74703-7

No. 74703-7

COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION I

STEVE SWINGER,

Appellant

v.

DOUGLAS J. VANDERPOL,

Respondent

RESPONDENT'S RESPONSE TO APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Respondent Douglas J. Vanderpol ("Vanderpol") substantively denies and disputes that the Trial Court committed any error. Vanderpol also takes exception to Assignments of Error Nos. 1-3 because in each, Appellant Steve Swinger ("Swinger") seeks reversal of the Trial Court's decision denying his "cross-motions" for substantive relief on his claims for unjust enrichment, tortious interference with contract and abuse of process. In fact, the only motions ever filed in the action were those of Vanderpol, including: (1) Defendant Douglas J. Vanderpol's Motion for Summary Judgment to Dismiss All Claims and Award Statutory Damages, Attorneys' Fees and Costs ("Motion for Summary Judgment"); and (2) Defendant Douglas J. Vanderpol's Motion for Entry of Final Judgment and Establishment of Statutory Damages and Attorneys' Fees ("Motion for Entry of Judgment"). Thus, there was never any motion made by Swinger on any of his claims or any corresponding order that can be appealed. Assignments of Error Nos. 1-3 should therefore be stricken.

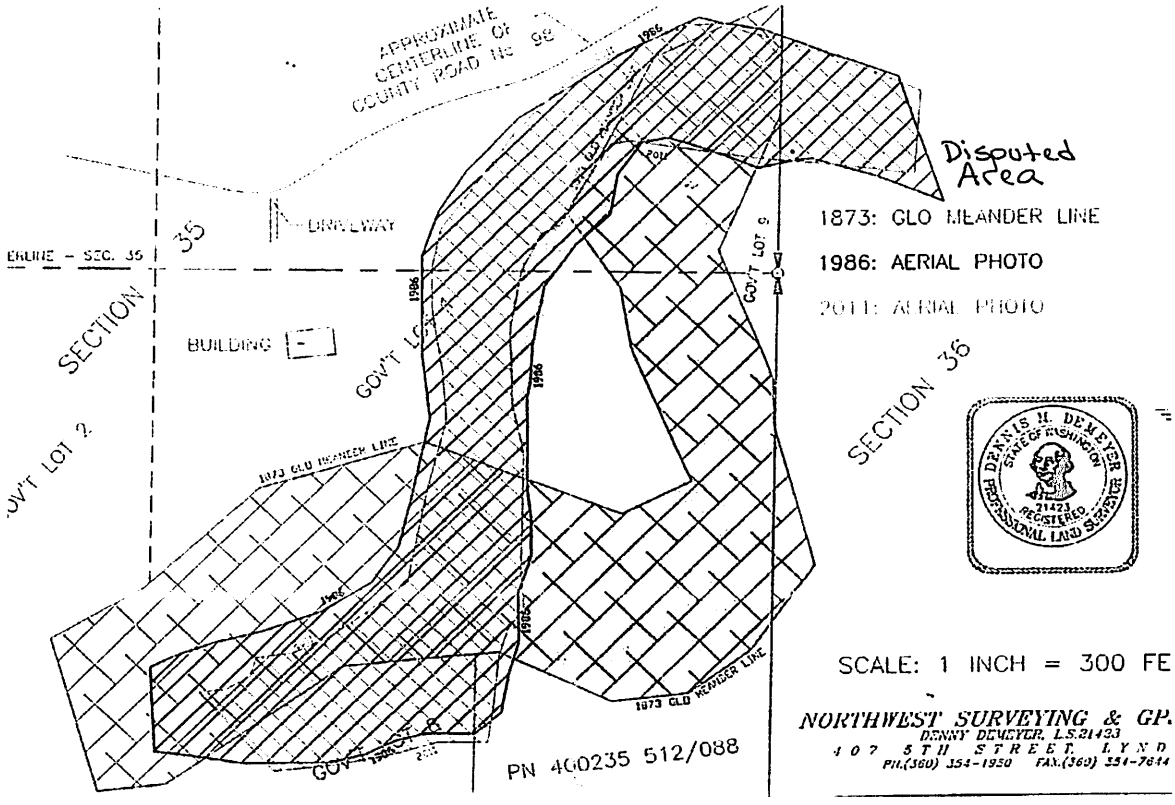
II. STATEMENT OF THE CASE

Vanderpol respectfully disagrees with Swinger's rendition of the evidence in this record, as it is incomplete and misstates the procedures

that occurred. He therefore provides a supplemental Statement of the Case. RAP 10.3(b).

