

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35692

**EASTSIDE COMMUNITY RAIL, LLC-ACQUISITION AND
OPERATION EXEMPTION - GNP RLY, INC
(Woodinville Subdivision, MP 23.8 to MP 38.25)**

Finance Docket No. 35730

**BALLARD TERMINAL RAILROAD COMPANY, LLC - LEASE
EXEMPTION -
EASTSIDE COMMUNITY RAIL, LLC
(Woodinville Subdivision, MP 23.8 to MP 38.25)**

**DECLARATION OF MATTHEW COHEN
IN SUPPORT OF THE CITY OF WOODINVILLE,
WASHINGTON'S REPLY TO DOUGLAS ENGLE/EASTSIDE
COMMUNITY RAIL PETITION FOR RECONSIDERATION**

Matthew Cohen hereby declares:

1. I am the attorney of record for the City of Woodinville, Washington in the above-captioned proceedings.
2. Attached hereto as Exhibit A is a true and correct copy of the Order Granting Summary Judgment, entered in King County Superior Court Docket No. 20-2-02815-1 SEA, *City of Woodinville v. Eastside Community Rail et al.*, on April 16, 2021.

3. Attached hereto as Exhibit B is a true and correct copy of Appellants' Brief filed in Washington Court of Appeals, Division 1, Docket No. 82600-3-1, *Eastside Community Rail v. City of Woodinville*, on October 8, 2021.

I declare under penalty of perjury that the foregoing is true and correct.

Sworn this 12TH day of November, 2021, at Seattle Washington.

A handwritten signature in black ink that reads "Matthew Cohen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matthew Cohen

CERTIFICATE OF SERVICE

I certify that on November 12, 2021 I served by email an e-filed copy of the foregoing document upon all parties of record in this proceeding as listed below per the STB service list.

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DATED: November 12, 2021

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EXHIBIT A

1
2
3
4
5
6
7 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9
10 CITY OF WOODINVILLE, a municipal
corporation,

11 Plaintiff,

12 v.

13
14 EASTSIDE COMMUNITY RAIL, LLC, a
Washington Corporation; TELEGRAPH
15 HILL INVESTMENTS, LLC, a Wyoming
corporation; DOUGLAS ENGLE, an
16 individual; BALLARD TERMINAL
RAILROAD COMPANY, LLC, a
17 Washington corporation; GNP RLY INC., a
Washington corporation; NW SIGNAL
18 MAINTENANCE, LLC, a Washington
corporation; KEVIN KUCERA, an
19 individual; JOANNE SKIEVASKI, an
individual; EARL ENGLE, an individual;
20 and ALL OTHER PERSONS OR PARTIES
21 UNKNOWN CLAIMING ANY RIGHT,
TITLE, ESTATE, LIEN, OR INTEREST IN
22 THE REAL PROPERTY DESCRIBED IN
THIS COMPLAINT,

23
24 Defendants.

NO. 20-2-02815-1 SEA

[PROPOSED]
ORDER GRANTING
SUMMARY JUDGMENT

25
26 This matter came before the Court on motion of plaintiff City of Woodinville ("City")
and defendants GNP RLY Inc. ("GNP"), NW Signal Maintenance, LLC ("NW Signal") and

[PROPOSED]
ORDER GRANTING
SUMMARY JUDGMENT — 1

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ORIGINAL

1 Kevin Kucera ("Kucera") for summary judgment adjudging that GNP alone possesses title to
2 the freight rail easement the ownership of which is the subject of this quiet title action—
3 specifically, that freight rail easement over the Snohomish to Renton, Washington Branch Line
4 right of way that traverses the City of Woodinville in King County, Washington, between
5 approximate mileposts 23.8 and 26.38, reserved by BNSF Railway Company when it conveyed
6 such right of way to the Port of Seattle on December 18, 2009; such easement having been
7 separately conveyed by BNSF Railway Company to GNP by quit claim deed on December 19,
8 2009 ("the Easement").
9

10 The Court considered the pleadings filed in this action, the declarations supporting the
11 joint motion, and the following:
12

