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SUPREME COURT REQUEST FOR DISCRETIONARY REVIEW

SUPREME COURT

OF THE STATE OF WASHINGTON

STEVE SWINGER,

PLAINTIFF – APPELLANT- APPLICANT

V.

Douglas Vanderpol

DEFENDANT – RESPONDANT

STEVE SWINGER (360) 303-8129

583 River Rd (subject property)

Lynden, Wa 98264

ss4409@comcast.net

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STATUTES

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Applicant, Steve Swinger, requests a Supreme Court review based on RAP 13.4 (b)(2)

Concerning Rap 13.4(c)(4) Citation of Court of appeals Decisions. Reference to the Court of Appeals decision which petitioner wants reviewed:
Unjust enrichment, tortuous interference with a contract and respondents Anti SLAPP counter claim. The date of the filing decision was December 27, 2016 and the date of the motion order for reconsideration January 18, 2017.

Concerning RAP 13.4 (c)(5) Issues for Review:
Unjust enrichment. The respondent, Vanderpol, in his complaint for adverse possession in a Federal Court complaint and in a letter to the Whatcom County CREP program stated that he owned and used a portion of Swinger's property for a period of 20 years. No payment was ever made to Swinger and he is demanding restitution on the theory of unjust enrichment.

Tortuous interference with a contract. Vanderpol in his letter of complaint about the activity of the CREP program on Swinger's property, stated that he owned a portion of Swinger's property

and as a result the CREP program cancelled a contract with Swinger. As a result Swinger lost the financial compensation that CREP was to pay Swinger for the use of his land.

Anti SLAPP violation. Respondent, Vanderpol, filed a cross complaint for Anti SLAPP compensation and attorney fees for Swinger's alleged wrong doing. Vanderpol was awarded the Anti SLAPP violation amount and attorney fees.

Concerning RAP 13.4 C (6) Statement of the case.

I UNJUST ENRICHMENT

Swinger filed a complaint against Vanderpol for unjust enrichment (UE) based on Vanderpol's use of Swinger property for 20 years without payment. Swinger also filed a claim for interference with a contract based on Vanderpol's claim to the CREP program that he owns the property that the CREP program determined was Swinger's property. Swinger's contract was cancelled based on Vanderpol's allegation of ownership.

Vanderpol file a cross complaint for an Anti SLAPP fee and attorney expenses.

Vanderpol defense against unjust enrichment and interference with a contract was that Swinger does not own the subject

property base on collateral estoppels.

Facts concerning unjust enrichment : Swinger has paid the taxes on the subject property for the past 10 years, therefore Swinger owns the disputed property based on the following statutes and evidence.

Washington State law "RC W 7.28.070 **Adverse possession under claim and color of title—Payment of taxes.** "Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for **seven successive** years continue in possession, and shall also during said time **PAY ALL TAXES LEGALLY ASSESSED** on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements,…..".

RCW 7.28.080 Color of title to vacant and unoccupied land.

Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section:

The appellant has paid the property tax for the past 10 years and his predecessor in ownership has paid the property tax as far back as the tax collector's records are available, 1985 (CP13… exh 4-1, 4-2, 4-3). A certified copy of those records has been provided as evidence of payment and ownership.

The Appellate Court's decision appears to be in direct conflict with the black letter law. No one else has paid the property tax or has proven they own the property. Additionally, the following preponderance of evidence (the only evidence) provided at the trial level or at any other time suggests any other owner.

Evidence that the subject property is owned by appellant, Steve Swinger, is as follows: (All documents attached to plaintiff's declaration in superior CP #13 provided by the clerk of the Superior Court.)

1.Grant deed. (exh 1)

2 County Department of Public Works, River and Flood section, declaration stating ownership of the property on the east side of the river and map showing the property tax number on the east and west side of the river (exh 2). (This agrees with the following item #s 3, 4, and 5 below.) The relevance of the 14.76 acres is that it takes Swinger's land on the east and west side of the river to comprise the 14.76 acres.