A. The Properties and Attempts by Swinger to Enter the CREP.

Vanderpol and Swinger own government lots that are located on the opposite sides of the Nooksack River. As is typical, the banks of the Nooksack River have moved over the years, as is shown on the map below, which identifies the location of the beds of the river in that area of the Swinger and Vanderpol properties on three different occasions: (1) the meander line from 1873; (2) an aerial photo from 1986; and (3) an aerial photo from 2011:



CP 90.

This dispute started when Swinger approached the Whatcom Conservation District ("District") and sought to place his property and the Disputed Area in the Conservation Reserve Enhancement Program ("CREP"). The CREP is a land retirement program in which property owners are paid to commit agricultural lands for preservation. The CREP is administered overall by the United States Department of Agriculture's Farm Service Agency ("FSA"), while the District "provides the technical

support and project planning" at the local level. CP 92. The principal use of the CREP under the District's program is to convert agricultural properties to riparian buffers along fish bearing streams and rivers. CP 91. This is generally accomplished through the execution of 10- or 15-year term contracts in which a property owner is paid to convert property from agricultural use to a riparian vegetative use. CP 92.

The District is a local governmental agency created under the authority of RCW Chapter 89.08. As defined by the statute:

> 'District', or 'conservation district' means a governmental subdivision of this state and a public body corporate and politic, organized in accordance with the provisions of chapter 184, Laws of 1973 1st ex. sess., for the purposes, with the powers, and subject to the restrictions set forth in this chapter.

RCW 89.08.020; see also RCW 89.08.220. (Emphasis added).

When Vanderpol found out about Swinger's plan to commit the Disputed Area into the CREP, he advised the District that he owned the Disputed Area. In each and every communication, Vanderpol merely asserted that he had a claim of title to the Disputed Area, and therefore Swinger should not be allowed to commit this portion to the CREP. CP 94-98. Swinger claims that the District refused to enter the lease with him because of Vanderpol's assertion of ownership of the Disputed Area.

B. The State Action Filed by Swinger.

In addition to seeking to enter the CREP, Swinger also filed a lawsuit pro se, against First American Title Insurance Company ("FATCO") on July 10, 2009, under the caption Swinger v. First American Title Insurance Company, et al., Whatcom County Superior Court Cause No. 09-2-01904-1 ("State Action"). In this case, Swinger sought damages caused by FATCO's alleged failure to disclose the existence of two easements in a title report issued when he originally purchased his Government Lot 1. CP 99-104.

Swinger then filed a "supplemental pleading" seeking to amend his complaint to add a claim for breach of the title report's provision calling for disclosure of any property that was land locked. This "claim" was based upon an assertion by Swinger that he owned the Disputed Area, that he could not gain access to this area, and this should have been disclosed in the title report. As alleged by Swinger:

> Three acres of the property east of the river [Disputed Area] are not accessible by vehicle and pedestrian access. No notification of this covered risk was provided in the title report. Therefore the defendant again breached the contract.…

CP 106.

In a Declaration to Support Motion to Amend and Supplement the Pleadings, Swinger clearly identified the Disputed Area as that to which he was claiming to own via avulsion, and to which FATCO failed to disclose as being landlocked: "There are three (3) acres of my property that are without legal access because the Nooksack River (50 yards wide at this point) separates the two areas." CP 132.

On September 15, 2011, FATCO filed a Second Motion for Partial Summary Judgment, seeking an "Order dismissing Plaintiff's claims relating to access for property lying across the Nooksack River to the east of Plaintiff's property and related Unfair Claims Practices Act violations associated with said claim based on Plaintiff's lack of ownership of such property." CP 134. In the supporting memorandum, FATCO first pointed out that Swinger's deed title set his property as that area "lying South of the River Road and Northwesterly of the Nooksack River…." CP 146. FATCO then argued that the physical location of the deed boundary was the current location of the banks of the river, not a preexisting location, since any movement of the river over time occurred through "accretion" not an "avulsion." Id. In response, Swinger argued that he owned the Disputed Area because the river had moved through avulsion. CP 156.

