

APPENDIX 1

SOME MUSINGS ABOUT THE FACTS.

The Court of Appeals rightly credited the district court's findings of fact. They were based in part on observing and listening to the witnesses. That is not a minor consideration. The written transcript cannot replace directly watching and hearing witnesses as they testify. That said, the facts as found seem odd to me.

Said and her daughter testified that Said followed her cultural heritage as an Ethiopian (or Ethiopian American), and used gold jewelry as a method of savings. Personally, I'd rather depend on depositing money in a bank and using FDIC insurance. However, no doubt, others might have a different view.

Said's proof on the jewelry issue was based on her testimony, her daughter's testimony, and the testimony of a pawn broker. Said and her daughter testified about their recollection of the pieces. Said testified the pieces were in the satchel in the discarded dresser on the morning of June 26. Her daughter testified about seeing the jewelry (or maybe some of it, with the testimony a bit unclear), when she got married in May, and that some of it was worn during the wedding. The pawn broker testified that Said would pawn some of the jewelry from time to time (she was a "good customer"), always paying off the loan before losing the jewelry to the pawn shop. He recalled specifics about a few of the pieces, apparently never seeing the entire collection.

What strikes me as odd is that Said was described both by herself and by her pawn broker as an astute businesswoman, and yet she took no good precautions regarding approximately \$50,000 worth of gold. She stored it in a dresser in her home in a mediocre neighborhood. She apparently had no insurance. Disasters happen – theft, quasi theft as in the instant case, fire, tornado. Why not store most of the jewelry in a safe deposit box? Even if banks are so distrusted that a bank vault is not a meaningful option, at least insure the gold.

Secondly, the first conciliation court complaint demanded only \$8,000. If about \$50,000 worth of gold was missing, why only a \$8,000 claim? Even after the first conciliation court complaint was amended (by dismissal and refile), the claim was only for the jurisdictional limit of \$15,000. An astute businesswoman would instead have sought legal help and sued in district court for the full value, as Said eventually did. It leaves me with some suspicion about what jewelry was actually lost.

On the other side of the ledger, once Old Home's manager realized what her cleaning crew had done, she offered only \$100 as compensation (albeit with a question to Said about what more could be done). Jewelry aside, a household full of boxes and furniture is worth 50 to 200 times \$100. The offer was insulting and invited litigation.

Then, when Said won \$15,000 in conciliation court, it was Old Home that sought removal to district court. Said could not appeal her own complete win. What did Old Home hope to gain? Eventually, the district court found the non-jewelry to be worth \$12,000. Ignoring the jewelry issue (which maybe was unknown to Old Home at that time), what did it expect in district court? Maybe the \$15,000 was a bit high, but going to district court would cost thousands of dollars in attorney fees. There was no attorney-fees clause in the lease. Old Home should have left well enough alone.

One also wonders if Old Home had insurance for the claim. Even at the end, it was negligence that led to the dumping. Prior to district court, why didn't Old Home tender the claim to its insurer? Maybe it had a high deductible, so on this point I'm mostly curious. I note that at the settlement conference prior to trial, the district court judge brought up insurance.