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NO. 101040-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF WOODINVILLE,

Respondent,

v.

EASTSIDE COMMUNITY RAIL, LLC, *et al.*

Appellants.

CITY OF WOODINVILLE'S ANSWER TO PETITION FOR REVIEW

Jeffrey Ganson
WSBA #26469
Attorney for City of Woodinville

HAGGARD & GANSON LLP
Attorneys at Law
19125 North Creek Pkwy.
Suite 120, PMB 337
Bothell, Washington 98011
Tel: (425) 329.2611

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I. INTRODUCTION

Respondent City of Woodinville (hereinafter, "City") brought this quiet title action to determine the owner of a freight rail easement that burdens railroad corridor property owned by the City. This action—brought at the suggestion of the federal Surface Transportation Board ("STB") holding regulatory authority over the railroad corridor—was necessitated by the actions of Appellant Douglas Engle ("Engle"), a former officer of the last clear owner of the easement, Respondent GNP RLY Inc. ("GNP"), creating significant clouds on the title of the easement. Disregarding the fact that it was the STB that suggested this action, Engle and Appellant Eastside Community Rail, LLC ("ECR") asserted that the Superior Court lacked subject matter jurisdiction because of the STB's preemptive authority over railroad regulation, then largely ignored the remainder of the proceedings, resulting in the imposition of discovery and

contempt sanctions that in part resulted in summary judgment recognizing GNP's sole title to the easement. Relying upon STB decisions and federal appellate case law interpreting the extent of its preemptive jurisdiction, the Court of Appeals affirmed the Superior Court's decision that it had subject matter jurisdiction to resolve an issue of state law property rights and affirmed the Superior Court's summary judgment in favor of the City and GNP. Because none of the considerations set forth in RAP 13.4(b) apply, the Supreme Court should decline to accept review.

II. STATEMENT OF THE CASE

A. Freight Rail Easement and Quiet Title Complaint

The freight rail easement at issue in this case was created by BNSF Railway Company when in 2009 it conveyed fee title to the Snohomish to Renton, Washington Branch Line railroad right of way that traverses the City of Woodinville in King County, Washington, between

approximate mileposts 23.8 and 26.38, to the Port of Seattle and retained the freight rail easement burdening the same property ("the Easement"). CP 142, 144-155. BNSF subsequently conveyed the Easement to GNP. CP 142, 156-168. The City now owns the fee title underlying the Easement, having obtained it from the Port of Seattle in November 2015. CP 142, 169-175.

On January 24, 2011, Engle, purportedly acting in his role as Chief Financial Officer of GNP, executed a quit claim deed by which GNP purported to convey a 46.1% interest in the Easement to Engle's then-wife, Joanne Engle (now defendant Joanne Skievaski), and a 53.9% interest in the Easement to his father, defendant Earl Engle. CP 206, 209-216. Two days later Engle's employment at GNP was terminated; his termination letter includes as causes his acting beyond his authority, failure to follow directions and breach of fiduciary duty. CP 207, 286.

On February 2, 2011, several GNP creditors commenced involuntary bankruptcy proceedings against GNP. *In re: GNP RLY, INC.*, Cause No. 11-40829-BDL in the United States Bankruptcy Court, Western District of Washington at Tacoma. CP 206. On October 6, 2011, the Bankruptcy Court found GNP insolvent and directed the entry of an order of relief under Chapter 11 of the Bankruptcy Code. CP 206, 230. On or about November 16, 2011, Perry Stacks was appointed trustee for GNP. CP 206, 231. On December 13, 2011, Thomas Payne, an officer of GNP, submitted to the Bankruptcy Court, under a declaration, a purported accounting of GNP's assets. CP 206, 232-274. Among those purported assets was the Easement. CP 234-247. On December 17, 2012, Mr. Stacks, GNP's bankruptcy trustee, and Engle, now acting on behalf of ECR, executed a Record of Transfer documenting ECR's purchase of GNP's assets. CP 207, 275. There is no evidence

that either Mr. Payne or Mr. Stacks was aware that Engle had, on January 24, 2011, caused GNP to convey the Easement to Engle's father and then-wife. CP 207. Engle, of course, knew that he had done so; that GNP therefore likely did not own the Easement; and that ECR therefore could not purchase it from GNP via the bankruptcy process.[1]

In light of Engle's actions, which have clouded title to the Easement, the City brought a quiet title action in order to secure a determination of who owns the Easement in order to properly manage the City-owned property burdened and encumbered by the Easement.

