IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KING COUNTY, a political subdivision of the State of Washington, Plaintiff, v. JOHN RASMUSSEN, and NANCY RASMUSSEN, husband and wife, and their marital community Defendants.	No. 00-2-14946-8 SEA DEFENDANTS' BRIEF OPPOSING PRELIMINARY INJUNCTION, AND REQUEST FOR BILATERAL NO CONTACT ORDER, CHANGE OF VENUE

I. RELIEF REQUESTED

Defendants John and Nancy Rasmussen oppose King County's far-reaching, pervasive motions for preliminary injunction, based upon their declarations refuting any claims they are dangerous, and the factual basis showing they have legal title to their real property, and that King County is attempting to use this forum to validate illegal title transfers, without carefully examining the true nature of the legal title involved in this action. Defendants are requesting terms for the unnecessary expedition of this matter, and request this court to grant their accelerated motion for changing venue of this action, based upon the counterclaims to be filed in this action. An administrative tort claim has been drafted, but due to exigencies of time there has been no opportunity to exhaust administrative remedies.

Defendants further request this court to enter a bilateral no contact order, pending trial on the merits, (save and except for the county's police and fire protection, or other necessary services for the defendants) and for a change of venue to Yakima County Superior Court.

II. STATEMENT OF FACTS

A. King County's Real Property Claims are Fraught With Illegality, and Based Upon Fraud, Negligent Investigation, Negligent Misrepresentation, Income Tax Evasion in which King County Participated for the Benefit of Burlington Northern-Santa Fe Railroad, Unsupported Title Examination, and Said Claims Should Be Ignored.

In the plaintiff's briefing, King county states:

"By deed dated May 9, 1882, Bill Hilchkanum and his wife *conveyed to the Seattle Lake Shore and Eastern Railway Company (the "Railway"), a continuous 100' wide strip of land, over one mile long*, running along the shore of East Lake Sammamish. Declaration of Neil Degoojer at ¶ 11-12. The *Hilchkanum deed conveyed this strip of land* from at least what is now 1241 E. Lake Sammamish Shore Ln. SE to 1913 E. Lake Sammamish Pl. SE. Id. at 12. Therefore, the *Hilchkanum deed conveyed to the Railway a 100' wide strip of land (the "subject property") through what is now the defendants' residential property,* located at 1605 E. Lake Sammamish Place SE. Id. at ¶ 13. The subject property is one segment of the East Lake Sammamish rail corridor. Id. at 18." (emphasis added)

The claim of fee simple conveyance is in error, viewed charitably, and the claim is fraudulent, if viewed realistically. A simple examination of the conveyance language of the Hilchkanum deed indicates the specific purposes for the conveyance of the described real property, and the language is illuminating: *"In consideration of the benefits and advantages to accrue to us from the* ***location, construction and operation*** *of the Seattle Lake Shore and Eastern Railway***we do hereby donate, grant and convey unto Seattle Lake Shore and Eastern Railway* ***a right of way****..."* Hilchkanum deed, dated May 9, 1887. The deed was entitled a "Right of Way Deed", ***but it also specifically described the grant as a right of way, and described the specific purposes of the right of way.*** Additional testimony shall include the history of the region at the time of the conveyance, the status of the parties, and the intent of the parties in this most interesting era of pioneering in the Pacific Northwest.

After leaping to the ridiculous conclusion that fee simple was conveyed by Hilchkanum, King County then relies upon Commonwealth Land Title Insurance

Company to verify Burlington Northern was the successor in interest to the subject property "conveyed" by the Hilchkanums to the Railway.

