

Bacus v. Andersen
No. 02-2-0009-6
COA No. 37772-1-II

Page 2

Joseph A. Bacus
Pro Se
91 Sprague Landing Road
Stevenson, WA 98648
(509)4277868

Table of Contents

Introduction p. 6-7

Assignments of Error p. 8

Issues Pertaining to Assignments of Error p.8-9

Statement of the Case p. 9-11

Summary of Argument p. 12-13

Argument p. 13

- Summary Judgment criteria p. 13

- LUPA's statute of limitations does not apply to this case. p.13-15

- The Bacus' reasonably disputed the "undisputed facts" upon which the trial court based its decision. p.15-17

- The Roadways on lot 3 are defined by both the Skamania County Short Plat Ordinance and the Andersen's Private Roadway Agreement and their Memorandum Supporting their Motion for Summary Judgment as "private roads." p. 18-20

- The Bacus' adverse possession and/or Revocation of Roadways document extinguished any interest that the Andersen's might claim in the roadways. P. 20-21

Conclusion p. 21-22

Table of Authorities

Published Cases

- Department of Labor & Indus. v. Kantor*, 94 Wn. App.
764, 769-770, 973 P. 2d 30 (1999) p.17
- Harris v. Urell*, 135 p. 3d, 133 Wash. App. 130,136-137
(Wash. App. Div. 2, 05/23/2006) p.20
- HJS Development, Inc. v. Pierce County*, 148 Wash. 2d
451,471-472, 61 P. 3d 1141 (2003) p.18
- Wes Crosby C. H., Inc. v. County of Spokane*, 137 Wash.
2d 296, 312, 971 P. 2d 32 (1999) p.15

Unpublished Cases

- Overhurst Neighborhood Assoc. v. Thurston County, No.*
20165-8-II (Wash. App. Div. 2, 03/28/1997) p.15

State Statutes

- RCW 4.16.020 p.14
- RCW 7. 28.010 p.14
- RCW 7. 28.070 p.20
- RCW 36.70C.020(1) p.13
- RCW 36.70C. 030 p.6
- RCW 58.17.065 p.17
- RCW 58.17.195 p.17

Court Rules

Cr. 56 p.13

Other Authority

Black's Law Dictionary, 6th ed. West Group,
St. Paul, Minn. 1990, quiet title, p. 1249 p.13-14

1. Introduction

This is an appeal of the trial court's decision granting the Andersen's' Motion for a Summary Judgment in this quiet title action. The Andersen's claim that they own roadway easements on the Bacus' lot 3 and the Bacus' claim that the Andersen's have no interest in these roadways.

The land at issue is located in Skamania County, Washington in the Patricia Andersen Short Plat.

The central issue is that the trial court granted the motion for summary judgment because the court held that LUPA (The Land Use Petition Act - RCW 36.70C.030) with its 21 day statute of limitations retroactively applied to time bar the Bacus' quiet title action. The trial court issued its decision without addressing the fact that LUPA applies only to land use issues and a quiet title action is a land ownership issue.

The trial court also failed to consider that a State Supreme Court case and a State Appellate Court, Division II, case both held that LUPA was not retroactive because the Legislature did not intend that LUPA was to be retroactive.

The remaining issues are as follows:

Bacus v. Andersen
No. 02-2-0009-6
COA No. 37772-1-II

Joseph A. Bacus
Pro Se
91 Sprague Landing Road
Stevenson, WA 98648
(509)4277868

The trial court incorrectly based its decision upon what it termed were the “undisputed facts.” The following facts that the trial court held were undisputed were, in fact, reasonably disputed by the Bacus’ throughout the case. They are:

- a. “The short plat describes on its face several easements for access to the lots;”
- b. “Patricia Andersen conveyed Lot 3 to David Prosser, specifically referencing in the deed the easement disclosed on the short plat” and
- c. “It is undisputed that the short plat was approved and recorded by Skamania County in 1989.”