[1] Notably, Engle's conveyance of the Easement to his relatives is not the only instance of his having purported to convey interests in the Easement to others, further clouding the question of ownership of the Easement. On or about December 18, 2017, Engle and his father purported to convey a portion of the Easement to defendant NW Signal Maintenance, LLC via quit claim deed. CP 306, 308-314. References to the "Grantor" on the face of that document were manually redacted, with references to "Eastside Community Rail, LLC" and "ESCR" having been marked out and replaced with references to Douglas and Earl Engle. CP 308-309. Further, on November 13, 2019, Engle and his father executed and had notarized a purported quit claim deed of the Easement *from* them (and defendant GNP) as "Grantors" *to* ECR. Engle also signed on behalf of ECR. However, GNP did not execute the deed, nor was it apparently recorded. CP 306, 317-340.

B. A state court quiet title action was encouraged by the Surface Transportation Board, which has stripped ECR of its authorization to own and operate a railroad on the Easement and subsequently directed it to reconvey the Easement to GNP.

The STB has preemptive regulatory authority over railroad acquisition and operation in interstate commerce. 49 U.S.C. § 10501(b). On July 12, 2018, Snohomish County—which owns title to the land underlying the freight easement within its boundaries—filed with the STB a petition to revoke ECR's authorization to acquire and operate a freight railroad upon this rail corridor. The petition alleged that ECR's submissions to the STB in seeking such approval contained materially false or misleading information about ECR's ownership of the freight easement. *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY INC.*, Surface Transportation Board Docket No. FD 35692, Decision Served Dec. 13, 2018; 2018 WL 6579043; CP 207, 276. Specifically, Snohomish

County relied upon the aforementioned facts—that GNP had conveyed the easement to Engle's relatives prior to the disposition of GNP's assets in bankruptcy, which facts were known to Engle at the time that ECR sought the STB's authorization to operate a railroad on the easement. 2018 WL 6579043 at 2-3; CP 278. "Under 49 C.F.R. pt. 1150 subparts D and E—Exempt Transactions, an exemption is void ab initio if (1) the verified notice contains false or misleading information (by assertion or omission), and (2) the false or misleading information is material." 2018 WL 6579043 at 5; CP 281 (citations omitted). The City intervened. 2018 WL 6579043 at 4; CP 279.

The STB found Mr. Engle's actions "troubling." 2018 WL 6579043 at 7; CP 283. However, it concluded that it could not determine ownership of the freight easement:

> It is clear from these facts that the questions that must be resolved to determine whether the notices of exemption were false or misleading

involve questions of ownership, which in turn involve *issues of state property and contract law* and federal bankruptcy law. The Board has repeatedly held that disputes concerning property and contract law should be decided by appropriate courts. Specifically, the question of regulatory authority under the Interstate Commerce Act is separate from whether the relevant parties have the *necessary state law property interests* or contractual rights to act on the authority granted by the Board. … That is because the Board's grant of authority is permissive—whether the parties have regulatory authority to acquire or operate over a certain segment of track is *different from the question of whether that party (or parties) have the necessary property interest* or contractual right to exercise that authority. As such, the determination of whether the parties have the necessary right to exercise Board authority is a question for a court with expertise in state contract and property law, and federal bankruptcy law. … Without resolution of the ownership issues, the Board cannot determine whether the verified notices contained false or misleading information. Accordingly, at this time, the Board will deny the County's petitions to revoke. However, the Board's decision is without prejudice to any party that wishes to file a future petition to revoke once the questions of ownership have been resolved.

2018 WL 6579043 at 6; CP 282-283 (emphasis added; citations omitted). The City's quiet title action sought, as suggested by the STB, a determination of who owns the Easement under Washington property law.

The U.S. Court of Appeals for the D.C. Circuit reversed the STB's decision because the STB failed to explain why ECR's apparent false or misleading submissions to the STB did not trigger the STB's own rule that any authorization granted by the STB is "void *ab initio"* if the submission seeking such authorization contains false or misleading information, 49 C.F.R. §§ 1150.32, 1150.42. *Snohomish Cty. v. Surface Transp. Bd.*, 954 F.3d 290, 301 (D.C. Cir. 2020) ("Here, we conclude that the Board's failure to consider whether the notices of exemption were misleading, even if not demonstrably false as a matter of state or federal law, was arbitrary and capricious."). The D.C. Circuit remanded the matter back to

the STB for further proceedings consistent with that conclusion.

