

NO. 36592-8-II



COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

BENITO MENDOZA,

Appellant.

v.

NEUDORFER ENGINEERS, INC., A Washington corporation and
MATT CHARTERS, an individual,

Respondents.

BRIEF OF RESPONDENTS

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A. ASSIGNMENTS OF ERROR

Assignments of Error

Respondents, Neudorfer Engineers, Inc. and Matt Charters (hereinafter collectively Neudorfer), assign no error to the trial court's decision.

Issues Pertaining to Assignments of Error

The Superior Court held that Pierce County lacked subject matter jurisdiction over a civil action for personal injuries resulting from negligence that occurred while plaintiff, Benito Mendoza, was working within the federal enclave of Fort Lewis. The sole issue that Mr. Mendoza's appeal raises is:

Whether the Superior Court correctly held that the federal government has exclusive subject-matter jurisdiction, and Pierce County therefore lacks subject matter jurisdiction, over a civil action for personal injuries resulting from negligence that occurred while the parties were on the federal enclave of Fort Lewis.

B. STATEMENT OF THE CASE

Mr. Mendoza filed a lawsuit in Pierce County Superior Court on February 1, 2007. CP 1. In his Complaint for Damages, Mr. Mendoza alleges that he was employed by Osborne Construction Company as a general laborer and was working on a building being constructed on Fort

Lewis. CP 2. Mr. Mendoza also alleges that he was injured when an employee of Neudorfer accidentally dropped a tool on him while he was working on the building on Fort Lewis. CP 3. In his Complaint for Damages, Mr. Mendoza states a claim for negligence against Defendants. CP 3. There are no other parties or causes of action.

On May 31, 2007, Neudorfer moved to dismiss pursuant to CR 12(b)(1) because Pierce County lacked subject matter jurisdiction. CP 5. Mr. Mendoza opposed the motion. After full briefing and oral argument, the Superior Court granted Neudorfer's motion to dismiss. CP 20-21. This appeal followed.

C. SUMMARY OF ARGUMENT

Where property is ceded to the federal government, as opposed to being purchased by it, the terms of the cession determine the extent of federal jurisdiction. The land on which Fort Lewis is situated was ceded to the federal government. The terms of the cession granted the federal government exclusive jurisdiction over Fort Lewis, reserving jurisdiction for the sole and limited purpose of serving civil and criminal process. The mere reservation of state jurisdiction for service of process does not defeat a grant of exclusive jurisdiction over the Fort Lewis property to the federal government. Moreover, federal jurisdiction is not diminished when private parties are allowed to operate within federal enclaves.

Accordingly, the federal government has exclusive jurisdiction over all crimes and torts committed on Fort Lewis, as it is a federal enclave within Washington State.

D. ARGUMENT

1. Standard of review.

Mr. Mendoza is correct that review of the Superior Court's decision to grant defendants' motion to dismiss pursuant to CR 12(b)(1) is *de novo*. See Appellant's Br. 3; see also *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

2. It is undisputed that Fort Lewis is a federal enclave.

It is undisputed that Fort Lewis is a federal enclave. See *State v. Lane*, 112 Wn.2d 464, 771 P.2d 1150 (1989). Moreover, it is undisputed that all of the elements of the cause of action occurred within the federal enclave of Fort Lewis. See Appellant's Br. 2.

3. The United States has exclusive jurisdiction, legislative and judicial, over federal enclaves.

The Constitution of the United States provides that Congress has the power to "exercise **exclusive legislation** in all cases whatsoever, . . . over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, . . ." U.S. Const. art. 1, § 8 (emphasis added). Where property is ceded to the federal government,

as opposed to being purchased by it, the terms of the cession determine the extent of federal jurisdiction. *State v. Lane*, 112 Wn.2d 464, 771 P.2d 1150 (1989) (citing *Bowen v. Johnston*, 306 U.S. 19, 83 L. Ed. 455, 59 S. Ct. 442 (1939)). The state may make the cession either absolute or qualified. See *Surplus Trading Co. v. Cook*, 281 U.S. 647, 651, 50 S. Ct. 455 (1930). When a cession is accepted, the terms of the cession are determinative of the jurisdiction of both the federal government and the state within the enclave. *Id.* at 652.

