

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
May 19, 2011, 2:23 pm  
BY RONALD R. CARPENTER  
CLERK

85962-1

---

RECEIVED BY E-MAIL

Supreme Court No. 85962-1  
Court of Appeals No. 63053-9-1

IN THE WASHINGTON STATE SUPREME COURT

---

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

Appellant/Plaintiff,

v.

THE CITY OF WOODINVILLE,  
a Washington municipal corporation.

Respondent/Defendant,

---

HOLLYWOOD VINEYARDS RESPONSE TO CITY OF  
WOODINVILLE'S PETITION FOR REVIEW

---

Catherine C. Clark  
Melody Retallack  
The Law Office of Catherine C. Clark PLLC  
701 Fifth Avenue, Suite 4785  
Seattle, WA 98104  
Phone: (206) 838-2528  
Fax: (206) 374-3003  
Email: [cat@loccc.com](mailto:cat@loccc.com)  
Attorneys for Appellants

**FILED**  
MAY 19 2011  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

ORIGINAL

Table of Contents

I.	INTRODUCTION.....	1
II.	FACTS RELEVANT TO MOTION.....	1
III.	ARGUMENT.....	3
	A.    THE COURT OF APPEALS HAS AUTHORITY TO RULE ON CASES OF FIRST IMPRESSION.....	3
	B.    THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH PRIOR DECISIONS OF THIS COURT.....	4
VI.	CONCLUSION.....	5

Table of Authorities

**Cases**

*Gorman v. City of Woodinville*,  
\_\_\_ Wn. App. \_\_\_, \_\_\_ 3d \_\_\_ (2011) ..... 1,4

*Xiao Ping Chen v City of Seattle*,  
153 Wn. App. 890, 223 P.3d 1230 (2009)..... 3

*Xiao Ping Chen v City of Seattle*,  
169 Wn.2d 1003 (2010).....3

**Statutes**

RCW 4.16.160 ..... 2,4

**Rules**

CR 12(b) (6)..... 2

RAP 13.4..... 3

## I. INTRODUCTION

Appellants James Gorman, as General Partner of Hollywood Vineyards Limited Partnership ("Hollywood"), responds to the City of Woodinville's ("City") Petition for Review 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? Division One of the Court of Appeals correctly answered this purely legal question with a resounding "no." *Gorman v. City of Woodinville*, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_ (2011) ("Decision"). A copy of the Decision is attached as Exhibit A.

In short, there is no basis for this Court to accept review of this matter. The petition should be denied.

## II. FACTS RELEVANT TO MOTION

The facts of this case are undisputed and short. They are restated here.

This matter arises out of a lawsuit initiated by James Gorman IV as general partner of the Hollywood Vineyards Limited Partnership against the City of Woodinville. In the Complaint, Mr. Gorman alleged that the City had been dedicated property by an adjoining property owner, which dedicated property was subject to

an adverse possession claim by Mr. Gorman as general partner.

The property at issue is legally described as:

Tract Y of Woodinville Village binding site plan recorded under Recording No. 20051222002236.

("Tract Y" or property). CP 7.

On August 10, 2007, Mr. Gorman initiated suit against the City seeking quiet title to Tract Y on a claim of adverse possession. CP 1-8.

In December 2008, on the eve of trial, the City filed a motion to dismiss the case under CR 12(b)(6). CP 16-25. The essence of the City's argument was that RCW 4.16.160 barred the claim as the statute states that no claim of right predicated upon a lapse of time shall ever be asserted against the state or other municipal organization. The trial court granted the City's motion and dismissed the action. CP 62-63. The court further entered judgment against Mr. Gorman for costs and statutory attorney's fees in the amount of \$4,274.20. CP 109-110. Judge Gonzales also denied Mr. Gorman's motion for reconsideration of the matter.

Mr. Gorman filed an appeal with Division One of the Court of Appeals. CP 111-117. On March 21, 2011, the Court of Appeals

reversed the trial court and reinstated the case. Exhibit A. The City now seeks review in this Court.

### III. ARGUMENT

#### A. THE COURT OF APPEALS HAS AUTHORITY TO RULE ON CASES OF FIRST IMPRESSION

The City contends that because the Decision is one of first impression, this Court is required to weigh-in on the issue. Petition for Review, p. 4. Mr. Gorman does not dispute that this matter involves a matter of first impression both in the State of Washington and Nationally.

