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NO. 82660-3-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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EASTSIDE COMMUNITY RAIL, LLC, *et al.*,

Appellants,

v.

CITY OF WOODINVILLE,

Respondent.

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**PETITION FOR REVIEW**

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### **A. IDENTITY OF PETITIONER**

Petitioner, Eastside Community Rail, LLC (“ECR”) and Douglas Engle, were appellants below and defendants in the initial underlying action.

### **B. COURT OF APPEALS DECISION**

ECR seeks review of the Court of Appeals Division I published opinion filed on May 23, 2022, *City of Woodinville v. Eastside Community Rai, LLC et. al.*, No. 82660-3-1.

### **C. ISSUES PRESENTED FOR REVIEW**

1. There is no subject matter jurisdiction on the federal question presented. Ownership of a rail easement can involve state property and contract rights and implicate state court jurisdiction; however, this dispute involves only the federal regulation of notices of exemption and no state property or contract rights (all of which expired long ago pursuant to statutes of limitation).

(a) Federal agencies have ruled that ECR’s notice of exemption was misleading. The City of Woodinville then commenced improper litigation in state court, where our courts have fashioned remedies for federal regulations and erroneously quieted title and deprived a citizen of property rights. Whether a notice of exemption is misleading and the

consequences is not a state court question. Federal law exclusively governs whether a notice of exemption is misleading and the consequences for any notice of exemption that is deemed to be misleading or false. Our state courts have no subject matter jurisdiction to make determinations about ownership related to the federal questions that surround the notice of exemption regulations for rail easements. In this matter, our state courts have erred by making decisions about rail easement ownership based on the notice of exemption federal question.

(b) If there were any state contract or property law questions pertaining to ownership, then our state courts would have authority to rule on those questions. However, throughout this litigation there has never been any state contract or property law questions plead, pursued or articulated because any rights by interested parties to pursue state contract or property law questions expired long ago with none surviving the passage of relevant statutes of limitation and none pursued by any entity.

(c) The Surface Transportation Board (“STB”) suggested in 2018 that state courts should determine state property law

questions, but that conjecture assumed that state property law questions existed outside of the notice of exemption issues when, in fact, none exist. There are no state property or contract questions, disputes, or justiciable controversies. The only extant issue is the consequences for a notice of exemption being deemed misleading, and that question is exclusively preempted.

#### **D. STATEMENT OF THE CASE**

1. In 2012, Appellant ECR acquired through bankruptcy proceedings a freight rail easement.<sup>1</sup>
2. As required under Federal law, Appellant ECR filed a notice of exemption with the U.S. Surface Transportation Board (“STB”) to operate a rail line on the easement, which was approved and became effective on December 7, 2012.<sup>2</sup>
3. In 2015, with no other parties claiming any interest in the easement, the City of Woodinville, plaintiff in this action, acquired the physical assets of a segment of the “Eastside Corridor” from its previous owner, the Port of Seattle.<sup>3</sup>

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<sup>1</sup> CP 15, 33.

<sup>2</sup> CP 15, 34.

<sup>3</sup> CP 15, 33.

Consequently, Respondent owns assets upon which ECR owns a federally regulated rail easement.

4. The easement in question was the subject of a petition by Snohomish County, actively joined by Plaintiff the City of Woodinville, to the U.S. STB to revoke ECR's exemption that allows it "to acquire and operate . . . a 14.45-mile line of railroad known as the Eastside Corridor..." without otherwise completing regulatory processes.<sup>4</sup>
  5. The statute of limitations expired long ago for any challenges regarding the transfer of the easement right during bankruptcy proceedings.<sup>5</sup>
  6. Any issues about acquisition, ownership, and operation are exclusively before the STB where exclusive jurisdiction lies.<sup>6</sup>
  7. Respondent and Snohomish County have actively pursued legal efforts to challenge the Notice of Exemption in federal forums.<sup>7</sup>
- With the initial exemption revoked, Appellants have been put in a position to submit an application for a subsequent Notice of

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<sup>4</sup> CP 32.