3 County assessor's map showing the Swinger property contains 14.76 acres. (exh 3)

4. History of property tax records indicating that the property ownership of 14.76 acres. (exh 4)

5 .Swinger's property tax bill showing ownership and total

acreage of 14.76 acres. (exh 5)

6.County CREP program map and declaration showing ownership and plan for planting vegetation on the east side of the river. (exh 6

7.Easement 790220 is recorded on the Swinger property and states the easement is on the north and south side of the river. The only property owned by Swinger on the south side of the river is the unjust enrichment area.(ex7)

8 .A survey by Denny DeMeyer showing that the unjust enrichment area is part of Swinger's legal description and ownership. The map's section lines indicate the east and west boundary of Swinger's property. This survey supports the county agency's declarations and maps evidencing Swinger's ownership. (exh 9)

9. The County Tax Assessor's appraisal of the property includes 14.76 acres. (ex 10)

10. Private licensed appraiser, Tom Langley, also shows the 14.76 acres in his appraisal. (ex 11)

Based on the above evidence Swinger demands restitution for Vanderpol's 20 yeaars use of Swinger's property.

II TORTUOUS INTERFERENCE WITH A CONTRACT

CREP, a county agency funded by the Federal Farm Agency, created the map (CP 13 exh 6) of the Swinger property

boundaries, staked out the boundaries, and contracted for vegetation planting independently of any Swinger activity. Swinger's only act in the process was the signing of the contract prepared by CREP.

In December 27, 2011, the CREP program received a letter (CP 13... Ex 10) from Attorney Terpstra expressing Vanderpol's concerns about the possibility of the vegetation being planted on the north boundary of Vanderpol's property, the southern edge of the UE property. Upon receiving the attorney's letter, CREP ceased work on the project.

In February 2012, Vanderpol employed another attorney, Mark J. Lee (Lee), who criticized the CREP program (CP13...ex 11-1) and stated that Vanderpol had used the entire eight (8) acres, the UE property, for 20 years to graze his cattle during certain times of the year. Shortly after Lee's criticism and litigation threat letter, the Federal Farm Agency, the funding source for the CREP project, informed Swinger that they were not going to complete the part of the project (CP #13 exh 12) on the east side of the river. This interference is tortuous and cost the plaintiff the contract total amount of $54,370 for the10 year contract (CP 13... ex 13). Appellant requests this amount as restitution plus interest until paid.

III ANTI SLAPP STATUTE

Vanderpol did not flag "potential wrongdoing" by Swinger when he communicated with CREP. In Vanderpol's letter December 22, 2011 (CP 13 ...exh 10-1) to CREP Lee stated; " Vanderpol is very concerned that the CREP bank protection plantings for the Swinger Project appears to be impacting the northwestern portion of his property.....".

Swinger only applied for the program. That is not "wrongdoing". The CREP program surveyed the property, mapped out the planting, and contracted for the work to be performed. Please review the attached letter dated February 8, 2012 from Mr. Lee that was written and directed to the government "wrongdoing".

Notice and marked in this letter Mr. Lee refers to the CREP proposal , not Swingers. The letter also states: "...Vanderpol maintains that he owns the disputed area". That is not good faith because Vanderpol has never proven he owns the disputed area.

RCW 4.24.500 Good faith communication to government agency—Legislative findings—Purpose.

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.
[1989 c 234 § 1.]
NOTES:

Intent—2002 c 232: "Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of **some public interest or social significance**. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

There is no public interest or social significance when the disputed property lies only between two parcels of land owned by the litigants.

The denial of the collateral estopple defense clears the way to Swinger's appeal for unjust enrichment and tortuous interference with a contract.

IV ARGUMENTS

RCW 13.4 C (7) reasons why review should be accepted under one or more tests under section (b).

Unjust enrichment: Under section (b) (2) the Court of Appeals is in conflict with a published decision of the Court of Appeals.

The following first two Appellate Court decisions are exactly the same as Swinger's appeal to the Appellate Court for their review of this case.

1.*Marquardt v. Federal Old Line Insurance Co.*, the Court of Appeals held that "collateral estoppel should not be applied to judgments of dismissal...based on settlement agreements." 658 P.2d 20, 22-23 **(Wash. Ct. App. 1983)**.