The City does not cite any legal authority to support such a position. In fact, the body of cases issued by the Court of Appeals by all three divisions supports a contrary result; the Court of Appeals regularly issues decisions on issues of first impression which this Court has chosen not to review. *E.g. Xiao Ping Chen v. City of Seattle*, 153 Wn. App. 890, 223 P.3d 1230 (2009), *review denied*, 169 Wn.2d 1003 (2010). Such a state of affairs does not meet the requirements of RAP 13.4.

**B. THE COURT OF APPEALS DECISION DOES NOT  
CONFLICT WITH PRIOR DECISIONS OF THIS  
COURT**

The Court of Appeals Decision does not conflict with prior decisions of this Court. RCW 4.16.160 only prevents the running of an adverse claim against a governmental entity; it does not address the question of what the government takes when the required period (here 10 years) runs prior to the conveyance and/or dedication to it. In such an instance, once the 10 year period required for an adverse possession claim runs, the claim perfects—the time period does not continue to run. Therefore, the prohibition under RCW 4.16.160 is not triggered. In the Court of Appeals' published opinion it agreed, stating:

In short, Washington cases support Gorman's claim, and the City offers no persuasive reason their principles should not apply. The City also contends that the policy behind RCW 4.16.160 supports a bar against claims like the Gorman's. We disagree. Government immunity from statutes of limitation protects the public from suffering from the negligence of its representatives, and allows the state to allocate its resources to uses other than vigilance about inchoate claims. It also protects the public from the costs of legal fees, awards, and insurance coverage that accompany lawsuits against the government. These purposes are served only where the land is in public ownership at the time the claim arises. Permitting Gorman's claim implicates none of the policies underlying the statute.

249 P.3d at 1043.

Beyond these points, Hollywood relies on its briefing below and incorporates the arguments made therein.

## VI. CONCLUSION

Again, for the above stated reasons and those arguments given in the original appellant brief and reply brief, the City of Woodinville's Petition for Review should be denied.

Dated this 19th day of May, 2011.

Respectfully submitted,

THE LAW OFFICE OF CATHERINE C. CLARK PLLC

By: 

Catherine C. Clark, WSBA 21231  
Melody Retallack, WSBA 40871  
Attorneys for Appellant James  
Gorman, as General Partner of  
Hollywood Vineyards Limited  
Partnership

DECLARATION OF SERVICE

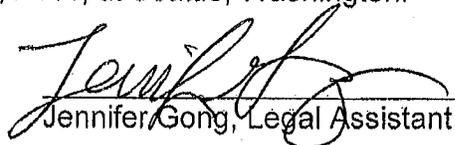
On said day below I sent a true and accurate copy of:  
Hollywood Vineyards Response to City of Woodinville's Petition for  
Review in Supreme Court Cause No. 85962-1 to the following party  
by messenger hand delivery:

Greg Rubstello  
2100 Westlake Ctr Tower  
1601 Fifth Ave.  
Seattle, WA 98101  
Attorney for City of Woodinville

Original sent by email for filing with:  
Washington State Supreme Court  
Clerk's Office  
415 12<sup>th</sup> Street W.  
Olympia, WA 98504  
Supreme@courts.wa.gov

I declare under penalty of perjury under the laws of the State  
of Washington and the United States that the foregoing is true and  
correct.

DATED: May 19, 2011, at Seattle, Washington.

  
Jennifer Gong, Legal Assistant

# EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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

Appellant,

v.

CITY OF WOODINVILLE,

Respondent.

No. 63053-9-1

PUBLISHED OPINION

FILED: March 21, 2011

ELLINGTON, J. — The government is protected by statute against claims of adverse possession. The statute does not protect private landowners, even if they later sell to the government. Here, James Gorman claims he acquired ownership by adverse possession before the government purchased the land. If so, his claim is not barred. We reverse and remand for determination of the validity of his claim of title by adverse possession to property recently acquired by the City of Woodinville.

BACKGROUND

The City of Woodinville (City) acquired record title to Tract Y for a road improvement project. James Gorman IV, as General Partner of Hollywood Vineyards Limited Partnership (Gorman), filed an action to quiet title to Tract Y, alleging he had acquired vested title by adverse possession before the land was conveyed to the City.

No. 63053-9-1/2

The City moved to dismiss under CR 12(b)(6), arguing Gorman's claim was barred by RCW 4.16.160, which provides that "no claim of right *predicated upon the lapse of time* shall ever be asserted against the state."<sup>1</sup> The City asserted Gorman's claim was predicated upon a lapse of time and therefore barred. The trial court agreed and dismissed.

Gorman contends the 10-year statute of limitations ran while the property was in private hands and his quiet title action is not barred by RCW 4.16.160. We agree and reverse.