On October 14, 2011, Judge Charles Snyder issued an Order on Defendant's Second Motion for Partial Summary Judgment, ruling that: "Plaintiff's claims relating to access for property lying across the Nooksack River to the east of Plaintiff's property [Disputed Area] and related Unfair Claims Practices Act violations associated with said claims are hereby dismissed based on Plaintiff's lack of ownership of such property…." CP 163. On October 27, 2011, Swinger filed a Motion for Reconsideration of Summary Judgment Decision, CP 165-166, which was stricken by court order on December 2, 2011. CP 167-168. The State Action was then dismissed with prejudice on March 1, 2012. CP 169-170.

C. The Action Filed by Vanderpol.

Given Swinger's persistent contention that he owned the Disputed Area, on May 3, 2012, Vanderpol commenced a lawsuit against Swinger and the United States under the caption Vanderpol v. Swinger and The United States of America, United States District Court, Western District of Washington, Case No. 2:12-cv-773-MJP ("The Action). In this case, Vanderpol sought to quiet title in the Disputed Area as to Swinger, and to establish that portion of the Disputed Area that was owned by the United States. The United States owns the property adjacent to Vanderpol (Government Lot 9), and therefore the movement of the Nooksack River

necessarily altered the common boundary line between the properties. Thus, Vanderpol had no choice but to name the United States, since its boundary lines would be determined as part of the quiet title action. In opposition, Swinger denied that Vanderpol and/or the United States owned the Disputed Area, but instead argued that he owned it through avulsion. He also stated a counterclaim against Vanderpol for unjust enrichment based upon his loss of the CREP contract when Vanderpol asserted his ownership interest to the Disputed Area.

In the Action, Judge Pechman issued two substantive rulings that are persuasive in this case. First, Vanderpol moved for summary judgment to have Swinger's claim for unjust enrichment dismissed pursuant to RCW 4.24.510 which prohibits a party from seeking recovery against another based upon communications with a governmental entity. On August 8, 2012, Judge Pechman issued an order granting such relief:

> Here, Vanderpol is immune from liability because Swinger's allegations stem from Vanderpol's communications with the District, which is a 'governmental subdivision of this state.' RCW 89.08.020. Specifically, Swinger alleges Vanderpol notified the CREP program that the land Swinger sought to commit may not actually be Swinger's. (Dkt. No. 16) While Swinger argues the Anti-SLAPP statute does not apply because Vanderpol's communication did not relate to any 'wrongdoing' by Swinger and/or any issue of reasonable concern to the agency, both arguments are misplaced. Swinger sought to

> enter the CREP program in order to obtain government funds in exchange for committing the Disputed Land to a particular use. This is a substantive issue of some public interest or social significance. … Regardless if Vanderpol was attempting to profit financially, title to the land promised for the CREP program is a reasonable concern to the agency. The Court finds Vanderpol's communications with the District are immune from liability.

CP 173-174. The Court then awarded Vanderpol $10,000.00 in statutory damages under RCW 4.24.510, and Vanderpol's attorneys' fees and costs. CP 174.

Then, on December 17, 2012, Judge Pechman dismissed all counterclaims and affirmative defenses raised by Swinger claiming right, title, or interest in the Disputed Area because he was collaterally estopped from making this contention given Judge Snyder's order in the State Action: "The Court agrees that collateral estoppel precludes Defendant Swinger's counterclaims and defenses." CP 184. Thereafter, the United States and Vanderpol stipulated to a common boundary line between them as to the Disputed Area, and a final judgment was entered. CP 187-192.

Swinger appealed this judgment, and the Ninth Circuit reversed the judgment, but only on the single conclusion that the District Court lacked subject matter jurisdiction to hear the case under the Quiet Title Act, 28 U.S.C. § 1346(f) and/or § 2409a. CP 193-196. According to the Ninth

Circuit, the United States had not sufficiently claimed an interest in any portion of the Disputed Area by the time the Action had been commenced. Id. Thus, the Ninth Circuit did not review, or reverse, any of the substantive decisions made by Judge Pechman.