Vanderpol's attorney argued that collateral estoppel applied to this litigation is based on a case between Swinger v. FirstAmerican Title Insurance Co. (FATCO). But, that case never went to trial and resulted in a settlement agreement (The agreement was provided to the Appellate Court). Therefore, the Appellate Court's decision in this case is in conflict with their prior decision in the above noted Marquardt case. The Supreme Court review is appropriate based on section 13.4(b) (2). Swinger's request for restitution for unjust enrichment is appropriate.

2 Under Washington law, "a consent judgment cannot be given collateral estoppels effect because the issues resolved were not litigated." *Pederson v. Potter*, 11 P.3d 833, 836 **(Wash. Ct. App. 2000)**.

The Supreme Court has said: "We hold that the issue whether a landowner has been deprived of all economical viable use of his property is a predominantly factual question....In actions at law otherwise with the purview of the Seventh Amendment, this question is for the jury" Monterey v. Del Monte Dunes at Monterey, Ltd, 526 U.S. 687, 720-721 (1999).

The Appellate court reasons that the collateral estoppels relates to the partial summary judgment between Swinger and FATCO. In that partial summary judgment the trial court left open the

possibility that Swinger **"may** in fact own the property **"** (the exact trial court transcript of the statement is on the bottom of page page #7 of the unpublished opinion filed December 27, 2016) if he could find "reliable evidence" to support that claim at the jury trial. The denial of a partial summary judgment was not a final decision if not made with prejudice.

Therefore, the Appellate Court's decision in this case is in conflict with their prior decision in the above noted Pederson case because Swinger v. FATCO was not litigated. Supreme Court review is appropriate based on section 13.4(b) (2). The denial of collateral estoppels as a defense results in Swinger's UE claim being appropriate. Swinger requests restitution for unjust enrichment.

"Issues preclusion attached only when an issue of fact or law is actually litigated and determined by a valid and final judgment.....In the case of a judgment entered by confession, **consent**, or default, none of the issues are actually litigated."

3, 4 Therefore.....(issue preclusion) does not apply...." *Arizona v. California*, 530 U.S. 392, 414 (2000) (quotation omitted); see also 18A Charles A. Wright et al., Fed. Prac. & Proc. Juris. 4443 (2d ed.) ("The central characteristic of a consent judgment is that the court has not actually resolved the substance of the issues presented.")

This issues presented in this case are not "identical in all respect to the issue decided in the prior proceedings" (Swinger v. FATCO). Regan, 257 P.3d at 1127. And the facts in FATCO

were not determined on the merits.

In Swinger v. FATCO the issue was the breach of an insurance contract for not reporting easements in a title report. In Swinger v. Vanderpol the issue is unjust enrichment for a benefit without payment.

Tortuous interference with a contract. The Appellate Court denied Swinger's claim base on collateral estoppels. The arguments against collateral estoppels are the same in this cause of action as in the above argument for unjust enrichment. Again the Appellate Court decision is in conflict with a published opinion of the Court of Appeals. RAP 13.4(b)(2).

Anti-SLAPP ARGUMENT

Again the Appellate Court decision is in conflict with a published opinion of the Court of Appeals. RAP 13.4(b)(2).

"To determine the plain meaning of a statutory provision, [the Court] examine(s) not only the specific provision at issue, but also the structure of the statute as a whole, including its objective and policy." *Children's Hosp. & Health Ctr. V. Belshe*, 188 F.3d 1090, 1096 (9th Cir. 1999).

The "information" communicated to a government agency must concern "potential wrongdoing" under Section 4.24.500 for the statute to apply. *Gontmakher v. City of Bellevue*, 85 P.3d 926, 927 (Wash. Ct. App. 2004)

The objective of the Anti-SLAPP statute is to allow information relevant to the government concerning wrong doing by a member

of the public. What is the wrong doing by Swinger? Nothing.

Vanderpol did not flag "potential wrongdoing" by Swinger when he communicated with CREP. In Vanderpol's letter December 22, 2011 (CP 13 ...exh 10-1) to CREP Lee stated; " Vanderpol is very concerned that the CREP bank protection plantings for the Swinger Project appears to be impacting the northwestern portion of his property.....". To this date, Vanderpol though Lee has never alleged or proven any wrong doing by Swinger. And Lee's allegation is that it only "appears" to be impacting. Lee doesn't know for sure that the planting impacts Vanderpol's property. Vanderpol has the burden of proof that it does impact his property. The statute and the case law require wrong doing by the public (Swinger).