On remand, the STB vacated ECR's authorization to operate a railroad on the line:

> Because the Board now finds that ECR's verified notice at issue in this case was materially misleading, the exemption will be vacated. In its verified notice of exemption, ECR and its principal Engle made a simple and straightforward assertion: that ECR was acquiring, as part of a bankruptcy proceeding, rail assets and a rail easement owned by GNP, which would continue to be operated by Ballard. But as the court recognized, the facts surrounding the assertion were hardly simple or straightforward. Approximately one week before GNP went into bankruptcy, Engle, who at the time was a principal of GNP, purportedly deeded the easement at issue here to his wife and father (Joanne Engle and Earl Engle), … thereby raising serious doubts about whether GNP even owned the easement that ECR claimed it was buying. In his August 2018 reply to the County, Engle conceded that he had indeed transferred GNP's easement to his relatives just days before the bankruptcy proceeding was instituted. But he then asserted that the easement had been transferred back to GNP during the bankruptcy proceeding (in

which Joanne and Earl Engle identified themselves as creditors of GNP rather than owners of the easement). It is not clear whether that retransfer ever became effective; during the Board's proceedings, Engle included copies of certain transaction documents, but the deed (from Earl and Joanne Engle to GNP) did not appear to have been signed by all the relevant parties. What is clear is that the failure by Engle and ECR to inform the Board of these activities—all undertaken without appropriate authority and in the face of a bankruptcy proceeding—flouted the regulatory process in general and, in particular, undermined the notice-of-exemption process in this case.

The Board cannot confirm that all (or any) of these unauthorized transfers, re-transfers, and further transfers of the easement actually took place or were valid. But after reviewing the record and the post-remand submissions in light of the court's remand, the Board can confirm this much: ECR's verified assertion in its notice of exemption that this was just an ordinary transfer from one entity to another was materially misleading. Given the purpose of the class exemptions at § 1150.31—to permit routine and uncontroversial transactions to proceed with minimal regulatory supervision—the Board finds that it would not have permitted ECR's exemption to go forward had it known the full extent of Engle's dealings with respect to the Line.

Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY INC., Surface Transportation Board Docket No. FD 35692, Decision Served Dec. 22, 2020; 2020 WL 7640412 at 3-4; CP 364, 369-370 (citations omitted).[2] The Board concluded:

> Because ECR's notice of exemption contained misleading information, it is vacated as void ab initio. … Thus, Board authorization to own and operate the Line reverts to GNP, and, therefore, *the Line should be returned to GNP* (whose new owner says the company is willing to operate the Line).

2020 WL 7640412 at 5; CP 372 (citations omitted; emphasis added). No party timely appealed. *Id.*

On September 29, 2021, the STB issued another decision in which it found that Engle's purported transfers of the Easement were void:

> [T]he Board clarifies that, regardless of whether the unauthorized transfers of the Line's

[2] The Board characterized Mr. Engle as "treating the Line as if it were a personal possession that could be passed around at will without regard to the governing regulatory process." 2020 WL 7640412 at 5; CP 372.

> easement by Douglas Engle actually took place or were valid under state law, any such transfers of the Line's easement by Douglas Engle are void. The transfers were all undertaken without the required Board authority; neither Douglas Engle nor ECR has ever sought to obtain after-the-fact authority; and neither Douglas Engle nor ECR has taken any actions to correct the previous errors or remedy the misleading representations to the Board.

Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY INC., Surface Transportation Board Docket No. FD 35692, Decision Served Sept. 29, 2021; 2021 WL 4467636 at 3. The STB went on to clearly require return of title to the Easement to GNP:

> The Board further clarifies that its statements in the 2020 Decision that "Board authorization to own and operate the Line reverts to GNP" and that "the Line should be returned to GNP" meant that the Line's easement was to be conveyed to GNP, if any such conveyance was necessary in order to ensure that GNP owns the Line's easement. Because it appears that any necessary actions have not happened, the Board will now order ECR and Douglas Engle to take any action needed to constitute an effective conveyance of the Line's easement to GNP

> within 30 days of the service date of this decision and to certify to the Board that they have done so. … In the alternative, in light of GNP's argument that it still owns the Line's easement, … ECR and Douglas Engle may acknowledge to the Board, in writing, within 30 days of the service date of this decision, that, as of the date of such acknowledgment, GNP has title to the Line's easement *and that ECR and Douglas Engle make no claim to the contrary*.
>
> The Board does not look favorably on ECR and Douglas Engle's apparent disregard for the Board's requirements in these proceedings, including their response to date to the 2020 Decision. ECR and Douglas Engle should be aware that their failure to comply may result in civil monetary penalties.

