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SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals Case No. 68739-5-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

KHUSHDEV MANGAT and HARBHJAN MANGAT

Petitioners/Appellants

vs.

SNOHOMISH COUNTY, LUIGI GALLO,
JOHANNES DANKERS and MARTHA DANKERS

Respondents

RESPONDENT SNOHOMISH COUNTY'S ANSWER TO
PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

This case is a companion to that Petition for Discretionary Review filed by Petitioners/Appellants Khushdev Mangat and Harbhjan Mangat (“Mangat”), relating to that Published Opinion of the Court of Appeals filed in Case No. 67712-8-I (Supreme Court No. 89378-1), affirming the trial court’s dismissal of an earlier action filed by the Mangats against Respondent, Snohomish County (“County”), seeking declaratory and injunctive relief to preclude the County from continuing to process a subdivision application originally filed by the Mangats as contract purchasers of certain real property owned by Respondents Luigi Gallo and Johannes Dankers and Martha Dankers (“Gallo and Dankers”).

After the Purchase and Sale Agreement terminated due to the Mangats inability to close, the underlying property owners (Gallo and Dankers) requested that the County continue to process the subdivision application over the Mangats’ objection. (CP 465-66). On March 22, 2011, the Mangats commenced an action under Snohomish County Cause No. 11-2-03863-5 (“Mangat I”), as a Complaint for Declaratory and Injunctive Relief to preclude the County from processing the subdivision application and seeking damages for alleged “unconstitutional taking” of the Mangats’ claimed property interest in the subdivision application. (CP 463-64).

Specifically, the Mangats' complaint was based on the contention that the vested rights arising under the subdivision application were the personal property rights of the named applicant (i.e. the Mangats) and, thus, that the County could not continue processing the application at the request of Gallo and Dankers without the consent or assignment of the Mangats' rights in the application. (CP 464)

The trial court in the first action granted summary judgment dismissing the Mangats' complaint for declaratory and injunctive relief based on the conclusion that the rights arising under a land use application are "in rem" and run with the land, not the person applying for the permit and, thus, that Gallo and Dankers were entitled to continue processing the subdivision application as the underlying property owners. (CP 478-82). In the alternative, the trial court also granted a companion motion for summary judgment filed by Gallo and Dankers based on the express language of the Purchase and Sale Agreement which required the Mangats to turn over to Gallo and Dankers all "written documents" relating to development of the subject property in the event the Purchase and Sale Agreement was terminated. Id.

During the pendency of the first action, the County proceeded to hearing on the subdivision application at the request of Gallo and Dankers, culminating with the grant of preliminary subdivision approval on March

17, 2011. (CP 465-66). Thereafter, the Mangats commenced this second action under Snohomish County Superior Court Cause No. 11-2-06519-5 (“Mangat II”), appealing the County’s decision to grant subdivision approval under the Land Use Petition Act (LUPA) Ch. 36.70C RCW, together with claims seeking writs of prohibition and mandamus to enjoin approval of the plat, and a claim for damages against the County under Ch. 64.40 RCW for alleged failure to timely act on the plat application. (CP 492-500).

The basis for the Mangats’ claims for writs of mandamus and prohibition in Mangat II were based upon the same claim of “unconstitutional taking” alleged in Mangat I and dismissed by the trial court in that action. (CP 501-02). Accordingly, the County moved to dismiss those claims as barred by the doctrine of collateral estoppel. (CP 474-75). Concurrent therewith, the County moved to dismiss the Mangats’ LUPA petition for lack of standing based on the fact that the Mangats had no further interest in the real property and, thus, were not aggrieved parties for purposes of standing under LUPA. (CP 462-476). These combined motions were granted by Order of the Court dated October 19, 2011. (CP 270-72).

Thereafter, the Mangats sought partial summary judgment on their remaining claim for damages under Ch. 64.40 RCW based upon the

alleged failure of the County to timely process the subdivision application. (CP 159-180). In response, the County asserted as an affirmative bar the 30-day claim filing requirement set forth in RCW 64.40.030. By Order dated April 12, 2012, the trial court denied the Mangats' motion, concluding that the claim was barred by the filing period in RCW 64.40.030, and dismissed the Mangats' remaining claim. (CP 19-21).

The Mangats appealed both decisions above to the Court of Appeals, which consolidated the hearing on the appeal in Mangat I with the hearing in the appeal on Mangat II. On August 26, 2013, the Court of Appeals issued concurrent opinions in both actions affirming the respective dismissals of the Mangats' complaints. (See Published Opinion Court of Appeals Case No. 67712-8-I – Mangat I; Unpublished Opinion Court of Appeals Case No. 68739-5-I – Mangat II). The Mangats, in turn, filed concurrent Petitions for Discretionary Review of both opinions with this Court.

II. ISSUES PRESENTED FOR REVIEW

To the extent the Court accepts discretionary review of the decision in Mangat I, does the Petition for Discretionary Review in Mangat II set forth any basis under RAP 13.4(b) for review of that decision?

III. STATEMENT OF THE CASE

The facts in this matter are succinctly stated in the Unpublished Opinion of the Court of Appeals filed herein. In conjunction therewith, the County incorporates by reference the Statement of the Case set forth in the County's Answer to Petition for Discretionary Review in Mangat I (Supreme Court Case No. 89378-1).