CONCLUSION

Vanderpol has benefited by using Swinger's property without payment, Vanderpol has tortuously interfered with the CREP contract, and Vanderpol has not proven the "wrong doing" elements for the anti-SLAPP statute to apply. Therefore, the appellant request an order for:

1. Vanderpol to pay the amount of $133,833.72 for unjust enrichment as of the date of the filing of the complaint plus 12% interest until paid in full.

2. Vanderpol to pay the amount of $54,370 for tortuous interference with a contract from the date of the filing of the complaint with interest at a rate of 12% until paid in full.
3. Vanderpol to pay all the appellants expenses for this appeal and the costs of the Federal Court action based on his abuse of the legal process and his unsuccessful result.
4. Denial of Vanderpol's request for anti-SLAPP fee and legal fees based on his lack of proving the elements required under the RCW statute.

APPENDIX

1. Appeals decision
2. Denial of motion for reconsideration

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEVE SWINGER, Appellant, v. DOUGLAS J. VANDERPOL, Respondent.	No. 74703-7-I DIVISION ONE UNPUBLISHED OPINION FILED: December 27, 2016

BECKER, J. — This is an appeal from an order of summary judgment resolving a dispute between neighboring landowners concerning a boundary set by the meandering Nooksack River. Because appellant's claims are barred on procedural grounds and unsupported by the record, we affirm.

Respondent Douglas Vanderpol owns land in Lynden on the east bank of the Nooksack River. Appellant Steve Swinger owns a plot of land on the other side of the river, to the north and west of Vanderpol's property. Swinger applied to participate in the federal Conservation Reserve Enhancement Program. The program pays property owners to commit their land for preservation efforts, such as planting vegetation along rivers to restore and protect fish habitat.

The Whatcom Conservation District, which administers the program locally, began developing a plan for preservation work on Swinger's property. The District created a map detailing where planting would occur. This map

showed planting on the Nooksack's east bank, across the river from Swinger's plot. Swinger claims to own an area of land on the east bank through avulsion, a process that occurs when a river rapidly changes course. Property boundaries remain in the center of the old river channel following avulsion. According to Swinger, the Nooksack abruptly changed course many years ago, causing land that was previously connected to his plot to become part of the east bank.

In December 2011, Vanderpol sent a letter to the District through his attorney, asserting that the land on the east bank that Swinger was attempting to commit for preservation belonged to Vanderpol. Whereas Swinger claimed to own the land through avulsion, Vanderpol claimed to own the same area through accretion or reliction. Both terms describe gradual additions to the land bordering on a river due to slow changes in the river's course. Vanderpol explained in his letter that if accretion or reliction occurs, "the boundary line of the property abutting the river also changes with the river course." He claimed he had been the "sole person occupying, maintaining and making use of the entire property at issue since 1989 when he first started using this area for a pasture area for his cows." He asserted that a survey was necessary to determine property boundaries.

The District suspended Swinger's application and did not proceed with the proposed planting. The District informed Swinger that he would not receive funding for preservation work on the east bank until the ownership issue was resolved. Vanderpol sent a second letter to the District in February 2012,

reasserting that he owned the area on the east bank that Swinger was attempting to commit to the program.

Around the same time, Swinger was involved in a lawsuit he had filed against his title insurance company. He claimed, "Three acres of the property east of the river are not accessible by vehicle or pedestrian access. No notification of this covered risk was provided in the title report." The court dismissed this claim on the title company's motion for partial summary judgment on October 14, 2011, because Swinger did not present facts that would prove his ownership of the three acres in question. Swinger did not attempt to obtain review of this ruling. The entire lawsuit against the title company was dismissed in March 2012, and Swinger expressly waived his right to appeal.

In May 2012, Vanderpol commenced a quiet title action in federal court to determine ownership of the area in dispute on the east bank. Vanderpol named Swinger and the United States as parties. The United States owns property next to Vanderpol's, and Vanderpol believed the ownership interests of the United States were also affected by changes in the Nooksack's course.