#### DISCUSSION

Dismissal under CR 12(b)(6) is appropriate only if the complaint alleges no facts that would justify recovery.<sup>2</sup> The plaintiff's allegations and any reasonable inferences are accepted as true.<sup>3</sup> Our review is de novo.<sup>4</sup>

The doctrine of adverse possession permits acquisition of legal title to private land without the owner's consent where the claimant possesses the property for at least 10 consecutive years and can prove the other requirements of the doctrine.<sup>5</sup> Adverse possession is thus partly dependent upon the passage of a statute of limitations. Under

---

<sup>1</sup> (Emphasis added.)

<sup>2</sup> Reid v. Pierce Cnty., 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998); Orwick v. City of Seattle, 103 Wn.2d 249, 254, 692 P.2d 793 (1984).

<sup>3</sup> Reid, 136 Wn.2d at 201.

<sup>4</sup> Id.

<sup>5</sup> RCW 4.16.020. Successful adverse possession in Washington requires 10 years of possession that is (1) actual; (2) open and notorious; (3) hostile; (4) continuous; and (5) exclusive. ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6 (1989).

No. 63053-9-1/3

RCW 4.16.160, claims predicated upon lapse of time may not be asserted against the government, so adverse possession does not run against the government.<sup>6</sup>

The question here is whether vested title acquired by adverse possession against a *private* owner can be asserted after the record owner attempts to convey the property to the government.

The City asserts such claims are unambiguously prohibited by the statute because they are predicated upon lapse of time.<sup>7</sup> The City points to Commercial Waterway District No. 1 v. Permanente Cement Company,<sup>8</sup> where the plaintiff claimed to have adversely possessed property while the water district owned it. Not surprisingly, the court rejected the claim, holding that cities, acting in a governmental capacity, are exempt from the 10-year statute of limitations for adverse possession.<sup>9</sup> But this holding is not germane to the question here because unlike the waterway district, the City did not own the property when Gorman's title allegedly vested.

The City's interpretation of the statute disregards traditional principles of adverse possession. Title acquired by an adverse possessor, although not recorded, is valid

---

<sup>6</sup> Edmonds v. Williams, 54 Wn. App. 632, 634, 774 P.2d 1241 (1989) (citing Commercial Waterway Dist. No. 1 of King Cnty. v. Permanente Cement Co., 61 Wn.2d 509, 512, 379 P.2d 178 (1963)).

<sup>7</sup> Municipalities acting in a governmental capacity constitute "the state" under RCW 4.16.160. Commercial Waterway, 61 Wn.2d at 512. The City is a Washington municipal corporation.

<sup>8</sup> 61 Wn.2d 509, 510-11, 379 P.2d 178 (1963).

<sup>9</sup> Id. at 512-13; see also Town of West Seattle v. West Seattle Land & Improvement Co., 38 Wash. 359, 363-64, 80 P. 549 (1905) (party could not adversely possess public roadway).

No. 63053-9-1/4

and enforceable.<sup>10</sup> Once an adverse possessor has fulfilled the conditions of the doctrine, title to the property vests in his favor.<sup>11</sup> The adverse possessor need not record or sue to preserve his rights in the land.<sup>12</sup> Rather, the law is clear that title is acquired upon passage of the 10-year period.<sup>13</sup>

The City contends these rules apply only to private parties. But the underlying claim here involved only private parties.

The City also points out that no case has addressed precisely these facts. But no case has abandoned settled analysis in similar circumstances. For example, City of Benton City v. Adrian involved a claim of a prescriptive easement for drainage onto city property, an easement that cannot be acquired if the property is held by a municipal corporation in its governmental capacity.<sup>14</sup> Adrian contended, however, that the claimed easement was perfected before the city acquired the property. The court held Adrian had failed to prove the elements of adverse possession against the previous owner.<sup>15</sup> The court gave no indication that, if established by the evidence, such a claim might be

---

<sup>10</sup> Mugaas v. Smith, 33 Wn.2d 429, 431, 206 P.2d 332 (1949). To rule otherwise, the court said, would be to require an adverse possessor to "keep his flag flying for ever [sic], and the statute [would] cease[] to be a statute of *limitations*." Id. at 433 (quoting Schall v. Williams Valley R. Co., 35 Pa. 191, 204, 11 Casey 191 (1860)).

<sup>11</sup> Bowden-Gazzam Co. v. Hogan, 22 Wn.2d 27, 39, 154 P.2d 285 (1944) (quoting Wheeler v. Stone, 1 Cush. 313, 55 Mass. 313 (1848)).

<sup>12</sup> Halverson v. City of Bellevue, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985).

