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Hsieh v. Wash. Dep't of Ecology, NO. 19126-5-II, 2001 Wash. App. LEXIS 3 (Wash. Ct. App. Jan. 2, 2001)

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for both the Kidd and Crowley properties did not contain an express grant of riparian rights and, therefore, the Kidds and Crowleys had no legal right to claim riparian rights to their properties.

With respect to the mean water line claim, the supreme court recognized the Kennedy survey used a mean water line designated in 1908, when the parties' properties were originally platted ("Historic MWL"). The Carrs claimed the correct measure to determine riparian rights was the current mean water line ("Current MLW"). The supreme court stated the general law governing the measurement and allocation of riparian rights is that any man-made improvements to a riparian owner's shoreline that alter the location of the shoreline should be disregarded in a determination of riparian rights, but that any natural accretion of the shoreline may be considered.

The supreme court recognized evidence before the commissioner that indicated man-made improvements altered the Carrs' shoreline. As such, the supreme court concluded the trial court correctly affirmed the commissioner's decision to use the Kennedy survey that used the Historic MWL to determine the parties' riparian rights.

With respect to the Carrs' claim that the Kidds and Crowleys were not granted riparian rights with their land, the supreme court determined that an owner of riparian land has a right to water frontage of such riparian land unless the grantor of the land on the face of the granting deed manifestly retains those rights. The supreme court held there was no evidence of any severance or retention of the riparian rights to either the Kidd or the Crowley property in the chains of title to both of their properties.

Megan Becher-Harris

WASHINGTON

Hsieh v. Wash. Dep't of Ecology, No. 19126-5-II, 2001 Wash. App. LEXIS 3 (Wash. Ct. App. Jan. 2, 2001) (affirming dismissal of permit holders' action, finding the statute of limitations and the doctrine of laches barred declaratory relief, conversion, and injunction claims, reversing the judgment awarding attorney fees, and finding the mortgage was extinguished at the time of foreclosure and the permit holders' action was not frivolous).

Jack and Dorothy Hsieh ("Hsiehs") had a water permit to appropriate water from the Columbia River to irrigate their property. Appellee, State of Washington Department of Ecology, established this water permit initially when it issued the permit to the Esmieu Trust, who later assigned the permit to the Hsiehs. In order to secure a loan, the Hsiehs executed a mortgage to Appellee, John Hancock Mutual Life Insurance Co. ("John Hancock"), on the property covered by the water permit. In 1985, John Hancock foreclosed on the mortgage. Appellees, J.R. Simplot Co. ("Simplot") and Iowa Beef Processors

("IBP") then acquired the property. The Hsiehs claimed they still held the water permit and sued John Hancock, Simplot, and IBP. The Hsiehs challenged the lower court's grant of summary judgment dismissal and award of attorney fees to John Hancock, Simplot, and IBP. The first issue was whether the statute of limitations and the doctrine of laches barred the Hsiehs' claims for (1) declaratory relief, (2) a finding of conversion, and (3) an injunction. The second issue addressed (1) whether the award of attorney fees was erroneous because the mortgage was extinguished when the property was foreclosed, and (2) whether the Hsiehs' action was frivolous.

The Washington Court of Appeals affirmed the judgment dismissing the Hsiehs' case, finding the statute of limitations and the doctrine of laches barred their declaratory relief, conversion, and injunction claims. The court reversed the judgment awarding attorney fees, finding the Hsiehs' case was not frivolous and the mortgage ended when the property was foreclosed.

The Hsiehs argued the court should award them a declaratory judgment. The court found the statute of limitations barred this action. The court stated parties must bring declaratory judgments within a reasonable amount of time and the statute of limitations for real property, including water permits, was ten years. Because the Hsiehs waited eleven years, their claim was unreasonable, and, thus, barred by the statute of limitations. The Hsiehs also argued the court should make a finding of conversion. The court found the relevant three-year statute of limitations barred this claim as well.

The Hsiehs also argued the appellate court should award an injunction to prohibit John Hancock, Simplot, and IBP from interfering with their water rights and to quiet title to their water rights. The court found that because these claims were equitable actions, they were subject to the defense of laches. Laches consists of two elements: (1) inexcusable delay, and (2) prejudice to the other party from the delay. The court determined the Hsiehs knew they assigned their interest in the water permit to John Hancock, but waited at least twelve years to bring this action. The court also determined the Hsiehs' delay prejudiced John Hancock, Simplot, and IBP. Moreover, John Hancock relied on the permit, which provided that the water rights were appurtenant to the land. Finding both elements of laches present, the court barred the Hsiehs from pursuing equitable actions.

Finally, the Hsiehs argued the lower court erred by awarding attorney fees to John Hancock, Simplot, and IBP. The court agreed with the Hsiehs and found no basis for attorney fees existed based on the terminated mortgage. In addition, the court found the lower court awarded attorney fees under a statute, which permits awards of attorney fees for frivolous actions. Here, the Hsiehs' claims were not baseless. Thus, the reviewing court found the lower court erred in awarding attorney fees.