

LALII SILVESTER, Plaintiff

v.

OMLEI MUCHUCHEU, and NGIRATKEL ETPISON, Defendants

Civil Action No. 375

Trial Division of the High Court

Palau District

January 21, 1969

Action to determine boundary line. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while normally area of land conveyed in the least reliable method of locating boundary lines the defendant, having failed to remove the uncertainty as to the location of a missing monument, was bound to accept the surveyor's depiction of the boundary based upon the computation of area.

1. Real Property-Boundaries

Normally, area of land conveyed is the least reliable method of locating boundary lines.

2. Real Property-Boundaries

In locating boundary lines monuments control courses and distances, and courses and distances control quantity; but where there is uncertainty in specific description the quantity named may be of decisive weight, and necessarily so if the intention to convey only so much and no more is plain.

3. Real Property-Boundaries

Having failed to remove the uncertainty as to the location of a missing monument, defendant was bound to accept the surveyor's depiction of the boundary based upon the computation of area.

Assessor:

JUDGE PABLO RINGANG

Interpreter:

SINGICHI IKESAKES

Reporter:

NANCY K. HATTORI

Counsel for Plaintiff:

WILLIAM O. WALLY

Counsel for Defendants:

G. TULOP

TURNER, *Associate Justice*

This case involves the location of the boundary line between plaintiff's land and defendant Etpison's land. Where the boundary is located will determine whether the defendant Omlei must remove her house from plain-

tiff's land or may continue to use the site on which she built with permission of defendant Etpison.

Originally, the land now divided, was owned by plaintiff's father and was so listed in the *Tochi Daicho* (Japanese ownership record made from the 1939-1941 survey).

There is no dispute that defendant Etpison acquired by a series of transfers, title to *Tochi Daicho* Lot No. 468 and that plaintiff's father conveyed the remaining parcel, Lot No. 474, to plaintiff.

The dispute as to the boundary exists solely because the Japanese survey marker for one of the common corners of the two lots is missing. It arose when defendant Omlei rebuilt her house destroyed by Typhoon Sally, March 1, 1967, and in rebuilding, moved the location westward from its original site to a cement slab which was laid down as a floor for a Japanese military kitchen during the war.

At the pre-trial conference, the court ordered the District Land Management Office to survey the disputed areas. Plaintiff pointed out to the surveyors the existing monuments and her opinion as to the location of the corner where the monument was missing. The defendant Etpison gave the surveyors his copy of a copy of the area of his land made from the *Tochi Daicho* map.

The District Land Management survey map made pursuant to order of this court-SK-286-68, Plaintiff's Exhibit 2--depicts the area of the two parcels with boundary markers shown except for the corner where the marker is missing. The crucial corner is marked on the map by lines to the nearest point of joinder of plaintiff's and defendant's land, with plaintiff's claimed corner shown and a "computed corner" and a "recomputed area" shown as the location of defendant's alleged corner.

A line from either the recomputed area or the computed corner to the next boundary point not in dispute clearly shows the defendant Omlei's house is located on plaintiff's

land. The plaintiff, of course, relies on the District Land Management map and the defendants dispute the map's accuracy.

Defendants make two complaints about the map. The first is that the missing corner marker was further west than the map shows in that it was "close" to an Ukall tree stump north of the disputed house site. This claim is not depicted on the sketch because neither of the defendants bothered to point out the location to the surveyors. Defendant Etpison gave the surveyors his *Tochi Daicho* map copy and pointed out existing boundary markers on his land, but not the corner where the marker is missing. He was unable to locate it for the surveyors.

The *Tochi Daicho* maps and survey records do not show lot metes and bounds. Lot boundaries were marked on the ground by cement markers and the map depicted only the general shape, specific area and the lot number for reference to the ownership record.

Defendant Etpison's Lot No. 468 contained 663.6 *tsubo* according to the *Tochi Daicho*. By computing the area enclosed within defendant Etpison's known boundaries, the Land Office computed a corner and recomputed an area, approximating defendant's claim. Actually, the defendant's computed area was nearly 100 *tsubo* more than the Japanese record but 119.3 *tsubo* were accounted for by the area of a new road built through defendant Etpison's land in American times long after the Japanese survey. The old road, not included as a part of the *Tochi Daicho* lot area, marked the eastern boundary of defendant Etpison's land. Defendant Etpison's theory was the new road cut through his land should not be counted because the old road was not included and that he should have 663.6 *tsubo* without including the new road. The Land Office survey compromised with this claim, giving him 764.1 *tsubo*

including the new road and 644.8 *tsubo* (instead of 663.6), not including the new road.

In any event, the court is satisfied that the westerly line of the "recomputed area" in Land Management Sketch 286-68, being Plaintiff's Exhibit 2, is the appropriate boundary line location in the absence of any showing of the "true" boundary running from the supposed location of the missing Japanese corner marker "close" to an Ukall stump.

The testimony as to where "close" might be was entirely too indefinite and uncertain to be acceptable. Pointing out on the ground where the marker might have been would not have improved the situation because none of defendants' witnesses and defendant Etpison, himself, had precise knowledge of the location. At least two of defendants' witnesses went so far as to say the boundary line from the location of the missing marker would have gone through Omlei's house, that part of the house was on plaintiff's land and part on defendant Etpison's land.

It also is noted that defendants did not produce any evidence in contradiction of plaintiff's statement that the Japanese cement slab on which defendant Omlei's house is built was laid down on plaintiff's land during the war for a military kitchen.

[1] Normally, area of land conveyed is the least reliable method of locating boundary lines. 12 Am. Jur. 2d, Boundaries, § 75.

[2] There are occasions, however, as here, when there are no surveyor's "calls" of metes, bounds, and directions, and the monuments necessary to establish a boundary have been destroyed or removed. A similar situation to the present case was decided by the U.S. Supreme Court in *Ainsa v. United States*, 161 U.S. 208, 16 S.Ct. 544. The court said at 16 S.Ct. 552:-

"So monuments control courses and distances, and courses and distances control quantity; but where there is uncertainty in specific description the quantity named may be of decisive weight, and necessarily so if the intention to convey only so much and no more is plain."

Defendant Etpison received Japanese Survey Lot No. 468, described only by number and quantity of land. His map showed its location to other lots and its general shape but nothing else.

[3] Having failed to remove the uncertainty as to the location of the missing monument, the defendant Etpison is bound to accept the surveyor's depiction of the boundary based upon the computation of area. Accordingly, it is

Ordered, adjudged, and decreed:-

1. The boundary between plaintiff's and defendant Etpison's land is the line marking the "recomputed area", as shown in SK-286-68, being Plaintiff's Exhibit 2, running from the northern boundary line to the point on the western edge of the new road where the properties join.
2. That the defendant Omlei Muchucheu's house is west of this line and is situated on plaintiff's land.
3. Defendant Omlei shall have ninety (90) days in which to remove her house from plaintiff's land and, if at the end of that time she has not done so, she shall be deemed to have abandoned it to the plaintiff.
4. No costs are awarded.