<sup>5</sup> CP 23, citing to 11 U.S.C. § 727.

<sup>6</sup> CP 19, citing to 49 U.S.C. § 10501(b).

<sup>7</sup> CP 32.

Exemption, complete regulatory processes, or transfer their interest in the rail easement.

8. On January 31, 2020, the City of Woodinville initiated the underlying lawsuit in King County Superior Court under a sham claim of seeking to quiet title. There was not a case or controversy pertaining to title. No parties contested the title to this rail easement, no case or controversy existed, and the King County Superior Court lacked subject matter jurisdiction over the preempted subject of federal rail acquisitions.<sup>8</sup>
9. Immediately upon filing an appearance in this action, Appellants filed an objection to subject matter jurisdiction because this matter is preempted by exclusive federal court jurisdiction.<sup>9</sup>
10. King County Superior Court Judge Spector took multiple leaves of absence during the pendency of this action, but provided a hearing date for Appellants Motion to Dismiss of December 11, 2020.<sup>10</sup> The trial court failed to rule on the duly filed motion.
11. This trial court had multiple opportunities to address the raised challenge to subject matter jurisdiction, but failed to ever address that elementary, threshold question. Despite having

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<sup>8</sup> CP 22-24, 28, 30.

<sup>9</sup> CP 1.

<sup>10</sup> CP 12.



evaded its duty to determine its own jurisdiction, based on invalid discovery orders the King County Superior Court issued severe monetary sanctions against Appellant and precluded Appellants from arguing the merits of claims made.<sup>11</sup>

12. On April 16, 2021, without ever ruling on jurisdiction, King County Superior Court entered summary judgment against Appellants.<sup>12</sup>

13. Appellants filed a timely Notice of Appeal on May 14, 2021.<sup>13</sup>

14. On May 23, 2022, the Court of Appeals acknowledged that the trial court had never ruled on jurisdiction. Nonetheless, it erroneously affirmed the trial court's decision as within possible subject matter jurisdiction while failing to recognize that the basis to quiet title is not a state law issue; rather, it is the federal regulation of a notice of exemption.

### **Summary**

Washington state courts have no authority or jurisdiction over how a federal notice of exemption pertains to ownership of a federally regulated rail easement. In 2015, the City of Woodinville acquired assets in the rail corridor from the Port of Seattle and began a campaign to wipe out interests

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<sup>11</sup> CP 8-11.

<sup>12</sup> CP 71-75.

<sup>13</sup> CP 78.

and break individuals with possessory interests pertaining to the corridor. No parties except Appellants claimed title to the easement at question here; however, in 2020 the City of Woodinville commenced a quiet title action as to continue to harass and harm Appellants. The City of Woodinville has argued in state court that, because a notice of exemption was deemed misleading by a federal agency, the state courts should extinguish property rights. That is not a state property law question.

Despite having no jurisdiction to rule on the consequences of a federal agency deeming a notice of exemption misleading, the King County court sanctioned Appellants for not complying with invalid discovery orders, precluded Appellants from presenting evidence against claims made, and assessed monetary sanctions totaling \$244,000. Although plainly precluded by federal preemption from ruling on ownership or acquisition of the federal rail easement in relation to the notice of exemption issue, the King County Superior Court ruled that ECR no longer possessed the property right it had purchased during bankruptcy proceedings in 2012, and declared: “GNP was the last clear owner of unclouded title to the Easement. Given the findings set forth above, GNP is the only party to this case with a colorable claim to the Easement.”<sup>14</sup> King County Superior

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<sup>14</sup> CP 74

Court fashioned a remedy based on the fact that a federal agency had deemed a notice of exemption to be misleading. King County Superior Court had no authority of subject matter jurisdiction to do any such thing.

