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Flying T Ranch v. Stillaguamish Tribe of Indians

The Washington Supreme Court held that tribal sovereign immunity cannot be abrogated through in rem jurisdiction over tribally owned, non-reservation lands to vest the court with subject matter jurisdiction over a quiet title action through adverse possession.

In 2021, the Stillaguamish Tribe purchased off-reservation land in Snohomish County for conservation use. Flying T Ranch owns adjacent property and in 2022, brought suit against the Tribe to quiet title to a strip of the parcel purchased by the Tribe. Flying T alleged it had acquired title by adverse possession as evidenced by a fence and ongoing livestock grazing since 1962. The Superior Court granted the Tribe's motion to dismiss based on sovereign immunity.

Flying T appealed, arguing that sovereign immunity was limited by the common law immovable property exception, and that the court had in rem jurisdiction with respect to claims that affect off-reservation real property. The appellate court affirmed the dismissal, reasoning that "when the Tribe is afforded immunity equal to foreign sovereign, it may be sued over its objection only when allowed by Congress." The appellate court acknowledged that past Washington authority permitted application of the in rem exception to tribal immunity, but the US Supreme Court in *Upper Skagit* explicitly stated its *County of Yakima* opinion did not address sovereign immunity's scope but instead focused on statutory interpretation. As a result, the USSC vacated and remanded *Upper Skagit* for the WSC to address sovereign immunity as a separate issue in light of its clarification of the *Yakima* holding.

In December 2024, the Washington Supreme Court (WSC) agreed to consider whether tribes can be sued in state courts. The WSC explained the United States Supreme Court has held tribes are not "foreign" sovereigns but are "domestic dependent nations" with sovereign immunity that only Congress or the tribes may waive.

The WSC echoed the appellate court's acknowledgement that Washington precedent had permitted in rem jurisdiction over tribally owned off-reservation land but again pointed to the clarification in *Upper Skagit*. It then turned to nationwide precedent and concluded that in rem claims do not circumvent sovereign immunity, noting in part that Flying T did not provide any precedent supporting in rem jurisdiction absent a clear waiver.

While the property in question is off-reservation, the WSC concluded that off-reservation lands are not automatically excluded from the definition of "Indian country" for purposes of sovereign immunity. Here, the property was purchased using state and federal funding pursuant to a conservation grant for purposes of protecting the property in perpetuity for purposes of preserving Tribe's right to fish and restore salmon populations, matters integral to tribal interests.

WSC concluded that sovereign immunity applied and then considered whether an immovable property exception could abrogate that immunity. Flying T argued that because the immovable property exception was written into the Foreign Sovereign Immunities Act, one could infer the existence and applicability of the common law exception prior to FSIA. WSC disagreed and reasoned that FSIA codified international norms, not US common law and so no exception could be inferred. Further, WSC noted that Congress did

not include the tribes in the FSIA immovable property exception and must not have intended for it to apply.

WSC affirmed the dismissal, held the immovable property exception inapplicable to tribes, and held state courts "do not have subject matter jurisdiction over adverse possession claims related to non-reservation land owned by tribes."

Luv v. West Coast Servicing

On October 9, 2025, the Washington Supreme Court clarified when mortgage servicers can challenge foreclosure rulings after a borrower's bankruptcy and conflicting court decisions.

Prince Eric Luv defaulted on a note secured by a deed of trust and filed for bankruptcy protection in 2008. His debt was discharged in 2009 and no further payments were made. When the debt was assigned to a new entity, West Coast Servicing, they initiated nonjudicial foreclosure proceedings. In response, Luv initiated a quiet title action asserting that the six year statute of limitations to enforce the note and foreclose tolled when the debt was discharged. The trial court quieted title in favor of Luv.

West Coast appealed and the Court of Appeals, Division One, affirmed the ruling. The Supreme Court denied review.