The roadways on lot 3 are “private roads” not “easements” and are so defined by the Skamania County Short Plat Ordinance, the Andersen’s’ Private Roadway Agreement and the Andersen’s’ Memorandum Supporting their Motion for Summary Judgment.

Regardless of whether the roadways are “private roads” or “easements” they were extinguished by the Bacus’ adverse possession and/or their recorded Revocation of Roadway document.

2. Assignments of error

1. The trial court erred when it held that LUPA's statute of limitations barred this quiet title action because LUPA is not retroactive and it only applies to land use issues and this is a quiet title action involving the ownership of interests in land.

2. The trial court erred when it held that it is an "undisputed" fact that: a. "The short plat describes on its face several easements for access to the lots;" b. That the deed from Patricia Andersen to David Prosser "specifically... (referenced).. easements disclosed on the short plat" and c. That the short plat was approved and recorded by Skamania County - each of these statements is "reasonably disputed."

3. The trial court erred when it held that the roadways were easements because they are defined by the short plat ordinance and the Andersen's as private roads not as easements.

4. The trial court erred because whether the roadways are "easements" or "private roads" they were extinguished by the Bacus' adverse possession and/or Revocation of Roadway document.

Issues Pertaining to Assignments of Error

1. Can the trial court hold that LUPA's statute of limitations retroactively bars this quiet title action even though this petition to

quiet title applies to land ownership and LUPA only applies to land use and the State Supreme Court and the State Appellate court have held that LUPA is not retroactive? (Assignment of Error 1.)

2. Can a trial court base a decision on a summary judgment motion upon facts that are reasonably disputed? (Assignment of Error 2.)

3. Can the trial court hold that roadways are easements when they are defined by the Skamania County Short Plat Ordinance; the Andersen's Private Roadway Agreement and the Andersen's Memorandum Supporting their Motion for Summary Judgment as private roads? (Assignment of Error 3.)

4. Can the trial court fail to extinguish the "private roads" or "easements" when the Bacus' obtained title by either adverse possession and/or their Roadway Revocation document? (Assignment of Error 4.)

3. Statement of the Case

This is an appeal from the trial court's decision granting the Andersen's Motion for Summary Judgment. (Cp. 177) This is a quiet title action involving the two roadways on lot 3 of the Patricia Andersen Short Plat. The Bacus' purchased lot 3 in 1995 and filed this action in 2002. Cp. 1

The Andersens were the short plat developers. They recorded the plat in 1989. Cp. 91

The trial court granted the Andersen's' Motion for Summary Judgment because it held that LUPA's 21 day statute of limitations retroactively applied to this quiet title action and time barred the Bacus' from filing this case. Cp. 180-186 The Bacus' challenged this asserting that LUPA was not retroactive. Cp. 196-200

The trial court additionally held that the roadways on lot 3 were lawful easements. Cp. 260-261. The Bacus' challenged this determination.

The Andersen's Private Roadway Agreement states that "...all roadway areas within said division ...(are)...private roadways "Cp. 59. Their Memorandum in Support of the Andersen's' Motion for Summary Judgment states that "this agreement states that the parties intend for the roadways shown on the face of the map to be private roads..." Cp. 47

The Skamania County Short Plat Ordinance states that an easement must be granted to a "specific person or persons, corporation or entity or the public." Skamania County Short Plat Ordinance "easement" Cp. 116 Neither of the roadways shown on the plat map of lot 3 contain this mandated dedication. Cp. 91

The Skamania County Short Plat Ordinance merely states that a “private road” is “everyway or place in private ownership and used for the travel of vehicles...” Cp. 117

Beginning in 1995 and until the present date the Bacus’ have paid all taxes attributable to the roadways; made all repairs; fenced them in and used them for pasture and in good faith with the full knowledge of the Andersen’s and the general public held out the roadways as their own. Cp. 254

The Bacus’ Revocation of Roadway document follows the definition of “private road “ in the short plat ordinance and limits the use of the roadways to the Bacus’ alone. Cp. 90

The County Sanitarian did not approve this short plat because of the lack of a guarantee of potable water and an unacceptable sanitary waste disposal on lot 2 of the plat map. This is noted on the plat map. Cp. 91

