

No. 63053-9-1

COURT OF APPEALS,  
DIVISION I,  
OF THE STATE OF WASHINGTON

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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..

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RESPONSE BRIEF OF RESPONDENT  
CITY OF WOODINVILLE

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**A. ISSUE**

1. Whether Gorman can assert against the City of Woodinville, a claim of title based upon ten years of continuous adverse possession of real property.

2. Whether the costs awarded to Woodinville are authorized by statute?

**B. STATEMENT OF THE CASE**

In his Complaint (CP 6-8), the plaintiff, James Gorman IV (“Gorman”), asserts that Hollywood Vineyards Limited Partnership (“HVLP”) has acquired title to the subject real property by adverse possession. Gorman claims ten (10) plus years of adverse possession preceded the conveyance to Woodinville in 2005. The subject property is referenced in the Complaint as “Tract Y.” The City of Woodinville is identified in the Complaint as the record title owner of Tract Y and as the only party defendant.

The tract was conveyed to the City for purposes of constructing roadway improvements.<sup>1</sup> Gorman requests in his complaint that title to Tract Y be quieted in favor of Hollywood Vineyards and that all claims of title to Tract Y made by the City of Woodinville be forever extinguished. CP 8.

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<sup>1</sup> This fact was not in dispute before the Trial Court nor is it disputed in Appellant’s Opening Brief. King County assessor records for the tax parcel (#95108200070) designate the present use as “right of way/utility, road.”

In its amended answer to the Complaint (CP 56-57), Woodinville asserted the affirmative defense of failure to state a claim upon which relief can be granted on the basis that the plaintiff is barred by statute (RCW 4.16.160) from asserting his claim of title by adverse possession against the City. The City filed and served a CR 12(B)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted on November 24, 2008. CP 20-25. After hearing, the Superior Court entered an Order granting Woodinville's motion and dismissing the Complaint. CP 62-63.

A Motion for Reconsideration filed by Gorman was denied on January 26, 2009. CP 113. Gorman then appealed the Order denying reconsideration of the Order of dismissal and the Order awarding costs to Woodinville. CP 111-117.

The City filed a motion for the court to enter its proposed judgment regarding an amended cost bill after Gorman objected to the Cost Bill filed by the City. The court granted the City motion and entered an order for costs which is now appealed. CP 109-110.

**C. SUMMARY OF ARGUMENT**

Hollywood Vineyards is prohibited by RCW 4.16.160 from asserting an adverse possession claim against the City, even though it may have asserted the claim against the private property owner who conveyed

the subject property to the City.<sup>2</sup> The statute is clear and unambiguous. It requires no judicial interpretation as to its meaning or interpretation of legislative intent.

Tract Y was conveyed to Woodinville without any claim of right, title or interest in the property ever having been previously asserted by Hollywood Vineyards. On these facts, any claim by Hollywood Vineyards/Gorman of title by adverse possession cannot now be asserted against the City. The claim is barred by legislation included in Chapter 4.16 RCW with the ten-year statute of limitations upon which Gorman's claim of adverse possession is based. RCW 4.16.020. What rights the legislature gave to adverse possessors, the legislature can also take away.

The award of costs is also based upon statute. All costs included in the Order awarding costs (CP 109-110) are based upon the statutory authorizations cited in this brief.

#### **D. ARGUMENT**

1. A claim contrary to law is subject to dismissal by a CR 12(B)(6) motion.

It is true that the factual allegations in the complaint must be accepted as true. *Dennis v. Heggen*, 35 Wn. App. 432, 667 P.2d 131 (1983). However, the motion may be granted if it appears beyond doubt that the plaintiff can prove no set of facts consistent with the complaint

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<sup>2</sup> No claim of adverse possession was asserted by Gorman/Hollywood Vineyards until after conveyance of the subject property to the City.

that would entitle plaintiff to relief. *Orwick v. City of Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984). Such is the case here, where regardless of the truth of the factual allegations made in the Complaint, the Plaintiff is barred from asserting a claim of title by adverse possession by RCW 4.16.160.