Less than two weeks later, the same Court of Appeals issued its opinion on *Copper Creek (Marysville) Homeowner's Assn v. Kurtz* - the nonjudicial foreclosure action on the deed of trust in this case was timely commenced as to all unpaid installments within the preceding six years, regardless of the borrowers' bankruptcy discharge orders - and directly denounced the *Luv* decision. A footnote reads: "("the six-year statute of limitations on the note was triggered on March 1, 2009, the date that Luv's last payment was due prior to his bankruptcy discharge"). The outcome of that opinion is contrary to the outcome here." The same day, West Coast attempted to renew its motion for reconsideration at the appellate level and for review with the Supreme Court. Both were denied.

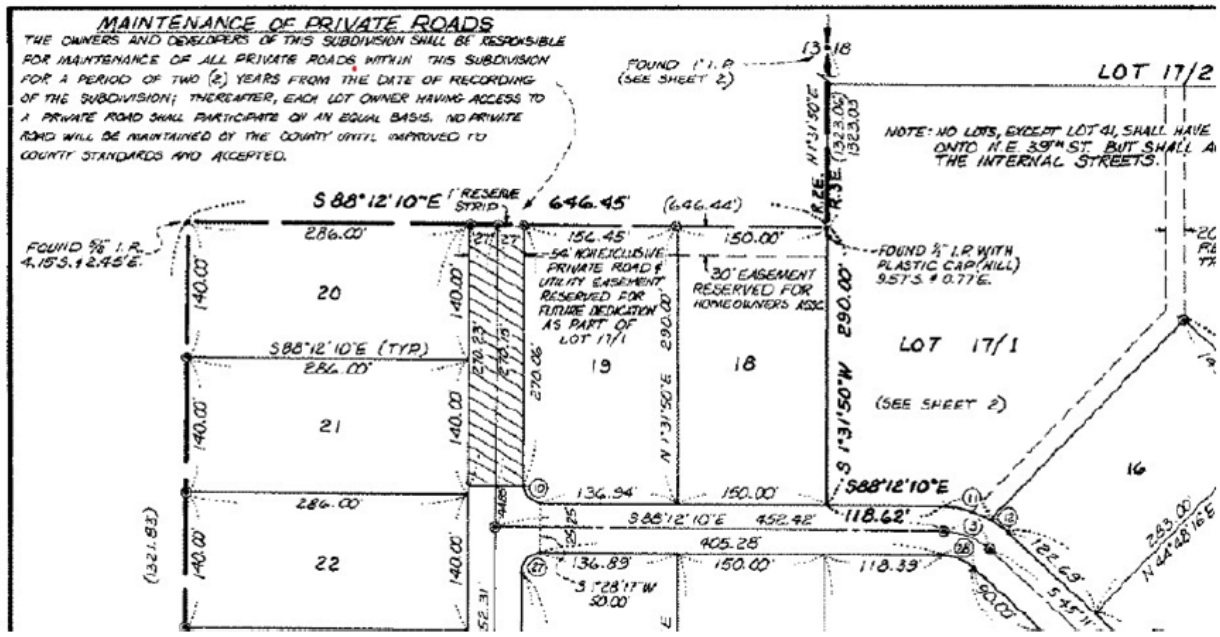
After exhausting direct appeal, West Coast sought relief at the trial court by moving to vacate the quiet title judgment under CR(60)(b)(11) ("On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:… (11) Any other reason justifying relief from the operation of the judgment.).

The Supreme Court found "the combined circumstances of this case compelling, which include several decisions denying relief based on legal error, West Coast's proper and prompt actions, and a divisional split occurring within a brief time frame.." as justifying relief under CR60(b)(11). West Coast is pursuing relief at the trial court level.

Stoney Meadows Homeowners Association v Ten Kley

In an unpublished opinion by the Division I Court of Appeals, the court held that a Clark County owner's association had not gained ownership of a road through adverse possession even though the association had maintained the road for over 20 years.

