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No. 36592-8

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BENITO J. MENDOZA,

Plaintiff/Appellant,

v.

NEUDORFER ENGINEERS, INC., a Washington corporation,
and MATT CHARTERS, an individual,

Defendants/Appellees



APPELLANT'S REPLY BRIEF

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I. SUMMARY OF REPLY

In their Response Brief ("RB"), Neudorfer Engineers, Inc. and Matt Charters (collectively "Neudorfer") raise the same arguments that they made before the trial court, which Mendoza addressed in his opening brief. Neudorfer failed to respond to Mendoza's key argument: Washington State courts have jurisdiction over Mendoza's claim because claims for personal injuries, being transitory in nature, can be brought in any jurisdiction in which the defendant can be found. Neudorfer continues to confuse legislative jurisdiction with judicial jurisdiction. Nothing in Washington State's cession of Fort Lewis to the federal government granted the federal courts exclusive judicial jurisdiction. Numerous pertinent cases so hold. Neudorfer ignores all of them except *Gulf Offshore Co. v. Mobile Oil Corp.*, then fails to rationally distinguish that case. The trial court's order dismissing Mendoza's claim for lack of subject matter jurisdiction should be reversed and this case remanded for trial.

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II. REPLY

A. Neudorfer Fails To Address Mendoza's Argument That Personal Injury Actions Can Be Maintained In Any Jurisdiction In Which The Defendant Can Be Found.

The central argument in Mendoza's Appellant Brief ("AB") is that personal injury actions are transitory in nature, so may be brought in any jurisdiction where a defendant can be found. Mendoza cited numerous cases to that effect, including from the United States Supreme Court. *See* AB at 3-5. Neudorfer failed to respond to the argument, and tried to evade the case law, unpersuasively.

Neudorfer acknowledged *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952) in its brief at page 6, but failed to address a key element of its analysis:

The Supreme Court has held that an action for personal injuries suffered on a reservation under the exclusive jurisdiction of the United States, being transitory, may be maintained in a state court which has personal jurisdiction of the defendant."

Id. at 123. That is the law everywhere. The appealed judgment conflicts with it, so should be reversed.

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B. Federal Courts Do Not Have Exclusive Judicial Jurisdiction Over Personal Injury Claims Arising From Acts And Omissions Committed on Fort Lewis.

Neudorfer argues that when Washington State ceded Fort Lewis to the United States, it not only ceded legislative jurisdiction to the federal government, but also judicial jurisdiction. *See* Respondents Brief (“RB”) at 5. Neudorfer is flat wrong. In the cession language itself, “Exclusive legislation” are the words that appear immediately before the words “in all cases whatsoever,” that Neudorfer put in bold in its brief at page 4; plainly, “exclusive legislation” and “in all cases whatsoever” comprise a single clause and should be read together. Laws of 1917, ch. 3, § 20, p. 14. “Exclusive ‘legislation’ has been construed to mean exclusive ‘jurisdiction’ *in the sense of exclusive sovereignty.*” *Matter v. Holley*, 200 F.2d 123 (5th Cir. 1952) (citing *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652, 50 S. Ct. 455, 74 L. Ed. 1091 (1930)) (emphasis added). Neudorfer confuses a government’s sovereignty (i.e., political jurisdiction) with its judicial jurisdiction. *See* Appellant’s Brief (“AB”) at 6-10. The United States Supreme Court

held in *Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473, 101 S. Ct. 2870, 69 L. Ed. 2d 784 (1981), that:

...nothing inherent in exclusive federal sovereignty over a territory precludes a state court from entertaining a personal injury suit concerning events occurring in the territory...