13 _____
14 _____
15 _____
16 _____

17 Based on the arguments of counsel, the pleadings, and evidence presented, the Court
18 finds:

- 19 1. The Court has previously ordered that it is taken as established for purposes of
20 this action that defendants Eastside Community Rail, LLC ("ECR") and Douglas
21 Engle each possesses no legal interest in the Easement and are barred from
22 presenting contrary evidence. The federal Surface Transportation Board has
23 similarly stripped ECR of legal authorization to own or operate the railroad
24 associated with the Easement. Thus there is no genuine issue of material fact as
25 to ECR's and Douglas Engle's lack of legal interest in the Easement.
26

- 1 2. In its December 14, 2020, Order Finding Eastside Community Rail, LLC and
2 Douglas Engle in Continued Contempt of Court, the Court ordered remedial
3 sanctions against ECR in the form of forfeiture of \$1000 per day for each day
4 that it was in contempt of court from September 18, 2020 through October 7,
5 2020 (20 days); \$1000 per day from November 16, 2020 through December 14,
6 2020 (29 days); and \$2000 per day for each additional day that ECR remains in
7 contempt of court. ECR never cured its contempt of court. ____ days elapsed
8 from December 15, 2020 through the date of this Order.
- 9
- 10 3. The Court has previously ordered that defendant Earl Engle is in default. Further,
11 Earl Engle has executed a declaration disclaiming any interest in the Easement.
12 Thus there is no genuine issue of material fact as to his lack of legal interest in
13 the Easement.
- 14
- 15 4. Joanne Skievaski has executed a declaration disclaiming any interest in the
16 Easement. Thus there is no genuine issue of material fact as to her lack of legal
17 interest in the Easement.
- 18
- 19 5. The Court has previously ordered that defendant Telegraph Hill Investments,
20 LLC ("THI") is in default. Further, in a purported answer to the City's complaint
21 executed by Douglas Engle, he asserted that THI "has no ownership interest in
22 the Easement." Thus there is no genuine issue of material fact as to THI's lack of
23 legal interest in the Easement.
- 24
- 25 6. Ballard Terminal Railroad Company, LLC has executed a declaration disclaiming
26 any interest in the Easement. Thus there is no genuine issue of material fact as to
 its lack of legal interest in the Easement.

1 7. NW Signal and Kucera stipulate that they each have no legal interest in the
2 Easement. Thus there is no genuine issue of material fact as to their lack of legal
3 interest in the Easement.

4
5 8. GNP was the last clear owner of unclouded title to the Easement. Given the
6 findings set forth above, GNP is also the only party to this case with a colorable
7 claim to title to the Easement. The federal Surface Transportation Board has
8 ordered that authorization to own and operate the railroad associated with the
9 Easement has reverted to GNP, and that the rail line should be returned to GNP.

10 9. Accordingly, GNP is the sole owner of title to the Easement.

11 10. _____
12 _____
13 _____
14 _____
15 _____

16 Based on the above findings,

17 IT IS ORDERED AND ADJUDGED THAT:

18 1. Defendant GNP RLY, Inc possesses sole legal ownership and title to the
19 Easement. No other party possesses any legal interest in the Easement.

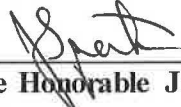
20 2. Judgment is hereby granted to plaintiff City of Woodinville against defendants
21 Eastside Community Rail, LLC and Douglas Engle in the amount of five
22 thousand eight hundred sixty-one dollars and twenty cents (\$5,861.20). Such
23 judgment shall bear post-judgment interest at the rate of 18% per annum.

24 3. Defendant Eastside Community Rail, LLC shall forfeit the sum of
25 \$ 122 days x \$2000 = \$244,000 to the Court pursuant to the Court's
26

December 14, 2020, Order Finding Eastside Community Rail, LLC and Douglas
Engle in Continued Contempt of Court.

4.

ORDERED AND ADJUDGED this 16th day of April, 2021.

By: 
The Honorable Julie Spector

Presented by:

HAGGARD & GANSON LLP

BETTS, PATTERSON & MINES, P.S.

Jeffrey Ganson, WSBA #26469
Attorneys for City of Woodinville

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Attorneys for GNP RLY Inc.,
NW Signal Maintenance, LLC and
Kevin Kucera

*Signed pursuant to emailed
authorization.*

EXHIBIT B

NO. 82660-3-I

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

EASTSIDE COMMUNITY RAIL, LLC, *et al.*,

Appellants,

v.