D. Procedural History of This Case.

Despite the historical results against him, Swinger filed this action, in which he states three claims against Vanderpol: (1) unjust enrichment arising out of Vanderpol's use of the Disputed Area; (2) abuse of process based upon Vanderpol's filing of the Action; and (3) tortious interference with contract arising out of Vanderpol's assertion of ownership of the Disputed Area when Swinger attempted to place it into the CREP. Vanderpol immediately responded to these claims by filing the Motion for Summary Judgment, seeking dismissal of each claim, and an award of $10,000.00 in statutory damages and attorneys' fees in terms of the tortious interference claim, because if violated Washington's Anti-SLAPP statute, RCW 4.24.510. A hearing was held on February 5, 2016, and the Trial Court granted the Motion for Summary Judgment. CP 65-67. Given the complete resolution of the claims, Vanderpol thereafter filed the Motion for Entry of Judgment, in which a Final Judgment was entered

dismissing all of Swinger's claims with prejudice, and awarding Vanderpol $10,000.00 and $4,441.00 in attorneys' fees and costs.

At no time did Swinger file any "motion" seeking determination on any of his claims. Thus, his contentions that the Trial Court erred by failing to grant his "cross-motions" for substantive relief are facially without merit.

III. DISCUSSION

This Court reviews the appeal of summary judgment de novo, meaning the review is the same as the Trial Court. Lybbert v. Grant County, State of Washington, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most favorable to the non-moving party. Id. If there is no genuine issue of material fact, summary judgment be granted. Id.

A. The Trial Court Properly Dismissed Swinger's Unjust Enrichment Claim Based Upon Collateral Estoppel.

Swinger argues that there are "facts" that establish his ownership of the Disputed Area.[1] Ultimately, these "facts" are irrelevant. There is

[1] Interestingly, Swinger highlights as proof of his ownership, the fact that Vanderpol included a claim for, inter alia, adverse possession as a basis to quiet title in the Disputed Area in the Action: "The mere filing of a claim in Federal Court of adverse possession is an admission that Vanderpol knows he does not own the UE property and the Federal Government never claimed ownership." Swinger Appellant Brief, p. 7. Although arguments and alleged evidence of his ownership of the Disputed Area is ultimately irrelevant, it is worth noting that Vanderpol stated the adverse possession claim as an

no dispute that Swinger's claim for unjust enrichment is dependent upon an underlying premise that he should be compensated for Vanderpol's use of the Disputed Area because he owns the Disputed Area. This claim fails, just as Swinger's ownership claims in the Action, because his claim is precluded by "non-mutuality" collateral estoppel.

Although Washington used to require mutuality of parties to apply collateral estoppel, this requirement has been eliminated and replaced by the availability of "non-mutual" collateral estoppel. This doctrine "occurs when a defendant seeks to prevent a plaintiff from re-litigating an issue previously litigated in an action against a different party." Casco Marina Development, LLC v. M/V Forrestall, 384 F.Supp.2d 154, 159 (D.C. D.C. 2005). Non-mutual collateral estoppel applies when:

> (1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and (4) application of [the] doctrine must not work an injustice.

State v. Bryant, 146 Wn.2d 90, 98-99, 42 P.3d 1278 (2002).

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alternative basis to establish title to the Disputed Area. The ultimate reason the federal district court quieted title in the Disputed Area to Vanderpol and the United States was their deed title, and movement of the Nooksack River by accretion.

The issues here are identical, i.e., whether Swinger owns the Disputed Area. Swinger argues that such does not exist because the issue in the State Action was whether FATCO failed to disclose a defect in his title. However, he follows this statement with the admission that "Swinger had to establish ownership of the eastern property [Disputed Area] to establish his breach of contract claim." Swinger Appellate Brief, p. 12. Thus, ownership of the Disputed Area was a necessary element to Swinger's claim in the State Action.

Second, the issue in the State Action resulted in a determination that Swinger did not own any of the Disputed Area pursuant to a summary judgment. A ruling on a summary judgment is a "final ruling" for application of collateral estoppel. Bunce Rental, Inc. v. Clark Equipment Company, 42 Wn.App. 644, 648, 713 P.2d 128 (1986); see also In re Estate of Black, 116 Wn.App. 476, 485, 66 P.3d 670 (2003) ("Summary judgment is res judicata as to the parties' rights.").

Swinger contends there was no "final judgment" in the State Action because the Trial Court only concluded that he had not met his burden of proof of ownership. Swinger's ownership was an element of his claim, and his failure to prove this element constitutes an adjudication on the merits.