Neudorfer's confusion of political sovereignty and judicial jurisdiction is evident throughout its brief. For example, Neudorfer states, in support of its position, "...a state's *sovereignty* is 'terminated and federal *sovereignty* [becomes] complete and exclusive' when a state conveys land to the federal government..." RB at 6 (quoting *Mater*, 200 F.2d at 124) (emphasis added, brackets in original). Neudorfer fails to comprehend that exclusive political sovereignty does not equal exclusive judicial jurisdiction, as the court in *Gulf Offshore* clearly held.¹

Neudorfer's confusion is also evident by its reliance on *Concessions Co. v. Morris*, 109 Wash. 46, 186 P. 655 (1919) and *Department of Labor & Indus. v. Dirt Aggregate, Inc.*, 120 Wn.2d

¹ If Neudorfer's argument that exclusive political sovereignty equals exclusive judicial jurisdiction was correct, there would be no need for the choice of law doctrine. Moreover, Neudorfer's position ignores the well settled law that state courts are presumed to have concurrent jurisdiction with federal courts, unless Congress states otherwise. *Gulf Offshore Co.*, 453 U.S. at 478.

49, 837 P.2d 1018 (1992). The issue in *Concessions* involved whether Washington had the *legislative* authority (*i.e.*, jurisdiction) to tax property on Fort Lewis. 109 Wash. at 48. The case had nothing to do with judicial jurisdiction. Accordingly, Neudorfer's reliance on *Concessions* is misplaced.

Likewise, the issue in *Dirt Aggregate* was whether Washington had the *legislative* authority to regulate activities on Mt. Rainier National Park, which was ceded to the United States. 120 Wn.2d at 50-51. The court held, "Once exclusive jurisdiction is established, the state government loses the power to *legislate* over the federal enclave." *Id.* at 52 (emphasis added).² The case had nothing to do with judicial jurisdiction. As such, Neudorfer's reliance on it is misplaced.³

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² Neudorfer also relies upon *Paul v. United States*, 371 U.S. 245, 268, 83 S. Ct. 426, 9 L. Ed. 292 (1963), as authority supporting its position. As in *Dirt Aggregate*, the court in *Paul* held "...a State may not *legislate* with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States..." (emphasis added).

³ Neudorfer's reference to 40 U.S.C. § 3172 also illuminates its confusion between political sovereignty and judicial jurisdiction. *See* RB at 8. The federal statute allows a state's workers' compensation laws to apply in federal enclaves. This is a legislative activity – allowing a state to legislate (*i.e.*, to make or enact laws).

C. Neudorfer's Reliance On *State v. Lane* Is Misplaced, As Lane Was Interpreting A Criminal Statute.

Neudorfer relies on *State v. Lane*, 112 Wn.2d 464, 771 P.2d 1150 (1989), for the proposition that for state courts to have judicial jurisdiction over personal injury claims, at least one element of the claim must have been committed in the State. *See* RB at 7. Neudorfer's argument is unsound. The court in *Lane* was applying Washington's criminal jurisdiction statute, RCW 9A.04.030(1), which states:

The following persons are liable to punishment:

- (1) A person who commits *in the state* any crime, in whole or in part.

Id. at 471 (emphasis added). Thus, according to the criminal statute, for Washington courts to have judicial jurisdiction, an element of the crime must have occurred in Washington State territory. The court held that although the murder at issue took place on a federal enclave, the defendant premeditated the murder in Washington and, therefore, State courts had judicial jurisdiction. The court did not hold that State courts lack judicial jurisdiction in personal injury claims arising from conduct on a federal enclave. Indeed, such a

holding would contravene the well established rule that personal injury actions can be brought in any jurisdiction where the defendant can be found. *Ohio River Contract Co. v. Gordon*, 244 U.S. 68, 37 S. Ct. 599, 61 L. Ed. 997 (1917); *Mater v. Holley*, 200 F.2d 123, 123 (5th Cir. 1952); *Madden v. Arnold*, 47 N.Y.S. 757 (App. Div. 1897); *Norfolk & P.B.L.R. Co. v. Parker*, 147 S.E. 461 (Va. 1929); *Red Top Cab Co. v. Capps*, 270 S.W. 2d 273, 274 (Tex. Civ. App. 1954); *Hansford v. District of Columbia*, 617 A.2d 1057 (Md. 1993).

