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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

NO. 28334-8

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

LANA T. FRAZIER-TURNER and JAMES R. LEE, JR.,

Appellants,

v.

JAMES R. LEE, SR.,

Respondent.

STATE'S SUPPLEMENTAL BRIEF

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**I. STATE'S JOINDER IN BRIEF OF RESPONDENT
MICHAEL J. LONGYEAR, COURT APPOINTED
GUARDIAN FOR MITZI L.H. LEE¹**

The State of Washington, Department of Transportation (the "State"), joins, in all respects, in Sections IV.A and IV.B. of the brief of Respondent Michael J. Longyear, Court Appointed Guardian for Mitzi L.H. Lee ("Mitzi Lee").

II. ARGUMENT

A. The Trial Court's Determination that the Quitclaim Deeds Were Void Did Not Affect the Validity of the Order Adjudicating Public Use and Necessity or the Stipulated Judgment and Decree of Appropriation.

The State joins in the Brief of Mitzi Lee concerning this particular issue. Mitzi Lee argues that the voiding of the quitclaim deeds by the trial court does not affect the validity of the Order Adjudicating Public Use and Necessity ("Order") or the Stipulated Judgment and Decree of Appropriation ("Judgment"). The State agrees.

All of the proceedings at the trial court level were proper, valid, and enforceable, despite the fact that Mitzi Lee was not included as a defendant in that case. As previously stated in its Corrected Brief dated October 11, 2010, the State was not required to name Mitzi Lee as a party in its condemnation petition, pursuant to RCW 8.04.010, as she was not a

¹ This Supplemental Brief is submitted in response to the Court's letter dated February 25, 2011, and addresses only the issue of the validity of the Order Adjudicating Public Use and Necessity and the Stipulated Judgment & Decree of Appropriation.

record owner of the properties in question at the time of the filing of that petition. As of June 2008, the State determined, after a review of the public records, that the record owners of the properties in question were Appellants James R. Lee, Jr. and Lana Frazier-Turner (together “Appellants”), along with James Lee, Sr.² CP 407-408, 412-415, 435-438.

RCW 8.04.010 provides, in pertinent part, that the condemnation petition shall include:

. . . the name of each and every owner, encumbrancer, or other person or party interested therein, or any part thereof, insofar as can be ascertained from the public records, the object for which the property is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money to such owner. . .

(emphasis added)

To be a necessary party to a condemnation proceeding, one must have a recorded interest in the property at issue. It has long been held that a condemning authority is only required to make an examination of the public records to determine who is to be a defendant in a condemnation proceeding. *Wirt v. Superior Ct. for Spokane Cty.*, 10 Wn.2d 362, 368, 116 P.2d 752 (1941). The *Wirt* court expressly held that “[N]o duty was incumbent upon the condemners in the absence of a record of ownership to make the relators parties defendant to the condemnation proceeding.

² Earl Lee was also indicated in the public records as a lien holder.

The necessary parties to the action were each and every owner, encumbrancer . . . so far as same can be ascertained from the public records.” *Id.*, 10 Wn.2d at 368; *see also, State v. Evans*, 96 Wn.2d, 119, 126-27, 634 P.2d 845 (1981) (State is bound only by record title and not liable for damages to land held under oral, unenforceable leases.)

Here, the State included in its condemnation proceedings those parties who had a recorded interest in the properties in question. It also otherwise strictly followed all statutory requirements set forth by the legislature in connection with this condemnation proceeding. This has not been challenged by any party at the trial level or on appeal. It is well settled that if the condemning authority proceeds in strict accordance with statutory requirements, it can take the land without assuming the burden (or liability) of distributing the just compensation funds. *State v. Clausen*, 94 Wa. 166, 169, 162 P. 1 (1917); *Carton v. Seattle*, 74 Wash. 375, 378-79, 133 P. 596 (1913); *State v. Long*, 80 Wash. 417, 424, 141 P. 906 (1914) (“When the petitioner has followed the statute it has discharged its duty to the landowner...”).

Indeed, the taking of property by the State may be accomplished without reference or regard to the conflicting interests of any claimants. *State v. Spencer*, 90 Wn.2d 415, 418, 583 P.2d 1201 (1978). That case involved a “lump sum” stipulated judgment and decree of appropriation

amount which was paid by the State into the court registry. The trial court distributed the funds in a later proceeding. The Supreme Court ultimately held that the statutory scheme which governs the exercise of eminent domain by the State, in particular RCW 8.04.110 and RCW 8.04.140, allows for the payment of just compensation, and taking of property, by the State prior to the equitable apportionment of the just compensation proceeds in a subsequent trial. *Id.*, 90 Wn.2d at 418-20.

Similarly here, a “lump sum” stipulated judgment and decree of appropriation was entered into by the parties to the proceeding on May 15, 2009, payment of the judgment amount was made by the State into the court registry (as required under RCW 8.04.130 and RCW 8.04.160) and a subsequent trial was held as to the equitable apportionment of the just compensation award. At the conclusion of those proceedings, the trial court issued its Findings of Fact, Conclusions of Law and Order of Disbursement. As such, all necessary statutes and procedures have been complied with and the actions taken in these proceedings are valid and enforceable.

Mitzi Lee agrees that the Order and the Judgment are valid and enforceable. She is also willing to waive defective notice, if any, as to these proceedings. The only party who has standing to allege a defect in the proceedings agrees that there is no defect. Therefore the question as to

the enforceability of the Order and Judgment is, for all intents and purposes, moot.

III. CONCLUSION

Pursuant to the statutory requirements and case law cited herein, all actions taken in the condemnation proceedings, including the entering of the Order and the Judgment, are valid and enforceable. Mitzi Lee does not contest the validity of the Order or the Judgment; rather, she argues that they are valid and enforceable.

Accordingly, the State respectfully requests that this Court finds the condemnation proceedings were conducted in compliance with all applicable statutory and case law requirements, and that the Order Adjudicating Public Use and Necessity and the Stipulated Judgment and Decree of Appropriation valid and enforceable.

RESPECTFULLY SUBMITTED this 21st day of April, 2011.

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