Without further explanation, King County then describes to this court the so-called land transfer that occurred from Burlington Northern to a nonprofit corporation, qualified under Internal Revenue Code §501(c)(3) as a charitable organization, without referencing that Burlington Northern obtained an appraisal of $41,700,000.00 for the ELS corridor, on the assumption that Burlington Northern owned a fee simple 100 foot width for the 11 mile length of the corridor. The appraiser merely relied upon the representations and instructions of Burlington Northern, without completing any independent due diligence concerning the nature and extent of title, if any, that was owned by BNSF. Burlington Northern sold the ELS corridor, including the subject property, to The Land Conservancy of Seattle and King County (TLC) for less than $2,000,000.00, thereby entitling it to a charitable contribution tax deduction of approximately $40,000,000.00. Of course, Burlington Northern did not have fee simple title to the 100 foot strip of land for the length of the corridor, The Land Conservancy of Seattle and King County held the 100 foot strip for a few hours, and then sold it for a few million dollars mark-up to King County. The taxpayers of King County were thus served up to a tax fraud laundry, by way of a wild deed that shall not stand muster at the time of trial. Now, King County's officials seek equitable relief from this court, with the dirtiest hands imaginable in this land-grabbing scheme.

The defendants have challenged the United States Surface Transportation Board's decision of September 18, 1998, approving the ELS corridor for railbanking, because there never was any compensation paid to the defendants for this "taking". The defendants have found that in 17 years not one claim has ever been paid to reversionary landowners, despite the millions of acres that have been involved in railbanking to date. King County suggests that the defendants should seek federal relief, despite the state action involved here in taking the Rasmussen land.

King County cannot be the successor in interest to the Railway, and cannot hold title to the Rasmussens' property, based upon Washington statutes, the Fifth and Fourteenth Amendments to the U.S. Constitution, the principles of eminent domain recognized here in Washington, the failure of evidence to support TLC's actions in holding whatever rights were transferred to it, albeit for only a few hours, the fraudulent manner in which King County has participated in enabling a massive tax fraud upon the United States government, and other factual bases that shall be

developed as additional time shall allow. King County has no obligation to preserve the legal and physical integrity of the ELS corridor, including the subject property, for future railroad use, because it has not correctly acquired any such real property. Also, there is no harm to the property by allowing the defendants to maintain the real property in their described area, since they have done so for years, the so-called trail is not imminently under construction, and there is no prejudice to King County by entering orders preventing the parties from having any further contact pending a trial on the merits in this action.

B. John Rasmussen Has Not Threatened, Nor Has He Intimidated, Anyone…He Has Asserted His Rights As A Landowner, All To No Avail, and At Great Risk to the Safety of His Family and His Own Person

The defendants object to the blatant hearsay of Ms. Knauer's artfully drafted declaration, and they request this court strike the hearsay from its consideration 1. By a complete reading of the Rasmussen e-mails, it is clear King County has been looking for a fight, and an opportunity to demonize Mr. Rasmussen. For example, Mr. Rasmussen refers to things "getting ugly". By further analysis he is obviously describing how ugly litigation can become…he apparently has been proved correct by the twisted misinformation fed this court by questionable declarations of King County employees. Nancy Rasmussen has clearly explained in her declaration the misinformation of Lori Hoover…it makes for an interesting read after wading through the innuendoes flung on the wall by Hoover and Knauer.

The entire imbroglio seems to center around Mr. Rasmussen's final frustration, after he has been ignored for fifteen months, and then he finally asserts
his Constitutionally-protected right to bear arms, and informs King County officials
that he shall defend his property and his person with a loaded shotgun. King County then files a lawsuit, stating he has "repeatedly threatened to shoot" King County officials. Perhaps the court could find those words for this writer, as all the e-mails have been provided this court as attachments to John Rasmussen's declaration…the words are not there. Not only are the words not "repeatedly" there, they just aren't there at all. King County is seeking to demonize John Rasmussen, in hopes that this court shall find it politically reprehensible to allow Mr. Rasmussen to state he shall arm himself and defend his person and property with a loaded shotgun 2.

John Rasmussen has stated that King County has not been actively involved in any "railroad right of way" matters for over five months. This is not consistent with King County now seeking an injunction to allow King County to enter the Rasmussen land, before trial, to act as some sort of land custodian and develop a park trail upon their questionable title. There is no evidence King County has established a *status quo* where King County employees have actively asserted rights to trail maintenance or development on the Rasmussen property. The true *status quo* is that King County has exercised no custodial responsibilities for trail maintenance or operation on the Rasmussen property.

