

**THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON  
Division III**

CASE # 349-86-1

SCOTT SHUPE, an individual

Appellant,

v.

CITY OF SPOKANE, a Washington municipality

Respondent.

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APPELLANT'S REPLY BRIEF

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SCOTT SHUPE

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## I. INTRODUCTION

The City's response ignores that all of the elements for conversion did not exist until it was determined that the City was not entitled to lawfully take the property at issue. The City improperly argues that a statute of limitations be applied to Mr. Shupe's constitutional right to just compensation for the taking of his property. However, there is no legal authority supporting its position. The Trial Court erred by failing to consider when the elements of the claims accrued and by applying a statute of limitations to an Inverse Condemnation claim.

## II. ARGUMENT

### B. UNTIL THE COURT OF APPEALS ISSUED ITS MANDATE THE ELEMENT OF UNLAWFUL JUSTIFICATION DID NOT EXIST.

The City does not dispute that the statute of limitations on conversion does not begin to run until all of the elements exist. "*Conversion is the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it.*" Westview Investments, LTD v. U.S. Bank National Association, 133 Wn. App. 835, 852 (2006), citing, PUD of Lewis County v. WPPSS, 104 Wn.2d 353, 378 (1985).

As a result, the statute of limitations did not begin to run until the facts existed which would support Mr. Shupe's claim that his property was

interfered with by the City without lawful justification. The Criminal action established that the City did not have lawful justification in searching and seizing the property. Until that determination was made, Mr. Shupe could not have brought the claim for conversion under CR 11 because he had not established that the City did not have lawful justification. Accordingly, the statute of limitations did not begin to run until that time.

If the allegations are taken as true as required by the CR 12(b)(6) standard, Mr. Shupe has established that the “*without lawful justification*” element was not established until the Mandate arrived. At the very least there is a question for trial as to when it was established.

**C. THERE IS NO STATUTE OF LIMITATIONS  
ASSOCIATED WITH AN INVERSE CONDEMNATION  
CLAIM**

The City has not provided the Court with any legal authority that applies a statute of limitation to an Inverse Condemnation Action because it is a constitutional right which protects citizens from the government and its broad powers. If the Legislature had intended to provide for a statute of limitations on that constitutional right it could have done so. However, there is no statute or case law that provides for such a limitation. As a result, the Court’s dismissal was improper.

### III. CONCLUSION

Given an analysis of when Shupe could properly bring the causes of action alleged, the Trial Court erred and Shupe has stated claims for relief that are not barred by any statute of limitations. Therefore, Shupe respectfully requests the Trial Court's ruling be reversed and the matter remanded.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of September, 2017.

ROBERTS | FREEBOURN, PLLC

s/ Kevin W. Roberts

KEVIN W. ROBERTS, WSBA #29473

Attorney for Appellant

CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the state of Washington that on the 15<sup>th</sup> day of September, 2017, a true and correct copy of the foregoing document was served by the method indicated below and addressed to the following:

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Assistant City Attorney	U.S. Mail	<input type="checkbox"/>
5 <sup>th</sup> Floor Municipal Building	Facsimile	<input type="checkbox"/>
Spokane, WA 99201	Email	<input type="checkbox"/>

DATED this 15<sup>th</sup> day of September, 2017 at Spokane, Washington.

s/ Kevin W. Roberts  
Kevin W. Roberts, WSBA #29473

**ROBERTS FREEBOURN**

**September 15, 2017 - 3:12 PM**

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