

Court of Appeals No. 63053-9-1

IN THE WASHINGTON COURT OF APPEALS
DIVISION ONE

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
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JAMES GORMAN, as General Partner of HOLLYWOOD
VINEYARDS LIMITED PARTNERSHIP,

Appellant/Plaintiff,

v.

THE CITY OF WOODINVILLE,
a Washington municipal corporation.

Respondent/Defendant,

BRIEF OF APPELLANT

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ORIGINAL

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I. INTRODUCTION

This matter involves a legal question only: Does the dedication of land to a municipal organization destroy a previously perfected claim of adverse possession to that property?

Here, the City of Woodinville (“City”) moved to dismiss James Gorman, as General Partner of Hollywood Vineyards Limited Partnership’s (“Gorman”) adverse possession claim to a tract of land dedicated to it under CR 12(b)(6). The basis for the motion was once the City took title to the property, any claim of adverse possession was eliminated pursuant to RCW 4.16.160 which bars such claims against a governmental entity. The trial court granted the City’s motion.

This was error. RCW 4.16.160 only prevents the running of an adverse claim against a governmental entity; it does not address the question of what the government takes when the required period (here 10 years) runs prior to the conveyance and/or dedication to it. In such an instance, once the 10 year period required for an adverse possession claim runs, the claim perfects—the time period does not continue to run. Therefore, the prohibition under RCW 4.16.160 is not triggered.

The trial court should be reversed, the cost award to the City vacated and the matter reinstated.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred by granting the City's motion to dismiss Gorman's case below.

Assignment of Error No. 2: The trial court erred by granting the City certain of its costs.

III. ISSUES PRESENTED

Issue No. 1: Whether title based a claim of adverse possession is thwarted/eviscerated by a conveyance/dedication of to a municipal organization?

Issue No. 2: Whether a municipal organization, when conveyed/dedicated property, takes that property subject to all off-record claims which may have perfected themselves prior to the date of the conveyance/dedication?

Issue No. 3: Does a conveyance of property to a public entity destroy a previously perfected claim of adverse possession to said property?

IV. STATEMENT OF THE CASE

This matter arises out of a lawsuit initiated by James Gorman IV as general partner of the Hollywood Vineyards Limited

Partnership against the City of Woodinville. In the Complaint, Mr. Gorman alleged that the City had been dedicated property by an adjoining property owner, which dedicated property was subject to an adverse possession claim by Mr. Gorman as general partner.

The property at issue is legally described as:

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

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

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

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

also denied Mr. Gorman's motion for reconsideration of the matter.

This appeal followed. CP 111-117.

V. ARGUMENT

A. STANDARD OF REVIEW—A DISMISSAL UNDER CR 12(B)(6) ARE ONLY GRANTED SPARINGLY AND WITH CARE

The standard of review of a trial court's dismissal of a plaintiff's case under CR 12(b)(6) is as follows:

We review dismissal of a claim under CR 12(b)(6) *de novo*. *Reid v. Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998); *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994). Dismissal is appropriate only if the complaint alleges no facts that would justify recovery. *Reid*, 136 Wn.2d at 200-01, 961 P.2d 333. We accept the plaintiffs' allegations and any reasonable inferences as true. *Id.* at 201, 961 P.2d 333. And for that reason CR 12(b)(6) motions should be granted sparingly and with care. *Cutler*, 124 Wn.2d at 755, 881 P.2d 216.

Wright v. Jeckle, 104 Wn. App. 478, 481, 16 P.3d 1268 (2001).

Any hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support plaintiff's claim.

Save Columbia Committee v. Columbia Community Credit Union,

___ Wn. App. ___, ___ P.3d ___, 2009 WL 1383607 ¶27 (Div. 2

Docket No. 372732-0-II, May 19, 2009).

In undertaking such an analysis, a plaintiff's allegations are presumed to be true and a court may consider hypothetical facts not included in the record.

(Citation omitted.) *Holiday Resort Comm. Assoc. v. Echo Lake Assoc., LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006) Under this standard, it is proper to assume that Gorman can prove all the elements of an adverse possession claim as follows.

In order to establish a claim of adverse possession, there must be possession that is: (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile. *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984). Possession of the property with each of the necessary concurrent elements must exist for the statutorily prescribed period of 10 years. RCW 4.16.020.

ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757-58, 774 P.2d 6 (1989). As is shown below, the trial court erred as the complaint has alleged facts which justify recovery in this matter.