The Skamania County Short Plat Ordinance requires the County Assessor’s written approval in order to give the County Auditor the administrative authority to record the short plat. (notification of subdivision or exemption, Cp. 135) The County Assessor and the County Deputy Auditor provide written statements that the County Auditor recorded this short plat in violation of the ordinance

without written permission from the Assessor. Cp. 110 &111

4. Summary of Argument

The trial court granted the Andersen's Motion for Summary Judgment because it incorrectly held that LUPA's statute of limitations retroactively applied to bar this quiet title action. LUPA does not apply to quiet title actions and is not retroactive. It only applies to land use issues. Quiet title actions involve land ownership issues and have their own statute of limitations. The Bacus' complied with the quiet title statute of limitations.

The trial court based its decision upon a number of allegedly "undisputed facts" which were, in fact, reasonably disputed by the Bacus' throughout the case.

The roadways on lot 3 are private roads based upon the fact that they are so defined by the Skamania County Short Plat Ordinance and the Andersen' Private Road Agreement and Memorandum Supporting the Andersen's' Motion For Summary Judgment.

If the roadways are private roads the Bacus' Revocation of Roadways document extinguishes the Andersen's claimed interest in the roadways.

Regardless of whether the roadways are private roads or

easements the Bacus' extinguished the Andersen's claimed interest by adverse possession because the Bacus' held the roadways under a good faith claim and color of title and paid all taxes from 1995 until the present date.

5. Argument

a. Summary Judgment Criteria

A summary judgment is proper when "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." CR 56(c)

Summary Judgments are reviewed by the appellate courts de novo on the law.

This summary judgment was based upon "facts" that were reasonably disputed by the Bacus'.

b. LUPA's Statute of Limitations Does Not Apply to This Case.

Contrary to the trial court's decision LUPA is not retroactive and there is no statute of limitations barring this action.

LUPA is the "means of judicial review of land use decisions." (my emphasis) RCW 36.70C.020(1) & RCW 36.70C.030

A "quiet title action" is a proceeding to establish the plaintiff's title to land by bringing into court an adverse claimant and there compelling him either to establish his claim or be forever after

stopped from asserting it.” (my emphasis) *Black’s Law Dictionary*,
6th ed., West Group, St. Paul, Minn. 1990, quiet title, p. 1249

Neither LUPA’s statute of limitations nor the writ of review’s
statute of limitations apply to a quiet title action.

The applicable statute of limitations states in pertinent part that:

Any person having a valid subsisting interest in real
property, and a right to the possession thereof, may
recover the same by an action in the superior
court of the proper county ...against the person claiming
the title.

RCW 7.28.010

and

The period for the commencement of the actions shall be as
follows:

Within ten years:

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 ...was seized or possessed of the premises in question
within ten years before the commencement of the action

RCW 4.16.020

The trial court supports its assertion that LUPA is retroactive by
piecing together several legal principles from various cases, but
neglects to address the cases that hold that LUPA is not retroactive.

Both the State Supreme Court and the State Appellate
Court , Division II have held that LUPA is not retroactive. The
Supreme Court states that “nothing in ... (the LUPA statute)

suggests it is retroactive.” *Wes Crosby C. H., Inc. v. County of Spokane*, 137 Wash. 2d 296, 312, 971 P. 2d 32 (1999)

Division II is more explicit. It states that:

...we decline to apply LUPA retroactively. Whether a statute has retroactive or prospective application is controlled by the legislative intent. *Pape v. Department of Labor & Indus.*, 43 Wash. 2d 736 (1953); accord *Poston v. Clinton*, 66 Wash. 2d 911, 915, 406 P.2d 623 (1965). Statutes are presumed to apply prospectively. *Pape*, 43 Wash. 2d at 741. Thus, we strictly construe statutes against retroactive application. *Pape*, 43 Wash. 2d at 741. By enacting a statute that materially changes the law, the legislature indicates its intent that the statute apply prospectively only. *In re Mota*, 114 Wash. 2d 465, 788 P.2d 538 (1990)

Overhulse Neighborhood Assoc. v.

