No. 90612-2

**SUPREME COURT OF THE STATE OF WASHINGTON**

KEITH L. HOLMQUIST and KAY BURDINE HOLMQUIST, f/k/a KAY BURDINE, husband and wife; and FREDERICK A. KASEBURG, a single man,

*Respondents,*

v.

KING COUNTY, a political subdivision of the State of Washington, and CITY OF SEATTLE, a municipal corporation,

*Petitioners.*



# *AMICUS CURIAE* BRIEF OF FRIENDS OF CEDAR PARK COMMUNITY AND SEATTLE SEA KAYAK CLUB

## IN SUPPORT OF SUPREME COURT REVIEW

Randall H. Brook
WSBA # 4860
10 Waxwing Ln
Twisp, WA 98856
Tel: 509.997.6242

Attorney for Friends of Cedar Park Community and Seattle Sea Kayak Club

David Bricklin
WSBA # 7583
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
(206) 264-8600

Attorneys for Friends of Cedar Park Community

TABLE OF CONTENTS

## I. INTRODUCTION

Friends of Cedar Park Community ("Friends") and the Seattle Sea Kayak Club ("SSKC") (together, the "Community Groups") support King County and the City of Seattle's ("Petitioners") Petition for Review of the Court of Appeals ruling quieting title to a small, public, waterfront park called the NE 130th Street End ("Street End park") in favor of three individuals who own adjacent waterfront properties.

Neither the Superior Court nor the Court of Appeals gave any indication of considering the public and equitable interests that are of great concern to the Community Groups as well as to all residents of Seattle and the surroundings. Indeed, due in large part to the actions of Respondents, the public was denied the opportunity to present to the Superior Court any evidence of the public interest and equities in this case. This substantial public interest provides a strong reason for the Supreme Court to review the decision below. RAP 13.4(b)(4)

This case is not simply a very technical property ownership dispute between King County or the City of Seattle and three individuals. It is first and foremost a case of three neighboring owners of already very valuable waterfront properties seeking windfall profits by taking away a vital community resource that has been treated by King County, the City of Seattle, the Community Groups, respondents' predecessors in interest, and

the real estate agents who sold respondents their properties, as belonging to the public since 1926. Indeed, before respondent Kaseburg made his recent purchase of one adjacent property, not even the Holmquist respondents – residents for 15 years -- had ever given any indication that they believed they had a claim to the public Street End park.

## II. IDENTITY AND INTEREST OF AMICUS CURIAE

The Community Groups represent the "public" to whom this street end was dedicated in 1926 when Puget Mill Company first transferred the NE 130 Street End to King County. The Dedication read:

> [Puget Mill Company] dedicate[s] to the use of the public forever all the streets shown hereon and the use thereof for all public purposes . . .[1]

The Friends of Cedar Park Community ("FCPN") is a grassroots, nonprofit, 501(c)(3) organization dedicated to protecting and preserving the community values of the neighborhood in which the Street End park subject to this litigation is located. Members live in the neighborhood. For many decades they and their predecessors have made use of the Street End park for swimming, launching inner tubes or other small craft, or just sitting on the shore enjoying the lake. FCPN regularly addresses a variety

---

[1] Court of Appeals decision, slip op. at 3.

of land use issues of broad applicability in Seattle and nearby areas, including building on unstable slopes and other issues of local concern.

The Seattle Sea Kayak Club ("SSKC") is an association of kayaking enthusiasts who live in or around Seattle and kayak the area's lakes and saltwater. Members range from whole families of kayakers, including children, to competitive athletes. For decades, SSKC members have made use of Seattle street end waterfront access points -- including the NE 130 Street End park -- to launch their kayaks. These little parks are important to kayakers because there is very limited water access in Seattle for launching small, hand powered boats.

The interest of the entire Seattle community in the outcome of this suit and preservation of water access points at Seattle street ends can also be seen in stories broadcast by local network affiliates:

For example, from KIRO radio: http://mynorthwest.com/11/2339568/Land-Grab. And from KOMO TV: http://www.komonews.com/news/local/POCKET-PARK-LEGAL-BATTLE-LAKE-CITY-PRIVATE-PUBLIC.html?tab=video&c=y.

## III. STATEMENT OF THE CASE

The Community Groups agree with and adopt the statement of the case presented by the City of Seattle and King County. (Petition for Review at 2-5.)

The Community Groups also note that the public has been maintaining and using this little park for more than 80 years with the understanding that it belong to everyone. Respondents have obtained substantial economic benefit by waiting to make their claim, for the first time, in 2012. That claim and the arguments they made below simply ignored the original intent of the parties and the long standing public use. So did the courts below.

Respondents kept first the City of Seattle, and then the public, from knowing of this suit until it was well underway or, in the case of the Community Groups, until after it reached summary judgment. This allowed, for example, respondents' to make false claims, supported only by their own self-serving declarations, that the Holmquists performed "the only known maintenance in the last 15 years" to go unchallenged by numerous other individuals who also voluntarily performed maintenance, starting long before any of the respondents purchased their properties.

Members of the Community Groups have maintained this property starting long before the Holmquists purchased their property and continuing until the present time. Neighbors (other than Respondents) and kayakers, as well as the City of Seattle, have long cleared trash from the area, and kayakers have cleared floating logs and other objects that could pose a danger to boaters or swimmers entering at the park.