The defense of failure to state a claim is applicable to a complaint setting out a claim which is either not recognized in the State of Washington or is directly contrary to law. *Pifer v. Egger*, 43 Wn. App. 63, 715 P.2d 154 (1986); *Blenheim v. Dawson & Hall*, 35 Wn. App. 435, 667 P.2d 125 (1983). Here, the claim asserted by Hollywood Vineyards is directly contrary to RCW 4.16.160 and therefore made contrary to law.

2. Since Gorman cannot assert his claim of adverse possession against Woodinville, the claim of adverse possession cannot be proven were there to be a trial.

In order to prove its claim of adverse possession, Hollywood Vineyards must first be entitled to bring its claim of adverse possession against the City. The legislature by statute adopted a ten-year statute of limitations and created the ability for an adverse possessor to acquire and defend its title to property. RCW 4.16.020. On the same hand, the legislature passed a statute plainly prohibiting an adverse possessor from asserting a claim against the City based upon the ten-year statute of limitations. RCW 4.16.160. Thus, the argument that Hollywood Vineyards acquired legal title immediately upon the lapse of ten years against the

City's predecessor is not compelling in light of the plain language of RCW 4.16.160, which bars a plaintiff from ever bringing an adverse possession claim against the City. None of the plaintiff's citations on pages 6-10 are on point to the issue at hand.

3. RCW 4.16.160 is clear on its face and requires no interpretation.

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 quasi municipality 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 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. (emphasis added)

The bolded text is clearly worded and without any ambiguity in its meaning. *Before 1903 it was possible to gain adverse possession title to state lands other than shorelines or tidelands, but adoption of a new statute of limitations in that year removed the possibility.* 17 William B. Stoebeck & John W. Weaver, *Washington Practice* § 8.8 Owners Against Whom Adverse Possession Title May Not be Obtained (2d. ed. 2004).

4. The ten-year statute of limitations for adverse possession is not applicable to governmental property.

The Plaintiff may not assert an adverse possession claim against the City of Woodinville because the ten-year statute of limitations is not applicable to municipalities when acting in their governmental capacity. RCW 4.16.160; *Commercial Waterway Dist. No. 1 v. Permanente Cement Co.*, 61 Wn.2d 509, 512, 379 P.2d 178 (1963) (citing *Town of West Seattle v. West Seattle Land & Improvement Co.*, 38 Wn. 359, 363-64, 80 P. 549 (1905)). In *Commercial Waterway*, the Supreme Court exempted cities from the ten-year statute of limitations period for adverse possession established in RCW 4.16.020 when acting in a governmental capacity. Similarly, an exception to the statute of limitations for adverse possession against the state is codified in RCW 4.16.160, which provides that:

[T]here 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.

The plain language of the statute places no limitation upon the proviso that no claim of right predicated upon the lapse of time against the state shall ever be permitted against the state. If the legislature had intended otherwise, it would have created an exception or qualification prohibiting application of the statute where, for example as occurred here, the state (city) acquired land after the presumptive statute of limitations

had run. The statute applies to bar Plaintiff's claim against the City, even though the City acquired title to the disputed property in 2005, subsequent to the time the plaintiff alleges he acquired legal title to the property through adverse possession. Because the plaintiff failed to bring a quiet title action prior to the City's acquisition of the property, the statute's plain language now bars the claim being pursued against the City.

The policies underlying the exemption of cities from the ten-year statute of limitations for adverse possession are also supported by a finding that Plaintiff is barred from asserting a claim against the City. As stated in the preamble of 1986 Laws of Washington, chapter 305, the legislature exempted the state from claims predicated upon the lapse of time to protect it from increased exposure to lawsuits and costs of insurance coverage. In addition, the legislature recognized that escalating costs ultimately affect the public through higher taxes, loss of essential services, and loss of protection provided by adequate insurance. In *Town of West Seattle v. West Seattle Land & Improvement Co.*, 38 Wn. 359, 80 P. 549 (1905), the Court also stated that allowing adverse possession against the city would be equivalent to allowing a nuisance to occur, and further, that it would "be a grave reproach to the law to permit a wrongdoer-one who is daily violating the law of the state itself-to take advantage of his own wrong and that of the municipality, and by such indirect and wrongful means obtain a right [to the land]." *Id.* at 364.