Vanderpol conceded that the disputed area was previously connected to Swinger's plot. He argued that through accretion or reliction, either he or the United States was the current owner. In the alternative, he argued ownership by adverse possession. Swinger denied Vanderpol's ownership. He asserted a counterclaim for unjust enrichment based on Vanderpol's use of the disputed area.

The federal district court determined it had subject matter jurisdiction under 28 U.S.C. § 1346(f), which grants district courts original jurisdiction over quiet title actions "in which an interest is claimed by the United States." On Vanderpol's motion for summary judgment, the court concluded that Swinger was estopped from relitigating whether he owned land on the east bank because the issue was decided in his suit against the title insurance company. Vanderpol and the United States entered into a stipulation regarding their boundary lines.

Swinger appealed. The Ninth Circuit Court of Appeals concluded that subject matter jurisdiction was lacking because the United States never claimed an interest in the disputed land, as required under 28 U.S.C. § 1346(f). The court vacated the summary judgment order and remanded with instructions to dismiss.

Acting pro se, Swinger then filed the current action against Vanderpol in Whatcom County Superior Court. The complaint alleges unjust enrichment, tortious interference with a contract, and abuse of process. Vanderpol moved for summary judgment, seeking dismissal of Swinger's claims. After a hearing on February 5, 2016, the court granted Vanderpol's motion. Swinger's claims were dismissed with prejudice and Vanderpol was awarded attorney fees and statutory damages. Swinger appeals.

We review summary judgment orders de novo. Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). All facts and any reasonable inferences therefrom are viewed in the light most favorable to the nonmoving party. Lybbert, 141 Wn.2d at 34. Summary judgment is proper when there is no genuine issue

as to any material fact and the moving party is entitled to judgment as a matter of law. Lybbert, 141 Wn.2d at 34.

We begin with Swinger's claim for unjust enrichment. The trial court dismissed it upon finding it was collaterally estopped by the ruling in Swinger's earlier suit against his title insurance company. In that suit, the ruling was made on a motion for partial summary judgment to dismiss Swinger's claim of access to property on the east side of the river. The court's written order stated the claims were "dismissed based on Plaintiff's lack of ownership of such property."

Swinger maintains that he owns the land on the Nooksack's east bank and Vanderpol's use of this area for grazing his cows constitutes unjust enrichment. He requests restitution plus interest. Vanderpol responds that the court properly dismissed the unjust enrichment claim based on collateral estoppel.

A party claiming unjust enrichment must demonstrate: (1) the defendant received a benefit, (2) the benefit was received at the plaintiff's expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment. Young v. Young, 164 Wn.2d 477, 484-85, 191 P.3d 1258 (2008). Here, Swinger's unjust enrichment claim relies on the premise that he owns property on the Nooksack's east bank. If he does not own the disputed area, he cannot demonstrate that Vanderpol received a benefit—using another's land without payment—at *Swinger's* expense.

The doctrine of collateral estoppel prevents Swinger from relitigating whether he owns land on the east bank if he already had a full and fair opportunity to present his case on this issue. Pederson v. Potter, 103 Wn. App.

62, 69, 11 P.3d 833 (2000), review denied, 143 Wn.2d 1006 (2001). The requirements for collateral estoppel are: (1) the issue decided in the prior action is identical to the issue in the second action, (2) the prior action ended in a final judgment on the merits, (3) the party to be estopped was a party or in privity with a party in the prior action, and (4) application of the doctrine would not work an injustice. Pederson, 103 Wn. App. at 69, citing Hanson v. City of Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993).

In Swinger's suit against the title insurance company, the court determined Swinger lacked evidence to prove his asserted ownership interest in "property lying across the Nooksack River to the east of Plaintiff's property." This issue is identical to the issue raised in the present case: whether Swinger can prove he owns the land on the east bank, such that he can claim unjust enrichment against Vanderpol for using that land.