The Court of Appeals acknowledged that the trial court never ruled on the challenge to jurisdiction. However, the Court of Appeals erred by ruling that subject matter jurisdiction existed. The Court of Appeals spoke only in the abstract about the fact that in some cases a state court might have jurisdiction over state property or contract issues. The Court of Appeals failed to ever confront the fact that, here, in this case, the only issue is the federal regulation regarding the notice of exemption and the consequence for a notice of exemption being deemed misleading. There is no part of that federal question that implicates state property or contract law. There has never been state court jurisdiction over this ill-conceived action.

#### **E. AUTHORITY**

A court's mandate is to first rule whether it even has subject matter jurisdiction. CR 12(b) states in pertinent part:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, ... (3) improper venue....

CR 12(h)(3) further states “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Here, Washington state courts have no subject matter jurisdiction over the issues asserted in the Complaint concerning a United States Surface Transportation Board matter involving a federal railroad easement. Venue is only proper in front of Surface Transportation Board based on federal law.

“A judgment entered by a court lacking subject matter jurisdiction is void; and a party may challenge such judgment at any time.” *Angelo Prop. Co. v. Hafiz*, 167 Wn. App. 789, 808, 274 P.3d 1075 (2012). Lack of subject matter jurisdiction renders a trial court powerless to decide the merits of the case. *Angelo Prop. Co.*, 167 Wn. App. at 808, citing *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). A court’s first mandate is to determine whether there is any subject matter jurisdiction. Here, there is none because it has been clearly preempted.

“A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate.” *Marley v. Department of Labor & Industries*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). Where there is federal preemption, this court has no authority to adjudicate. “The doctrine of federal preemption is derived

from the supremacy clause of the United States Constitution, article 6, clause 2.” *Berger v. Personal Products, Inc.*, 115 Wn.2d 267, 270, 797 P.2d 1148 (1990). “Federal law preempts state law when Congress intends to occupy a given field, when state law directly conflicts with federal law, or when state law would hinder accomplishment of the full purposes and objectives of the federal law.” *Id.* “Preemption may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.” *Id.* (emphasis added). “Federal regulations have the same preemptive effect as federal statutes.” *Id.* As applicable here, the Surface Transportation Board’s “authority over rail operations and acquisitions is exclusive and preemptive of state remedies.” *Snohomish County*, 954 F.3d at 293, citing 49 U.S.C. § 10501(b).

The trial court never determined the basis for its jurisdiction, and the Court of Appeals erred by failing to acknowledge that this dispute pertains not to state property or contract questions but the federal regulation of notices of exemption and the consequences for a notice being deemed misleading. The Court of Appeals identified that in some cases state courts might have jurisdiction over state property and contract questions, but not in the case where the entire dispute exists because of a federal regulation pertaining to a notice of exemption and a federal agency finding that it was

misleading. Nothing in this dispute presents state property law or contract questions.

### **RAP 13.4 CONSIDERATIONS**

- (1) The decision of the Court of Appeals is in conflict with decisions of the Supreme Court requiring that courts comply with CR 12(3) and only exercise jurisdiction over cases on which jurisdiction lies.
- (2) The decision of the Court of Appeals is in conflict with published decisions of the Court of Appeals requiring that courts comply with CR 12(3) and only exercise jurisdiction over cases on which jurisdiction lies.
- (3) Significant questions of law exist under the Constitution because federal preemption is based on the supremacy clause of the Constitution.
- (4) The petition involves an issue of substantial public interest because the abuse of power by municipal corporations and deprivation of property rights is a grave abuse that demands repair from our state Supreme Court.

### **CONCLUSION**

Washington state courts have no jurisdiction over the federal question of how a notice of exemption being deemed misleading by a federal agency affects property rights. This aspect of the acquisition and ownership of federal regulated rail easements is exclusively preempted. The Court of Appeals spoke only in the abstract about possible exercise of state court jurisdiction and failed to articulate the specific question at issue here—which is plainly a federal question on which there is no state court jurisdiction. This Court should take review and correct the fundamental legal errors that have been made below.

