

Washington State

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Supreme Court

Washington State
Supreme Court

Logan A Edenstrom

Dean G Edenstrom

Theodore B Edenstrom

Case No.

v.

95960-9

Thurston County

Resource Stewardship

Appellant's Reply Brief

APPELLANT'S REPLY BRIEF

LOGAN A EDENSTROM

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Argument

Thurston County argues that a 1983 action which was dismissed without prejudice on summary judgment, without the merits having been considered, triggers Res Judicata which bars the ability to petition for an inquiry as to the County's authority, or interest, in the Edenstroms land, or private property in general, by utilizing a Writ of Quo Warranto.

This is incorrect. Ted Edenstroms 1983 action was dismissed without prejudice, which means without prejudice as to any right or claim the

plaintiff may have. The Petition for Writ of Quo Warranto is a petition by the People of the State of Washington on the relation of Edenstrom et. Al, to the defendant, in this situation, to produce whatever authority is claimed by them to trespass, regulate, charge use fees, and hold public hearings on private land. If a demand to present authority is interpreted to be the same as a 1983 civil action, the 1983 action was dismissed without prejudice.

Res Judicata should not apply because there has not been any writ proceeding previously invoked.

The court should take into consideration that the stop work orders issued, along with other threatening Notices by Thurston County, are an ongoing unlawful deprivation of petitioners liberties and constitutional rights; On this basis, the court should not allow the operation of the doctrine of Res Judicata as this would erode away at other similar proceedings such as Habeas Corpus or any demand of due process.

Meanwhile the stop work orders with threats of further prosecution, invasions of private affairs, and illegal surveillance without any due process to date remain active and unaddressed, and constitute an ongoing deprivation of rights, which would seem to nullify the argument of Res Judicata claimed as the continuing deprivation is a new claim for each and every day the stop work orders and notices of violations stay un-rescinded.

Conclusion

This Court should not allow the operation of the doctrine of Res Judicata, and should grant this petition for Writ of Quo Warranto as it is an important legal inquiry provided to the people. It is an aid to civil litigation as with any other writ and not repeated civil litigation.

A Quo Warranto is deserved and justified.

Sanders v. United States, 373 U.S. 1 (1963)

“Conventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged.”

MCCONNELL v. ATTY GEN OF TX

- A dismissal without prejudice means the claimant has the right to sue again on the same cause of action and prevents "the decree of dismissal from operating as a bar to a subsequent suit." BLACK'S LAW DICTIONARY 469 (6th ed. 1990). If a suit is dismissed without prejudice, res judicata has not occurred. Bell v. Moores, 832 S.W.2d 749, 755 (Tex.App. — Houston [14th Dist.] 1992, writ denied). If dismissal is with prejudice, res judicata applies and bars the right to bring an action on the same cause. Id. (citing Cowgill v. White, 543 S.W.2d 437, 439 (Tex.Civ.App. — Corpus Christi 1976, writ ref'd n.r.e.)).

Black's Law Dictionary, sixth edition, Dismissal Without Prejudice

- Term meaning dismissal without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit.

Black's Law Dictionary, sixth edition, Quo Warranto

- *In old English practice, a writ in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right. It lay also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse.*
3 Bl.Comm. 262.
- *A common law writ designed to test whether a person exercising power is legally entitled to do so. An extraordinary proceeding, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted. Johnson v. Manhattan Ry. Co., N.Y. 289 U.S. 479, 53 S.Ct. 721, 77 L.Ed. 1331.*
- *An ancient prerogative right through which the state acts to protect itself and the good of the public generally through its chosen agents as provided by its Constitution and laws, though sometimes it is brought at instance of and for benefit of a private individual who may have a special interest. Lewis v. Drake, Tex.App., 641 S.W.2d 392, 394. Legal action whereby legality of powers by municipal corporation may be placed in issue. People ex. Rel City of Des Plaines v. Village of Mount Prospect, 29 Ill.App.3d 807, 331 N.E.2d 373, 377.*
- *In the law of Corporations, quo warranto may be used to test whether a corporation was validly organized or whether it has power to engage in the business in which it is involved.*

WITHOUT PREJUDICE Logan Edenstrom

Logan A Edenstrom

UCC1-308 Dean Edenstrom

Dean G Edenstrom

Reserving All rights Ted Edstrom

Theodore B Edenstrom