Thus, the time at which the city obtained record ownership of the land should make no difference if the policies of the statute and case law are to be served. The City and the citizens of the state will be subjected to higher costs and a nuisance interfering with the construction of a beneficial public street if the statute of limitations is applied against the City.

In the present case, the Plaintiff is not permitted to assert an adverse possession claim against the City of Woodinville. Because the City of Woodinville has acted in its governmental capacity in constructing a city street on the disputed property, the plaintiff cannot assert that he acquired title by adverse possession. *See Town of West Seattle*, 38 Wn. at 364 (finding the construction of a city street to be a governmental function).

5. Case law relied upon by plaintiff is distinguishable on its facts and legal analysis.

Gorman/Hollywood Vineyards argues that the City's predecessor in title had no title to transfer and that the City never received legal title and therefore has no rights to Tract Y. According to plaintiff's counsel, Washington case law states that once title has become fully vested by adverse possession it cannot be divested by any other act that would be required by deed. Gorman's counsel cites to *Mugaas v. Smith*, 33 Wn.2d 429, 431 (1949) in support of his position. This case does not support any exception to RCW 4.16.160 on the facts before this court.

First, *Mugaas v. Smith* did not involve any analysis of RCW 4.16.160. The state was not a party. Title by adverse possession was not asserted against the state. The application of the statute was not at issue in the case.

In addition, since RCW 4.16.160 was not applicable, there was no bar to the plaintiff asserting a claim of adverse possession and demonstrating factual evidence at trial to prove his claim. Here, RCW 4.16.160 prohibits the plaintiff from making a claim of title by adverse possession and from bringing forward evidence at trial to prove the essential elements of adverse possession. Plaintiff may have been able to assert his claim against the City's predecessor in title prior to the conveyance to the City in 2005, but plaintiff is now barred by statute from asserting the claim against the City. 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 limitation. *Herrmann v. Cissna*, 82 Wash.2d 1, 507 P.2d 144 (1973). This 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. *Leciejewski v. Sedlak*, 110 Wis.2d 337, 329 N.W. 2d 233 (1982).

Gorman also cites to *Kesinger v. Logan*, 51 Wn. App. 914, 919, 756 P.2d 752 (1988), *aff'd*, 113 Wn.2d 320 (1989) asserting that the bar contained in RCW 4.16.160 is not absolute where the land at issue is held

by a government in its proprietary, as opposed to its governmental capacity. This statement is an accurate statement of the law, but since Woodinville was conveyed the property for a highway improvement project, the property is held in a governmental, and not a proprietary capacity. *Muller v. City of Seattle*, 167 Wash. 67, 8 P.2d 994 (1932); *Vetter v. K. & K. Timber Co.*, 124 Wash. 151 213 P. 927 (1923); and *City of Benton City v. Adrian*, 50 Wn. App. 330, 748 P.2d 679 (1988).

Gorman's most incredible claim however, is the claim that Washington Court have already acknowledged that adverse possession claims which run against a private owner are properly asserted against a later public owner.<sup>3</sup> Gorman cites to *City of Benton City v. Adrian*, 50 Wn. App. at 337-338. No such acknowledgement is made or even hinted at in the portion of the opinion cited by Gorman. The court's dictum dismisses Adrian's claim that their rights were fixed by the acts of their predecessors long before the City acquired its property by pointing out that there was not sufficient proof of open, notorious, continuous, and uninterrupted adverse use for ten 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. The applicability or non-applicability of the language in RCW 4.16.160 barring the assertion of the claim against the City is not even discussed. There is no acknowledgement by the court that Adrian has

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<sup>3</sup> See page 11 of Opening Brief.

the right to assert his claim against the City if his claim is based on tenyears of adverse possession occurring prior to City ownership.