John Rasmussen has relinquished all of his guns, despite his Constitutional right to bear arms. He has voluntarily done this to assuage those King County employees prickled by Mr. Rasmussen's objections to trespass in protecting his land, personal safety, and the safety of his family. Mr. Rasmussen is seeking relief from this court that shall protect the *status quo* pending a trial on the merits of the parties' claims. He asserts counterclaims against King County, and he respectfully requests this case be sent to Yakima County Superior Court 3, as he is entitled to a change of venue in this action, and he has business contacts in Yakima County, as well as his lawyer's offices. John and Nancy Rasmussen request that a bilateral order be entered, providing for no contact between King County officials except through legal counsel, except for necessary law enforcement, fire protection, or other necessary county services. A suggested format for that order is attached hereto as Exhibit "A" to this briefing.

IV. KING COUNTY SHOULD NOT BE GRANTED A PRELIMINARY INJUNCTION ALLOWING THEM ONTO THE RASMUSSEN LAND FOR TRAIL MAINTENANCE OR DEVELOPMENT

King County has not demonstrated:

> (1) a clear legal or equitable right, as established in the status quo;
>
> (2) a legitimate, well-grounded fear of immediate invasion of that right; and
>
> (3) that acts complained of have or will result in actual and substantial injury.

Because the county fails to come in with clean hands, has failed to provide a substantial legal basis for its claim of title, (Degoojer's claim he has examined over ten thousand titles provides nothing helpful to this *imbroglio*), stretches the truth to new lows for artful drafting of fact declarations (where are the "repeated threats" of

shooting county officials?), and asks this court to go far beyond any reasonable order for ensuring there is no contact between the defendants and relevant county officials, it is clear that King County should not be granted the preliminary injunction it has requested.

V. AUTHORITY

Injunctive relief is appropriate where the moving party shows: (1) a clear legal or equitable right as *established by the status quo between the parties*; (2) *a well-grounded fear of immediate invasion* of that right; and (3) that the acts [*legitimately*] complained of have or will result in actual and substantial injury [4]. Rabon v. City of Seattle, 135 Wn.2d 278, 284, 957 P.2d 621 (1998) (citing Tyler Pipe Indus., Inc. v. Department of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)). The granting of a preliminary injunction is addressed to the sound discretion of the trial court, *including the necessary scope of any such orders, subject to the jurisdictional limitations of the court.* Brown v. Voss, 105 Wn.2d 366, 372-373, 715 P.2d 514 (1986) (citations omitted). In addition, the trial court has broad discretionary authority to "shape injunctive relief to fit the particular facts, circumstances, and equities of the case before it." Id. In this case, the parties need this court to intervene without prejudice to either side's legal or equitable claims, and establish an order that prevents contact between the parties, and maintains the *status quo* pending final resolution of these title issues, compensation issues, damage claims, income tax fraud issues, and other claims that have been demonstrated before this court. The defendants' proposed order is the least intrusive upon all of the parties' legal positions, and meets the needs and concerns of this court, as well as all parties. The defendants' interim injunctive order should be entered by this court, and this court should change venue of this action to Yakima County Superior Court, or other adjacent county that is reasonably located for all the parties.

A. KING COUNTY HAS NO CLEAR LEGAL RIGHT

In order to establish a clear legal or equitable right, the court examines the likelihood that the moving party will prevail on the merits. Rabon at 285. The court must reach the merits of the purely legal issues in order to make that determination, *but it should not adjudicate the ultimate merits of the case*. Id. at 286. In this case, the plaintiff's record is conclusory, and fraught with unacceptable hearsay. Expert witness Degoojer provided a declaration that is hopelessly entangled with assumptions, conclusions, and leaps from one conclusion regarding the chain of

title to another. The dearth of analysis of deed language is one of the most troubling aspects of the plaintiff's presentation. Degoojer's testimony should be stricken or ignored as incompetent.