Moreover, there is a fundamental difference between subject matter jurisdiction over *criminal* cases as compared to *tort* cases: tort claims are transitory, but crimes are inherently local. With regard to criminal cases, “[i]t is fundamental that jurisdiction over a *crime* rests exclusively in the courts of the state in which the crime is committed.” *Lane*, 112 Wn.2d at 470 (emphasis added). As authority for this statement, *Lane* cited *Huntington v. Attrill*, 146 U.S. 657, 13 S. Ct. 224, 36 L. Ed. 1123 (1892). *Huntington* relied on this statement made by the legendary jurist William Blackstone,

Crimes are in their nature local, and *the jurisdiction of crimes is local*. And so as to the rights of real property, the subject being fixed and immovable. But

personal injuries are of a transitory nature, and sequuntur forum rei.”

146 U.S. at 669 (emphasis added). “*Crimes* and offenses against the laws of any State can only be defined, *prosecuted* and pardoned by the sovereign authority of that State; and the authorities, legislative, executive, or *judicial*, of other States take no action with regard to them...” *Id.* (emphasis added).⁴ Thus, while a civil action can presumptively be brought in any jurisdiction (provided there is personal jurisdiction over the defendant), crimes can only be prosecuted in the state in which they were committed. Since the doctrine of subject matter jurisdiction fundamentally differs between criminal cases and tort cases, Neudorfer’s reliance on *Lane* is misplaced.

D. Neudorfer’s Attempt To Distinguish *Gulf Offshore v. Mobile Oil Corp.* Should Be Unpersuasive.

Neudorfer attempts to distinguish *Gulf Offshore* by noting that the federal land at issue in that case “was neither ceded to nor purchased by the United States.” RB at 9. This is a distinction without a difference. Neudorfer’s claim that state courts lack subject

⁴ *See also*, 18 U.S.C. 3231 (“The district courts of the United States shall have original jurisdiction, *exclusive of the courts of the States*, of all offenses against the laws of the United States.”).

matter jurisdiction to adjudicate personal injury claims occurring on federal land is solely premised on its argument that the United States has “exclusive jurisdiction” over the land where the injury occurred. As in the present case, the court in *Gulf Offshore* noted that the United States has “exclusive jurisdiction” over the property on which the injury occurred. 453 U.S. at 479. How the United States came to possess “exclusive jurisdiction” is irrelevant.

Neudorfer also attempts to distinguish *Gulf Offshore* by noting that the court said that there was no evidence showing Congress intended federal courts to have exclusive jurisdiction. *See* RB at 9. Neudorfer then concludes that this case is different because Washington ceded “exclusive jurisdiction” to the United States. *Id.* Neudorfer’s rationale begs the question. The fact that Washington ceded “exclusive jurisdiction” (that is, political sovereignty) to the United States, actually shows that *Gulf Offshore* and the present case are analogous, since the land upon which the injuries occurred in both cases were under the “exclusive jurisdiction” of the United

States.⁵ The principle that determined the result in *Gulf Offshore* governs this case as well. The superior court had jurisdiction to adjudicate Mendoza's personal injury claim notwithstanding that his arose from conduct on federal land.

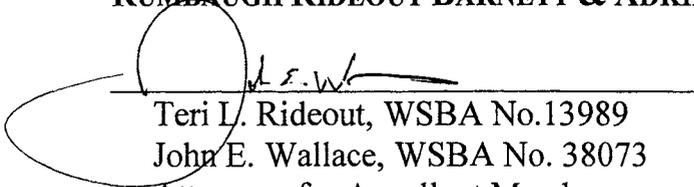
III. CONCLUSION

For the reasons stated above and the reasons stated in Mendoza's opening brief, the Court should reverse the trial court's order and remand this case for trial.

DATED this 3rd day of December 2007.

Respectfully submitted,

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⁵ It should also be noted that the court in *Gulf Offshore* held that exclusive federal judicial jurisdiction arises in only two situations: by an act of Congress or by a disabling incompatibility. 453 U.S. at 477-78. Neudorfer does not argue that either situation is present in the this case. Allowing state courts to adjudicate civil claims arising from injuries occurring on federal land does not create a disabling incompatibility between state and federal sovereignty, especially when it is state law that applies. *See* 16 U.S.C. § 457. Moreover, Congress has not limited judicial jurisdiction over such claims to federal courts. *See id.*

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that I sent via legal messenger a copy of this brief to:

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DATED at Tacoma, Washington this 3rd day of December 2007.


Dawn LaRiviere, Legal Assistant

