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NO. 70500-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

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

Appellants,

v.

KEITH L. HOLMQUIST AND KAY BURDINE HOLMQUIST F/K/A KAY BURDINE, HUSBAND AND WIFE; AND FREDERICK A. KASEBURG, A SINGLE MAN,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE MONICA BENTON

REPLY BRIEF OF APPELLANT KING COUNTY

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JOHN F. BRIGGS
Senior Deputy Prosecuting Attorney
Attorneys for Appellant

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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I. RESPONDENTS' PREDECESSORS IN INTEREST DID NOT OWN THE SUBJECT LOTS IN 1932

This case turns on who "owned" the lots adjacent to NE 130th Street when that street was vacated in 1932. Under applicable state law, the owner of those lots became the owner of the vacated street property.

King County demonstrated in its opening brief that under Washington law in 1932 the Puget Mill Company ("Puget Mill") was the "owner" of the adjacent lots at the time of the vacation. This is because Puget Mill was the vendor of these lots under executory real estate contracts. Under Washington law in 1932, vendors of property under executory real estate contracts owned the property being sold. The vendees under real estate contracts did not own the property being purchased until they made the final payment under the contract, at which time they received the deed to the property and became the owner.

Respondents, the current neighbors of the vacated parcel (Neighbors), resist the conclusion that under Washington law in 1932 vendees under executory real estate contracts did not own the property they were in the process of buying. Their resistance, however, is futile.

The Washington Supreme Court has definitively answered this question. In 1925, the Court announced the rule that vendees under executory real estate contracts do not own the property they are buying:

"an executory contract of sale in this state conveys **no title or interest, either legal or equitable**, in the vendee..." Ashford v. Reese, 132 Wash. 649, 650, 233 P. 29 (1925)(emphasis added). The court could not have been clearer. In 1932 Vendees under real estate contracts were not **the owner** of and in fact had **no ownership interest** whatsoever in the property they are purchasing until the contract is completely performed.[1]

In 1977, the Washington Supreme Court reversed the rule announced in Ashford, but – importantly for the instant litigation – prospectively only. Cascade Security Bank v. Butler, 88 Wash.2d 777, 780, 567 P.2d 631 (1977).[2] Therefore, the Washington Supreme Court has explicitly decided that between 1925 and 1977 vendees under executory real estate contracts in this state did not own the land they were buying. The arguments of the Neighbors to the contrary cannot withstand the

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[1] This holding in Ashford controls here. The Neighbors' predecessors in interest were not the owners of the adjacent lots in 1932 when the vacation occurred. Rather, under applicable Washington law, Puget Mill owned the adjacent lots, as the vendor under executory real estate contracts. Therefore, Puget Mill became the owner of the vacated property.

[2] The defendants in Cascade became vendees of an executory real estate contract to purchase real property. The judgment creditor-plaintiff applied for a writ of execution on the judgment and against the vendees' interest in the real property.
The sheriff executed and published a notice of sale. The trial court granted a motion for summary judgment and enjoined the sale. The trial court based its decision in favor of the contract vendees and cited the holding in Ashford that "an executory contract of sale in this state conveys no title or interest, either legal or equitable, to the vendee . . ."
The Supreme Court in Cascade affirmed the trial court's decision, reasoning that pursuant to its previous holding in Ashford regarding the rights of the parties to an executory contract to purchase land, the vendee did not hold a real estate interest within the scope of the judgment lien statute.

explicit and authoritative rulings of the highest court in the state on the meaning of Washington state law.

The Neighbors argue that the rule set forth in Ashford that vendees under an executory real estate contract have no ownership interest in the real property they were buying was "much criticized." Criticized or not, it was the law in this state until 1977.

The Neighbors also argue that in a few cases between 1925 and 1932 the Washington Supreme Court recognized that vendees under executory real estate contracts possess some rights relating to the property they were buying. Respondents' Brief at 13-14. These cases, however, do not approach establishing the proposition that vendees under executory real estate contracts "own" the property they are buying. Many people have rights relating to real property, such as lessees and easement holders. Under modern concepts of nuisance and zoning law, even neighbors have some enforceable rights relating to property. No one would suggest that being a lessee, a neighbor, or an easement holder makes one the **owner** of real property.

The Neighbors' predecessors in interest did not own the lots adjacent to N.E. 130th Street at the time of its vacation in 1932. They, therefore, did not become the owners of the subject property as a result of

the vacation. Puget Mill owned the adjacent lots and became the owner of the subject property upon the vacation of NE 130th Street in 1932.

II. THE PUGET MILL TRANSFERRED THE SUBJECT PROPERTY TO KING COUNTY.

In 1932, a mere six weeks after the vacation, the Puget Mill Company conveyed the subject property to King County by Quit Claim Deed. CP 125-126. The Neighbors contend their predecessors in interest obtained title to the subject property when they fulfilled their real estate contracts and received deeds to the lots they were buying from Puget Mill in 1933 and 1935, respectively. Respondents Brief at 20-27. There are three problems with this contention. First, there is nothing in the fulfillment deeds that purports to convey the vacated right of way from Puget Mill to the Neighbors' predecessors in interests.

Second, when Puget Mill conveyed title to the adjacent lots to the Neighbors' predecessors in interest, it did not own the vacated right of way. Puget Mill had previously conveyed this property to the County. CP 125-126. The Neighbors attempt to impugn the conveyance of the vacated property from Puget Mill to the County by referencing the "backdated" replacement deed. There is nothing in the record to suggest that the "backdated" replacement deed is anything other than exactly what it says it is. It is a replacement deed, to replace the original deed that was lost.