CITY OF WOODINVILLE,

Respondent.

APPELLANTS' BRIEF

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TABLE OF CONTENTS

A. TABLE OF AUTHORITIES.....	2
B. INTRODUCTION.....	4
C. ASSIGNMENTS OF ERROR	6
D. STATEMENT OF THE CASE.....	7
E. ARGUMENT	10
1. The Surface Transportation Board, not this Court, has exclusive and preemptive jurisdiction over this matter.....	12
2. This Court would have no jurisdiction over this dispute, even absent federal preemption, because there is no justiciable case or controversy.....	13
F. CONCLUSION	16

TABLE OF AUTHORITIES

TABLE OF CASES

<i>Angelo Prop. Co. v. Hafiz</i> , 167 Wn. App. 789, 808, 274 P.3d 1075 (2012).....	11
<i>Bavand v. OneWest Bank, F.S.B.</i> , 176 Wn. App. 475, 502, 309 P.3d 636 (2013).....	14
<i>Berger v. Personal Products, Inc.</i> , 115 Wn.2d 267, 270, 797 P.2d 1148 (1990).....	11
<i>Byrd v. Pierce Cty.</i> , 5 Wn. App.2d 249, 265-66, 425 P.3d 948 (2018).....	14
<i>Diversified Indus. Dev. Corp.</i> , 82 Wash.2d at 815, 514 P.2d 137...16	
<i>Kobza v. Tripp</i> , 105 Wn. App. 90, 95, 18 P.3d 621 (2001).....	14
<i>Marley v. Department of Labor & Industries</i> , 125 Wn.2d 533, 539, 886 P.2d 189 (1994).....	11
<i>Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County</i> , 135 Wn.2d 542, 556, 958 P.2d 962 (1998).....	11
<i>Skinner v. Holgate</i> , 1. App. 840, 173 P.3d 300 (2007).....	15
<i>Snohomish County</i> , 954 F.3d at 293.....	12, 13
<i>To-Ro Trade Shows v. Collins</i> , 144 Wn.2d 403, 411, 27 P.3d 1149 (2001).....	16
<i>Walker v. Quality Loan Serv Corp. of Wash.</i> , 176 Wn. App. 294, 322, 308 P.3d 716 (2013).....	14

TABLE OF CONTITUTIONAL PROVISIONS, STATUTES, RULES

United States Constitution, article 6, clause 2.....	11
11 U.S.C. § 727.....	8, 15
49 U.S.C. § 10501(b).....	8, 12
CR 12(b).....	10
CR 12(h)(3).....	6, 10
RAP 18.1.....	16

A. INTRODUCTION

Washington state courts have no authority or jurisdiction over acquisition or ownership of a federally regulated rail easement. In 2015, the City of Woodinville acquired assets in the rail corridor from the Port of Seattle and began a campaign to wipe out interests and break individuals with possessory interests pertaining to the corridor. No parties except Appellants claimed title to the easement at question here; however, in 2020 the City of Woodinville commenced a quiet title action as to continue to harass and harm Appellants.

Our law is intended to prevent such abuses. However, the City of Woodinville got what it wanted when Judge Spector of King County Superior Court refused to even consider objections to jurisdiction, refused to rule on a motion to dismiss, and gave the City of Woodinville whatever it requested. Judge Spector's handling of the case was derelict and erroneous. Despite receiving a recorded objection to the court's jurisdiction and despite scheduling a hearing date for a motion to dismiss based on jurisdiction, King County Superior Court failed to ever rule on the threshold question of its own subject matter jurisdiction, which patently does not exist here.

Despite having no jurisdiction to rule on this matter where ownership and acquisition of a rail easement was the subject, the King

County court sanctioned Appellants for not complying with invalid discovery orders, precluded Appellants from presenting evidence against claims made, and assessed monetary sanctions totaling \$244,000.

