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No. 97599-0

NO. ~~96887~~

SUPREME COURT OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND
SEWER DISTRICT, a Washington municipal corporation; and
TOWN OF WOODWAY, a Washington municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal
corporation,

Respondent,

and

SNOHOMISH COUNTY, a Washington municipal corporation;
KING COUNTY, a Washington municipal corporation; CITY OF
SHORELINE, a Washington municipal corporation,

Defendants.

KING COUNTY'S BRIEF OF DEFENDANT

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RELEVANT FACTS 1

III. LEGAL ARGUMENT 5

 A. King County had authority to operate its Richmond Beach Sewer System pursuant to Chapter 36.94 RCW 5

 B. The 1985 Transfer Order lawfully Annexed the Point Wells Service Area to Ronald's corporate boundary..... 6

 C. The 1985 Transfer Order was a final "in rem" judgment barring Appellants' untimely challenge..... 7

IV. CONCLUSION..... 8

TABLE OF AUTHORITIES

Washington Cases

Cedar River Water and Sewer District v. King County,
178 Wn.2d 763 (2013) 4

Smale v. Noretap, 150 Wn. App. 476, 479 n. 4,
208 P.3d 1180, 1181 (2009)..... 7

Washington Statutes

Chapter 35.58 RCW 3

Chapter 36.94 RCW 5

RCW 36.94.190 5

RCW 36.94.410 2, 6, 7

RCW 36.94.410-440 2, 6, 7

RCW 36.94.420 6

RCW 36.94.440 7

RCW 57.02.001 1

Other Authorities

Substitute House Bill 1127 2, 3, 6, 7

I. INTRODUCTION

The origin of this dispute is a 1985 King County Superior Court Order Approving Sewer System Transfer (“1985 Transfer Order”) which conveyed the wastewater collection facilities and the wastewater service area, including the Point Wells area, to the Ronald Wastewater District (“Ronald”). In 2017 the Superior Court granted Ronald’s Motion for Partial Summary Judgment ruling that (1) the 1985 Transfer Order was done pursuant to statutory authority, (2) the 1985 Transfer Order lawfully transferred the Richmond Beach Sewer System to Ronald and annexed the Point Wells service area to Ronald’s corporate boundary, (3) the 1985 Transfer Order was a final judgment “in rem” and was binding on all parties and entities including the appellants, here, and (4) RCW 57.02.001 validated and ratified Ronald’s annexation of the Point Wells service area. The Superior Court denied the cross-motions for summary judgment brought by the Town of Woodway (“Woodway”) and Snohomish County. The Superior Court’s 2017 Order (the “2017 Order”) was correct and should be upheld.

II. RELEVANT FACTS

King County adopts the Statement of the Case provided by Ronald in its Respondent’s Brief. In addition, King County highlights the following facts.

In 1970 and 1971, King County Sewer District #3 (“KCSD #3”), entered into an agreement with Standard Oil Company of California (which later became Chevron USA Inc.) to provide sewer service to the Point Wells area in Snohomish County. CP 904-908, 912.

KCSD #3 continued to provide sewage collection service to the Point Wells area through the mid-1980s, when King County began divesting itself of sewage collection operations. To accomplish the divestment of the sewer system, King County supported the Legislature’s passage of Substitute House Bill 1127 (SHB 1127), which provided an expedited process for transferring a sewer system from a county to a water-sewer district. SHB 1127, adopted in 1984, is codified at RCW 36.94.410-440. In February 1984, in anticipation of King County’s divestment process, King County adopted the Sewerage General Plan for the Richmond Beach Sewer System. The Sewerage General Plan recognized that the existing Richmond Beach Sewer System included service to “a Chevron Petroleum plant on Point Wells just north of the King-Snohomish border.” CP 806. All sewage from the Richmond Beach Sewer System was transported to METRO, a separate legal entity at the time, for primary treatment at METRO’s Richmond Beach treatment plant and discharge into Puget Sound. CP 806, 923.

KCSD #3 and King County entered into a transfer agreement and obtained a court order transferring the Richmond Beach Sewer System from KCSD #3 to King County. CP 1113-1148. In turn, following the process authorized by SHB 1127, King County and Ronald took each of the statutorily-required steps for a transfer of the Richmond Beach Sewer System from King County to Ronald.

The 1985 Transfer Order stated that the 1985 Transfer Agreement “is approved;” that the transfer of the Richmond Beach Sewer System “is to be accomplished in accordance with” the 1985 Transfer Agreement “effective as of January 1, 1986”; and that “the area served by the System shall be annexed to and become a part of the [Ronald] District on the effective date of the transfer. CP 1082-1083.

King County, in addition to being a county, is designated by state statute as the successor to the unique, statutorily-created regional governmental entity known as METRO, a metropolitan municipal corporation, that provided sewage treatment and disposal services beginning in the late 1950’s (Chapter 35.58 RCW). METRO entered into long term sewage treatment and disposal agreements with cities, sewer districts and other sewage utilities in King, Snohomish and Pierce counties, including KCSD #3, King County, Ronald and Woodway.

