

SOLEDAD T. TENORIO, Plaintiff-Appellant

v.

ALBERT S. CAMACHO, Defendant-Appellee

Civil Appeal No. 223

Appellate Division of the High Court

Northern Mariana Islands District

October 27, 1982

Appeal from a finding by the trial court in a boundary dispute that there had been an "agreed boundary line" or "boundary by acquiescence." The Appellate Division of the High Court, Gianotti, Associate Justice, held that since the "agreed boundary line" or "boundary by acquiescence" had not been mutually agreed upon for a period of twenty years, finding of trial court was erroneous, and therefore finding was reversed and the case remanded to trial court.

1. Boundaries—By Acquiescence

In order to establish a boundary by agreement or boundary by acquiescence, the owners of adjacent properties must have occupied their respective premises up to an open boundary line visibly marked by monuments, fences or buildings and mutually recognized it as the dividing line, for a period at least equal to that of the statute of limitations in case of adverse possession, which is twenty years in the Trust Territory.

2. Boundaries—By Acquiescence

Finding of trial court that there had been an "agreed boundary" or "boundary by acquiescence" between owners of adjacent properties was erroneous, where the line was not acquiesced in for a period of twenty years.

Counsel for Appellant:

CHING, ROSENZWEIG & BOERTZEL

Counsel for Appellee:

DOUGLAS F. CUSHNIE

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

This case involves a boundary dispute between owners of certain land located in Susupe, Saipan Island, Northern Mariana Islands. Sometime during the year 1958, government surveyors incorrectly designated certain boundary

lines between appellant's and appellee's property. Both parties were aware of the designated boundaries and neither appear to have questioned the designation made by the government surveyors. Subsequently, appellee built certain improvements on his side of the designated boundary without protest by appellant. Thereafter, appellant sold his land to a third party who held the land until approximately 1969, when appellant reacquired the property. No protest as to the boundary was ever made by either the third party or by the appellant, even upon appellant reacquiring his land. In 1971, certificates of title were issued to the respective parties and again the boundary lines were incorrectly designated based upon the 1958 survey. In 1975, appellant caused a new survey to be made and the error was then discovered as to the incorrect boundary designation. Appellant then brought his action.

The trial court, in making written findings of fact and conclusions, found there to exist an "agreed boundary line" or "boundary by acquiescence."

Was this designation correct and was there an agreed boundary as defined under the line? We think not.

In order to establish boundary by agreement or boundary by acquiescence and there is no express agreement, the majority opinion seems to be that stated in *Holmes v. Judge*, 31 Utah 269, 87 P. 1009, saying if the owners of adjoining property:

. . . have occupied their respective premises up to an open boundary line visibly marked by monuments, fences or buildings for a "long period of time" and mutually recognized it as the dividing line between them, the law will imply an agreement fixing the boundary as located.

What does the court in the *Holmes* case mean by "a long period of time"?

Carstensen v. Brown (Wyo.), 236 P. 517:

A line acquiesced in for only a short period of time would not, generally, at least, evince a clear intention to recognize it as permanent, and we think it sounder public policy to require, in order to make such acquiescence binding upon the parties, a continuance thereof, for a period at least equal to that of the Statute of Limitations in case of adverse possession, and that seems to be the weight of authority [citing cases]. The acquiescence must, of course, be by both parties, in order to make it binding.

Rule affirmed in:

Kincaid v. Peterson (Ore.), 297 P. 833;

Hein v. Nutt (Ariz.), 184 P.2d 656;

Shelton v. Matette (Calif.), 301 P.2d 18;

Edgeller v. Johnston (Ida.), 262 P.2d 1006;

Beckmore v. Metzger (Okla.), 299 P.2d 152;

Townsend v. Koukol (Mont.), 416 P.2d 532;

Scott v. Slater (Wash.), 255 P.2d 377.

[1] The Trust Territory Code enacted its statute of limitations in 6 TTC § 302 wherein a twenty year period was established. Therefore, applying Trust Territory law to the *Carstensen* case, we are bound to apply the twenty year statutory period. In our immediate case, the incorrect boundary designation had not been in existence for that period before the action was brought.

[2] Under certain situations, the twenty year statute of limitations existing in Micronesia can, or could, work an extreme hardship on a party to an action. Such is the immediate situation. If the trial court had not been so emphatic in finding an "agreed boundary," an equitable approach to a solution of this boundary dispute may have been found, especially after such a long period of time had occurred. However, as to this we can only raise conjecture which has no place in this appeal. Because of the legal requirements necessary to find an "agreed boundary," this court has no alternative but to find such agreement did not exist for the period of the statute of limitations, and there-

KAPILEO v. OLOPAI

fore an “agreed boundary” cannot exist. We have no alternative but to reverse the finding of the trial court and remand this case back to the trial court for findings consistent with this decision.