An Appendix accompanies as Exhibit A hereto, attaching a copy of the Court of Appeals decision.

Fee Request: Under RAP 18.1, Appellant requests attorneys' fees and costs for prevailing on appeal.

DATED this 22<sup>nd</sup> day of June 2022.

**The Collins Law Group PLLC**

s/Jami K. Elison

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**PROOF OF SERVICE**

I certify under penalty of perjury that on the 22<sup>nd</sup> day of June, 2021,

I served a copy of Petition for Review on the following:

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF WOODINVILLE, a municipal corporation,	)	No. 82660-3-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	PUBLISHED OPINION
	)	
EASTSIDE COMMUNITY RAIL, LLC, a Washington corporation, and DOUGLAS ENGLE, and individual;	)	
	)	
Appellants,	)	
	)	
GNP RLY INC., a Washington corporation;	)	
	)	
Respondent,	)	
	)	
TELEGRAPH HILL INVESTMENTS, LLC, a Wyoming corporation; BALLARD TERMINAL RAIL COMPANY, a Washington corporation; NW SIGNAL MAINTENANCE, LLC, a Washington corporation; KEVIN KUCERA, an individual; JOANNE SKIEVASKI, an individual; EARL ENGLE, an individual; and ALL OTHER PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE REAL PROPERTY DESCRIBED IN THIS COMPLAINT,	)	
	)	
Defendants.	)	
	)	

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HAZELRIGG, J. — Eastside Community Rail (ECR) and Douglas Engle appeal from an order granting summary judgment in a quiet title action. ECR and

Engle argue the superior court lacked subject matter jurisdiction, and therefore all orders it entered are void, because federal law preempts state exercise of jurisdiction over claims of ownership of railroad easements. Alternatively, ECR and Engle argue there is no justiciable controversy. Because the superior court properly exercised authority over the justiciable claim, we affirm.

## FACTS

This appeal arises from a lawsuit the City of Woodinville (City) filed in King County Superior Court to quiet title of a railroad easement. The easement was created in 2009 by BNSF Railway Company, who then conveyed it to GNP Railway, Inc. (GNP). In January 2011, Douglas Engle, who was chief financial officer of GNP at the time, executed a quit claim deed on behalf of GNP conveying the easement to his then-wife and his father. Engle was terminated from his position at GNP that same month. Days later, GNP creditors commenced involuntary bankruptcy proceedings. During the bankruptcy proceedings, the bankruptcy trustee and Engle, now acting on behalf of Eastside Community Rail, LLC (ECR),<sup>1</sup> executed a Record of Transfer, documenting that ECR had purchased the easement from GNP in the bankruptcy, despite the fact that Engle had quitclaimed the easement to his relatives 11 months earlier.

In July 2018, Snohomish County<sup>2</sup> filed several petitions with the Surface Transportation Board (STB) to revoke ECR's ability to operate a railroad on the easement. Eastside Cmty. Rail, LLC—Acquisition & Operation Exemption—GNP

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<sup>1</sup> Because Engle acts on behalf of ECR as its sole principal, we refer to the appellants collectively as ECR for clarity.

<sup>2</sup> Snohomish County owns title to a portion of land underlying the easement in question.

Rly Inc. Ballard Terminal R.R. Co., LLC—Lease Exemption—Eastside Cmty. Rail, LLC, Fed. Carr. Cas. (CCH) ¶ 37406, 2018 WL 6579043 at \*1 (U.S. Surface Transp. Bd. Dec. 11, 2018). Snohomish County claimed ECR’s “verified notices contained materially false or misleading information about ECR’s property interests in an easement over the [railroad line] and are therefore void ab initio<sup>3</sup>.” Id. The STB denied the petitions to revoke, concluding it could not determine whether the notices contained false information because it could not determine ownership of the easement as “[t]he petitions are based on property, contract, and bankruptcy law issues that should be resolved by an appropriate court.” Id. Snohomish County appealed the decision to the United States Court of Appeals, District of Columbia Circuit. Snohomish Cty, Wash. v. Surface Transp. Bd., 954 F.3d 290, 446 U.S. App. D.C. 56 (2020). The D.C. Circuit reversed, holding the STB’s decision was arbitrary and capricious because it “fail[ed] to consider whether the notices of exemption were misleading, even if not demonstrably false as a matter of state or federal law.” Id. at 301.