Although clearly precluded by federal preemption from ruling on ownership or acquisition of the federal rail easement, the King County Superior Court ruled that ECR no longer possessed that right, which ECR had purchased during bankruptcy proceedings in 2012, and declared: “GNP was the last clear owner of unclouded title to the Easement. Given the findings set forth above, GNP is the only party to this case with a colorable claim to the Easement.”¹ Appellants request that this Court simply apply & enforce our law. That requires reversal of the King County Superior Court’s Order and Judgment because our Washington state courts never had proper jurisdiction over this federally precluded matter.

¹ CP 74

B. ASSIGNMENTS OF ERROR

1. Issue: Washington state courts have no jurisdiction over the preempted field of railroad acquisition and ownership.

Error: The King County Superior Court erred in exercising jurisdiction over railroad acquisition and ownership.

2. Issue: CR 12(h)(3) imposes an affirmative duty on a state court to determine its own jurisdiction or dismiss the action when a party alerts a court to its lack of jurisdiction.

Error: Appellants filed a notice of objection to lack of jurisdiction and duly noted a motion to dismiss based on jurisdiction, but the King County Superior Court was derelict in never ruling on jurisdiction.

3. Issue: Orders issued without jurisdiction are null and void.

Error: King County Superior Court erroneously issued discovery orders and subsequent sanctions without jurisdiction.

C. STATEMENT OF THE CASE

1. In 2012, Appellant ECR acquired through bankruptcy proceedings a freight rail easement.²
2. As required under Federal law, Appellant ECR filed a notice of exemption with the U.S. Surface Transportation Board (“STB”) to operate a rail line on the easement, which was approved and became effective on December 7, 2012.³
3. In 2015, with no other parties claiming any interest in the easement, the City of Woodinville, plaintiff in this action, acquired the physical assets of a segment of the “Eastside Corridor” from its previous owner, the Port of Seattle.⁴ Consequently, Respondent owns assets upon which ECR owns a federally regulated rail easement.
4. The easement in question was the subject of a petition by Snohomish County, actively joined by Plaintiff the City of Woodinville, to the U.S. STB to revoke ECR’s exemption that allows it “to acquire and operate . . . a 14.45-mile line of railroad

² CP 15, 33.

³ CP 15, 34.

⁴ CP 15, 33.

known as the Eastside Corridor...” without otherwise completing regulatory processes.⁵

5. The statute of limitations expired long ago for any challenges regarding the transfer of the easement right during bankruptcy proceedings.⁶

6. Any issues about acquisition, ownership, and operation are exclusively before the STB where exclusive jurisdiction lies.⁷

7. Respondent and Snohomish County have actively pursued legal efforts to challenge the Notice of Exemption in federal forums.⁸

With the initial exemption revoked, Appellants have been put in a position to submit an application for a subsequent Notice of Exemption, complete regulatory processes, or transfer their interest in the rail easement.

8. On January 31, 2020, the City of Woodinville initiated the underlying lawsuit in King County Superior Court under a sham claim of seeking to quiet title. There was not a case or controversy pertaining to title. No parties contested the title to this rail easement, no case or controversy existed, and the King

⁵ CP 32.

⁶ CP 23, citing to 11 U.S.C. § 727.

⁷ CP 19, citing to 49 U.S.C. § 10501(b).

⁸ CP 32.

County Superior Court lacked subject matter jurisdiction over the preempted subject of federal rail acquisitions.⁹

9. Immediately upon filing an appearance in this action, Appellants filed an objection to subject matter jurisdiction because this matter is preempted by exclusive federal court jurisdiction.¹⁰

10. King County Superior Court Judge Spector took multiple leaves of absence during the pendency of this action, but provided a hearing date for Appellants Motion to Dismiss of December 11, 2020.¹¹ The trial court failed to rule on the duly filed motion.

11. This trial court had multiple opportunities to address the raised challenge to subject matter jurisdiction, but failed to ever address that elementary, threshold question. Despite having evaded its duty to determine its own jurisdiction, based on invalid discovery orders the King County Superior Court issued severe monetary sanctions against Appellant and precluded Appellants from arguing the merits of claims made.¹²

⁹ CP 22-24, 28, 30.

¹⁰ CP 1.

¹¹ CP 12.

¹² CP 8-11.