The interpretation of a deed to determine its effect is a mixed question of law and fact. Veach v. Culp, 92 Wn.2d 570, 573, 599 P.2d 526 (1979). The intent of the parties is a factual question with the legal consequence of that intent dictated by the rules of law. Id. In this case, the defendants should be entitled to an opportunity to present expert witness testimony, something that King County is attempting to preempt by its rush to judgment through CR 65 expedited motion practice. Clearly, this case is not ready for this court's preemption of the defendants' property rights based upon the conclusory statements regarding the thousands of deeds analyzed by Degoojer, and the conclusions he has generally made about those deeds. How does that relate to the Rasmussen land? For example, did Degoojer know that the Indian, Mr. Halchkanum, *signed a deed prepared by the railroad*, and that it was for a *"right of way"?* Did Degoojer know that Mr. *Halchkanum did not even have fee simple patent rights to his homestead* until *after* he *had signed the right of way deed prepared by the railroad?* Did Degoojer know that the right of way deed prepared by the railroad for Mr. Halchkanum's signature *described the purposes for the deed, and the described purposes limited the use of the land for purposes of the railroad's* ***location, construction and operation****, and there was nothing described in the deed for any future uses such as for a park or trail?* Did Degoojer know that the Washington legislature has required compensation for any taking pursuant to the 42 U.S.C. § 1247 (d)] "Rails to Trails Act? See R.C.W. 64.04.180, 190. No, Degoojer's conclusory declaration does not cut the mustard to establish a "clear legal or equitable right". Degoojer's declaration should be ignored or significantly discounted.

If a deed conveys a definite strip of land and contains no language limiting the purpose of the conveyance, the deed conveys a fee simple interest in the strip of land regardless of the caption of the deed. *Brown v. State*, 130 Wn.2d 430, 439-440 and 444 (citations omitted). That's black-letter law, taught in first year property class. In this case, *the reversionary words are contained in the deed, as the purpose of the transfer was clearly spelled out*. Nothing in the deed indicates the deed was to be for all purposes…just the opposite is true. King County would have this court gloss over this important distinction from *Brown v. State*, *supra*. To convey a conditional or reversionary estate, the words in the deed must clearly and

expressly indicate such an intent. Brown at 438 (citing King County v. Hanson Inv. Co., 34 Wn.2d 112, 208 P.2d 113 (1949)). In this case, the clear, expressed intent is found within the four corners of the deed. Note: this presupposes that Halchkanum even had authority to sign the right of way deed in the first place, and it should not be lost upon this court that there is no "after-acquired title" language in the deed, thus placing an even further cloud on the effectiveness of the Halchkanum transfer of a right of way, since *the right of way transfer occurred before the grantor had legal title.*

In Brown, one of the deeds at issue - the “Simpson deed” - was a conveyance from a landowner to a railroad, and was captioned “Right of Way Deed”. Brown at 444. The Simpson deed described a strip of land, but did not expressly convey fee title. Id. Because the purpose of the conveyance was not limited, the Court found that the deed conveyed fee simple title regardless of the caption. Id. In the Rasmussen case, *the conveyance by Halchkanum is limited by the language found in the purpose of the transfer*. The transfer was specifically described as a transfer of a "right of way", the deed was entitled a "right of way" deed, and the specific purposes of the right of way were described in the deed. *Brown* supports the defendants' legal position by its clear distinctions from this instant case. The intent of the parties can clearly be seen by this expressed purpose for the transfer. A thorough title investigation, and research of the history of the transactions at the time of the right of way conveyance, is of paramount importance. King County obfuscates this need, and suggests it has a "slam dunk" case against Rasmussens, and suggests even further that no compensation is owed to the Rasmussens, based on *Brown v. State*, *supra.* But see *Lawson v. State*, 107 Wn.2d 444, 730 P.2d 1308 (1986) (compensation must be paid for the taking of a landowner's right of way).

Although the court should not reach the ultimate merits of the case, the defendants are likely to establish that they hold a fee simple estate in the subject property. Given the wording of the deed, the failure of the county to overcome the clear, expressed purposes of the right of way transfer, the failure of adequate compensation to the Rasmussens for King County's "taking", the clear direction of both the courts and the Washington legislature as expressed in *Lawson v. State*, *supra,* together with the subsequent enactment of R.C.W. 64.04.180, 190, and the Supreme Court’s consistent analysis in *Brown, supra,* this court should enter an order enjoining any further contact between the parties, reserving all other requests until the time of trial, or further order of this court, and this court should change venue to Yakima County Superior Court or another adjacent county that may be

reasonably accessible to the parties. There is no justification, legal or otherwise, for King County to usurp the defendant landowners' rights in this action, pending a trial on the merits in this action.