On remand, the STB found “ECR’s verified notice at issue in this case was materially misleading” and vacated its exemption. Eastside Cmty. Rail, LLC—Acquisition & Operation Exemption—GNP Rly Inc. Ballard Terminal R.R. Co., LLC—Lease Exemption—Eastside Cmty. Rail, LLC, Fed. Carr. Cas. (CCH) ¶ 37,457, 2020 WL 7640412 at \*3 (U.S. Surface Transp. Bd. Dec. 21, 2020). Neither party appealed. The STB issued a subsequent opinion in September 2021 to “provide[] clarification” of its December 2020 decision. Eastside Cmty. Rail, LLC—

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<sup>3</sup> From the beginning.

Acquisition & Operation Exemption—GNP Rly Inc. Ballard Terminal R.R. Co., LLC—Lease Exemption—Eastside Cmty. Rail, LLC, 2021 WL 4467636 at \*1 (U.S. Surface Transp. Bd. Sep. 27, 2021). Between the STB’s December 2020 and September 2021 decisions, Snohomish County alleged ECR and Engle failed to take action to return the rail line to GNP as instructed by the STB. Id. at \*2. It asked the STB to void deeds executed by Engle conveying the line to his father and then-wife, or alternatively to order ECR to reconvey the easement to GNP. Id. The STB ordered ECR “to convey the Line’s easement to GNP and certify to the [STB] that they have done so.” Id. at \*4.

In light of the STB’s 2018 conclusion that ownership of the easement was better determined by an appropriate court applying state property law, which was undisturbed by the D.C. Circuit Court decision, the City brought its 2020 quiet title action in King County Superior Court, rather than to the STB. ECR was largely unresponsive to the City’s quiet title claim, which eventually resulted in an order of default. The default order against ECR was later vacated, but the court imposed a monetary sanction. The court also found ECR “failed to timely respond to interrogatories and requests for production . . . and that counsel for them has willfully refused or failed to confer in good faith.”

ECR disputed the claim solely on the assertion that the trial court lacked subject matter jurisdiction (SMJ), seeking dismissal on that basis. The parties appear to agree that, due to scheduling issues, ECR’s motion challenging the

court's jurisdiction was stricken by the court with instructions for ECR to renote it.<sup>4</sup> ECR did not renote the motion and the trial court never ruled on the challenge to jurisdiction.

The City filed a motion for summary judgment, which was joined by named defendants GNP, NW Signal Maintenance, LLC, and Kevin Kucera. The court granted the motion, finding there was "no genuine issue of material fact as to ECR's and Douglas Engle's lack of legal interest in the Easement." ECR timely appealed.

#### ANALYSIS

This court reviews the question of subject matter jurisdiction de novo. Angelo Prop. Co., LP v. Hafiz, 167 Wn App. 789, 808, 274 P.3d 1075 (2012). ECR's argument, essentially, is that the superior court lacks subject matter jurisdiction over the quiet title action because of federal preemption. It contends federal law allows only the STB to determine ownership of a railroad easement under 49 U.S.C. § 10501.

As the parties noted at oral argument, the concepts of subject matter jurisdiction and preemption overlap but are distinct. If a subject otherwise properly heard by a superior court falls into a set of issues over which the STB has preemptive authority, any exercise of authority by the state court is preempted by federal law. "[S]uperior courts have jurisdiction 'in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other

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<sup>4</sup> The City references these facts in its briefing to this court, but the record transmitted on appeal is silent as to this aspect of the proceedings. However, the parties agreed to the facts during oral argument.

court.” In re Marriage of Weiser, 14 Wn. App. 2d 884, 905, 475 P.3d 237 (2020) (quoting WASHINGTON CONST. art. IV, § 6). RCW 2.08.010 provides that superior courts “have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property . . . and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars.” Absent any law that vests exclusive jurisdiction in some other court, the superior court has jurisdiction over a quiet title action.

