as follows: I am employed with the law firm of Sheppard Mullin Richter & Hampton LLP, whose address is 501 West Broadway, 19th Floor, San Diego, California 92101. I am over the age of eighteen years, and am not a party to this action. On **October 7, 2016**, I served the foregoing document described as:

**ANSWER TO AMICUS CURIAE BRIEF OF BAKER, BURTON & LUNDY,
PC, ZAKARI LAW, AND DALE E. WASHINGTON, ESQ.**

[X] U. S. MAIL: I placed a copy in a separate envelope, with postage fully prepaid, for each addressee named below for collection and mailing on the below indicated day following the ordinary business practices at Sheppard Mullin Richter & Hampton LLP. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on **October 7, 2016**.



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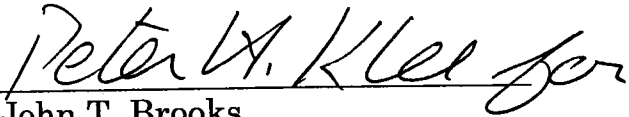
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CERTIFICATE OF COMPLIANCE

I, John T. Brooks, appellate counsel to A-1 Self Storage, Inc., Caster Properties, Inc., Caster Family Enterprises, Inc., and Caster Group LP, certify that the foregoing brief is prepared in proportionally spaced Century Schoolbook 13 point type and, based on the word count of the word processing system used to prepare the brief, the brief is 511 words long.


John T. Brooks