<sup>13</sup> Id. ("The law is clear that title is acquired by adverse possession upon passage of the 10-year period. The quiet title action merely confirmed that title to the land had passed to Halverson by 1974." (citations omitted)).

<sup>14</sup> 50 Wn. App. 330, 336, 748 P.2d 679 (1988) (citing Commercial Waterway, 61 Wn.2d at 512).

<sup>15</sup> Id. at 337.

No. 63053-9-1/5

barred.

In short, Washington cases support Gorman's claim, and the City offers no persuasive reason their principles should not apply.

The City also contends that the policy behind RCW 4.16.160 supports a bar against claims like Gorman's. We disagree.

Government immunity from statutes of limitation protects the public from suffering for the negligence of its representatives, and allows the state to allocate its resources to uses other than vigilance about inchoate claims.<sup>16</sup> It also protects the public from the costs of legal fees, awards, and insurance coverage that accompany lawsuits against the government.<sup>17</sup> These purposes are served only where the land is in public ownership at the time the claim arises. Permitting Gorman's claim implicates none of the policies underlying the statute.

Further, Gorman's quiet title action is predicated not upon a lapse of time but upon proof of vested title. The fact that, at trial, he would need to prove the elements of adverse possession, including passage of the statute of limitations against the former owner, does not mean his quiet title action is predicated upon the lapse of time as to the City.

---

<sup>16</sup> Bellevue Sch. Dist. v. Brazier Constr. Co., 103 Wn.2d 111, 114, 691 P.2d 178 (1984) (quoting United States v. Thompson, 98 U.S. 486, 489-90, 8 Otto 486, 25 L. Ed. 194 (1878)); see also Guaranty Trust Co. of New York v. United States, 304 U.S. 126, 141, 58 S. Ct. 785, 82 L. Ed. 1224 (1938); 17 WILLIAM B. STÖEBUCK, JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 8.1, at 515 (2d ed. 2004 & Supp. 2010).

<sup>17</sup> See LAWS OF 1986, ch. 305, § 100 (preamble); Bellevue Sch. Dist. v. Brazier Constr. Co., 100 Wn.2d 776, 783, 691 P.2d 178 (1984).

No. 63053-9-1/6

If Gorman had valid title before the City purchased the property, we think he has it still. We reverse and remand for trial.<sup>18</sup>

WE CONCUR:

Appelvik, J.

Engel, J.

Cox, J.

---

<sup>18</sup> Given our disposition, we need not reach the arguments concerning fees and costs except to point out that deposition costs are awardable only insofar as the depositions are used at trial. Kiewitt-Grice v. State, 77 Wn. App. 867, 874, 895 P.2d 6 (1995) (fees for deposition transcripts not used at trial not awardable under RCW 4.84.010); Platts v. Arney, 46 Wn.2d 122, 128-29, 278 P.2d 657 (1955) (fees for depositions taken for discovery but not used at trial not awardable under RCW 4.48.090). The City's argument that Kiewitt-Grice does not apply here because the City's cost award did not include transcription fees is unpersuasive.

**OFFICE RECEPTIONIST, CLERK**

---

**To:** Gong, Jennifer  
**Cc:** Rogge, Melissa  
**Subject:** RE: Hollywood Vineyards v. City of Woodinville No. 85962-1

Rec. 5-19-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

---

**From:** Gong, Jennifer [<mailto:jennifer@loccc.com>]  
**Sent:** Thursday, May 19, 2011 1:56 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Rogge, Melissa  
**Subject:** Hollywood Vineyards v. City of Woodinville No. 85962-1

Hello Supreme Court Clerk,

My apologize, the previous filing did not have the document attached. Please find the attached documents for filing with the Supreme Court today:

- Hollywood Vineyards' Response to City of Woodinville's Petition for Review with Declaration of Service attached

For the following matter:

Case name: Gorman/Hollywood Vineyards v. City of Woodinville  
Supreme Court Case number: 85962-1  
Court of Appeals Case number: 63053-9-1

Filed by:  
Catherine Clark, WSBA 21231  
Melody Retallack, WSBA 40871  
Attorneys for Gorman/Hollywood Vineyards  
701 Fifth Ave, Suite 4785  
Seattle, WA 98104  
(206) 838-2528  
[Cat@loccc.com](mailto:Cat@loccc.com)

Thank you.

*Jennifer Gong*  
Legal Assistant  
*Law Offices of Catherine C. Clark PLLC*  
701 Fifth Ave, Suite 4785  
Seattle, WA 98104  
(p) 206-838-2528  
(f) 206-374-3003  
Email: [jennifer@loccc.com](mailto:jennifer@loccc.com)