I. Superior Court Authority

“Federal law preempts state law when state law operates in a field that is completely occupied by federal law or when state law conflicts with federal law.” West v. Seattle Port Comm’n, 194 Wn. App. 821, 830, 380 P.3d 82 (2016). Preemption analysis is guided by Congressional intent. Id. Preemptive intent may be explicit in statutory language or implied. Inlandboatmen’s Union of the Pac. v. Dept. of Transp., 119 Wn.2d 697, 701, 836 P.2d 823 (1992). If “Congress expressly withdraws specified powers from a state through a statutory provision,” there is express preemption. Beatty v. Wash. Fish & Wildlife Comm’n, 185 Wn. App. 426, 454, 341 P.3d 291 (2015). “We must interpret an express preemption clause narrowly but fairly.” Kitsap County v. Kitsap Rifle and Revolver Club, 1 Wn. App. 2d 393, 404, 405 P.3d 1026 (2017). 49 U.S.C. § 10501(b) states in part:

The jurisdiction of the Board over . . . the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

The STB has reached the question of whether this statutory language preempts state superior courts from hearing quiet title actions involving railroad easements in several cases, including a case involving ECR with nearly identical facts and concerning the very railroad tract at issue here.<sup>5</sup> The STB's opinion stated in part:

ECR has argued in the state appellate court that federal preemption under 49 U.S.C. § 10501(b) bars the state courts from ruling on state property law issues concerning property subject to this agency's licensing proceedings. That argument is clearly incorrect.

Eastside Cmty. Rail, LLC-Acquisition & Operation Exemption-GNP Rly Inc. Ballard Terminal R.R. Co., LLC-Lease Exemption-Eastside Cmty. Rail, LLC, No. 10, 2022 WL 696819, at \*3 (U.S. Surface Transp. Bd. Mar. 7, 2022) (emphasis added.)<sup>6</sup> The STB continued, stating “[a]lthough federal preemption is broad, the Board has consistently held that disputes concerning state contract and property law should be decided by the appropriate courts with expertise in those matters, rather than by the Board[,]” and cited a line of opinions where the STB had declined to reach issues which were “better determined by state court[s].” Id. Specific to ECR's claim before the STB, it held “in this case, a determination regarding the ownership of the Line's easement under state law . . . is appropriately being made in the Washington state courts.” Id. The STB explains that it grants “permissive” “acquisition authority,” allowing an entity “to acquire a rail line that is part of the interstate rail network.” Id. However, “in order to exercise that authority, the party

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<sup>5</sup> Snohomish County filed the original petition with the STB to revoke ECR's authority to operate a rail line. The City filed a reply brief in support of Snohomish County in that case.

<sup>6</sup> This decision by the STB was released in response to a motion for reconsideration filed by ECR and Engle. Id. at \*2. It was issued after ECR submitted its briefing in this appeal.



also must obtain the appropriate rights under state property and contract law to actually acquire the line.” Id. Further, the STB ordered the parties to “file [ ] a copy of any decisions in the state court proceedings within five days of their issuance,” and noted it would revisit the matter “[a]fter the state court proceedings have been completed.” Id. at \*3. This ordering language is clear direction from the STB to resolve the property claims in state court, which entirely undercuts ECR’s argument that the superior court could not hear this matter.

