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Prior Precedents Did Not Preclude Tribal Sovereign Immunity In A Property Dispute

21 May 2018

After the Upper Skagit Indian Tribe purchased a 40-acre parcel of land in Washington State, a survey of that parcel revealed that approximately an acre of it lay on the other side of a boundary fence, which the Tribe's new neighbors, the Lundgrens, believed they had owned for decades. The Lundgrens file a quiet title action, and the Tribe asserted sovereign immunity. The Washington Supreme Court rejected the Tribe's sovereign immunity claim under the U.S. Supreme Court's previous decision in *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992). The Court, in a 7-2 decision by Justice Gorsuch, reversed, holding that the *Yakima* decision did not foreclose a tribe's sovereign immunity in an *in rem* suit, since *Yakima* only interpreted an old statute, and did not directly address the issue. The Court remanded to the state court to consider the Lundgrens' alternative argument, that the Tribe waived its sovereign immunity when it purchased immovable property in the same manner as a private individual. Chief Justice Roberts, joined by Justice Kennedy, filed a concurrence noting that if the Tribe prevails on remand on the immovable property exception, it could create an untenable situation where a tribe could use sovereign immunity as a sword to seize private land with impunity. Justice Thomas, joined by Justice Alito, dissented, arguing that the immovable property exception should apply. A link to the decision in *Upper Skagit Tribe v. Lundgren* is here.

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TAGGED: scotus, Sovereign Immunity, County of Yakima v. Confederated Tribes and Bands of Yakima Nation, Immovable Property, Upper Skagit Tribe v. Lundgren