The only question presented by this appeal is whether the title which passed to the City is subject to a claim of adverse possession by Gorman. As is shown below, it is.

B. THE CITY RECEIVED ONLY WHAT THE GRANTOR HAD TO GIVE

RCW 4.16.020(1) governs claims for adverse possession and states:

For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of

the premises in question within ten years before the commencement of the action.

It is well known in Washington law that this 10 year period need not be the 10 years immediately preceding the subject lawsuit. Rather, the 10 year period need only be any 10 year prior to the subject lawsuit.

The defendants next contend that the plaintiff cannot prevail because it does not appear that Mr. Santmeyer was seized or in possession of the property within 10 years prior to the commencement of the action. Section 156, Rem. Comp. Stat., provides that no action shall be maintained for the recovery of real property unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within 10 years before the commencement of the action. In *Wilkeson v. Miller*, 63 Wash. 680, 116 P. 268, 4 Wash. 497, 30 P. 648, it was held that a *quoting with approval to the same effect from Balch v. Smith* complaint to recover possession of real property setting forth the nature of the plaintiffs' title was sufficient without alleging that the plaintiffs were seized and possessed of the premises within the statutory period for commencing the action. The plaintiff had a right to maintain the action even though Mr. Sautmeyer was not in the actual possession of the property at any time during the 10 years next preceding the commencement thereof.

Santmeyer v. Clemmancs, 147 Wash. 354, 357, 266 P. 148 (1928) *overruled on other grounds by Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984); *see also In re Water Rights in Ahtanum Creek, Yakima County*, 139 Wash. 84, 92, 245 P. 758 (1926) (court

looked at “any period of ten years prior to the beginning of the [subject] action.”).

As a general rule, a grantee is bound by any prescriptive rights which may have accrued against a prior owner.

Title to property held in fee that is acquired by adverse possession matures into an absolute fee interest after the statutory prescriptive period has expired. Thus, adverse possession for the requisite period of time not only cuts off the true owner’s remedies but also divests the owner of his or her estate.

POWELL ON REAL PROPERTY, § 91.12, *The Claimant Normally Acquires the Interest Held by the Owner at the Time the Adverse Possession Began*. Washington courts agree. In *Mugaas v. Smith*, 33 Wn.2d 429, 206 P.2d 332 (1949), the Supreme Court decided a case in which an adverse claimant, Ms. Mugaas, who had ceased using the disputed property, had lost her claim to adverse possession to the property. This court stated:

We have on several occasions approved a statement which appears in *Towles v. Hamilton*, 94 Neb. 588, 143 N.W. 935, 936, that:

‘* * * It is elementary that, where the title has become fully vested by disseisin so long continued as to bar an action, it cannot be divested by parol abandonment or relinquishment or by verbal declarations of the disseizor, nor by any other act short of what would be required in a case where his title was by deed.’

See *McInnis v. Day Lumber Co.*, 102 Wash. 38, 172 P. 844; *King County v. Hagen*, Wash., 194 P.2d 357.

Mugaas, 33 Wn.2d at 431. The court thus quieted the title to the property to Ms. Mugaas:

When real property has been held by adverse possession for ten years, such possession ripens into an original title. Title so acquired by the adverse possessor cannot be divested by acts other than those required where title was acquired by deed. *Mugaas v. Smith, supra; McInnis v. Day Lumber Co.*, 102 Wash. 38, 172 P. 844 (1918). The person so acquiring this title can convey it to another party without having had title quieted in him prior to the conveyance. Once a person has title (which was acquired by him or his predecessor by adverse possession), the ten-year statute of limitations does not require that the property be continuously held in an adverse manner up to the time his title is quieted in a lawsuit. He may bring his action at any time after possession has been held adversely for ten years.

El Cerrito, Inc. v. Ryndak, 60 Wn.2d 847, 855, 376 P.2d 528 (1962).

We have recognized that one who himself did not acquire title by adverse possession may rest a claim to title on the adverse possession of a predecessor in interest. *El Cerrito, Inc. v. Ryndak*, 60 Wn.2d 847, 376 P.2d 528 (1962). The successor's claim is based on the fact that his predecessor who possessed with the requisite adversity for the necessary period acquired title comparable to that acquired by deed. *El Cerrito, Inc. v. Ryndak, supra*; F. Clark, A TREATISE ON THE LAW OF SURVEYING AND BOUNDARIES s 544 (4th ed. Grimes 1976).