Both the County and Puget Mill, apparently, agreed that the original deed conveying the vacated property from Puget Mill to the County on August 10, 1932 had been lost. Both parties signed a replacement deed, also dated August 10, 1932, to replace the lost deed. CP 125-126.

Third, the Neighbors contention is inconsistent with Washington law. Because Puget Mill owned both lots adjacent to the vacated street, Puget Mill became the owner of the subject property as a separate parcel upon vacation. Hagen v. Bolcom Mills, 74 Wn. 462, 133 P.100 (1913). Even if Puget Mill had not conveyed the vacated property to the County prior to the Neighbors' predecessors receiving their fulfillment deeds, these fulfillment deeds would not have conveyed the vacated property to the Neighbors' predecessors. The vacated property was a separate parcel, and would not have been conveyed to the Neighbors predecessors in the fulfillment deeds as part of lots they were purchasing. As a separate parcel, it needed to be explicitly conveyed in a separate deed.

The Neighbors cite case law that establishes that property next to road right of way carries with ownership to the centerline of the road, unless explicitly provided otherwise. This principle has no application here, where there was no road right of way at the time of the conveyance to the Neighbors' predecessors in the fulfillment deeds. The right of way had been vacated in 1932, and Puget Mill had conveyed the entire vacated

right of way to King County by quit claim deed on August 10, 1932. There was no right of way left for Neighbors' predecessors in interest to claim when they became the owners of their respective adjacent lots.

III. QUIETING TITLE TO THE VACATED RIGHT-OF-WAY IN FAVOR OF KASEBURG AND HOLMQUIST WOULD BE INEQUITABLE.

Neighbors' predecessors in interest Muller and Shotwell joined with a host of freeholders and petitioned the King County Commissioners to vacate the 130th right-of-way so that it could become a community swimming beach located on Lake Washington. CP 63-64. The King County Board of Commissioners vacated the 130th right-of-way for that express purpose. CP 117-118. Erroneously believing that they owned half of the vacated right of way, Muller and Shotwell generously issued a quitclaim deed to the Cedar Park Community Club so that the swimming beach could be established. CP 114-115. Muller and Shotwell hoped that the vacated right-of-way could be enjoyed by many. The Neighbors are not nearly as community minded. They, unlike Muller and Shotwell, want this valuable waterfront property for themselves alone.

Neighbors in an effort to prevent the County from presenting its equitable argument tell a fascinating tale. Citing the established principle that one seeking equity must come to the Court with clean hands, they argue that in this case the County's hands are sullied. The offending act

on the part of the County was allegedly carried out by the elected King County Prosecutor in 1932. "The County cites Muller and Shotwell's claimed intention to create a community beach, but it ignores that they never delivered a deed, in part because its Prosecuting Attorney, under a mistaken interpretation of Rem. Stat. § 9303, told Muller and Shotwell after the vacation that they could not create a community beach because Puget Mill owned it. (CP 114-15, 314) If the intentions of Muller and Shotwell failed, it was due to the County's mistaken advice." (emphasis added) Response at 28. There is absolutely nothing in the record that even remotely supports Neighbors' assertions.

The King County Prosecuting Attorney is the legal adviser to County officials, not to citizens of the King County. He does not provide legal advice to citizens. After they vacated the 130th Street right-of-way in the summer of 1932, the King County Board of County Commissioners sent a letter to their legal advisor, King County Prosecuting Attorney Robert Burgunder, asking him to "prepare some sort of instrument whereby this vacated portion, together with the deed, may be held by the community under the corporate name of Cedar Park Community Club." CP 122-123. Prosecutor Burgunder responded to his client, the King County Board of County Commissioners, in a letter dated July 5, 1932. In the letter, the King County Prosecutor told the King County Commissioners that the

Puget Mill Company, rather than King County, would be the party that would have to pass title to the Cedar Park Community Club. Id.

Neighbors have completely failed to establish any questionable action by the County allegedly relied upon by Muller and Shotwell to their detriment. There is absolutely nothing in the record to suggest that the Prosecutor Burgunder ever spoke with Muller or Shotwell, or that Muller or Shotwell ever saw the July 5, 1932 letter written by the Prosecutor Burgunder to the County Commissioners. Neighbors can point to no act on the point of the County that requires this court to "deny to any man the advantage of his own wrong." Langley v. Devin, 95 Wash. 171, 187, 163 P. 395 (1917). What the Court should consider is the inequity of the situation where the Neighbors attempt to financially benefit from a road vacation that their predecessors in interest Muller and Shotwell initiated to benefit the community as a whole, rather than themselves alone.

IV. CONCLUSION

The Court should reverse the trial court's summary judgment order and remand the case to the trial court.

DATED this 2nd day of January, 2014 at Seattle, Washington.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
JOHN BRIGGS, WSBA #24301
Senior Deputy Prosecuting Attorney
Attorneys for Appellant King County

Certificate of Service

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct.

That on January 2nd 2014, I arranged for service via ABC legal messengers to the following parties of this action as follows:

Robert E. Ordal
ROBERT E. ORDAL, PLLC
1000 Second Ave. Suite 1750
Seattle, WA 98104

Howard M. Goodfriend
SMITH GOODFRIEND, P.S.
1619 8th Ave. North
Seattle, WA 98109

Kelly N. Stone
Seattle City Attorney's Office
600 4th Ave. 4th Floor
Seattle, WA 98124

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

_____ 1/2/14
Name: LuAnna Yellow Robe Date
Done in Seattle, Washington