2021 WL 4467636 at 3-4 (emphasis added).[3]

Finally, on March 8, 2022, the STB issued another decision directly addressing and batting down the jurisdictional argument upon which Appellants rely in this case:

[3] The STB in issuing this order did not purport to resolve the state law property rights issue of ownership of the Easement but rather, acted to cure a violation of its rules, effectuating its prior order voiding ECR's and Engle's authorization to obtain the line due to their material misrepresentations to the STB.

ECR has argued in the state appellate court that federal preemption under 49 U.S.C. § 10501(b) bars the state courts from ruling on state property law issues concerning property subject to this agency's licensing proceedings. That argument is clearly incorrect. Although federal preemption is broad, the Board has consistently held that disputes concerning state contract and property law should be decided by the appropriate courts with expertise in those matters, rather than by the Board. *See Gen. Ry.—Exemption for Acquis. of a R.R. Line—in Osceola & Dickinson Cntys., Iowa*, FD 34867, slip op. at 4-5 (STB served June 15, 2007) (denying petition to revoke because a contract dispute involved questions of state contract and property law better determined by state court); *V&S Ry.—Pet. for Declaratory Ord.—R.R. Operations in Hutchinson, Kan.*, FD 35459, slip op. at 6-7 (STB served July 12, 2012) (declining to address state property law issue because property interest dispute should be decided by a court applying state law). Indeed, as the Board has explained, the acquisition authority that the Board grants is permissive—it allows a party to acquire a rail line that is part of the interstate rail network—but, in order to exercise that authority, the party also must obtain the appropriate rights under state property and contract law to actually acquire the line (through purchase, lease, condemnation, or otherwise). *Great Walton R.R.—Pet. for Declaratory Ord.*, AB 1242 (Sub-No. 1), slip op.

> at 7-8 (STB served June 23, 2020) (and cases cited therein). Thus, in this case, a determination regarding the ownership of the Line's easement under state law, which has been a question from the beginning of this proceeding, is appropriately being made in the Washington state courts.

Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY INC., Surface Transportation Board Docket No. FD 35692, Decision Served March 8, 2022; 2022 WL 696819 at 3 (additional footnote citations omitted).

C. ECR and Engle largely ignored the quiet title proceedings and engaged in prolonged discovery misconduct resulting in sanctions and summary judgment.

From the filing the City's quiet title complaint on January 31, 2020, through grant of summary judgment on April 16, 2021, ECR and Engle largely ignored the proceedings. On June 22, 2020, they were each found to be in default for failure to answer. CP 128-130 (vacated subject

to payment of terms, CP 131-132). On September 15, 2020, they were sanctioned and ordered to respond to the City's discovery requests. CP 191-194. On October 8, 2020, upon Appellants' motion for reconsideration in which they asserted that the Superior Court lacked subject matter jurisdiction, that order was vacated by another judge, Judge Shaffer, pending determination of the question of subject matter jurisdiction, which the court noted was then set for hearing on December 11, 2020. CP 4-7.

On October 19, 2020, the Superior Court entered an order finding ECR and Engle in contempt of court for failure to comply with the order compelling discovery and imposed remedial sanctions. CP 8-11. The court noted: "Discovery is ongoing and cannot be delayed because of a pending motion on December 11, 2020 challenging justiciability." CP 10. Appellants sought reconsideration, which was denied. CP 287-290. In so doing, the court vacated the order vacating

the order compelling discovery. CP 289. Judge Spector noted: "The court is well aware of Judge Shaffer's orders putting the parties back to status quo. Defendants' motion is denied. Discovery shall continue immediately. Failure to follow this order will result in retroactive sanctions." CP 290.