ECR argues the D.C. Circuit opinion declared the STB erred by stating ownership turned on issues of state property law to be determined by a state court. This is simply not true. The Circuit Court reversed based on the STB’s failure to address “the separate claim that the notices of exemption were misleading,” particularly because “[t]he record before the [STB] contained ample evidence of potential misleadingness, notably the omissions and inconsistencies in Engle’s account that [Snohomish County] and others flagged.” 954 F.3d at 302. The court stated it “need not decide whether the [STB] permissibly declined to address [Snohomish County]’s arguments about the falsity of Engle’s filings,” because those claims rested in questions of state property law. Id. The reversal was based entirely on the Circuit Court’s conclusion that the STB failed to exercise its discretion and rule on the exemption. It had nothing to do with the STB’s conclusion regarding the state court’s ability to resolve property or contract claims.

ECR makes much of the concurrence to the D.C. Circuit Court opinion, which “identif[ied] another troubling aspect of the [STB]’s decision: Its insistence that only state courts, or perhaps a bankruptcy court, can decide whether filings

submitted to the [STB] were ‘false’ within the meaning of the [STB]’s own regulation.” Id. at 303. (Millett, J., concurring). Even if we were to consider this concurring opinion, the authoring judge is troubled by the [STB]’s purported statements that a state court can determine if a filing is false, not the conclusion that a state court should determine ownership under state property law. The STB opinion clearly holds ownership should be determined by a state court applying state property law, which would necessarily determine if the filing is false by resolving the underlying factual discrepancy. Likewise, the City did not ask the King County Superior Court to determine if ECR’s filing was false, but only whether ECR owned the easement. While related, those questions are not the same.

STB decisions and opinions are not binding upon this court, but several federal circuit courts have held they would defer to STB decisions in analyzing preemption. In Adrian & Blissfield R. Co. v. Vill. Of Blissfield, the Sixth Circuit held “the STB was authorized by Congress to administer [49 U.S.C. § 10501] and is therefore ‘uniquely qualified to determine whether state law should be preempted by [49 U.S.C. § 10501].’” 550 F.3d 533, 539 (2008) (quoting Emerson v. Kansas City S. Ry. Co., 503 F.3d 1126, 1130 (10th Cir. 2007); accord, Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 642 (2d Cir. 2005). Additionally, our state courts have consistently “‘accorded great weight’” to an agency’s interpretation of an ambiguous statute “[w]here a statute is within [an] agency’s special expertise.” See, e.g., Port of Seattle v. Pollution Control Hr’gs Bd., 151 Wn.2d 568, 593, 90 P.3d 659 (2004) (alterations in original) (quoting Postema v. Pollution Control Hr’gs Bd., 142 Wn.2d 68, 77, 11 P.3d 726 (2000)). We would be remiss to ignore the

STB's explicit and consistent holdings that state courts may properly hear issues of state property law over railroads.

The superior court had subject matter jurisdiction to hear the quiet title claim, and its exercise of authority to hear the present claim was not preempted by federal law.<sup>7</sup>

## II. Justiciability

ECR next argues even if the superior court had subject matter jurisdiction and authority to hear the case, there is no justiciable case or controversy because the City has no claim of ownership to the easement. The City counters that it has standing to bring a quiet title action under RCW 7.28.010 because it owns the land burdened by the easement and under RCW 35A.11.020 because it has statutory authority to regulate use of real property.

RCW 7.28.010 states in part that “[a]ny person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county . . . to quiet or remove a cloud from the title to real property.” To bring a claim, a plaintiff must first demonstrate they are in possession or have a “right to possession of real property.” Kobza v. Tripp, 105 Wn. App. 90, 95, 18 P.3d 621 (2001). This right to possession

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<sup>7</sup> ECR also assigns error to the court's failure to rule on the question of subject matter jurisdiction. While CR 12 requires courts to determine the question of subject matter jurisdiction whenever it is raised by a party, the record before us is less than clear as to the whether ECR effectively abandoned its motion when it failed to renote it after being instructed to do so by the trial court.

Further, as the City noted at oral argument, ECR could have raised its subject matter jurisdiction challenge in response to the City's motion for summary judgment, but did not. Even assuming the trial court erred by failing to rule on the issue, any error is harmless as this court has reached the question and concluded that the superior court had subject matter jurisdiction to hear the case.

