



1 granted, laches, estoppel, lack of standing and statute of limitations (7 CMC § 2502(a)(2)). *See*  
2 Answer: Cross-Claim (Oct. 7, 1996). Fejeran simultaneously filed a cross-claim against Ahn Y. Gold,  
3 Inc., a sub-lessee of Fejeran since June 7, 1979. *Id.*<sup>1</sup> Pursuant to Commonwealth Rule of Civil  
4 Procedure 55, the court ordered a default judgement against co-defendant Ahn Y. Gold, Inc. for failure  
5 to appear. *See Teregeyo v. Fejeran*, Civ. No. 96-0909 (N.M.I. Super. Ct. Dec. 18, 1997)  
6 ([Unpublished] Entry of Default).

7 The Second Amended Complaint, filed on May 21, 1998, added Rosa M. Fejeran (now Rosa T.  
8 Malite) and Lourdes M. Rangamar as joint owners and lessors of Lots 348 and 349. On June 22,  
9 1998, Fejeran’s Answer to the Second Amended Complaint asserted that “title [is] vested in  
10 Defendants Rosa and Lourdes by adverse possession.” The court granted Fejeran’s motion to join  
11 Rosa and Lourdes as indispensable parties to the action to avoid multiple lawsuits and to prevent the  
12 substantial risk to the parties of double, multiple or otherwise inconsistent obligations. *See Teregeyo v.*  
13 *Fejeran*, Civ. No. 96-0909 (N.M.I. Super. Ct. May 7, 1998) ([Unpublished] Order); *see also* Com.  
14 R. Civ. P. 19(a)(2)(ii). On March 12, 2002, Fejeran filed a Motion for Judgment on the Pleadings,  
15 stating pursuant to 7 CMC § 2502(a)(2), Teregeyo’s claim as “an action for the recovery of land” was  
16 barred by the statute of limitations, or in the alternative, by the equitable doctrine of laches. The court  
17 denied the motion, citing unresolved material issues of fact. *See Teregeyo v. Fejeran*, Civ. No. 96-  
18 0909 (N.M.I. Super. Ct. May 9, 2000) (Order Denying Motion for Judgement on the Pleadings).

### 19 III. FACTS

20 The testimony elicited at trial shows that the ownership of the northwestern area of Lot 367 has  
21 been in dispute between the Litulumar and the Malite families since at least the late 1960’s. At that time,  
22 the Litulumars were farming the disputed area when some members of the Malite family came onto the  
23 land and uprooted the crops. Teregeyo testified that the crops were never replanted. Throughout the  
24 time that Elena L. Teregeyo (formerly Litulumar) was the record owner of Lot 367, she never filed a

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26 <sup>1</sup> Defendant Fejeran’s Answer: Cross-Claim (Oct. 7, 1996) states that the structure was built by Ahn Y.  
27 Gold, Inc., without the authorization of Fejeran, around June 7, 1979, and not the earlier year specified in the original  
28 complaint. Evidence adduced at trial renders this conclusion erroneous. Fejeran admitted under oath that he was  
solely responsible for the construction in 1972.

1 quiet-title action to resolve the question of ownership to the disputed area. On January 7, 1988, Elena  
2 L. Teregeyo leased the entire lot, excluding the disputed area where Fejeran's building was located.  
3 On May 12, 1994, she granted title to Lot 367 to her son, George L. Teregeyo by Deed of G/ft.

4 There are two maps of the disputed area admitted into evidence. The first, and earlier of the two,  
5 is a map done by Asia Mapping, Inc. at an unknown date. This map shows the prospective boundaries  
6 of eleven lots in the same general area of Lot 367. It also shows an area running from northeast to  
7 southwest in Lot 367 that was the site of a Japanese railroad. Notes written on the Asia Mapping, Inc.  
8 map state: "[f]inal survey of all Lots on this sketch cannot be made due to Malite family claim &  
9 hostility." See Pl.'s Ex. 4 (Asia Mapping, Inc.-Sketch No. 41).

10 The second map admitted into evidence was a survey of Lot 367 exclusively, done on October  
11 29, 1987, by Commonwealth Enterprises, Inc., at the request of Elena L. Teregeyo, for the purpose of  
12 leasing the property. See Pl.'s Ex. 7 (Parcel Survey of Lot 367). This map designates the disputed area  
13 as "Lot 367-1" comprising the area of 1,285 square meters. At the time of this survey, two corners of  
14 the new Lot 367-1 were set by rebar with the northwest corner computed.

