

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

GEORGE TUBBS,	:	APPEAL NO. C-190282
	:	TRIAL NO. A-1803014
and	:	
	:	<i>JUDGMENT ENTRY.</i>
LINDA GIBSON,	:	
Plaintiffs-Appellants,	:	
vs.	:	
SIMPLY SELF STORAGE,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant George Tubbs entered into a rental agreement with defendant-appellee Simply Self Storage to rent a storage unit. The lease carried an addendum that required the lessee to carry insurance or to assume the risk of loss as a self-insurer. In so doing, the lessee released the lessor from liability for damages that would have been covered by insurance. The agreement also stated that the lessee would not allow property belonging to anyone else to be stored in the unit. Due to an alleged leaking roof and other conditions, Tubbs and plaintiff-appellant Linda Gibson claimed that their property had been damaged. Although it is not clear from the record, it appears that most of the property damaged belonged to Gibson, who was not a party to the rental agreement.

Tubbs and Gibson later filed a lawsuit against Simply Self Storage claiming “damage to our 10 x 10 storage bin and the [loss] of [Gibson’s] vision (left) due to stress.” During discovery, Tubbs and Gibson failed to respond to requests for admissions, which were then deemed admitted by the trial court. The admissions established that Gibson was not a party to the agreement, that Tubbs was prohibited

from storing anyone else's property in the unit, that Tubbs was required to maintain insurance for the items stored in the property and that the failure to do so would result in Tubbs being considered self-insured. In addition, Tubbs and Gibson failed to disclose any expert witnesses or to submit any expert reports by the court-ordered deadline. Simply Self Storage filed a motion for summary judgment, which the trial court granted. Tubbs and Gibson now appeal.

The brief filed by Tubbs and Gibson is difficult to follow, as it appears to have been filed with the pages out of order and with a confusing page-numbering style. They seem to have asserted four assignments of error: three of which argue that the trial court erred in granting Simply Self Storage's motion for summary judgment, and a fourth argument claiming that they are entitled to relief under the novel theory of unjust enrichment. We will discuss each issue in turn.

We first address the decision to grant summary judgment on the claim for property damage. This case is like a recent case from the Tenth Appellate District, *Hopkins v. Car Go Self Storage*, 2019-Ohio-1793, 135 N.E.3d 1229 (10th Dist.). As in this case, the court found that the storage contract contained a broad release of liability for damage caused to property, the validity of which had not been contested. *Id.* at ¶ 18. Tubbs was to either maintain insurance for his property or assume the risk as a self-insurer, holding Simply Self Storage harmless. The record establishes that Tubbs failed to insure the property. Further, any property not owned by Tubbs was expressly excluded as Tubbs was precluded by contract from storing the property of another in the unit.

We also agree that the trial court properly determined that Gibson's claim for personal injury was ripe for dismissal. Gibson had not disclosed any expert witnesses or provided an expert report as required by the trial court's scheduling order. Gibson claimed that she lost her vision due to, among other things, stress or mold or other conditions in the unit. But such a claim must be supported by expert testimony, which Gibson was procedurally barred from providing. *See Terry v.*

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Caputo, 115 Ohio St.3d 351, 2007-Ohio-5023, 875 N.E.2d 72, ¶ 7 (without expert testimony to establish both general causation and specific causation, a claimant cannot establish a prima facie case of exposure to mold or other toxic substance).

Finally, we address the argument that summary judgment was inappropriate under a theory of unjust enrichment. But this was not a claim that Tubbs and Gibson made in their complaint or argued below. We will not consider an argument that has been raised for the first time on appeal. *See Republic Steel Corp. v. Bd. of Rev. of Cuyahoga Cty.*, 175 Ohio St. 179, 184-185, 192 N.E.2d 47 (1963).

For the reasons set forth above, we overrule Tubbs and Gibson’s assignments of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on December 9, 2020,
per order of the court _____.

Presiding Judge