Would the county still be entitled to use the subject property free from interference, if the county may only claim a railroad easement? This is an unresolved issue, not clearly defined by the county in its claims before this court. The issue of whether or not John and Nancy Rasmussen may pursue a Tucker Act claim is beyond the scope of this analysis, and is a self-serving abandonment of accountability by King County. Remember, it is the *county* that is attempting to usurp the Rasmussens' property rights, their privacy rights, their peaceful enjoyment of their lives' investment. See *Lawson v. State*, 107 Wn.2d 444, 730 P.2d 1308 (1986) Under proper procedures, including the obligation for compensation, the need to establish entities that are eligible to hold the right of way, and related protocol that have not been proved by King County, federal law prevents railroad easements from dissolving as a result of railbanking and interim trail use. See 16 U.S.C. 1247(d).

Assuming for the moment King County has purchased a railroad right of way easement, what is the scope of its rights under the easement? As the holder of an easement, King County would have a common law right to maintain the easement; King County would also have a duty to maintain the easement in a safe condition. See e.g., Rivett v. Tacoma, 123 Wn.2d 573, 582, 870 P.2d 299 (1994) (holding that a municipality has a duty to maintain a right-of-way in a safe condition); Dreger v. Sullivan, 46 Wn.2d 36, 278 P.2d 647 (owner of easement by implied grant has burden of making any necessary improvements to the way); Hughes v. Boyer, 5 Wn.2d 81, 104 P.2d 760 (1940) (owners of easement have the right to re-grade easement across land of owners of the servient tenement without any express grant from the owners of the servient tenement). King County could arguably maintain the railroad right of way for purposes of ***location, construction and operation*** of a railroad. The issue of extending this easement right to the construction of a park trail, or maintenance of a park trail, should not be before this court in the guise of an emergency hearing for a preliminary injunction, when the thrust of the county's claim is that John Rasmussen has loaded his shotgun and is threatening to shoot county officials.

Therefore, King County's request for preliminary injunction should be denied. A reasonable order should be entered, prohibiting any further contact between the parties to this *imbroglio*, pending a trial on the merits.

B. **King County Has No Well-Grounded Fear of Invasion**

John Rasmussen's "repeated threats" cannot be found when his e-mail correspondence is examined in detail. The county's gloss on John Rasmussen's communications cannot withstand scrutiny, because there is no immediate fear of harm or invasion of any county rights. A careful reading of the defendants' declarations, well-supported by their presentation of the law and the misconduct of county officials, supports the reasonable conclusion that the parties should simply have no further contact until this matter is heard at trial.

C. **There is No Competent Proof of Actual or Substantial Injury**

The Rasmussen declarations refute any claim of actual or substantial injury. This court should see the fallacy of King County's claims, and conclude a reasonable no contact order shall cool off these issues, until the matters here can be heard at trial. King County should let John Rasmussen use his own weed-eater to keep the weeds down on the contested strip of land in the middle of the Rasmussens' waterfront back yard, until this case has been litigated.

VI. CONCLUSION

King County cannot prove at trial that it has a clear legal right to access the subject property for trail development and management free from objection by defendants. John Rasmussen is entitled to assert his property rights, and to object to trespass upon his property. The county should not invade his back yard with these title claims unless they have been proved in a trial on the merits. The parties should be enjoined from having any further contact, except for the county's necessary provision of police and fire protection, as well as other necessary county services.

Therefore, the defendants respectfully ask the court to deny the county's request for a preliminary injunction. A copy of a proposed no contact order is attached for the Court's benefit.

Respectfully submitted this 6th day of September, 2000.

SANDLIN LAW FIRM

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J.J. SANDLIN, WSBA #7392, for defendants

Footnotes:

1 Knauer states she heard Hoover tell Knauer that Nancy Rasmussen told Hoover that John Rasmussen told Nancy Rasmussen...??? Then Knauer describes Hoover's mood as "shaken". The testimony is blatant hearsay, and reveals the fraudulent nature of this preliminary injunction motion.