Thurston County, No. 20165-8-II (Wash. App. Div. 2 03/28/1997)

Although not argued before the trial court, a quiet title action has nothing to do with LUPA or the writ of review. The trial court erred when it did not recognize the difference between a quiet title action that deals with the ownership of interests in land and the use of that land.

c. The Bacus' Reasonably Disputed the " Facts" upon which the

Trial Court Based its Decision

1. There are no easements on Lot 3. They are all Private Roads

The trial court stated that it is undisputed that "the short plat

describes on its face several easements for access to the lots." The

Bacus v. Andersen
No. 02-2-0009-6
COA No. 37772-1-II

Joseph A. Bacus
Pro Se
91 Sprague Landing Road
Stevenson, WA 98648
(509)4277868

Bacus' disputed this statement because the short plat ordinance defines these roads as private roads and not easements and the Andersens stated they were private roads in their Private Roadway Agreement and Memorandum Supporting Their Motion For Summary Judgment.

The deeds applicable to lot 3 can not create easements because they do not contain the language of grant mandated by the short plat ordinance.

2. The trial court states that it is undisputed that "the deed from Patricia Andersen to David Prosser "specifically... (referenced)...easements disclosed on the short plat." The Bacus' disputed the alleged "easements" because they did not meet the short plat ordinance definition of "easement." The short plat mandated grantee was not named. Easements were never created. The roads met the short plat definition of "private road."

3. This short plat is not protected by any statute of limitations because it was never approved by Skamania County.

The trial court states it is undisputed that the short plat was approved and recorded by Skamania County in 1989. The record reflects that the short plat was disapproved by the County Sanitarian and the County Assessor and that the County Auditor

recorded the short plat in violation of a county ordinance (Cp. 135) and in excess of his delegated authority. RCW 58.17.195.

On the face of the plat the Sanitarian withholds his approval by stating that there is no guarantee of adequate potable water and lot 2 does not have an acceptable on site sanitary sewage disposal area.
Cp. 91

The county short plat ordinance withholds the Auditor's authority to record without the written approval of the Assessor.
Cp. 135

Recordation is final approval of a short plat. RCW 58.17.065
Statements from the Assessor and the Deputy Auditor provide that the Auditor did not receive written permission from the Assessor and consequently recorded the plat in excess of his authority. Cp. 110 & Cp. 111

"Ultra vires acts are those done wholly without legal authorization or in direct violation of existing statutes...(or ordinances)..." Department of Labor & Indus. V. Kantor, 94 Wn. App. 764, 769-79, 973 P. 2d 30 (1999)

The recordation was ultra vires and void and the short plat was never approved. No statute of limitations could have commenced to run in regard to this short plat because a statute of limitations

does not begin until the short plat has been approved.

The trial court based its decision upon the above three disputed facts. This requires that the case be remanded.

d. The Roadways on Lot 3 Are Defined by both the Short Plat Ordinance and the Andersen's as "Private Roads"

As stated earlier The Andersen's Private Roadway Agreement and their Memorandum Supporting their Motion for Summary Judgment both state that the roadways on lot 3 are "private roads."

Interpretation of local ordinances is governed by the same rules of construction as state statutes ...rules of construction do not apply when the language is clear and explicit...definitions contained within the act control the meaning of words used in the Act.

HJS Development, Inc. v. Pierce County, 148. Wash. 2d 451, 471-472, 61 P. 3d 1141 (2003)

The short plat ordinance only provides for two types of roadways - "private roads" and "easements." Their definitions are clear and unambiguous. "easement" Cp. 116 and "private road" Cp. 117-118

In order for a roadway to be an "easement" it must be granted to "...a specific person or persons, corporation or entity, or to the public..." Skamania County Short Plat Ordinance, Cp.116

In order for a roadway to be a "private road" it must include "everyway or place in private ownership and used for the travel of

vehicles by the owner or those having express or implied permission from the the owner but by no other persons.” Skamania County Short Plat Ordinance, Cp. 117-118

The language on the plat regarding the roadways is somewhat misleading and appears to have been drafted without consideration of the requirements of the short plat ordinance.

