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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

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Court of Appeals No. 63053-9-I

ORIGINAL

IN THE WASHINGTON COURT OF APPEALS
DIVISION ONE

JAMES GORMAN, as General Partner of HOLLYWOOD
VINEYARDS LIMITED PARTNERSHIP,

Appellant/Plaintiff,

v.

THE CITY OF WOODINVILLE,
a Washington municipal corporation.

Respondent/Defendant,

REPLY BRIEF OF APPELLANT HOLLYWOOD VINEYARDS

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Table of Contents

I.	INTRODUCTION.....	1
II.	ARGUMENT.....	2
	A. STANDARD OF REVIEW.....	2
	B. ADVERSE POSSESSION VESTED AND PERFECTED BEFORE THE CITY OF WOODINVILLE WAS CONVEYED TRACT.....	2
	C. ADVERSE POSSESSION CLAIMS ARE NOT ABSOLUTELY BARRED AGAINST A PUBLIC ENTITY.....	4
	D. ADVERSE POSSESSION CLAIMS CAN BE ASSERTED AGAINST A LATER PUBLIC OWNER..	5
	E. THE CITY'S CLAIM FOR COSTS IS INCORRECT...	6
III.	CONCLUSION	7

Table of Authorities

Cases

<i>El Cerrito, Inc. v. Ryndak</i> , 60 Wn.2d 847, 855, 376 P.2d 528 (1962).....	7
<i>In City of Benton City v. Adrian</i> , 50 Wn. App. 330, 748 P.2d 679 (1988).....	6
<i>Kesinger v. Logan</i> , 51 Wn. App. 914, 919, 756 P.2d 752 (1988).....	4
<i>Wright v. Jeckle</i> , 104 Wn. App. 478, 481, 16 P.3d 1268 (2001).....	2

Statutes

RCW 4.16.020(1).....	3
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Rules

CR 12(b) (6).....	2
RCW 4.16.020	2, 3
RCW 4.84.090	6, 7

I. INTRODUCTION

Appellants James Gorman, as General Partner of Hollywood Vineyards Limited Partnership (“Hollywood”), replies to the City of Woodinville’s Brief as follows.

This matter involves a purely legal question: Does the dedication of land to a municipal organization destroy a previously perfected claim of adverse possession to that property? More specifically does dedication of Tract Y to the City of Woodinville (“City”) destroy the prior adverse possession claim vested and perfected by Hollywood Vineyards? As a matter of law, no.

As argued in the primary brief, Hollywood perfected its claim of adverse possession prior to the City acquiring Tract Y through dedication. The City does not disagree with their basic premise, rather, implicit in the City’s argument is that the time is continuing to run. This is simply not true; the 10 year period had already been acquired by Hollywood. Thus, Hollywood is not barred from asserting ownership just because the City is a municipal organization. The Trial Court should be reversed.

Hollywood Vineyards also asserts the City’s calculation of award costs is incorrect.

II. ARGUMENT

A. STANDARD OF REVIEW

The trial court dismissed Hollywood claim under CR 12(b)(6). The standard of review under CR 12(b) (6) is

We review dismissal of a claim under CR 12(b)(6) *de novo*. *Reid v. Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998); *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994). Dismissal is appropriate only if the complaint alleges no facts that would justify recovery. *Reid*, 136 Wn.2d at 200-01, 961 P.2d 333. We accept the plaintiffs' allegations and any reasonable inferences as true. *Id.* at 201, 961 P.2d 333. And for that reason CR 12(b)(6) motions should be granted sparingly and with care. *Cutler*, 124 Wn.2d at 755, 881 P.2d 216.

Wright v. Jeckle, 104 Wn. App. 478, 481, 16 P.3d 1268 (2001).

The sole question here is not whether or not Hollywood is correct in its claim, but, whether or not it has the right to challenge the improper dismissal of its adverse possession action. As a matter of law, they do.

B. ADVERSE POSSESSION VESTED AND PERFECTED BEFORE THE CITY OF WOODINVILLE WAS CONVEYED TRACT Y.

The City vehemently asserts that Hollywood's claim is contrary to law under RCW 4.16.020. However the City does not contest that it can only receive what the grantor had to give.

RCW 4.16.020(1) governs claims for adverse possession and states:

For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

Here, if the court assumes that Hollywood's claim for adverse possession was perfected prior to the dedication(as it can do under The Standard of Review), then the Grantor of Tract Y did not have legal title to give the land to the City. Hollywood is not claiming adverse possession against the City, but against the prior owner by which the City is bound. No lapse of time is being claimed against the City. The prior owner did not have the authority to dedicate the land to the City because Hollywood's adverse possession claim was already perfected.