12. On April 16, 2021, without ever ruling on jurisdiction, King County Superior Court entered summary judgment against Appellants.¹³

13. Appellants filed a timely Notice of Appeal on May 14, 2021.¹⁴

D. ARGUMENT

This Court's mandate is to first rule whether it even has subject matter jurisdiction. CR 12(b) states in pertinent part:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, ... (3) improper venue....

CR 12(h)(3) further states "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Here, Washington state court have no subject matter jurisdiction over the issues asserted in the Complaint concerning a United States Surface Transportation Board matter involving a federal railroad easement. Venue is only proper in front of Surface Transportation Board based on federal law.

¹³ CP 71-75.

¹⁴ CP 78.

“A judgment entered by a court lacking subject matter jurisdiction is void; and a party may challenge such judgment at any time.” *Angelo Prop. Co. v. Hafiz*, 167 Wn. App. 789, 808, 274 P.3d 1075 (2012). Lack of subject matter jurisdiction renders a trial court powerless to decide the merits of the case. *Angelo Prop. Co.*, 167 Wn. App. at 808, citing *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). This Court’s first mandate is to determine whether there is any subject matter jurisdiction. Here, there is none because it has been clearly preempted.

“A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate.” *Marley v. Department of Labor & Industries*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). Where there is federal preemption, this court has no authority to adjudicate. “The doctrine of federal preemption is derived from the supremacy clause of the United States Constitution, article 6, clause 2.” *Berger v. Personal Products, Inc.*, 115 Wn.2d 267, 270, 797 P.2d 1148 (1990). “Federal law preempts state law when Congress intends to occupy a given field, when state law directly conflicts with federal law, or when state law would hinder accomplishment of the full purposes and objectives of the federal law.” *Id.* “Preemption may be either express or implied, and is compelled whether Congress' command is explicitly stated

in the statute's language or implicitly contained in its structure and purpose.” *Id.* (emphasis added). “Federal regulations have the same preemptive effect as federal statutes.” *Id.* As applicable here, the Surface Transportation Board’s “authority over rail operations and acquisitions is exclusive and preemptive of state remedies.” *Snohomish County*, 954 F.3d at 293, citing 49 U.S.C. § 10501(b).

1. The Surface Transportation Board, not this Court, has exclusive and preemptive jurisdiction over this matter.

The Surface Transportation Board’s “authority over rail operations and acquisitions is exclusive and preemptive of state remedies.” *Snohomish County*, 954 F.3d at 293, citing 49 U.S.C. § 10501(b). This is not a complicated legal question.

Respondent has presented no colorable argument to establish subject matter jurisdiction. Without supporting legal authority, the City argued:

The City, as the owner of public property burdened by the easement, has a responsibility to ensure that its property is used only by those authorized to do so. Douglas Engle’s actions—first in conveying the easement on behalf of GNP to his relatives, then purporting to buy it on behalf of ECR from the GNP bankruptcy estate that it knew did not own it—necessitated this action.¹⁵

¹⁵ CP, Response in Opposition to Motion for Reconsideration of Order Compelling Discovery and Imposing Terms, p. 8. ll. 12-17. Dkt. 73 (“Response”).

It is undisputed and unquestioned that this is exactly the same argument advanced in the federal forum and is the City's challenge to the acquisition and operations questions over which only federal jurisdiction lies.

There is no authority creating state court jurisdiction over the claims in this lawsuit. Such authority is granted exclusively and preemptively to the STB by federal statute. This Court should note that plaintiff was fully aware of the federal preemption issue when it filed this lawsuit on January 31, 2020 because plaintiff argued for it in front of the D.C. Court of Appeals on January 6, 2020. *Snohomish County*, 954 F.3d 290 (2020).

2. This Court would have no jurisdiction over this dispute, even absent federal preemption, because there is no justiciable case or controversy.

Even aside from federal preemption, there is no justiciable case or controversy. The City has no claim to ownership of the easement, the City was not a debtor in the bankruptcy action, and the City was not the Trustee in the bankruptcy action. The City has neither articulated nor cited legal authority to establish a basis for it to, on its own initiative, commence a lawsuit against the holder of the easement and, on its own initiative, seek to invent challenges to ownership.