15 On October 5, 1995, a land title investigation was done by the Office of Land Registration and  
16 Survey, pursuant to a request by Rosa T. Malite. The conclusion of the report was that the Litulumar  
17 family (i.e., Teregeyo's family), before World War II, had sold a Japanese railroad company an  
18 easement, and that the northwest corner was in fact a part of Lot 367, currently encroached. The  
19 report relied on translated Japanese land documents, the purchase record of the railroad right of way,  
20 the Asia Mapping, Inc. map, the Parcel Survey of Lot 367, and other pertinent documents on record.

21 On December 7, 1972, Fejeran leased Lots 348 and 349 (south), situated adjacent to Lot 367,  
22 from Clara Taman Nee Camacho [hereinafter Camacho]. See Motion to Join Necessary Parties Under  
23 Com. R. Civ. P. 19(a) (Apr. 30, 1998). A few months later, Fejeran employed his brother to construct  
24 a building on the leased property, believing it to be rightfully owned by Camacho. On June 22, 1982,  
25 Camacho transferred all of her interest in Lot 348 and Lot 349 (south)<sup>2</sup> to Rosa and Lourdes by

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27 <sup>2</sup> A survey company, Asia Mapping, Inc., conducted a survey on Lot 347 and Lot 348 along with the  
28 adjoining properties in the early 1970's, but did not perform a final survey or produce a final map because Camacho,  
Lourdes, and Rosa did not agree on the placement of boundary monuments or locations. See Def.'s Ex. A.

1 quitclaim deed as tenants in common, recognizing the 1972 lease agreement. *Id.* Fejeran’s building is  
2 situated directly on the lot designated as “Lot 367-1” in the 1987 Commonwealth Enterprises, Inc.  
3 Parcel Survey. *See* Pl.’s Ex. 7.

4 **IV. ISSUES**

5 I. Whether the disputed area is part of Lot 367, or whether it was lawfully leased to  
6 Fejeran as part of Lots 348 and 349 (south).

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8 II. Whether the disputed area can be claimed by Rosa and Lourdes under the  
9 common-law doctrine of adverse possession.

10 **V. ANALYSIS**

11 **A. The Boundary Dispute**

12 Although this action was brought as one for encroachment against a lessee of land, in order to  
13 resolve that issue, the Court must first address the issue of rightful ownership of the disputed parcel.  
14 “[A] boundary dispute . . . generally must be established first in an action for encroachment.” *See*  
15 *Estate of Taisacan v. Hattori*, 4 N.M.I. 26, 30 (1993). The “failure to technically plead a quiet title  
16 claim for relief does not preclude the Court from granting declaratory relief resolving the boundary  
17 dispute between the parties and quieting title to the . . . property.” *Id.* In other words, failure to resolve  
18 the boundary dispute would render the rest of the Court’s findings nonsensical.

19 In the instant case, evidence reveals an unresolved boundary dispute in existence for at least thirty  
20 years. Testimonial evidence from both parties show that, as early as the 1960’s, the Malite and  
21 Litulumar families both asserted ownership of the northwestern corner of Lot 367. Although Defendants  
22 presented testimonial evidence that they had continuously owned and occupied the  
23 disputed land, Plaintiff presented voluminous documentary evidence to support his claim. The findings  
24 of the Office of Land Registration and Survey offer the most credible evidence in its voluminous  
25 research, including pre-war and post-war documentary evidence. Although it is not unheard of for the  
26 court to decide in favor of a party presenting little or no documentary evidence in a quiet title action, this

1 case produces a different result. *See Sablan v. Iginioef*, 1 N.M.I. 190 (1990).

2 In the present case, the Court finds Plaintiff's testimony and documentary evidence persuasive.  
3 There is substantial evidence on record that supports a finding for the Plaintiff on the boundary issue.  
4 Defendants failed to produce any meaningful evidence to convince the Court that the Malite family had  
5 ever held title to the disputed property. They presented no documentary evidence as to title, only the  
6 lease agreement with Fejeran, and a Termination of Lease with sub-lessee Ahn Y. Gold, Inc.

7 For the foregoing reasons, the Court finds that Lot 367 includes the disputed portion now alleged  
8 to be encroached upon by Defendant Fejeran's commercial structure. The Court hereby declares that  
9 the map prepared by Commonwealth Enterprises, Inc. (DLS Check No. 2031/88) is the official  
10 representation of the disputed area, and will refer to that map as controlling for the rest of its  
11 determination. *See Pl.'s Ex. 7*. Unfortunately, the analysis does not end here. Having settled the  
12 boundary issue, the Court must make further inquiry as to whether the disputed parcel now determined  
13 to be owned by Plaintiff, was taken prescriptively by Defendants under the common law doctrine of  
14 adverse possession.