On November 13, 2020, Appellants filed a motion to dismiss asserting lack of subject matter jurisdiction and noted the motion for hearing on December 11, 2020. CP 12. Before that motion could be heard, on December 7, 2020, counsel for Appellants withdrew, purporting to stay "of record for the limited purpose of receiving and conveying court notices to the clients." CP 341-342. The same day, the court notified the parties by email that the judge was unable to hear the motion to dismiss as scheduled and inquired whether the parties would agree that it could be heard without oral argument. The City and Appellants agreed. The

court then notified the parties by email that Judge Spector would be out until January 4, 2021, and instructed that the motion to dismiss be re-noted without oral argument after that date. Appellants never re-noted their motion to dismiss and it was not ruled upon. *See City of Woodinville v. Eastside Community Rail, LLC*, 510 P.3d 355, 358 (2022) (noting the parties' agreement as to these facts).

Meanwhile, on December 14, 2020, the court found Appellants in continued contempt and imposed the following discovery sanctions:

> 1. Pursuant to CR 37(b)(2)(A), it is taken as established for purposes of this action that neither ECR nor [Douglas] Engle possesses any legal interest in the freight rail easement at issue in this case.
>
> 2. Pursuant to CR 37(b)(2)(C), any answer filed by ECR and/or [Douglas] Engle in this case is hereby stricken.
>
> 3. Pursuant to CR 37(b)(2)(B), ECR and [Douglas] Engle are each precluded from defending the City's action or introducing

> evidence with respect to ownership of the freight rail easement at issue in this case.

CP 67. The order also assessed remedial sanctions against ECR in the form of forfeiture of $1000 per day for each day that it was in contempt of court to that point, and $2000 per day for each additional day that ECR remained in contempt thereafter. CP 67.

On March 19, 2021, the City and GNP filed and noted a motion for summary judgment for hearing on April 16, 2021. CP 343-360. Appellants did not oppose that motion and did not appear for that hearing, CP 69-70, and the court granted summary judgment to the City and GNP. CP 71-75.

D. All other defendants disclaimed any legal interest in the easement.

Earl Engle and Joanne Skievaski each executed declarations disclaiming any ownership interest in the Easement. CP 28, 30. Telegraph Hill Investments, LLC ("THI") was found in default for failure to appear or answer.

CP 130. However, in a purported answer to the City's complaint, which does not appear to have been filed with the Superior Court but was executed by Engle, he asserted that THI "has no ownership interest in the Easement." CP 104, 121.

In a declaration submitted by Ballard Terminal Railroad Company, LLC ("BTRC") it disclaimed any legal interest in the Easement, noting that it had ceased rail operations on the line and that BTRC, with ECR, had been stripped of authority to operate a railroad on the line. CP 361-362.

Finally, NW Signal and Kucera (with the exception of his role as President and owner of GNP) each stipulated that they possessed no legal interest in the Easement. CP 354.

E. The Court of Appeals affirmed.

Noting the STB's clear position on the extent of its preemptive authority as applicable to a state law quiet title

action, and the great weight accorded by Washington courts to an agency's interpretation of an ambiguous statute, the Court of Appeals found that the Superior Court had subject matter jurisdiction to decide the City's quiet title complaint. *City of Woodinville v. Eastside Community Rail, LLC*, 510 P.3d 355, 359-61 (2022).[4]

The Court of Appeals also rejected Appellants' justiciability argument, finding that the City's interest as owner of property burdened and encumbered by the Easement was cognizable under RCW 7.28.010 (quiet title) and RCW 7.24.010 (declaratory judgment). 510 P.3d at 361-62 and n.8.

Accordingly, the Court of Appeals affirmed.

[4] In so doing, the Court of Appeals disposed of Appellants' argument that the Superior Court failed to rule on whether it had subject matter jurisdiction, noting Appellants' failure to renote their motion to dismiss as instructed by the court, and Appellants' failure to oppose the City's motion for summary judgment. "Even assuming the trial court erred by failing to rule on the issue, any error is harmless as this court has reached the question and concluded that the superior court had subject matter jurisdiction to hear the case." 510 P.3d at 361 n.7.

III. ARGUMENT

The issues raised by Appellants do not satisfy any of the RAP 13.4(b) considerations governing acceptance of review by the Supreme Court.

A. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court or a published decision of the Court of Appeals.

