

A REVIEW OF SHARMA VERSUS TYANNIKOV

By Landon Blake

Introduction

In this article, I review the unpublished court decision in the case Sharma Versus Tyannikov. This case comes from the California Appeals Court (Third Appellate District). The case involves a dispute over a fence constructed several feet from the actual boundary between two (2) residential parcels. The parcels are located in West Sacramento, California. It has a couple of interesting lessons about the relationship between a survey and the agreed boundary doctrine. It also has lessons on the legal concept of "laches" and the methods used to monument residential subdivisions.

Timeline

Here is a summary of the events in the timeline of this boundary dispute:

1980: The residential subdivision creating the two (2) lots involved in this dispute is filed.

1998: The Sharma Family purchases the property at 3126 Allan Avenue.

2012: The Tyannikov Family purchases the property at 3138 Allan Avenue, next door to the Sharma Family.

2012: The Sharma Family investigates the location of the fence between their property and the Tyannikov property as part of the permit process for a new backyard shed. They suspect the fence encroaches on their property.

2012: The Sharma Family obtains a survey of their parcel. The survey confirms the fence encroaches onto their lot. The encroachment is approximately 8 feet in the rear of the lot and 4 feet in the front of the lot.

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2012: The Sharma Family asks the Tyannikov Family to move their fence. The Tyannikov Family refuses. The Sharma Family sues.

????: The trial court rules for the Sharma Family. The Tyannikov Family appeals.

Undisputed Facts

The Sharma Family and Tyannikov Family both agree on the following facts related to their dispute:

- 1) The land subdivision map that created the residential parcels didn't set lot corners. The boundaries of the lots were controlled by monuments placed in the adjacent street.
- 2) The fence encroached on the boundary as shown on the survey by Sharma.

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"The execution of a survey can be evidence of a land owners uncertainty in the location of a boundary when the purpose of the survey is to retrace that boundary. Original surveys that create lines and corners don't meet that criteria."

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1998

The Sharma Family purchases the property at 3126 Allan Avenue.

2012

The Tyannikov Family purchases the property at 3138 Allan Avenue, next door to the Sharma Family.

2012

The Prewitts purchase a 311-acre parcel next door to Jackie Norsworthy.

2012

The Sharma Family investigates the location of the fence between their property and the Tyannikov

2012

The Sharma Family obtains a survey of their parcel. The survey confirms the fence encroaches.

2012

The Sharma Family asks the Tyannikov Family to move their fence. They Tyannikov Family refuses.

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COMMON LAW

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Tyannikov Claims

The Tyannikov makes the following claims in its appeal:

- 1) The boundary between the Sharma Property and the Tyannikov parcels was established by agreement at the location of the current fence.
- 2) The Tyannikov family is prevented from asserting the true location of the boundary between the parcels by the legal doctrine of "laches."

Narrow Legal Questions

Here are the narrow legal questions raised in this case:

- 1) Was the boundary between the Sharma Parcel and the Tyannikov Parcel established by agreement at the location of the fence?

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"This case shows why it can be foolish to buy and sell residential parcels without an ALTA/NSPS Land Title Survey. In this example a major encroachment was present on a parcel in a relatively modern subdivision."

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2) Is the Sharma Family prevented from claiming land to the true boundary by the legal doctrine of laches?

The Appeals Court Decision

In this section, we will review the decision of the Appeals Court on the narrow legal questions raised in this dispute.

Question #1: Was the boundary between the Sharma Parcel and the Tyannikov Parcel established by agreement at the location of the fence?

No.

In this case, the Appeals Court agrees with the trial court. There was no boundary by agreement. Why not?

The Appeals Court offers the following reasons for its finding on this question:

Broad Legal Questions

This case raises the following broad legal questions:

Question #1: What evidence is necessary to establish an agreed boundary?

Question #2: When is the execution of a land survey evidence that parties on both sides of a boundary were uncertain about its location?

Question #3: What is needed to successfully assert a claim of laches in a boundary dispute?

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1) If the location of the boundary is clear, common law in California requires additional evidence that there was uncertainty in the location of the boundary by the owners on either side. Acceptance of the fence is not in itself enough evidence. In this case, the Appeals Court said: “There is no such additional evidence here.” The Tyannikov Family didn’t offer any evidence showing that the Sharma Family had ever agreed on the fence as the location of the boundary.

2) In some cases, the execution of a boundary survey before construction of improvements can provide evidence of uncertainty in a boundary location. However, although a survey was conducted before the fence was built, it was not conducted to resolve uncertainty in the boundary location. On the contrary, the survey was made as part of the subdivision that created the boundary.

3) A fence can provide evidence of the original location of a

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surveyed boundary. However, in this case, the Tyannikov Family offered no evidence to counter the Sharma Family claim that the fence was not built based on the survey. The fence also clearly differed from the measurements on the subdivision map. The Appeals Court clearly stated in its decision that: "...the fence was not placed by the survey subdividing the land."

Question #2: Is the Sharma Family prevented from claiming land to the true boundary by the legal doctrine of laches?
No.