Swinger contends the issue in his prior suit was "whether the title company had failed to disclose defects in title, including an easement on the property on the east side of the river," whereas the issue here is "whether Vanderpol benefited by the use of Swingers property without payment." Brief of Appellant at 12. While it is true that the cause of action was different, each lawsuit depended on Swinger's ability to prove the same factual issue: his ownership of land on the east bank. The first element of collateral estoppel is satisfied.

Regarding the second element of collateral estoppel, a reviewing court must determine whether the prior judgment is sufficiently firm. "Factors for a

court to consider in determining whether 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." Cunningham v. State, 61 Wn. App. 562, 567, 811 P.2d 225 (1991).

Swinger and the title insurance company submitted thorough briefing on Swinger's claim of ownership on the east bank. The transcript of oral argument on the company's motion for partial summary judgment shows that the court informed Swinger he had failed to prove ownership:

> [THE COURT:] I don't think that I have any evidence here that I can look at that's reliable that this Court could determine that that property belongs to you.
>
> . . . .
>
> Again, I don't think there's sufficient evidence, and I think that the only option that this Court has at this point in time is to deny any further motions to amend the pleadings to add new claims or to include that property across the river. There's no basis for it . . . .
>
> MR. SWINGER: Do I not own that property then? Is that what the Court is saying?
>
> THE COURT: You haven't proven to me that you do. You may, but you haven't proven to me, you haven't given to me anything . . . that's reliable evidence that I can look at that says you do. You don't have a document with a legal description that includes that property. . . .
>
> . . . .
>
> . . . nobody sold you anything on the east side of the river. There's no documents when you purchased the property that indicate that you purchased anything other than that property on the north side of the river. That's how your legal description reads.
>
> MR. SWINGER: But that legal description was made a hundred years ago when that river was somewhere else.
>
> THE COURT: I don't know that. I have no testimony to that effect at all. I have the legal description in your deed. That's all I have.

The written order on partial summary judgment, issued October 14, 2011, was firm: The court denied Swinger's claim based on his "lack of ownership" of property across the river. And it was not tentative. On March 1, 2012, the court reviewed and approved a stipulation for dismissal entered into between the parties, and dismissed the entire complaint with a written order stating:

> 1. All of Plaintiff Steve Swinger's claims that have been asserted and/or that could have been asserted in this cause are hereby dismissed with prejudice and without costs;
> 2. Plaintiff Steven Swinger hereby waives any right of appeal that may arise out of these proceedings;
> 3. That each party shall bear their own attorney's fees and costs incurred herein;
> 4. That the Court's Order awarding attorney fees dated August 27, 2010 is hereby vacated.

Swinger contends dismissal of the action against the title company on March 1, 2012, was the result of a settlement. Swinger asserts that because he settled with the title insurance company, his failure to appeal did not preclude him from raising the same issue of ownership in the present lawsuit against Vanderpol. See Marquardt v. Fed. Old Line Ins. Co., 33 Wn. App. 685, 689, 658 P.2d 20 (1983) ("collateral estoppel should not be applied to judgments of dismissal . . . when based on settlement agreements.") The reason settlement agreements are ordinarily not preclusive is that "the parties could settle for myriad reasons not related to the resolution of the issues they are litigating." Marquardt, 33 Wn. App. at 689.

Other than the order quoted above, the record contains no evidence that the title company lawsuit was dismissed due to a settlement. Approval of a stipulation does not necessarily mean the parties settled. We might reasonably

assume that the order of dismissal reflects an undisclosed settlement whereby Swinger, in exchange for being excused from liability for the title company's attorney fees, agreed to give up his right of appeal as well as a remaining claim for damages under the policy that is mentioned in the summary judgment order of October 14, 2011. But even if that is what happened, the rule stated in Marquardt is not controlling. The estoppel operating in the present case does not come from the final judgment entered in the title company case on March 1, 2012. The estoppel comes from the order on partial summary judgment entered on October 14, 2011.

Finality for the purposes of collateral estoppel, which is designed to prevent more than one trial on the same claim, is different from finality for the purposes of appeal, which is intended to discourage the piecemeal review of an action. Cunningham, 61 Wn. App. at 568. An order on partial summary judgment may be sufficiently final for collateral estoppel purposes even if it is not appealable. Cunningham, 61 Wn. App. at 570. That is the case here. The order of October 14, 2011, firmly dismissed the claims requiring proof of Swinger's ownership. The final order on March 1, 2012, did not change that. The order of October 14, 2011, was sufficiently final to satisfy the second element of collateral estoppel.