He then argues that the State Action eventually culminated in a "dismissal" of the case pursuant to some undisclosed settlement. The Order of Dismissal of Plaintiff's Complaint ("Order of Dismissal") in the State Action was "with prejudice," which constitutes a final order from which collateral estoppel can apply. See State, Dept. of Ecology v. Yakima Reservation Irr. Dist., 121 Wn.2d 257, 290, 850 P.2d 1306 (1993). The Order of Dismissal was preceded by the actual litigation of Swinger's ownership rights that led to the order on summary judgment, which is the ruling that triggers application of collateral estoppel.

The ruling in Cunningham v. State, 61 Wn.App. 562, 811 P.2d 225 (1991) is controlling. There, the passenger of a vehicle driven into a concrete bollard originally sued, inter alia, the United States for alleged deficiencies in the design of road signage, lighting, and striping. The claim against the United States was dismissed on summary judgment based upon the discretionary function exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a). The passenger settled his remaining claims.

The driver of the vehicle thereafter sued his counsel for malpractice in Washington state court for failing to timely file an action for the accident against the United States. His former attorney sought and obtained dismissal of the malpractice claim based upon collateral estoppel

arising from the partial summary judgment awarded to the United States in the passenger's action. On appeal, the driver argued that the summary judgment order for the United States was not "final" because it was not an appealable order. The Washington State Court of Appeals disagreed because "finality" for purposes of collateral estoppel did not mean "appealability" under CR 54. Id. at 566.

The court identified the factors to consider in determining whether a prior order is "final" for purposes of collateral estoppel:

> [w]hether the requisite firmness is present include whether the prior decision was adequately deliberated, whether it was firm, rather than tentative, whether the parties were fully heard, whether the court supported its decision with a reasoned opinion, and whether the decision was subject to appeal or in fact was reviewed on appeal.

Id. at 567 (citing Restatement (Second) of Judgments, § 13, comment g (1982)). Based upon these factors, the Court of Appeals upheld application of the doctrine to the order on summary judgment:

> Cunningham fully and vigorously litigated the discretionary function exception issue in the first proceeding. The federal judge considered the question and issued a written opinion outlining her reasons for finding the discretionary function exception applicable. The judge was firm in her decision; she denied both Cunningham's and McBride's motions for reconsideration. Moreover, the issue decided was a purely legal one governed solely by federal law. A federal judge's decision on such an issue commands special deference; it would, therefore, be a particular waste of

> judicial resources to relitigate the issue in state court. Accordingly, we affirm the trial court's conclusion that the federal court's partial summary judgment order was sufficiently firm to satisfy the requirements of collateral estoppel.

Id. at 569-70. The contended and fully litigated order on summary judgment in the State Action contained these same characteristics.

Finally, there is no injustice in applying collateral estoppel. Collateral estoppel will not be applied only if it will work a "manifest" injustice, which "means more than that the prior decision was wrong." State Farm Mut. Auto. Ins. Co. v. Avery, 114 Wn.App. 299, 306, 57 P.3d 300 (2002). Injustice only arises where a party lacks an "opportunity" to present evidence arising out of substantive exclusion of evidence or an inability to proofer the evidence. State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wn.App. 715, 346 P.3d 771, 776 (2015). Swinger fully and vigorously litigated the issue in the State Action.

Swinger contends injustice arises because in the State Action, he was denied the opportunity to introduce evidence demonstrating his ownership interest which was not considered in the summary judgment. In order to establish this claim, the alleged additional evidence must be presented to evaluate its importance, admissibility, and relevance. State Farm Fire & Cas. Co. v. Ford Motor Co., supra, 186 Wn.App. at 725-26.

Swinger has never identified what evidence he was prohibited from introducing. Moreover, Swinger had every opportunity to present evidence, and thus, has never contended or established that he was precluded from offering anything. Indeed, the evidence he offered at the Trial Court level, and to which he cites in his brief to establish his alleged ownership, is essentially the same as that produced in the State Action.

Swinger contends an injustice would occur because he was not sufficiently motivated to continue litigating his ownership in the State Action because he could not have foreseen that Vanderpol would claim ownership. This is factually incorrect, even if relevant. The Order of Dismissal was entered on March 1, 2012. By this time, he had received a January 9, 2012, letter from Farm Service Agency reporting that the CREP would not be granted for the Disputed Area based upon a claimed ownership interest by his neighbor. CP 54-55. He had also received a February 8, 2012, letter on behalf of Vanderpol, in the form of a "cc," which specifically claimed that Vanderpol owned the property that was the subject matter of the State Action. CP 51-52. Thus, Swinger was notified of Vanderpol's claimed ownership before agreeing to dismiss the State Action. The true question is whether or not Swinger had in the State Action "interests at stake that would call for a full litigational effort."