The land on which Fort Lewis is situated was ceded to the federal government. *Lane*, 112 Wn.2d at 469. The terms of the cession conveying the land for Fort Lewis to the federal government provides:

Pursuant to the constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such constitution, the consent of the legislature of the State of Washington is hereby given to the United States to acquire, by donation from Pierce county, title to all lands herein intended to be referred to, . . . and the consent of the State of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation **in all cases whatsoever** over such tracts or parcels of land so conveyed to it . . . *provided*, That all civil process issued from courts of this state and such criminal process as may issue under the authority of this state, against any person charged with crime in cases arising outside of said reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made.

Laws of 1917, ch. 3, § 20, p. 14 (boldface emphasis added). *See also* Const. art. 25, § 1; RCW 37.16.180.

Pursuant to the terms of cession, the state of Washington gave the federal government the power to exercise exclusive jurisdiction over Fort Lewis. Although the ceding language includes the term “exclusive legislation,” in this context, the term means exclusive jurisdiction. *See Surplus Trading Co. v. Cook*, 281 U.S. 647, 652, 50 S. Ct. 455 (1930); *see also Caha v. United States*, 152 U.S. 211, 215, 14 S. Ct. 513 (1894). Moreover, the reservation of jurisdiction for service of process does not defeat a grant of exclusive jurisdiction to the federal government. *Lane*, 112 Wn.2d at 470.

It is a well established principle that a state may not exercise jurisdiction over a federal enclave unless specifically reserved by the state in the ceding document or pursuant to an act of Congress. *See Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, 526-28, 5 S. Ct. 995 (1885); *Paul v. United States*, 371 U.S. 245, 268, 83 S. Ct. 426 (1963). In the present case, neither one of these conditions have been satisfied. Therefore, by granting the federal government exclusive jurisdiction, the state of Washington was divested of all jurisdiction over criminal and civil matters occurring within Fort Lewis. *See Surplus Trading Co. v. Cook*, 281 U.S. at 655-656 (citing *Fort Leavenworth R. R. Co. v. Lowe* (1885),

114 U.S. 525; *United States v. Unzeuta*, 281 U.S. 138, 50 S. Ct. 284 (1930); *State v. Mack*, 23 Nev. 359). Accordingly, the federal government has exclusive jurisdiction over all crimes and torts committed on Fort Lewis, as it is a federal enclave within Washington State. *Lane*, 112 Wn.2d 464; *Dirt & Aggregate, Inc.*, 120 Wn.2d 49.

The Fifth Circuit addressed federal enclave jurisdiction in *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952). In *Mater*, the court concluded that personal injury claims resulting from negligence that occurred on a federal enclave are claims arising under the laws of the United States within the meaning of 28 U.S.C. § 1331. *Id.* at 123, 125. In addition, the court stated that a state's sovereignty is "terminated and federal sovereignty [becomes] complete and exclusive" when a state conveys land to the federal government without reserving concurrent jurisdiction in the ceding documents. *Id.* at 124 (*Surplus Trading Co. v. Cook*, 281 U.S. at 652).

4. Washington courts have concluded that the United States has exclusive jurisdiction over Fort Lewis and other federal enclaves in Washington.

In *Lane*, the criminal defendants argued that the State of Washington lacked jurisdiction to adjudicate the prosecutions "because the victim was killed at Fort Lewis." *Lane*, 112 Wn.2d at 465. The facts on appeal showed that the defendants had abducted the victim in Tacoma and then transported her to Fort Lewis, after which they killed her. *Id.* at 466.

The Court held that the State of Washington had jurisdiction **only** because an essential element of the crime, namely premeditation, occurred outside of Fort Lewis. *Id.* at 468, 471-72. *Id.* at 470 (emphasis added) (citing *Concessions Co. v. Morris*, 109 Wash. 46, 51, 67, 186 P. 655 (1919)).

Nowhere did *Lane* limit itself to criminal prosecutions. Rather, *Lane* is Supreme Court precedent analyzing the terms of cession for Fort Lewis—the same federal enclave at issue here—and holding that only when an essential element of the unlawful conduct takes place outside of Fort Lewis may Washington courts exercise jurisdiction. *Id.* Though the word “tort” does not appear in the ceding language, the phrase “all cases whatsoever” does. *See* Laws of 1919, ch. 3, § 20. Any sensible reading of the phrase, “all cases whatsoever” encompasses all cases, whether civil or criminal. In fact, as the Court stated in *Concessions*, broader or clearer language could not be used. *Concessions*, 109 Wash. at 54. Had the legislature wished to exclude tort actions from the granting of exclusive jurisdiction to the United States, it could have done so. But it did not do so.