In 1989, owners executed a plat dedicating Stoney Meadows. The portion of the subdivision relevant to the dispute is depicted below, namely the hatches strip between lots 19, 20, and 21 referred to as the Private Road and 1' reserve strip.



After the plat was recorded, a joint venture executed a Declaration of Covenants, Conditions, and Restrictions and Establishment of the Homeowner's Association. Within the CCR's, "Common Area" as "all real property owned by the Association for the common use and enjoyment of the owners." CCR's further state that the "Common Area to be owned by the Association is described as Lot 17/1" of the plat," that each homeowner "shall have a right and easement of enjoyment in and to the Common Areas," and that the Association is responsible for maintaining the Common Areas.

The joint venture began conveying lots out to initial owners, and in 1995, executed a quit claim deed conveying Lot 17/1 to the Association. In 1997, joint venture executed a deed conveying to Smith Lot 20 "… TOGETHER with a 54 foot non-exclusive private road and utility easement subject to Lots 19, 20, and 21 as disclosed on the plat deed of Stoney Meadows."

After homeowners assumed control of the Association, they took various actions with respect to the Private Road, including hiring contractors to pave a portion of the road and add curb cuts, installing and supplying electricity to a streetlamp on the road, hanging seasonal decorations on the streetlamp, and installing a fake camera and "No Outlet" and "Private Road" signage.

In 2007, the Association voted to stop maintaining the Private Road after determining that it was owned by the owners of lots 19, 20, and 20 rather than part of the common areas; however, in 2009, the Association reversed course and voted to resume paying a contractor to maintain the unpaved portion of the Private Road.

In 2017, the Ten Kleys purchased Lot 18 with the intent of purchasing an additional 20-acres to the north of the subdivision. While they were unable to come to agreement with the Association for permission to

use the Private Road to create a point of access to the 20 acres, the Ten Kleys were able to secure an easement for ingress and egress from the remaining shareholders of the joint venture.

When the Association learned of the easement, it sought a judgment quieting title to the Private Road and reserve strip in their favor, either through the Lot 17/1 Deed or adverse possession. The trial court ruled that 1) the Association was not the record owner of the Private Road via the Lot 17/1 Deed, 2) the Association did not adversely possess the Private Road, and 3) the easement is valid but only includes the Private Road and not the reserve strip, and 4) the Association had adversely possessed the reserve strip. Both the Association and the Ten Kleys appealed.

In reviewing whether ownership of the Private Road and reserve strip were conveyed by the Lot 17/1 Deed, the appellate court concluded that under the plain language of the deed, it unambiguously conveyed only Lot 17/1. Further, the plat did not incorporate the Private Road or reserve strip as part of Lot 17/1. By stating that the Private Road was reserved for future dedication, the developers were expressing an intent to retain private ownership and possible to convey it as part of Lot 17/1 at some other point in time, which they failed to do.

As to adverse possession of the Private Road, the appellate court found that the Association failed to prove that its possession was exclusive or hostile. The Association shared possession of the Private Road with innumerable third parties, and while signage indicated that the road was private with no outlet, the signs did not state that only the Association or its members could use the Private Road. This is in contrast to members only signage in front of the common area on Lot 17/1. Use by the Association of the Private Road was not hostile as it merely maintained a road that owners possessed permission to use.

With respect to the reserve strip, the court questioned whether the Association proved possession at all. This area was never landscaped and lay to the north of a fence. While the trial court held that because the Ten Kleys did not obtain an easement over the reserve strip, there was no one to oppose the Association's ownership claim, the appellate court disagreed. The appellate court concluded that there is an issue of material fact with respect to the scope of the Ten Kleys easement and thus, the Ten Kleys have standing to oppose the Association's adverse possession claim over the strip.

The case has been remanded to the trial court to determine the scope of the easement – specifically if it was intended to burden the reserve strip in addition to the Private Road – as well as evaluate the adverse possession claims over the reserve strip and attorneys' fees.