The third element is also satisfied. Swinger, the party to be estopped, was a party to the earlier action.

In assessing the fourth element, whether application of collateral estoppel would work an injustice, reviewing courts focus on whether the parties to the

earlier action were afforded a full and fair opportunity to litigate their claim in a neutral forum. Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 264-65, 956 P.2d 312 (1998).

Swinger contends he was denied the opportunity to introduce evidence against the title insurance company. He also claims to have lacked sufficient motivation to litigate that action vigorously because he did not foresee the collateral estoppel consequences. Swinger states, "The court did not advise or take extra care in advising me of the implications of not providing all documents supporting my ownership of the disputed area." Brief of Appellant at 14.

The court was not obligated to advise Swinger of the consequences of not bringing an appeal. The role Swinger describes is that of a lawyer, not a judge. Swinger chose to act pro se in bringing this lawsuit and the action against the title company. In undertaking the role of a lawyer, pro se litigants assume the duties and responsibilities of a lawyer and are held accountable to the same standard of legal knowledge. Batten v. Abrams, 28 Wn. App. 737, 739 n.1, 626 P.2d 984, review denied, 95 Wn.2d 1033 (1981).

The superior court was a neutral forum for Swinger's case against the title company. The court considered thorough briefing by the parties and heard oral argument. Swinger had a full and fair opportunity to litigate his claim that he owned the property on the east bank, and it was decided against him.

The elements of collateral estoppel are met here. The trial court properly dismissed Swinger's unjust enrichment claim as precluded by the decision in the previous case.

We turn next to Swinger's assertion of a claim that it was an abuse of process for Vanderpol to file the federal lawsuit. He requests reimbursement for the expenses he incurred in result of that litigation. The trial court dismissed Swinger's abuse of process claim for lack of evidentiary support.

To prove an abuse of process, the claimant must demonstrate: (1) an ulterior purpose to accomplish an object not within the proper scope of the process and (2) an act not proper in the regular prosecution of proceedings. Fite v. Lee, 11 Wn. App. 21, 27, 521 P.2d 964, review denied, 84 Wn.2d 1005 (1974). For instance, an abuse of process occurs when a party files numerous improper motions and discovery requests for the purpose of harassing another party. Hough v. Stockbridge, 152 Wn. App. 328, 346-47, 216 P.3d 1077 (2009), review denied, 168 Wn.2d 1043 (2010). "The mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." Fite, 11 Wn. App. at 27-28; see also Abrams, 28 Wn. App. at 749 ("filing a lawsuit, although baseless or vexatious, is not misusing process.") "There is no liability if nothing is done with the lawsuit other than carrying it to its regular conclusion." Abrams, 28 Wn. App. at 749.

Swinger first argues Vanderpol's filing of the federal suit was an abuse of process because the court lacked subject matter jurisdiction. Filing suit in a court that lacks jurisdiction does not by itself satisfy either element of an abuse of process claim. There is no evidence that Vanderpol had an ulterior motive. The lawsuit was carried to a regular conclusion when the appellate court dismissed it for lack of jurisdiction.

Swinger next argues it was an abuse of process for Vanderpol to include an adverse possession claim in his federal court lawsuit when he had not paid the taxes on the subject property. Again, Swinger fails to identify evidence satisfying the elements of an abuse of process claim. Assuming for the sake of argument that Vanderpol filed the adverse possession claim without the evidence needed to prove it, that would make his claim baseless, but it would not establish an abuse of process. The trial court properly dismissed the abuse of process claim.

Next, we address Swinger's claim that Vanderpol, through his communications with the District, is liable for a tortious interference with contract. Swinger argues that Vanderpol interfered with Swinger's contract with the Conservation Reserve Enhancement Program. Vanderpol's December 2011 letter to the District asserted that if planting occurred on his property without his consent, he would "pursue his full legal rights and remedies with regards to such an intentional trespass." In his February 2012 letter, he reiterated that he would seek legal recourse if a trespass occurred. Swinger asserts that Vanderpol's "criticism and litigation threat letter" constitutes a tortious interference. He claims damages of $54,370, the amount he would have received for participating in the program.

