

TARSISIO, Plaintiff
v.
FEFAN MUNICIPALITY, Defendant
Civil Action No. 556
Trial Division of the High Court
Truk District
October 1, 1971

Action to recover for alleged encroachment upon land by municipality. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where boundary was in dispute and there was an absence of adequate evidence either way, court would accept the boundary as surveyed by Land Management.

Boundaries—Evidence

In the absence of adequate evidence either way the court will accept the boundary as surveyed by Land Management.

<i>Assessor:</i>	ICHIRO MOSES, <i>Associate Judge of the District Court</i>
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	RAFAEL ROBERT
<i>Counsel for Defendant:</i>	AUGUST HARTMAN

TURNER, *Associate Justice*

Immediately preceding trial, the defendant municipality modified its claims to the lands, Uonpoin and Fankurek #2, adjoining Lot No. 60393 as shown in Land Management Office Drawing 6032/69. Instead of proceeding on its claim of ownership of the whole of these lands, counsel for the municipality conceded that the municipality owned a strip not wider than six feet adjoining the surveyed boundary and that the defendant was the owner of the remainder of the two lands in question.

Although the judgment in this case necessarily reflects on the correctness of the surveyed boundaries of the lands Nemenukuk, Fankurek #3 and Fankurek #1, those lands are specifically excluded from this judgment.

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FINDINGS OF FACT

1. Plaintiff acquired the two parcels of land in question from his father, Nikemau, and has lived on and worked the lands since during the Japanese administration.

2. The boundaries of the Fefan Municipality land are as depicted as the boundaries of Lot 60393 on Division of Land Management Drawing No. 6032/69, surveyed November 10, 1969.

3. The boundaries of Uonpoin and Fankurek #2 adjoining Lot 60393 are as depicted on Division of Land Management Drawing No. 6032/69.

4. The municipality purchased the first row of coconut trees surrounding the municipal *taro* swamp (Lot 60393) but did not purchase the land, of approximately three and one-half feet in width because the landowners agreed to grant municipal use rights to the strip of land around the *taro* swamp.

5. Neither Nikemau, plaintiff's predecessor and father, nor the plaintiff were paid for coconut trees adjoining the *taro* swamp which were cut down, if any were cut down, on their land.

OPINION

In 1947 Fefan Municipality built its municipal office and the people filled in a *taro* swamp given to the municipality in the area shown in Land Management Drawing No. 6032/69. No surveys of municipal and private boundaries were made at the time and the municipality at first built on and used land adjoining the *taro* swamp for municipal purposes. Apparently there was no real objection from the adjoining landowners to this use for many years. Some of the owners, if not all of them, had been paid for trees cut on their lands adjoining the *taro* swamp and did not complain of the municipal use.

It appears the first action taken against the municipality was by Albert Hartman, the brother of Carl Hartman, the island chief who initiated the *taro* swamp project in 1947. Albert sued the municipality for rent for use of his land by construction of municipal structures on them—first the community office building and after that a schoolhouse on the same site. Rental was sought from 1947 until 1955 when the municipal building was moved. The suit was filed in 1965 and Albert obtained judgment against the municipality in *Albert Hartman v. Fefan Municipality*, Civil Action No. 362, not published.

The land subject to the *Hartman* suit was a division of the land Nojak, also spelled Nesok, which adjoins plaintiff's land Uonpoin. The corner boundary fixed for the purposes of the *Hartman* suit and used by the surveyors as Corner M-A of Lot 60393, also fixed the corner boundary of Uonpoin. This evidence plus the fact the present owner, Makis, of the Nesok division was not named a party to this action prevents the plaintiff from establishing his claim that the survey line of his land and the municipal land was incorrect. His claim, therefore, that the boundary line for Uonpoin included part of the dispensary shown on Lot 60393 is not established by the evidence.

The evidence also is unsatisfactory as to whether or not the surveyed boundary of Lot 60393 included or excluded the three and one-half foot strip around the *taro* swamp from which trees were cut and which the people undoubtedly agreed to permit the municipality to use. In the absence of adequate evidence either way, the court necessarily accepts the boundary surveyed by Land Management.

Accordingly, the adjoining boundary between the private land and the municipal land must be held to be as surveyed in 1969.

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Ordered, adjudged, and decreed:—

1. That plaintiff is denied recovery on his claim Fefan Municipality has encroached upon and is using a strip of the lands Fankurek #2 and Uonpoin adjoining the municipal land.

2. The defendant is denied recovery on its counterclaim that it purchased and is entitled to use a strip of land surrounding Lot 60393 within the adjoining lands Fankurek #2 and Uonpoin.

3. This judgment shall not affect any rights-of-way existing over the lands in question.

4. No costs are allowed.