Muench v. Oxley, 90 Wn.2d 637, 643-644, 584 P.2d 939 (1978) overruled on other grounds by *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984).

In *Halverson v. City of Bellevue*, 41 Wn. App. 457, 704 P.2d 1232 (1985), a person claiming title to property by adverse possession challenged Bellevue's approval of a plat which contained the disputed property. Bellevue contended that the adverse possessor did not have an ownership interest in the property and thus no right to challenge the plat. This court stated:

The law is clear that title is acquired by adverse possession upon passage of the 10-year period. *El Cerrito v. Ryndak*, 60 Wn.2d 847, 855, 376 P.2d 528 (1962); *Muench v. Oxley*, 90 Wn.2d 637, 644, 584 P.2d 939 (1978). The quiet title action merely confirmed that title to the land had passed to Halvorson [the adverse possessor] by 1974.

41 Wn. App. at 460.

In this case, as the court below dismissed this action on a motion under CR 12(b)(6), this court may assume that Gorman can prove that it met all of the elements of an adverse possession claim for any ten year period prior to the dedication to the City. Again,

In undertaking such an analysis, a plaintiff's allegations are presumed to be true and a court may consider hypothetical facts not included in the record.

(Citation omitted.) *Holiday Resort Comm. Assoc. v. Echo Lake Assoc., LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006).

C. RCW 4.16.160 DOES NOT BAR THE ACTION AGAINST THE CITY IN THIS CASE

The City argued that RCW 4.16.160 barred Gorman's claims against it. This is incorrect. The statute provides:

The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute.

Here, as the court may assume that Gorman's adverse possession claim to the Tract Y was perfected prior to the dedication meaning that the 10 year period had been satisfied prior to the City's acquisition of Tract Y. In such a case, no lapse of time against the City is being claimed. Rather, the lapse of time is claimed and perfected against the prior owner.

D. ADVERSE POSSESSION CLAIMS ARE NOT ABSOLUTELY BARRED AGAINST A PUBLIC ENTITY

Inherent in the City's position is the argument that no claim of adverse possession can ever run against a governmental entity.

This is not true.

Adverse possession does not run against a governmental body holding land for public purposes. However, if land is held by a governmental body in its proprietary, as opposed to governmental capacity, the land is subject to being acquired by adverse possession the same as if owned by a private individual.

(Citations omitted.) *Kesinger v. Logan*, 51 Wn. App. 914, 919, 756 P.2d 752 (1988), *aff'd* 113 Wn.2d 320 (1989). Thus, the bar contained in RCW 4.16.160 is not absolute.

E. WASHINGTON COURTS ALREADY ACKNOWLEDGE THAT ADVERSE POSSESSION CLAIMS WHICH RUN AGAINST A PRIVATE OWNER ARE PROPERLY ASSERTED AGAINST A LATER PUBLIC OWNER

In *City of Benton City v. Adrian*, 50 Wn. App. 330, 748 P.2d 679 (1988), a dispute arose between the Benton City and the Adrians regarding discharge of excess irrigation water into the City's storm drainage system. Among the many arguments made by the Adrians, they contended that they had acquired prescriptive rights for this excess irrigation water by its flow into the natural

drainway citing *Brand v. Lienkaemper*, 72 Wash. 547, 130 P. 1147 (1913) which acknowledges such a right. The court pointed out that generally speaking no claim of adverse possession can run against a municipal corporation, it also said the following:

The orchard owners respond that their rights were fixed by the acts of their predecessors long before the City acquired its property. However, we do not find sufficient proof of open, notorious, continuous, and uninterrupted adverse use for 10 years prior to the City's acquisition in the mid-1950's, and that the prior owners had knowledge, constructive or actual, of the adverse use. See *Dunbar v. Heinrich*, 95 Wn.2d 20, 22, 622 P.2d 812 (1980). This case is similar to *Downie v. Renton*, 162 Wash. 181, 298 P. 454 (1931), *rev'd on review*, 167 Wash. 374, 9 P.2d 372 (1932). There, the court held biannual release of artificially stored waters onto arid wild lands from a municipal water storage reservoir was not open and notorious because the adjoining land was unfenced, unused, and unimproved. The previous owners could not be presumed to have constructive notice of the adverse use. This land was also unfenced, unused, and unimproved during the period the orchard owners allege prescriptive rights arose.

