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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2023 MAY 12 AM 11:36

Linda Myhre Enlow
Thurston County Clerk

Hearing Date: May 12, 2023
Hearing Time: 9:00 a.m.
Judge/Calendar: Hon. Indu Thomas/Dispositive

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

COOKE AQUACULTURE PACIFIC, LLC,
a Washington limited liability company,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF NATURAL RESOURCES, and
HILARY FRANZ, the Washington
Commissioner of Public Lands,

Defendants.

NO. 22-2-03398-34

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

THIS MATTER came before the Court on Defendants Washington Commissioner of Public Lands Hilary Franz and the Washington State Department of Natural Resources' (collectively, DNR) Motion for Partial Summary Judgment. Defendants were represented by ROBERT W. FERGUSON, Attorney General, appearing through JENNIFER A. CLEMENTS and APRIL D. HARE, Assistant Attorneys General. Plaintiff Cooke Aquaculture Pacific, LLC (Cooke) was represented by attorneys DOUGLAS J. STEDING and GREG A. HIBBARD.

The Court heard the oral argument of counsel for both parties. The Court considered the pleadings filed in this action, as well as the following documents and evidence:

1. Defendants' Motion for Partial Summary Judgment and Memorandum in Support;

1 2. Declaration of Sean Carlson in Support of Defendants' Motion for Partial
2 Summary Judgment with attached exhibits;

3 3. Declaration of Thomas Gorman in Support of Defendants' Motion for Partial
4 Summary Judgment with attached exhibits;

5 4. Declaration of April D. Hare in Support of Defendants' Motion for Partial
6 Summary Judgment with attached exhibits;

7 5. Plaintiff's Response to Defendants' Motion for Partial Summary Judgment;

8 6. Affidavit of Kevin Bright in Support of Plaintiff's Response to Defendants'
9 Motion for Partial Summary Judgment;

10 7. Declaration of Douglas J. Steding In Support of Plaintiff's Response to
11 Defendants' Motion for Partial Summary Judgment; and

12 8. Defendants' Reply in Support of Partial Summary Judgment.

13 Based on the argument of counsel and the evidence presented, the Court finds that there
14 are no genuine issues of material fact in dispute in this case with respect to the First, Third,
15 Fourth, and Fifth Causes of Action listed in the Notice of Appeal Under RCW 79.02.030 and
16 Complaint for Breach of the Duty of Good Faith and Fair Dealing, Violation of Due Process,
17 and for Injunctive Relief. Therefore, Defendants are entitled to judgment as a matter of law.

18 The Court having found that there are no genuine issues of material fact in dispute in this
19 case, concludes the following as a matter of law:

20 1. Under CR 56, a moving party may be granted summary judgment when there are
21 no genuine issues of material fact in dispute and that party demonstrates that they are entitled to
22 judgment as a matter of law. DNR have met this burden.

23 2. First Cause of Action: The lease agreements terminated following the end of their
24 15-year term, at which time the tenancies became month-to-month. Per the explicit terms of the
25 agreements, the month-to-month tenancies could be terminated by DNR upon 30 days' notice,
26 after which Cooke was required to surrender the leased aquatic lands. The leases did not grant

1 Cooke any right to renewal or reauthorization beyond the 15-year term. DNR acted in accordance
2 with the terms of the lease agreements. Cooke's claim would require imposition of new terms
3 and obligations on DNR in contradiction to the express terms of the lease agreements. Therefore,
4 Cooke's breach of duty of good faith and fair dealing claim fails as a matter of law. *Badgett v.*
5 *Sec. State Bank*, 116 Wn.2d 563, 570, 807 P.2d 356 (1991); *Rekhter v. Dep't of Soc. & Health*
6 *Servs.*, 180 Wn.2d 102, 112, 323 P.3d 1036 (2014).

7 3. Third and Fourth Causes of Action: The Department of Natural Resources, a state
8 agency, and Washington Commissioner of Public Lands Hilary Franz are not "persons" subject
9 to suit under 42 U.S.C. § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70-71, 109 S. Ct.
10 2304, 105 L. Ed. 2d 45 (1989); *Hontz v. State*, 105 Wn.2d 302, 309, 714 P.2d 1176 (1986); *Edgar*
11 *v. State*, 92 Wn.2d 217, 222, 595 P.2d 534 (1979). Additionally, Cooke has not been deprived of
12 a property or fundamental interest, which is a threshold requirement for procedural and
13 substantive due process claims. *Bd. of Regents v. Roth*, 408 U.S. 564, 569, 92 S. Ct. 2701, 2705,
14 33 L. Ed. 2d 548 (1972); *Swanson Hay Co. v. State Emp. Sec. Dep't*, 1 Wn. App. 2d 174, 223,
15 404 P.3d 517 (2017). Procedural due process was also satisfied because adequate
16 post-deprivation remedies in the way of a breach of contract suit and administrative review
17 pursuant to RCW 79.02.030 were available to Cooke. *Parratt v. Taylor*, 451 U.S. 527, 543-44,
18 101 S. Ct. 1908, 1916, 68 L. Ed. 2d 420 (1981), *overruled on other grounds by Daniels v.*
19 *Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). Therefore, Cooke's
20 constitutional due process claims fail as a matter of law.

21 4. Fifth Cause of Action: A party seeking temporary or permanent injunctive relief
22 must show (1) that it has a clear legal or equitable right, (2) that it has a well-grounded fear of
23 immediate invasion of that right, and (3) that the act(s) complained of will result in actual and
24 substantial injury. *Port of Seattle v. Int'l Longshoremen's & Warehousemen's Union*, 52 Wn.2d
25 317, 319, 324 P.2d 1099 (1958). Cooke has no more remaining rights under the expired leases.
26

1 Also, Cooke will not suffer an irreparable injury. Therefore, Cook's claim for permanent
2 injunctive relief fails as a matter of law.

3 5. Cooke is not entitled to its requested relief under its First, Third, Fourth, and Fifth
4 Causes of Action, and therefore its request for such relief is denied; and

5 6. Defendants are entitled to summary judgment as a matter of law on the First,
6 Third, Fourth, and Fifth Causes of Action listed in the Notice of Appeal Under RCW 79.02.030
7 and Complaint for Breach of the Duty of Good Faith and Fair Dealing, Violation of Due Process,
8 and for Injunctive Relief.

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17 **ORDER**

18 **IT IS HEREBY ORDERED** that summary judgment in favor of DNR on the First, Third,
19 Fourth, and Fifth Causes of Action listed in the Notice of Appeal Under RCW 79.02.030 and
20 Complaint for Breach of the Duty of Good Faith and Fair Dealing, Violation of Due Process,
21 and for Injunctive Relief is **GRANTED**, and the First, Third, Fourth, and Fifth Causes of Action
22 are hereby **DISMISSED WITH PREJUDICE**.

23 SO ORDERED this 12th day of May 2023.

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26 JUDGE INDU THOMAS

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 s/ April D. Hare

5 JENNIFER A. CLEMENTS, WSBA #50408
6 APRIL D. HARE, WSBA# 42924
7 Assistant Attorney General
8 Public Lands and Conservation Division
*Attorneys for Defendants Washington State
Department of Natural Resources and
Hilary Franz, Washington Commissioner
of Public Lands*

9 Approved as to form:

10 NORTHWEST RESOURCE LAW PLLC

11 Participated by Zoom Approved as
12 DOUGLAS J. STEDING, WSBA #37020
13 GREG A. HIBBARD, WSBA #60526
14 *Attorneys for Plaintiff Cooke Aquaculture
Pacific, LLC*