### 15 **B. Adverse Possession**

16 The Commonwealth Supreme Court has ruled that the burden of establishing title in an adverse  
17 possession claim rests with the party in possession of the disputed property. *See Apatang v. Mundo*, 4  
18 N.M.I. 90, 93 (1994). The party must show that their possession was actual, open, notorious,  
19 continuous, and exclusive for the statutory period.

20 [W]here one is shown to have been for the statutory period in actual, open,  
21 notorious, continuous and exclusive possession, apparently as owner, and  
22 such possession is unexplained, either by showing that [such possession] was  
under a lease from, or other contract with or otherwise by the permission of  
the true owner, the presumption is that such possession [is] hostile.

23 *Albertina v. Kapiolani Estate*, 14 Haw. 321, 325 (1902).

24 The actions of the record owners of Lots 348 and 349 (south), Camacho, Rosa and Lourdes,  
25 coupled with those of Fejeran, demonstrate possession of the land under a claim of right. An adverse  
26 possessor has a claim of right where the "claimant is in possession as owner, with intent to claim the  
27 land as his or her own, and not in recognition of or subordination to record title owner." BLACK'S LAW  
28 DICTIONARY 248 (6th ed. 1990). Simply phrased, the "'claim of right' element requires only that the

1 claimant treat the land as his against the world.” *See Chaplin v. Sanders*, 676 P.2d 431, 436 (Wash.  
2 1984). The evidence clearly indicates that the Defendants considered themselves the owners of the  
3 property. They transferred title and leased the disputed parcel, demonstrating that “throughout all these  
4 years [they] claimed the land as [their] own.” *DePonte v. Ulupalakua Ranch, Ltd.*, 395 P.2d 273,  
5 274. The Defendants’ possession of the land was so blatant that it could not be interpreted any other  
6 way than a denial of the Teregeyo’s title, from the pulling up of the crops in the late 1960’s until the  
7 construction of Fejeran’s building in 1972.

8 In fact, the Plaintiff has implicitly recognized that the Malites were the owners of the property in  
9 question, because he did nothing legally until the filing of this action in 1996. An action for recovery of  
10 land in the Commonwealth has to be commenced “within 20 years after the cause of action accrues.”  
11 *See* 7 CMC § 2502(a)(2). According to Plaintiff’s own testimony, the Litulumar family was on notice  
12 of the Malites’ hostile claim since as early as the late 1960’s. Although Plaintiff claims his family spoke  
13 to Fejeran several times about the encroaching structure, they failed to bring a cause of action to quiet  
14 title. The statutory period for an adverse possession claim in the CNMI is governed by 7 CMC §  
15 2502(a)(2). The Court finds that this action accrued when the Litulumar family witnessed their crops  
16 being uprooted in the late 1960’s. This action was not commenced until August 16, 1996. The Plaintiff  
17 slept on his rights for approximately thirty years, well beyond the required limitation period.

18 Plaintiff also raised a question at trial as to whether the statutory period would still run while a  
19 lessee was in actual possession of the property. The common-law doctrine of tacking “permits one  
20 claiming title by adverse possession to add his period of possession to that of a prior adverse possessor  
21 or possessors in order to establish a continuous possession for the statutory period.” *See Cheatham v.*  
22 *Vanderwey*, 499 P.2d 986, 988 (Ariz. Ct. App. 1972).<sup>3</sup> In this case Fejeran leased the disputed  
23 property by a rental agreement solemnized before a witness on December 7, 1972. *See* Def.’s Ex. 6.  
24 The lease created a valid privity of estate between Lessor and Lessee, thus allowing for tacking of the  
25 twenty-year statutory period. Defendants possessed the disputed property continuously, openly,

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27 <sup>3</sup> *See also*, 3 AM. JUR. 2D *Adverse Possession* § 80 (1986); 6 R. POWELL, THE LAW OF REAL PROPERTY, ¶ 1021  
28 (1968).

1 notoriously, exclusively, and under a “claim of right” for a period exceeding that required in the  
2 Commonwealth to establish a claim for adverse possession.

3 **VI. CONCLUSION**

4 This Court concludes that Defendants clearly treated the property as if it were their own against all  
5 others, and have proven each and every element of their claim for adverse possession. The Court  
6 hereby DECLARES that the area designated as Lot 367-1, shown in the northwest corner of Lot 367-  
7 R1 according to DLS Check No. 2031/88 (Pl.’s Ex. 7), consisting of 1,285 square meters, now  
8 belongs to Rosa T. Malite and Lourdes M. Rangamar as tenants in common. Rosa and Lourdes shall  
9 provide a copy of this order to the Office of Land Registration and Survey.

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11 SO ORDERED this 8th day of August 2002.

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14 /s/Juan T. Lizama  
15 JUAN T. LIZAMA, Associate Judge  
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