The Appeals Court provides a good summary of laches in its decision. It says: "Laches is an equitable time limitation on a party's right to bring suite, resting on the maxim that "equity aids the vigilant, not those that sleep on their rights." It makes an important clarification on this doctrine, noting that: "Acquiescence, to constitute laches, must be with the knowledge of the wrongful acts themselves and their injurious

consequences."

Although the Appeals Court acknowledges the long period over which the Sharma Family accepted the fence, it finds the claim of laches fails for two (2) reasons:

- 1) The Sharma Family didn't have knowledge of the mismatch between the fence and the boundary for a long period. When they discovered the error in 2012, they took immediate action to deal with the problem.
- 2) The Tyannikov Family didn't suffer major harm or injury from the Sharma Family's acceptance of the fence. The Appeals Court said: "Further, there was no evidence that defendants relied to their detriment on the misplaced fence. They testified that a large backyard was important to them, but didn't testify that they passed over opportunities to purchase other houses

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with large yards or would not have purchased the house on Allan Avenue if they had known the yard was smaller than it appeared.”

A Review of the Court’s Decision

This was an excellent decision by the California Appeals Court. I agree with every aspect of its decision. I don’t think the Tyannikov Family proved boundary-by-agreement for the reasons listed by the court. I also agree that the Tyannikov Family didn’t prove the doctrine of laches applied for the reasons listed by the court.

The court also did a very good job of reviewing a couple of previous cases related to boundary-by-agreement from California courts and explaining how they did (or didn’t) apply to the facts in this case. I encourage my readers to examine the full case to get this review of precedent for themselves.

Answers to Broad Legal Questions

Let’s briefly consider the answer to the broader legal questions raised in this dispute.

Question #1: What evidence is necessary to establish an agreed boundary?

You need clear evidence that parties on both sides of the boundary were uncertain about the boundary’s location at the time of the agreement.

You also need clear evidence that parties on both sides of the boundary agreed on a location for the uncertain boundary. Mere acceptance of the placement of a fence isn’t strong enough evidence.

Question #2: When is the execution of a land survey evidence that parties on both sides of a boundary were uncertain about its location?

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Lessons

There are lessons in this case for land surveyors, land title professionals, land attorneys, and local government agencies.

Lessons for Land Surveyors

When you create a subdivision and only monument the sidelines, you make fertile ground for future boundary disputes. Setting monuments to mark individual lot corners in the subdivision can help prevent this.

A sophisticated court will be able to make distinctions between different types of surveys. In this case, it explained the difference between a retracement survey that seeks to establish an uncertain boundary line and a subdivision survey that creates original lines and corners.

Lessons for Land Title Professionals

This case shows why it can be foolish to buy and sell residential

The execution of a survey can be evidence of a land owners uncertainty in the location of a boundary when the purpose of the survey is to retrace that boundary. Original surveys that create lines and corners don't meet that criteria.

Question #3: What is needed to successfully assert a claim of laches in a boundary dispute?

To successfully assert a claim of laches in a boundary dispute, you must show the land owner harmed by the encroachment knew about the encroachment for a long period of time and took no action to correct it. The key date in this consideration is the date the landowner harmed by the encroachment discovered its existence.

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parcels without an ALTA/NSPS Land Title Survey. In this example a major encroachment was present on a parcel in a relatively modern subdivision. If the Tayannikov Family purchased their lot with title insurance, and the survey exception didn't apply, they have a good claim against their title insurance company.

Subdivisions that are only monumented on road centerlines and exterior boundaries present extra risk. Encroachments and boundary disputes are more likely when individual lot corners aren't marked by a monument. The cost of title insurance on these parcels should reflect this.

Lessons for Land Attorneys

If you want to successfully assert an agreed boundary at trial, you need to present evidence of two (2) things:

1) That parties on both sides of the line agreed to the location

of the boundary. The evidence presented to establish this element needs to be very clear. It also needs to be more than just evidence that the adjoining land owner accepted the fence.

2) That parties on both sides of the line at the time of the agreement felt the location of the boundary was uncertain. If one of the parties believed physical occupation already marked the true line, you can't have an agreed boundary.

The execution of a retracement survey can provide evidence that parties were uncertain about the location of a boundary. However, the subdivision survey that creates the original lots is not this type of survey.

A defense against the legal doctrine of laches in a boundary dispute can be made if your client took swift action to correct an encroachment. The period of time considered for

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a claim of laches isn't the length of time an encroachment existed, but how long the party harmed by the encroachment knew about its existence before taking action.

Your client's desire for a big backyard isn't likely a good basis for asking a court to create a boundary by unwritten means. If you are going to make this argument, you need to provide hard evidence at trial that shows the desire for a large backyard was a critical part of your clients decision to purchase a parcel.

Lessons for Local Government Agencies

The City of West Sacramento required that Sharma locate his parcel boundaries in relation to the proposed shed as part of their permit process. Although this may seem like an unnecessary burden, this case shows how it can prevent boundary disputes from getting worse. Without that check in the permit process, expensive improvements can be made across a parcel boundary.