6. Defense of failure to state claim is applicable when the claim set out in a complaint is directly contrary to law.

The defense of failure to state a claim upon which relief can be granted is applicable if a complaint, as here, sets out a claim which is either not recognized in the State of Washington or is directly contrary to law. *Pifer v. Egger*, 43 Wn.App. 63, 715 P.2d 154 (1986) and *Blenheim v. Dawson & Hall*, 35 Wn.App. 435, 667 P.2d 125 (1983).

In conclusion, RCW 4.16.160 bars plaintiffs claim of right to quiet title based upon the ten-year statute of limitation from being asserted against the City.

7. The Order for the award of costs to Woodinville is grounded upon the applicable statutes in Chapter 4.84 RCW.

The total cost bill amount of \$4,274.20 is based upon actual undisputed costs incurred by Woodinville<sup>4</sup> and allowed by applicable statutes as set forth in Woodinville's response to the objection<sup>5</sup> to cost bill filed by Gorman:

The City of Woodinville after reviewing  
RCW 4.84.010; 4.84.080 and 4.84.090

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<sup>4</sup> Woodinville's original Cost Bill amount of \$6,228.11 (CP 64-70) was amended after objection to \$4,272.20 (CP 97-98).

<sup>5</sup> CP 97-98.

agrees that its Cost Bill dated January 16, 2009 includes amounts for the cost of reproduction of documents and the transcription of depositions, and Westlaw search costs that are not allowed by statute. Therefore, the City of Woodinville hereby amends its cost bill to the amount of \$4,274.20, consisting of the following expenses:

1. 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
  2. Expenses for taking depositions (does not include transcriptions costs) as authorized by RCW 4.84.090.....\$1,084.20
  3. Compensation paid Mediator at JAMS (compensation of referee) as authorized by RCW 4.84.090.....\$1,395.00
  4. Statutory attorney fee authorized by RCW 4.84.080.....\$0,200.00
  5. Filing fee for counterclaim authorized by RCW 4.84.010 and RCW 4.84.090.....\$0,200.00
- Total:.....\$4,274.20

a. Service fees paid to legal messenger.

RCW 4.94.090 allows the prevailing party to recover “all necessary disbursements” including those specifically listed. Service of process charges are specifically listed, but the specific inclusion of “service of process” charges does not prevent recovery of paid for service

of all pleadings required to be served on the other party even if “service of process” means summons and complaint as argued by Gorman. Such disbursements were as necessary as the specific costs of service of summons and complaint by the Gorman or service of the answer and counterclaim by the Woodinville.

b. Expenses paid to court reporter for taking of the depositions.

The costs included that paid for the attendance of the court reporter at the depositions taken in this case do not include the costs of transcription. Therefore, the requirement that the depositions be used at trial in RCW 4.84.010(7) is not applicable. Transcription costs were included in the original cost bill but deleted from the amended cost bill approved by the Court.

c. Expenses of mediation.

In King County Superior Court an attempt at alternative dispute resolution is mandatory and included in all civil case schedules. LCR 4(e). It is a necessary cost of litigation and therefore a “necessary disbursement” under RCW 4.84.090. True, a mediator is not within the statutory definition of referee found in RCW 2.24.060, but a mediator serves a mandatory function by facilitating a required ADR process. The expense of the mediator is a necessary disbursement allowed by RCW 4.84.090.

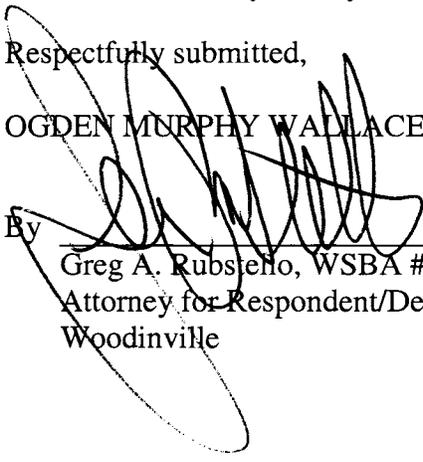
E. **CONCLUSION**

The decisions of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 7th day of July, 2009.

Respectfully submitted,

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By 

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