On the short plat map one roadway states “Patricia Road (private) to provide access to lots 2&3” the other states “Roadway easement for remainder of property.” Cp. 91

Regardless of the language on the short plat these roadways can not be easements because they do not contain the language mandated by the short plat ordinance- to wit, they are not granted to “...a specific person or persons, corporation or entity, or to the public...”

The roadways do fit within the definition of “private road” in that the land is privately owned and the roadways are used for the travel of vehicles.

The definition of “private road” also states that it is used “...by the owner or those having express or implied permission from the owner but not by other persons.”

In 2003 the Bacus’ recorded a Roadway Revocation document.

It follows the definition of “private road” and restricts use of the roadways to the Bacus’ alone. Cp. 90

e. The Bacus’ Adverse Possession Extinguished any Interest that
the Andersen’s Might Claim in the Roadways

The adverse possession statute states that:

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 land or tenements shall be held and adjudged to be the legal owner of said lands or tenements.

RCW 7.28.070

“...if a claimant has held the claimed property for seven years under a “good faith color of title” and has paid all taxes on the disputed property he need only prove actual, open and notorious possession for those seven years.” RCW 7.28.070 & *Harris v. Urell*, 135 P. 3d 530, 133 Wash. App. 130, 136-137 (Wash. App. Div. 2 05/23/2006)

Regardless of whether the roadways are “private roads” or “easements” the Andersen’s claimed interest was extinguished by adverse possession.

Since their 1995 purchase of lot 3 the Bacus have paid all taxes related to the roadways; done all repair and improvement on the roadways, fenced in the roadways for pasture and took all action

with the direct knowledge of the Andersens and the general public to indicate that they were the owners of the roadways. In all this the Bacus' under good faith color of title relied on the Private Roadway Agreement prepared, executed and recorded with the plat by the Andersen's that stated that all roadways were "private roads" which the short plat ordinance provided that the Bacus' could extinguish. Cp. 253

If the roadways are determined to be private roads they were extinguished by the Bacus' Revocation of Roadways document.

6. Conclusion

The trial court's decision is based upon a significant mistatement of the law. The basis of the trial court's decision is that LUPA is retroactive and applies to petitions to quiet title. LUPA is not retroactive because the Legislature did not intend that it be retroactive. It applies only to land use issues. It does not apply to land ownership issues such as a quiet title action. The trial court's decision did not comport with the law and should be reversed.

The roadways on lot 3 are private roads as provided by the short plat ordinance; the Andersen's Private Roadway Agreement and

the Andersen's Memoranda Supporting their Motion for Summary Judgment. They were extinguished by the Bacus' Revocation of Roadways document.

The Bacus' conduct from 1995 until the present meets and exceeds all the required elements for adverse possession. The trial court's decision must be reversed and a decision rendered in favor of the Bacus' because the Andersen's have no legal interest in the roadways.

The Bacus' respectfully request that the trial court's decision be reversed and a decision be rendered in the Bacus' favor and/or this case be remanded to the trial court.

Respectfully submitted,

Dated: October 5, 2008



Joseph A. Bacus
Pro Se
91 Sprague Landing Rd.
Stevenson, WA 98648
(509) 427-7868

following persons.

Washington Court of Appeals
Division Two
David Ponzoha, Clerk
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Skamania County Superior Court
LizBeth Hermansen
P.O. Box 790
Stevenson, WA 98648

Bradley W. Andersen
Attorney at Law
700 Washington St. Ste 701
Stevenson, WA 98648

Date: October 5, 2008



Joseph A. Bacus, Pro Se
91 Sprague Landing Road
Stevenson, WA 98648
(509) 427-7868

Bacus v Andersen
No 02-2-00092-6
COA No. 37772-1-II

Joseph A. Bacus, Pro Se
91 Sprague Landing Rd
Stevenson, WA 98648
(509) 427-7868