CP 806, 921, 376. Under the agreements, these local sewage utilities collect the sewage and send it to METRO for treatment and disposal. In 2004 Woodway assigned its rights under its agreement with METRO to the Olympic View Water and Sewer District. CP 377, 1179.

On January 1, 1994, King County assumed the rights, powers, functions and obligations of METRO. Now, King County, through its Wastewater Treatment Division (“WTD”), as the successor to METRO, provides sewage treatment and disposal to 34 entities that act as sewage utilities, *Cedar River Water and Sewer District v. King County*, 178 Wn.2d 763 (2013). METRO’s service area includes King County and portions of Snohomish and Pierce counties. CP 3369.

METRO/King County and the City of Edmonds entered into a series of reciprocal agreements for sewage treatment in 1988, 1993 and 2000 and METRO constructed a sewage conveyance line to the City of Edmonds to facilitate the reciprocal agreements. These reciprocal agreements provide for an exchange of sewage across the King and Snohomish county borders through 2036.¹ CP 1684-1685.

In reliance upon these long-term sewage disposal agreements, METRO’s and King County WTD’s ratepayers made sizable investments

¹ Pursuant to the Agreement with the City of Edmonds, Edmonds sends an equivalent amount of wastewater from the east portion of the City of Edmonds to King County WTD for treatment and disposal.

in facilities to serve Ronald and the Point Wells area, including the decommissioning of the Richmond Beach Treatment Plant and the construction of the Richmond Beach Pump station and necessary infrastructure to convey wastewater to the City of Edmonds. CP 862, 6543.

III. LEGAL ARGUMENT

King County adopts and incorporates by this reference the legal arguments made by Ronald in its Respondent's Brief. In addition, King County highlights the following points.

A. King County had authority to operate its Richmond Beach Sewer System pursuant to Chapter 36.94 RCW

King County had authority to operate its Richmond Beach Sewer System, including the portion of which was in Snohomish County, pursuant to Chapter 36.94 RCW. RCW 36.94.190, adopted in 1967, authorizes counties to contract with entities "within *or without* the county ... for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply." During the period when it operated the Richmond Beach Sewer System, before the transfer from King County to Ronald, King County operated the Richmond Beach Sewer System by contract, pursuant to the contract with Standard Oil.

B. The 1985 Transfer Order lawfully Annexed the Point Wells Service Area to Ronald's corporate boundary.

Even if the Court determines that King County did not have authority to operate the Snohomish County portion of the Richmond Beach Sewer System, the superior court was authorized to annex the Point Wells service area to Ronald's corporate boundary. RCW 36.94.410-440, which authorized the transfer from King County to Ronald, did not limit annexations of territory to geographic areas that were lawfully annexed to King County's sewer system. Instead, Section 2 of SHB 1127 (codified at RCW 36.94.420) states as follows: "If so provided in the transfer agreement, the area *served* by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system."

This language authorizes annexations of service areas based on where service was actually provided rather than on the formal boundaries of the former sewer system. Therefore, the 1985 Transfer Order transferred the entire Point Wells area to Ronald.

Finally, the 1985 Transfer Agreement was not illegal or ultra vires as Appellants allege. When the King County council made its findings that the transfer of the Richmond Beach Sewer System was in the public

interest, it was acting pursuant to RCW 36.94.410-440, which contain no limitations on cross-county annexations.

C. The 1985 Transfer Order was a final "in rem" judgment barring Appellants' untimely challenge.

The 1985 Transfer Order was a final "in rem" judgment that was binding "against the world." As the courts have explained:

A proceeding in rem is essentially a proceeding to determine rights in a specific thing or in specific property, against all the world, equally binding on everyone.

Smale v. Noretap, 150 Wn. App. 476, 479 n. 4, 208 P.3d 1180, 1181 (2009).

The Court's entry of the 1985 Transfer Order was the final step in the statutory annexation process established by SHB 1127. RCW 36.94.440 provides that, "[i]f the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement." That is precisely what the superior court did in 1985. The 1985 Transfer Order is a final judgment "in rem" that is binding on the whole world, including the Snohomish County appellants. Thus,

appellants' arguments are untimely and barred by principles of res judicata.

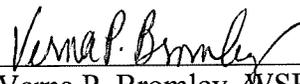
IV. CONCLUSION

The Superior Court properly applied the law in issuing the 2017 Order granting Ronald's Motion for Partial Summary Judgment and in denying Woodway's and Snohomish County's motions for summary judgment. For all the reasons set forth and incorporated herein, this Court should uphold the Superior Court's orders granting Ronald's Motion for Partial Summary Judgment and denying Woodway's and Snohomish County's motions for summary judgment.

DATED this 2nd day of February, 2018.

RESPECTFULLY submitted,

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DECLARATION OF SERVICE

On said day below, I served a true and accurate copy of **King County's Brief of Defendant** in Supreme Court Cause No. 94633-7 to the following parties:

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I declare under penalty of perjury under the laws of the State of

Washington that the foregoing is true and correct.

Dated this ^{2nd} day of February, 2018.

A handwritten signature in cursive script, appearing to read "Mary A. Livermore".

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