Hadley v. Maxwell, 144 Wn.2d 306, 312, 27 P.3d 600 (2001) (quoting 14 Lewis H. Orland & Karl B. Tegland, Washington Practice: Trial Practice, Civil, § 373 at 763 (5th ed.1996)). As the plaintiff in the State Action who admittedly needed to prove his ownership of the Disputed Area, such motivation was inherent.

He then argues that Judge Snyder failed to explain to him that he may be subject to collateral estoppel by failing to appeal the order finding that he did not own the Disputed Area. There is no injustice in applying collateral estoppel here, as it was not Judge Snyder's obligation to explain all of the potential implications to Swinger who chose to act pro se.

B. The Trial Court Correctly Dismissed the Abuse of Process Claim.

Although there is no dedicated section in his argument section as to the dismissal of his abuse of process claim, Swinger does maintain in the Statement of Case section that an abuse of process claim arises out of Vanderpol's filing of the Action because it was dismissed for lack of subject matter jurisdiction.

To prove abuse of process, Swinger must plead and prove "(1) the existence of an ulterior purpose to accomplish an object not within the proper scope of the process, and (2) an act in the use of legal process not

proper in the regular prosecution of the proceedings." Mark v. Williams, 45 Wn.App. 182, 191, 724 P.2d 428, rev. denied, 107 Wn.2d 1015 (1986). Under this standard, the "mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." Fite v. Lee, 11 Wn.App. 21, 27–28, 521 P.2d 964, rev. denied, 84 Wn.2d 1005 (1974). Moreover, there is no liability for filing a baseless lawsuit, or simply having the lawsuit carried to its regular conclusion. Batten v. Abrams, 28 Wn.App. 737, 749, 626 P.2d 984, rev. denied, 95 Wn.2d 1033 (1981).

Swinger failed to allege or present any evidence of an improper ulterior motive or any misuse of the legal process. This failure to plead or present such evidence required that the claim be dismissed with prejudice.

C. The Trial Court Properly Dismissed the Intentional Interference With Contract Claim and Awarded Statutory Damages and Attorneys' Fees Under the Anti-SLAPP Statute.

As with the abuse of process claim, Swinger does not include a dedicated section addressing dismissal of his intentional interference with contract claim, but does include the following Assignment of Error:

> 5. The trial court granted ANTI-SLAPP damages and fees. Vanderpol did not meet the statutory requirements for ANTI-SLAPP damages. Vanderpol complained to the government about the government not Swinger.

Swinger's Appellant Brief, p. 3. He also includes the following in his Statement of the Case:

> In February 2012, Vanderpol employed attorney, Mark J. Lee (Lee), who criticized the CREP program (cr 13…ex 11-1). The letter is addressed to CREP and contains the pronoun 'you' several times naming the program as the wrong doer not Swinger.

Id. at pp. 6-7. Thus, it appears that Swinger continues to argue that his intentional interference claim should not have been dismissed, and statutory damages and attorneys' fees awarded under RCW 4.24.510.

There is no dispute from Swinger that his tortious interference claim was based exclusively upon Vanderpol's contacts with the District in which he claimed ownership of the Disputed Area. RCW 4.24.510 absolutely prohibited the claim:

> A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory

> damages may be denied if the court finds that the complaint or information was communicated in bad faith.

The protection afforded by this statute is based upon the long-standing recognition that members of the public should be free to communicate with governmental agencies, without fear of being sued. The underlying purpose is explained in the legislative findings:

> Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

RCW 4.24.500. Thus, RCW 4.24.510 applies "when a person (1) 'communicates a complaint or information to any branch of federal, state, or local government, or to any self-regulatory organization,' that is (2) based on any matter 'reasonably of concern to that agency.'" Bailey v. State of Washington, 147 Wn.App. 251, 261, 191 P.3d 1285 (2008), rev. denied, 166 Wn.2d 1004 (2009) (quoting RCW 4.24.510). Both of these elements apply to Swinger's tortious interference claim.