The City is not claiming the right to possession or ownership. That is fatal. "A quiet title action is equitable and "designed to resolve

competing claims of ownership’ to property.”¹⁶ It is not enough for the City to be curious about whether transactions could have been handled differently or whether other parties, other than itself, may have once contested the acquisition. An action to quiet title allows a person in peaceable possession or claiming the right to possession of real property to compel others who assert a hostile right or claim to come forward and assert their right or claim and submit it to judicial determination.¹⁷ But the City claims no right to possession of the easement and fails this threshold requirement.

The City purposefully challenges the strength of defendants’ possessory rights, which misses the point entirely: “It is a long-standing principle that ‘[a] plaintiff in an action to quiet title must succeed on the strength of his own title and not on the weakness of his adversary.’”¹⁸ The City was never able to meet the threshold requirement for a quiet title action because the City never had title of its own. Without title of its own, the City merely states that it “has a responsibility to ensure that its property is used only by those authorized to do so.”¹⁹ That ‘responsibility’ is

¹⁶ *Byrd v. Pierce Cty.*, 5 Wn. App.2d 249, 265-66, 425 P.3d 948 (2018), quoting *Bavand v. OneWest Bank, F.S.B.*, 176 Wn. App. 475, 502, 309 P.3d 636 (2013) (quoting *Walker v. Quality Loan Serv Corp. of Wash.*, 176 Wn. App. 294, 322, 308 P.3d 716 (2013)).

¹⁷ *Kobza v. Tripp*, 105 Wn. App. 90, 95, 18 P.3d 621 (2001).

¹⁸ *Byrd*, 5 Wn. App.2d at 266, quoting *Bavand*, 176 Wn. App. at 502.

¹⁹ Response, p.8, ll. 12-13.

accompanied by zero legal citation and violates controlling authorities and criteria for quiet title actions.

Courts lack jurisdiction when there is no justiciable controversy, and there is none here. Any disputes about bankruptcy proceedings have long been dormant and a motion to re-open proceedings was never filed and now prohibited under 11 U.S.C. § 727 (period to set aside discharge for fraud is barred one year after discharge). Moreover, the City never had standing for that action even if timely because it was neither a creditor nor Trustee.²⁰ Finally, the only parties potentially aggrieved by the transaction are Mr. Engle's ex-wife and father, Joanne Skievaski and Earl.²¹ Neither have ever contested the transactions.

“[B]efore the jurisdiction of a court may be invoked under the act, there must be a justiciable controversy.” We defined a justiciable controversy as “(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4)

²⁰ See *Skinner v. Holgate*, 1. App. 840, 173 P.3d 300 (2007) (identifying the creditor or trustee's ability to set aside discharge).

²¹ The City identifies only these two individuals as entities who may have once claimed a possessory interest in the transactions. See Response, p.3, ll.3-9.

a judicial determination of which will be final and conclusive.”Inherent in these four requirements are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement. In sum, the four justiciability factors must “coalesce” to ensure that the court will be rendering a final judgment on an actual dispute between opposing parties with a genuine stake in the resolution.²²

Applying that controlling law, there is no justiciable controversy or jurisdiction here. There was nothing more than “possible, dormant, hypothetical, speculative or moot disagreement” from the City who never had a “direct” or “opposing” interest in the transactions it questioned. The City’s lawsuit never should have been condoned by the King County Superior Court. It was improper from the outset.

CONCLUSION

Washington state courts have no jurisdiction over the acquisition and ownership of federal regulated rail easements. King County Superior Court must be reversed for its orders and judgments below, each of which under controlling law must be deemed null and void.

Fee Request: Under RAP 18.1, Appellant requests attorneys’ fees and costs for prevailing on appeal.

²² *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001), quoting *Diversified Indus. Dev. Corp.*, 82 Wash.2d at 815, 514 P.2d 137.

DATED this 8th day of October 2021.

The Collins Law Group PLLC

s/Jami K. Elison

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Attorneys for Appellant

PROOF OF SERVICE

I certify under penalty of perjury that on the 8th day of October, 2021, I served a copy Appellant's Brief on the following:

Via EService via the Clerk

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Dated at Issaquah Washington this 8th day of October, 2021.

s/Jami K. Ellison

Jami K. Ellison

THE COLLINS LAW GROUP PLLC

October 08, 2021 - 4:11 PM

Transmittal Information

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Appellants

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