## IV. ARGUMENT WHY REVIEW SHOULD BE GRANTED

There is a strong public interest in the outcome of this case, sufficient to warrant review by the Supreme Court.

### A. There Is a Substantial Public Interest in Reviewing a Decision that Deprives the Public of Property Dedicated to it 86 Years Ago, While Providing Windfall Profits to Private Individuals

The case below was decided on purely legal and highly technical grounds, although both Appellants and Respondents had made equitable concerns an issue. The Community Groups have an important interest in adding to the discussion of equitable concerns, *i.e.*, the public interest, in this court or on remand to the trial court.

It is undisputed that the original intent of the land grant in 1926 was to give the Street End to the public, as noted above. Respondents never contested the fact that all parties to the original transactions, including Miller and Shotwell in 1932, intended a public use of the Street End park. *See* Petition for Review at 9-11.

It is also undisputed that for 58 years and continuing until this lawsuit was started in 2012, no one questioned Seattle's ownership of the Street End park. *See* Petition for Review at 11. Respondents, as successors in interest to all previous owners of the adjacent properties, have benefitted by decades of not claiming otherwise. They avoided

paying any property taxes. They denied the City any opportunity to consider negotiating a settlement to quiet title to the Street End park when property values were low. They avoided any risk of the City instituting condemnation proceedings while the value of the Street End park may have been low. They benefitted from paying a purchase price for their properties that did not include any market expectation that an interest in the Street End park was included.[2]

Nor have Respondents introduced any evidence that any predecessor in interest made a claim for the park to Seattle in the past 58 years. No facts have changed or new evidence found. This case could have been brought against King County in 1935, or against Seattle in 1954, as easily as today. Respondents do not claim otherwise. They do not, and could not, offer any good cause or equitable justification for upsetting a long-standing assertion of ownership and pattern of public usage based on the intent of the original parties to the transaction. Their uncontradicted expectation was that the public would continue its use of the Street End park.

---

[2] Respondents have never claimed that they purchased their properties with any expectation that an extremely valuable share in the Street End park was included in the purchase price. Had they claimed otherwise, and had the Community Groups been able to participate in the trial court proceeding, the Community Groups could have introduced evidence and testimony from real estate brokers that the property listings and sales made no mention of any interest, actual or potential, in the Street End park.

B. Respondents' Self-Serving Claims Regarding Their Supposed "Known Maintenance" Are False or Misleading, and Irrelevant, and Were Only Possible Because of Their Success in Preventing the Public from Learning of the Lawsuit in Time to File Contradictory Evidence

The history of this case is unusual is that it was initiated without notice to the parties most affected by the relief sought, *i.e.*, the City of Seattle and the people who had been and were openly using the Street End park for decades. First, the City of Seattle was given no notice of the lawsuit. The City did not even learn of the suit until January 2013, after it had been underway for six months and discovery complete. Seattle's motion to intervene was then vigorously opposed by Respondents.[3] Even then, there was no notice to the neighbors.

Even after filing suit, respondents never told any neighbor using the Street End park that they had made a claim to ownership and, in fact, went to court to prevent notice to the public. The first indication the Community Groups had of the dispute – but not that a suit had been filed – was when the City of Seattle put up a second sign, stating that there was a possible problem with regard to the intended improvements.[4] This did not,

---

[3] City of Seattle Motion to Intervene (Mar. 21, 2013) [CP 13], Declaration of Kelly N. Stone [CP 14]; Reply by City of Seattle (Mar. 28, 2013), [CP 21], Declaration of Kelly N. Stone [CP 22].

[4] The sign read: "The City of Seattle was informed that possible street vacation of this site occurred several decades ago and needs time to thoroughly

however, inform the Community Groups that a lawsuit was already well underway.

After seeing the second sign, neighbors began asking the City what the problem was. It was not until mid-June that the Community Groups learned about the suit and that summary judgment had already been granted. They also learned at that late date that respondents had sought a court order to force the City to remove even the ambiguous sign described above. The trial court denied this motion on July 9, 2012.[5]

Nonetheless, the damage was done. The summary judgment had been entered without the possibility of any participation of the people most affected by the outcome, the longtime users of the Street End park. As a result, respondents in their Answer to Petition for Review make the misleadingly worded claim that the "Holmquists performed the only **known** maintenance in the last 15 years." (Respondents' Brief at 6, emphasis supplied)

The Community Groups, had they had to opportunity to present evidence in the Superior Court, would have shown unequivocally that the claim was false. Members of the Community Groups were doing

---

understand what actions may have occurred, and the impact on city jurisdiction of this site."

[5] Order Denying Motion re: Supersedeas Bond (7/19/13) [CP 52].

voluntary maintenance on the Street End park long before and after the Holmquists purchased their property. Respondents' claim is also irrelevant. Doing voluntary maintenance on a public park, which thousands of citizens regularly do, has never provided a legal or equitable basis for a private takeover.

## VI. CONCLUSION

Based on RAP 13(b)(4), the Community Groups respectfully request that this court grant appellants' Petition for Review.

Dated this 25th day of September, 2014.

Respectfully submitted,

RANDALL H. BROOK
WSBA No. 4860
Attorney for Friends of Cedar Park
Community and Seattle Sea Kayak Club

BRICKLIN & NEWMAN, LLP

By: 

DAVID A. BRICKLIN
WSBA No. 7583
Attorneys for Friends of
Cedar Park Community