In making a case for the applicability of these considerations, Appellants rely solely on the argument that the Court of Appeals decision conflicts with decisions of the Supreme Court and published decisions of the Court of Appeals "requiring that courts comply with CR 12(3) and only exercise jurisdiction over cases on which jurisdiction lies." Petition for Review at 13.

The Court of Appeals squarely addressed the question of subject matter jurisdiction, recognizing that federal preemption could deny a state court subject matter jurisdiction in some circumstances, but finding no such

preemption of state courts' clear statutory authority to resolve issues of property rights under state law. In reaching that conclusion, the Court of Appeals noted the STB's clear and firm statements that resolution of this issue "is appropriately being made in the Washington state courts," and cited federal court decisions with respect to the extent of the STB's preemptive authority. 510 P.3d at 359-61.

Appellants fail to identify any decisions of the Supreme Court or Court of Appeals that are in conflict with the Court of Appeals' opinion in this case. The considerations referenced in RAP 13.4(b)(1) and (2) are not applicable and do not support acceptance of review.

B. No significant question of law under the Constitutions of Washington or the United States is involved.

In making a case for the applicability of this consideration, Appellants rely solely on the argument that federal preemption is based on the Supremacy Clause of the

United States Constitution. Petition for Review at 13. While that may be true, there is no Supremacy Clause issue if there is no preemption, and the federal case law and STB orders relied upon by the Court of Appeals unambiguously establish that there is no federal preemption of state courts' authority to resolve state law property rights issues. The consideration referenced in RAP 13.4(b)(3) is therefore not applicable and does not support acceptance of review.

C. No issue of substantial public interest is involved.

In making a case for the applicability of this consideration, Appellants rely solely on the argument that "abuse of power by municipal corporations and deprivation of property rights is a grave abuse that demands repair" by the Supreme Court. Petition for Review at 13.

Abuse of power by the City is not an issue that was raised by Appellants in the Court of Appeals. Aside from broadly complaining about the City's having brought a quiet

title action and about the courts' decisions with respect to that action and Appellants' uncured contempt of court for discovery misconduct, Appellants articulate no cognizable basis upon which to recognize this theory as one favoring acceptance of review.

Nor do Appellants articulate what they mean by "deprivation of property rights." They offer no evidence or legal theory for their having been subjected to such a "deprivation." Appellants were properly precluded by the Superior Court from offering evidence of ownership because they engaged in protracted discovery misconduct, including ignoring multiple orders of the Superior Court and failing ever to cure their contempt. Moreover, the STB—the agency that Appellants insist has preemptive authority over ownership of the Easement—has issued decisions, quoted at length above, clearly holding that Appellants have no federal authority to own the Easement; holding that GNP has the

authority to own the Easement under federal law; and ordering Appellants to convey the Easement to GNP or to acknowledge GNP's ownership and disclaim any interest in it.

Appellants' unsupported references to abuse of power and deprivation of property rights do not establish a substantial issue of public interest. The consideration referenced in RAP 13.4(b)(4) is therefore not applicable and does not support acceptance of review.

IV. CONCLUSION

For the reasons set forth herein, the Supreme Court should decline to accept review.

RESPECTFULLY SUBMITTED this 5th day of August, 2022. We certify that this memorandum contains 4583 words, in compliance with the RAP 18.17.

HAGGARD & GANSON LLP

By: Jeffrey Ganson, WSBA #26469
Attorneys for City of Woodinville

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022, I caused to be electronically filed the foregoing Answer to Petition for Review, to which this Certificate of Service is attached, with the Clerk of the Court, which will send notification to the following:

Jami K. Elison, WSBA No. 31007
jami@tclg-law.com
The Collins Law Group
Attorney for Appellants Eastside Community Rail, LLC and Douglas Engle

David P. Rossmiller, WSBA No. 36491
drossmiller@chartwelllaw.com
Kelsey Terry, WSBA No. 52417
kterry@chartwelllaw.com
Chartwell Law
Attorneys for Respondent GNP RLY, Inc.

By: Jeffrey Ganson, WSBA #26469
Attorneys for City of Woodinville

HAGGARD & GANSON LLP

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- mtaylor@chartwelllaw.com

Comments:

Sender Name: Jeffrey Ganson - Email: jeff@haggardganson.com
Address:
19125 N CREEK PKWY STE 120
BOTHELL, WA, 98011-8000
Phone: 425-329-2611

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