In addition, there is substantial evidence tail water did not go beyond 11th Street prior to the early 1980's. An expert witness testifying for the orchard owners concluded saturation near the subsurface basalt layer in recent years, due to increased irrigation, coupled with other sources, would cause water to flow farther down the natural drainway today than in years past. This supports the court's conclusion no prescriptive rights were acquired.

Adrian, at 337-38.

By engaging in this analysis, the court agreed that such a claim could be brought. Its conclusion that there was not any evidence to support the adverse possession claim proves the point. Why would the court engage in an analysis of the claim of adverse possession if the claim was barred as a matter of law under RCW 4.16.160? If it was barred as a matter of law under the statute, why did not the *Adrian* court so state? The obvious answer is because the adverse possession claim against the City of Benton City was not barred by RCW 4.16.160. *Cf. Douglas Northwest, Inc. v. Bill O'Brien & Sons Const., Inc.*, 64 Wn. App. 661, 681, 828 P.2d 565 (1992) (“the trial court is presumed to know the law”).

The City cited *Hermann v. Cissna*, 82 Wn.2d 1, 507 P.2d 144 (1973) in support of its contention that RCW 4.16.160 bars Gorman’s claim. CP 24-25. The City uses *Hermann* as authority for the following statement:

Furthermore, the statute is not rendered inapplicable because the state derived its title from an individual who may have been subject to the ten year statute of limitations.

CP 24. In *Hermann*, the Washington Insurance Commissioner brought an action against the former officers and directors of a defunct insurance company. Those officers and directors moved to dismiss the claim under RCW 4.16.160 claiming that the matter

was beyond the 10 year period. The trial court agreed and dismissed the case. The Supreme Court reversed and held that there was no such limitation for actions brought in the name of the State. *Id.* at 3-5.

The City confuses the State's right to bring a claim to protect the public at large (such as actions by the Insurance Commissioner) with the long held rule of law that a grantee or other party who receives property, can only receive what the grantor or dedicator has to give. *El Cerrito, Inc. v. Ryndak*, 60 Wn.2d 847, 855, 376 P.2d 528 (1962); *Mugaas v. Smith*, 33 Wn.2d 429, 206 P.2d 332 (1949); POWELL ON REAL PROPERTY, § 91.12, *The Claimant Normally Acquires the Interest Held by the Owner at the Time the Adverse Possession Began*. *Hermann* is not helpful to this case.

F. A DEDICATION IN A BINDING SITE PLAN IS NOT THE EQUIVALENT OF AN ORDER FORECLOSING A PROPERTY TAX LIEN

The City also contended that asserting a claim of a perfected adverse possession claim after a dedication is

no different than the bar to asserting a claim of adverse possession against the owner of property who obtained the property from a county following a tax lien foreclosure

CP 25. In support of this point, the City cited to *Leciejewski v. Sedlak*, 110 Wis.2d 337, 329 N.W.2d 233 (1982). There, a party claiming title to property based on adverse possession lost its suit given the language of the Wisconsin Statutes which specifically stated that a tax deed extinguished all prior claims. *Id.* at 347.

Washington has a similar statutory scheme to that in Wisconsin. RCW 84.64. A claim to property based on adverse possession which property is dedicated to the public in a binding site plan is different from title acquired through the real estate tax lien foreclosure process. The primary reason is that a tax lien foreclosure process affords notice of the intent to foreclose the lien pursuant to RCW 84.64.050 provides in relevant part:

Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient.

Here, the dedication in the binding site plan did not afford notice, either actual or constructive, of its existence or the City's involvement with the dedicator. *Ellingsen v. Franklin County*, 117 Wn.2d 24, 810 P.2d 910 (1991) (only documents recorded with auditor's office afford constructive notice; general public records do not). The dedication of land in a binding site plan is not the equivalent of a tax lien foreclosure process through the courts.

G. THE TRIAL COURT ERRED IN AWARDING COSTS

If the court is not inclined to reverse the trial court on the order dismissing the case and thereby vacate the cost award to the City at CP 109-110, it should amend the cost award. In that award, the court awarded the City the following:

<u>Description</u>	<u>Award Amount</u>
Process Service (ABC Legal Messenger Service served copies of all pleadings) as authorized by RCW 4.84.010(2) and RCW 4.84.090	\$1,395.00
Expenses for taking depositions (does not include transcription costs) as authorized by RCW 4.84.090	\$1,084.20
Compensation paid Mediator at JAMS (compensation of referee)	\$1,395.00

as authorized by RCW
4.84.090

Total \$3,874.20

As is shown below, this was error.