The City repeatedly asserts in its brief that Hollywood must first be entitled to bring its claim of adverse possession against the City, however this is incorrect. Hollywood adverse possession claim vested and perfected against the prior owners prior to the dedication of the land to the City.

C. ADVERSE POSSESSION CLAIMS ARE NOT ABSOLUTELY BARRED AGAINST A PUBLIC ENTITY.

As previously argued in the brief and reiterated here adverse possession claims are not absolutely barred against a public entity.

In *Kesinger v. Logan*, 51 Wn. App. 914, 919, 756 P.2d 752 (1988), *aff'd* 113 Wn.2d 320 (1989) the court states

Adverse possession does not run against a governmental body holding land for public purposes. However, if land is held by a governmental body in its proprietary, as opposed to governmental capacity, the land is subject to being acquired by adverse possession the same as if owned by a private individual.

(Citations omitted.) *Kesinger v. Logan*, 51 Wn. App. 914, 919, 756 P.2d 752 (1988), *aff'd* 113 Wn.2d 320 (1989). Thus, the bar contained in RCW 4.16.160 is not absolute.

While the City attempts to invalidate Hollywood's argument by distinguishing between land at issue being held in proprietary as opposed to governmental capacity, the City does not contest that an accurate statement of law was provided by Hollywood in citing *Kesinger v. Logan*. The City agrees in their brief that the bar contained in RCW 4.16.160 is not absolute and that adverse possession is not absolutely barred against a public entity.

Furthermore the City incorrectly state the issue in this case, saying "Woodinville was conveyed the property for a highway improvement project" (Respondent Brief page 10). This is incorrect, the City was dedicated the property in order to do improvement on a road that supports a private development.

D. ADVERSE POSSESSION CLAIMS CAN BE ASSERTED AGAINST A LATER PUBLIC OWNER.

Hollywood reiterates that this court has already acknowledged that adverse possession claims which run against a private owner are properly asserted by a later public owner.

In *City of Benton City v. Adrian*, 50 Wn. App. 330, 748 P.2d 679 (1988) the court stated

The orchard owners respond that their rights were fixed by the acts of their predecessors long before the City acquired its property. However, we do not find sufficient proof of open, notorious, continuous, and uninterrupted adverse use for 10 years prior to the City's acquisition in the mid-1950's, and that the prior owners had knowledge, constructive or actual, of the adverse use. See *Dunbar v. Heinrich*, 95 Wn.2d 20, 22, 622 P.2d 812 (1980).

Adrian, at 337.

By engaging in this analysis, this Court agreed that such a claim could be brought. While City calls this claim incredible it is incorrect. The court would not have analyzed the adverse

possession claim if it could not exist, they simply would have asserted that adverse possession could not be asserted against a public entity if that was the case.

E. THE CITY'S CLAIM FOR COSTS IS INCORRECT.

The City has submitted a claim for costs that is invalid. The court should vacate the cost award in the order reversing the dismissal of this case.

As argued in the primary brief, RCW 4.84.010(2) refers to service of a summons and complaint served upon a defendant in the matter, not documents filed with the court. RCW 4.84.090 does not afford the City the right to claim legal messenger expenses as cited by the City. The award of \$1,395.00 was an error.

The expense the City claims for costs of depositions pursuant to RCW 4.84.090 of \$1,084.20 is an error as no depositions were used at trial.

The expense the City claims for payment to JAMS for the services of a mediator under RCW 4.84.090 is an error as the mediator is not a "referee" pursuant to CR 53.1. The award of \$1,395.00 was an error.

The court should vacate these costs as they are clearly over what the statutory law permits.

VI. CONCLUSION

Again, for the above stated reasons and those arguments given in the original appellant brief, the trial court should be reversed, the cost award vacated and this matter remanded for further proceedings. If the court is not inclined to reverse the trial court on the merits of this appeal, the cost award should be reduced by \$3,874.20.

Dated this 6th day of August, 2009.

Respectfully submitted,

THE LAW OFFICE OF CATHERINE C. CLARK PLLC

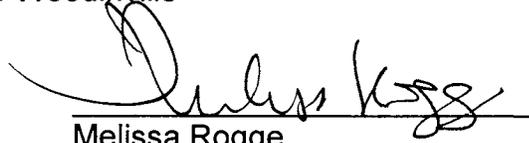
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Certificate of Service

I hereby certify that I caused the foregoing document to be served upon the below named individual in the identified manner on this 6th day of August, 2009:

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