Each of these elements exists in this case. First, the communications by Vanderpol relied upon by Swinger to recover lost

income from the allegedly terminated CREP contract were with District officials. The District is a local governmental agency. Finally, ownership of the Disputed Area was a concern of the District in determining whether a CREP contract should be entered with Swinger.

The propriety of applying the statute in this case is supported by Judge Pechman's conclusion that the statute applied to Swinger's claim for unjust enrichment, which was based upon the exact same communications relied upon here to seek recovery for tortious interference with a contract. The simplicity of the statute's application is shown by the analysis in Bailey:

> To obtain immunity under RCW 4.24.510, the claim against Ms. Lindholdt must be based on a communication she made to EWU 'regarding any matter reasonably of concern to that agency or organization.' Ms. Lindholdt complained about Ms. Bailey to EWU concerning several matters of reasonable concern to EWU. Thus, her communication falls squarely under the immunity provided by RCW 4.24.510.

Id. at 263. See also Phoenix Trading, Inc. v. Kayser, 2011 WL 3158416 (2011) (immunity extended to company writing letter to New York City Mayor complaining about tooth brush product purchased for use in jails).

Swinger's only contention is that Vanderpol's communications to CREP did not report any wrongdoing on his part. The general purpose

provision of the Anti-SLAPP statute does reference the desire to promote the communication of "wrongdoing." RCW 4.24.500. However, courts have specifically extended the applicability of RCW 4.24.510 to (1) "'a complaint or information to any branch of federal, state, or local government, or to any self-regulatory organization,' that is (2) based on any matter 'reasonably of concern to that agency.'" Bailey v. State of Washington, supra, 147 Wn.App. at 261 (quoting RCW 4.24.510); see also Lowe v. Rowe, 173 Wn.App. 253, 261-62, 294 P.3d 6 (2012) ("All that needed to be established to obtain immunity was for Mr. Rowe to demonstrate that he communicated to law enforcement concerning a matter within their responsibility."). This is consistent with the express language of RCW 4.24.510 which extends to the communication of "a complaint or information" to any governmental agency.

Swinger does not contend that Vanderpol's claimed ownership was not of interest to the District. He cannot, since the District specifically relied upon the claim to deny the contract:

> The Farm Service Agency will not determine ownership of the disputed property. Until this ownership issue is resolved, Per handbook 2-CRP paragraph 126B, funding will only be issued to the portion of the project on the west side of the Nooksack River.

CP 54.

Because of the ability to harm a person even by bringing a case where immunity arises, the legislature provided an unqualified right for a party needing to seek dismissal of an inappropriately filed claim to recover attorneys' fees and costs, along with statutory damages of $10,000.00. Entitlement to both is without any discretion: "A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars." RCW 4.24.510. Swinger does not dispute the awarding of such relief to Vanderpol.

D. Vanderpol Should Be Awarded Attorneys' Fees and Costs on Appeal Associated With the Intentional Interference With Contract Claim.

Pursuant to RAP 18.1, Vanderpol requests that he be awarded attorneys' fees and costs for this appeal pursuant to RCW 4.24.510, which provides that "A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars." Vanderpol requests that he be awarded

those attorneys' fees associated with responding to Swinger's appeal of the dismissal of his claim for intentional interference with contract.

IV. CONCLUSION

For the above reasons, the Trial Court's order granting summary judgment, and the Judgment should be upheld and attorneys' fees awarded to Vanderpol.

DATED this 6th day of May, 2016

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NO. 74703-7

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

STEVE SWINGER, Appellant, v. DOUGLAS J. VANDERPOL Respondent.	))))))))	Superior Court Cause No. 15-2-02282-9 PROOF OF SERVICE

SUZANNE M. COLLINS DECLARES AS FOLLOWS:

1. I am a paralegal with Brownlie Wolf & Lee, LLP, am over the age of 18, and make this declaration based upon personal knowledge and belief.

2. On May 6, 2016, I emailed to Appellant Steve Swinger at ss4409@comast.net and caused to be delivered to him via First Class United States mail, postage prepaid, a true and correct copy of Respondent Douglas J. Vanderpol's Response to Appellant's Brief at the following address:

Steve Swinger
583 River Road
Lynden, WA 98264

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge and belief.

May 6, 2016 Suzanne M Collins
Suzanne M. Collins

Bellingham, Washington