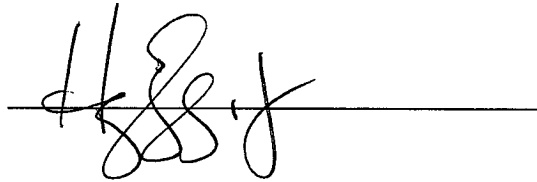
allows, for example, “the dominant owner to an easement” to bring a quiet title claim. Kave v. McIntosh Ridge Primary Rd. Ass’n, 198 Wn. App. 812, 819–20, 394 P.3d 446 (2017). A property owner may bring a quiet title action to obtain “an order removing” an encumbrance, or cloud, from the property title. Robinson v. Khan, 89 Wn. App. 418, 421, 948 P.2d 1347 (1998); see also RCW 7.28.010 (Plaintiff may bring an action to “remove a cloud from the title to real property”). “An encumbrance is ‘any right to, or interest in, land which may subsist in third persons, to the diminution of the value of the estate of the tenant.’” Robinson, 89 Wn. App. at 421 (quoting Merlin v. Rodine, 32 Wn.2d 757, 760, 203 P.2d 683 (1949)). Easements, liens, and servitudes, are encumbrances. Merlin, 32 Wn.2d at 760. This court has held “[t]he word ‘cloud’ does not denote a hard-edged limitation[,] [i]t is more appropriate to focus on whether the recorded document has any tendency to impair the fee owner’s ability to exercise the rights of ownership.” Robinson, 89 Wn. App. at 422–23.

Here, the City owns the property burdened by the easement in fee title. This easement creates an encumbrance clouding title of the City’s land. Because the property is burdened by an easement, a third person may have a competing interest in the land by allowing it to operate a railroad over the real property, impacting the City’s ability to exercise its ownership rights. “[T]he right to exclude others’ is ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” Holmquist v. King County, 192 Wn. App. 551, 561–62, 368 P.3d 234 (2016) (quoting Kaiser Aetna v. United States, 444 U.S. 164, 176, 100 S. Ct. 383, 62 L. Ed. 2d 332 (1979)). The question of ownership of the

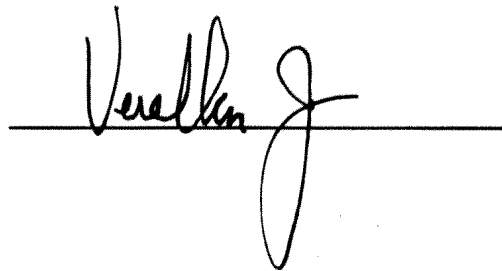
easement impacts the City's ability to exclude individuals from its property by calling into question who may rightfully operate a railroad over the property.

Because the City holds title to the real property burdened by the easement, and the easement is an encumbrance on its title, it has standing under RCW 7.28.010 to bring a quiet title action and there is a justiciable controversy.<sup>8</sup>

Affirmed

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WE CONCUR:

A handwritten signature in black ink, appearing to be "Smith, A.C.J.", written over a horizontal line.A handwritten signature in black ink, appearing to be "Verellen J.", written over a horizontal line.

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<sup>8</sup> Further, as the City noted at oral argument, even if the City was not captured within the language of RCW 7.28.010 as an interested party with regard to the easement title, superior courts have wide equitable authority to grant declaratory judgments. Under RCW 7.24.010, courts have broad "power to declare rights, status, and other legal relations," even if a declaratory judgment is not specifically requested. Any declaration issued by the court "shall have the force and effect of a final judgment or decree." RCW 7.24.010. The purpose of the Uniform Declaratory Judgments Act, chapter 7.24 RCW, "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status[,] and legal relations; and is to be liberally construed and administered." RCW 7.24.120. Accordingly, the court could have quieted title as a declaratory judgment.