In *Concessions*, 109 Wash. at 51, which *Lane* cites with approval, the Court discusses the basis of the federal government’s exclusive jurisdiction over Fort Lewis:

It seems to us that the answer to this is clear, and that such property is *without* the state in both a jurisdictional and territorial sense, for, as we have seen by the constitution of the United States, and the act of the legislature of this state, both the military reservation itself and the jurisdiction and legislation over it have been granted to the United States, and thereby there has been created an independent sovereignty the territory of which is surrounded by the state of Washington, **but over which the state of Washington has no jurisdiction.**

Id. (boldface added).

In *Dept. of Labor & Ind. v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 837 P.2d 1018 (1992), the Court recognized that “[o]nce the federal government attains exclusive jurisdiction, state regulation of activities within the federal enclave may resume only with the express permission of Congress.” *Id.* at 53. With regard to workers’ compensation laws, they apply in federal enclaves **only** because of a federal statute enacted by Congress. *See Id.* at 56 (citing 40 U.S.C. § 290, *recodified at* 40 U.S.C. § 3172¹). As such, Congress has granted the states permission to apply their

¹ That federal statute provides:

The state authority charged with enforcing and requiring compliance with the state workers' compensation laws and with the orders, decisions, and awards of the authority **may apply the laws to all land and premises in the State which the Federal Government owns or holds by deed or act of cession**, and to all projects, buildings, constructions, improvements, and property in the State and belonging to the Government, **in the same way and to the same extent as if the premises were under the exclusive jurisdiction of the State** in which the land, premises, projects, buildings, constructions, improvements, or property are located.

40 U.S.C. § 3172 (emphasis added).

workers' compensation laws. The same is **not** true for torts committed on federal enclaves where the terms of cession grant exclusive jurisdiction to the United States, which is the case with Fort Lewis.

5. ***Gulf Offshore Co. v. Mobil Oil Corp.* is readily distinguishable.**

Mr. Mendoza's reliance on *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 101 S. Ct. 2870, 69 L. Ed. 2d 784 (1981) is misplaced. First, unlike the situation presented by Fort Lewis, the land at issue in *Gulf Shore* (the Outer Continental Shelf off the Gulf of Mexico) was neither ceded to nor purchased by the United States. Second, the Court noted that "nothing in the language, structure, legislative history, or underlying policies of OCSLA suggests that Congress intended federal courts to exercise exclusive jurisdiction over personal injury actions arising under OCSLA." *Gulf Offshore*, 453 U.S. at 484.² As such, the "general principle" of concurrent jurisdiction espoused by *Gulf Offshore* is inapplicable because Washington State ceded **exclusive** jurisdiction over Fort Lewis to the United States, except for "civil process issued from the courts of this state and such criminal process as may issue under authority of this state." Laws of 1919, ch. 3, § 20, *quoted in Lane*, 112 Wn.2d at 469.

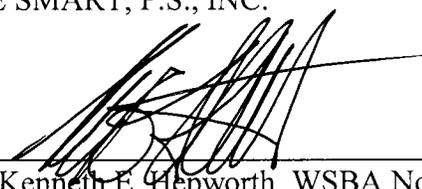
² *Gulf Offshore* considered whether state courts could adjudicate disputes under the Outer Continental Shelf Lands Act (OCSLA).

E. CONCLUSION

The court should affirm the superior court's order dismissing Mr. Mendoza's lawsuit on the ground that Pierce County lacks subject matter jurisdiction over a civil action for personal injuries resulting from negligence that occurred while Mr. Mendoza was working within the federal enclave of Fort Lewis.

RESPECTFULLY SUBMITTED this 31st day of October, 2007.

LEE SMART, P.S., INC.

By: 

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Of Attorneys for Respondents

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on November 2, 2007, in Seattle, Washington, I caused service of the foregoing pleading on each and every attorney of record herein:

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