**1. Service of All Pleadings in a Case is Not Authorized
by Statute**

RCW 4.84.010(2) provides for an award of certain costs to a prevailing party. Under RCW 4.84.010(2) the following is permitted:

- (2) Fees for the service of process by a public officer, registered process server, or other means, as follows:
 - (a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
 - (b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;

“Service of process” within RCW 4.84.010(2) refers to the service of a summons and complaint upon a defendant in a matter pursuant to RCW 4.28.080, not service of documents to be filed with the court. See *generally* 14 WASHINGTON PRACTICE, Civil Procedure § 8.1 *Service of process generally—Statutory requirements are jurisdictional.*

RCW 4.84.090 similarly does not afford the City the right to claim such legal messenger expenses as cited by the City. The statute provides:

The prevailing party, in addition to allowance for costs, as provided in RCW 4.84.080, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The court shall allow the prevailing party all service of process charges in case such process was served by a person or persons not an officer or officers. Such service charge shall be the same as is now allowed or shall in the future be allowed as fee and mileage to an officer. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his attorney, and filed with the clerk of the court, within ten days after the judgment: PROVIDED, The clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial.

This statute relates to service of process (i.e. subpoenas) upon witnesses. There is no evidence here that any witness was so subpoenaed or otherwise served with process.

To award \$1,395.00 to the City for its legal messenger fees in a case where it was a defendant and thus did not incur any service of process fees was error.

2. The City is Not Entitled to Costs of Depositions Not Used at Trial

The City claims a cost of \$1,084.20 reimbursement of depositions citing RCW 4.84.090. The City is not entitled to this amount as no depositions were used at a trial. There was not a trial; the matter was dismissed under CR 12(b)(6).

A party is entitled to the costs of taking depositions if the depositions were taken and used for trial purposes. *Tombari v. Blankenship-Dixon Co.*, 19 Wn. App. 145, 150, 574 P.2d 401, *review denied*, 90 Wn.2d 1015 (1978); RCW 4.84.010; RCW 4.84.090. RCW 4.84.010 states explicitly that “the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.” RCW 4.84.010(7). However, here the award for deposition costs apparently included fees for deposition transcripts that were not used at trial. This was error.

Kiewit-Grice v. State, 77 Wash. App. 867, 874, 895 P.2d 6 (1995).

It was error for the trial court to award the City the costs of its depositions.

3. The City is Not Entitled to Recover its Share of Fees Paid to a Mediator

The City also claimed and was awarded \$1,395.00 for payment of fees to JAMS for the services of a mediator citing RCW 4.84.090. The City's position is that such costs constitute “the compensation of referees” envisioned by the statute. The City is incorrect.

Under CR 53.1, the parties may choose to have their dispute resolved by a referee. A referee is defined by RCW 2.24.060 as follows:

A referee is a person appointed by the court or judicial officer with power--

- (1) To try an issue of law or of fact in a civil action or proceeding and report thereon.
- (2) To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact or to take and report the evidence in an action.
- (3) To execute an order, judgment or decree or to exercise any other power or perform any other duty expressly authorized by law.

There is no evidence that any person employed with JAMS acted as a referee. There is no court order appointing such a person nor is there a decision by any person purporting to be a referee.

Rather, all decisions in this case were rendered by Judge Gonzales of the King County Superior Court.

Rather, the parties employed a mediator in an attempt to resolve their differences. A mediator is defined as someone "who conducts a mediation". RCW 7.07.010(3). A mediation is

a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

RCW 7.07.010(1). There is no language in RCW 4.84.090, or elsewhere in RCW 4.84 entitling a prevailing party to recover the costs of mediation. To do so would discourage parties from engaging in alternative dispute resolution something which Washington law strongly encourages.

VI. CONCLUSION

For the above stated reasons, the trial court should be reversed, the cost award vacated and this matter remanded for further proceedings. If the court is not inclined to reverse the trial court on the merits of this appeal, the cost award should be reduced by \$3,874.20.

Dated this 5th day of June, 2009.

Respectfully submitted,

THE LAW OFFICE OF CATHERINE C. CLARK PLLC

By: 

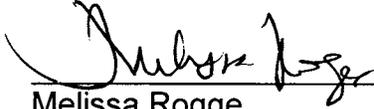
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Certificate of Service

I hereby certify that I caused the foregoing document to be served upon the below named individual in the identified manner on this 5th day of June, 2009:

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