2 John Rasmussen has waived his Second Amendment right to bear arms, to clarify his intent to defend himself and his family, and to nullify claims he is being aggressive rather than defensive. It is questionable whether or not King County shall step in to provide protection to John Rasmussen and his family now that he has given up his guns.

3 The Honorable Susan Hahn, Yakima County Superior Court Judge, authored the prevailing opinion at the trial court level in *Brown v. State*, 130 Wn.2d 430, 924 P.2d 908 (1996), heavily (albeit mistakenly) relied upon by King County in this action.

4 The Rasmussens cannot control the machinations of Knauer's mind, nor Hoover's moods: but Knauer's thoughts and Hoover's moods are not the proofs necessary to grant the extraordinary relief demanded by King County.

Exhibit "A"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

KING COUNTY, a political subdivision of the State of Washington;

Plaintiff;

vs.

JOHN RASMUSSEN and NANCY RASMUSSEN, husband and wife, and their marital community;

Defendants.

No. 00-2-14946-8 SEA

FINDINGS AND ORDER ON MOTION FOR PRE-LIMINARY INJUNCTION

(PROPOSED)

FINDINGS

Plaintiff King County has asserted its claims to the fee simple estate in certain lands contained within that real property claimed to be owned in fee simple by defendants John Rasmussen and Nancy Rasmussen, husband and wife, located in the "ELS corridor", on the eastern side of Lake Sammamish, King County, Washington.

Defendants John Rasmussen and Nancy Rasmussen claim their property rights have been wrongfully encumbered or taken by illegal acts of the plaintiff King County and other third parties or entities which are not parties to this action.

Plaintiff King County claims the defendant John Rasmussen has wrongfully threatened King County employees or others with violence if they trespass upon his real property, allegedly causing county employees to fear for their safety and welfare while carrying out their duties upon the fee simple real property claimed by plaintiff King County.

Neither the plaintiff nor the defendants concede that they have been guilty of any wrongdoing of any kind or nature, and the court does not intend to adversely affect any of the parties' claimed rights, by entry of this order.

The court intends to establish an environment where stability and preservation of the peace may be maintained, in order to address and resolve all issues between the parties by legal process; now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Defendants John Rasmussen and Nancy Rasmussen shall have no contact with any King County employees or representatives who may be in the vicinity of the defendants' personal residence or other real property located at 1605 East Lake Sammamish Place South East, Sammamish, Washington 98075, pending further order of this court; and
2. Plaintiff King County shall ensure no county employees, representatives, agents or other individuals acting in concert with plaintiff King County shall have any contact with defendants John Rasmussen and Nancy Rasmussen in the vicinity of the defendants' personal residence or other real property located at 1605 East Lake Sammamish Place South East, Sammamish, Washington 98075, pending further order of this court; and
3. All of the parties' rights, concerning their individual or collective claims against any other party in this action are reserved pending trial on the merits or further order of this court, and nothing in this order shall be construed to limit or waive any procedural or substantive rights of any of the parties to this agreement, including , but not limited to, rights concerning jurisdiction, venue, legal title to real property, nature and extent of existing easements, if any, and all other issues that may be brought before the court, or subsequent court in this action.

VIOLATION OF ANY PROVISIONS OF THIS ORDER SHALL BE DEEMED A CONTEMPT OF THIS COURT, AND ANY SUCH VIOLATION MAY SUBJECT THE VIOLATOR TO MONETARY AND JAIL SANCTIONS FOR CONTEMPT OF COURT, OR OTHER SANCTIONS AS MAY BE IMPOSED BY THIS COURT.

DATED this _____ day of September, 2000.

_____

JUDGE/COURT COMMISSIONER

Presented by:

SANDLIN LAW FIRM

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J.J. SANDLIN, WSBA #7392, for defendants

Exhibit "A"

DEFENDANTS' BRIEF OPPOSING MOTION FOR
PRELIMINARY INJUNCTION