IV. ARGUMENT

A. Grounds for Accepting Discretionary Review.

As recognized in the Mangats' Petition for Discretionary Review filed in the present action, there is no independent basis under RAP 13.4(b) for the Mangats to seek review of the Court of Appeals' Unpublished Opinion in Case No. 68739-5-I (Mangat II). Specifically, the Mangats do not challenge the Court of Appeals application of the law relating to the doctrine of collateral estoppel as barring their claims for writ of mandamus and prohibition (assuming the decision on the merits issued in Mangat I stands); nor that they lack standing to maintain an appeal under LUPA (assuming they had no further interest in the subdivision application as determined in Mangat I); or that their claim for damages under Ch. 64.40 RCW is barred by the filing period in RCW 64.40.030. (See Petition for Review, at 7-8).

Rather, the basis for the Mangats' Petition for Discretionary Review in this case is based solely on the grounds asserted for review in Mangat I stating as follows:

Resolution of the writ and LUPA issues decided herein will likely turn on this Court's resolution of the issues in Mangat I. Accordingly, the Mangats request this Court take judicial notice of Mangat's Petition for Review in that action and consider them here notwithstanding the general rule to the contrary because cases are linked and application of the collateral estoppel doctrine requires consideration of the issues raised in both cases. Thus, as shown below, the RAP 13,4(b) considerations meriting review in Mangat I also favor granting review of the issues here with respect to Writs and LUPA. [emphasis added]

The COA decision sets forth the elements necessary for the application of collateral estoppel. (Exhibit A, p. 4) The Mangats have no quarrel with the standards, but assert that ownership of the vested rights, including the 2007 vesting date, will be determined by this Court's ultimate resolution of the substantive issue argued in Mangat I; . . . [emphasis added]

(See Petition for Review, at 8).

As recognized in the Mangats' Petition for Discretionary Review in this case, the decision on the merits in Mangat I was dispositive of the issues raised in the LUPA appeal and claims for writs of mandamus and prohibition in Mangat II and, thus, the trial court in Mangat II correctly dismissed those claims as barred by the doctrine of collateral estoppel in its order dated October 19, 2011. Notably, the Mangats do not seek review of the trial courts separate Order dated April 12, 2012, dismissing the

Mangats' claim for damages under Ch. 64.40 RCW as barred by the claim filing period in RCW 64.40.030. This decision is independent of any collateral estoppel arising from that decision in Mangat I and clearly in accordance with that decision in Birnbaum v. Pierce County, 167 Wn. App. 728, 274 P.3d 1070, *review denied*, 175 Wn.2d 1018, 290 P.3d 994 (2012).

The remainder of the Mangats' Petition for Discretionary Review in this matter is devoted to re-arguing the issue in Mangat I regarding whether the rights arising under a land use application should be deemed "in personam" as the personal property of the applicant; or "in rem" as attaching to and running with the land. As stated in the Published Opinion of the Court of Appeals issued in Mangat I, this issue has been previously determined by this Court in Clark v. Sunset Hills Memorial Park, 45 Wn.2d 180, 273 P.2d 645 (1954), wherein the Court specifically held that zoning and permit rights run with the land, not with the person applying for the permits. (See Published Opinion Court of Appeals, Case No. 67712-8-I, at 6 – Mangat I).

For the same reason that the decision in Mangat I was correctly decided based upon established law precluding the need for further review, so too was the decision on the merits in Mangat II, dismissing such action seeking to re-litigate the same issues based upon the doctrine

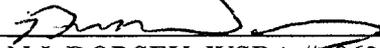
of collateral estoppel. Accordingly, there is no basis for review of such decision under RAP 13.4(b).

V. CONCLUSION

The decision of the Court of Appeals in this matter affirming the trial court's dismissal of the Mangats' attempt to re-litigate the issues addressed in Mangat I is based on a clear application of the doctrine of collateral estoppel which the Mangats do not dispute. Accordingly, to the extent the decision in Mangat I was based upon a correct application of the rule of law as announced by this Court in Clark v. Sunset Hills Memorial Park, supra, such decision is dispositive of the alternative claims for relief which the Mangats attempted to assert in the second action based on the same issue and, thus, the Court of Appeal's Unpublished Opinion affirming the same was correct. The Supreme Court should deny review.

Respectfully submitted this 23rd day of October, 2013.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 
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DECLARATION OF SERVICE

I, Regina McManus, hereby declare that I am an employee of the Civil Division of the Snohomish County Prosecuting Attorney, and that on this 23rd day of October 2013, Respondent Snohomish County's Answer to Petition for Discretionary Review was served upon persons listed and by the method(s) indicated:

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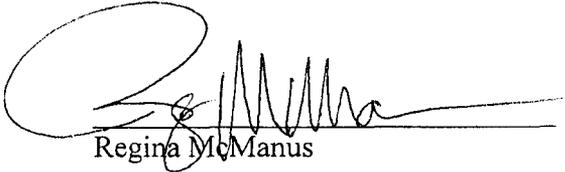
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 23 day of October, 2013.


Regina McManus

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Attached for filing in Mangat v. Snohomish County, et al., (*Mangat II* – Case No. 89332-2), is Respondent Snohomish County's Answer to Petition for Discretionary Review. Please let me know if you have any trouble opening this document. Thank you.

Filed by Regina McManus (425-388-6347), on behalf of:

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