The information Vanderpol communicated to the District—that he allegedly owned the property Swinger was attempting to commit for preservation—was relevant to the District's decision whether to proceed with a project on Swinger's property. The District is a government agency. See RCW 89.08.020. The trial

court properly dismissed Swinger's interference claim because Vanderpol has a statutory immunity from a suit based on his communications with a government agency. "A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . 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." RCW 4.24.510. The purpose of this statute is "to protect individuals who make good-faith reports to appropriate governmental bodies," based on a finding 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." RCW 4.24.500.

The tortious interference claim was properly dismissed for an additional reason. One element of a tortious interference claim is the existence of a valid contract. Calbom v. Knudtzon, 65 Wn.2d 157, 162, 396 P.2d 148 (1964). Swinger's interference claim depends on his having a valid contract with the District. As discussed above in connection with the unjust enrichment claim, Swinger is precluded from asserting that he owns land on the east bank. Swinger cannot prove he has a valid contract with the District as to property on the east bank because he cannot prove he owns that property.

Last, we consider the issue of attorney fees and costs. Relying on RCW 4.24.510, the trial court awarded Vanderpol $10,000 in statutory damages as well as the attorney fees he incurred in obtaining dismissal of Swinger's claim of tortious interference with contract. Vanderpol requests an award of attorney fees and costs for this appeal under the same statute.

A person immune from suit under RCW 4.24.510 "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." RCW 4.24.510.

Swinger contends it was error for the trial court to award damages and fees under the statute. He cites Gontmakher v. City of Bellevue, 120 Wn. App. 365, 366, 85 P.3d 926 (2004), for the proposition that for RCW 4.24.510 to apply, the information communicated to an agency must concern "potential wrongdoing." He contends that Vanderpol "did not flag" potential wrongdoing by Swinger when he communicated with the District.

The phrase "potential wrongdoing" occurs in Gontmakher, where the opinion explains the background of the statute by quoting legislative findings. Gontmakher, 120 Wn. App. at 371. The legislative findings are stated in RCW 4.24.500:

> 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.

The quoted language explains why the legislature saw fit to enact the statute; it does not create a requirement or element. The operative language concerning immunity and attorney fees is found in the next section of the statute, RCW 4.24.510. This section does not require that the "complaint or information"

communicated by the speaker must concern wrongdoing in order for immunity to attach.

As discussed above, Vanderpol is immune from suit under RCW 4.24.510 with respect to the tortious interference claim. The court did not find that Vanderpol communicated information to the District in bad faith. Therefore, the trial court did not err in awarding to Vanderpol the mandatory damages of $10,000 as well as the expenses and reasonable attorney fees he incurred to establish the defense of immunity. Subject to compliance with RAP 18.1, Vanderpol is entitled to an award of the attorney fees and costs he incurred in this appeal that are related to the immunity defense under RCW 4.24.510.

Affirmed.

Becker, J.

WE CONCUR:

Trickey, J

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

STEVE SWINGER, Appellant, v. DOUGLAS J. VANDERPOL, Respondent.	)	No. 74703-7-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Steve Swinger, has filed a motion for reconsideration of the opinion filed on December 27, 2016. Respondent, Douglas Vanderpol, has not filed an answer to appellant's motion. The court has determined that said motion should be denied. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

DATED this 18th day of January, 2017.

FOR THE COURT:

Becker, J.

Judge

CERTIFICATION OF SERVICE

I certify that I am over the age of 18 and

on February 1st, 2017 I served Steve Swinger's RAP 13.4 (b)(2) discretionary review for the Supreme Court (Unjust enrichment, interference with a contract, Anti-SLAPP statute), on the following:

Mark Lee

Brownlie, Evans Wolf & Lee
230 E. Champion Street
Bellingham, Wa 98225

Via U.S. Mail dated this 1st day of February 2017 in Bellingham, Washington.

Andrea Elliott

ANDREA ELLIOTT