**IN THE SUPREME COURT OF GUAM**

**IN THE MATTER OF THE APPLICATION PETER B. LEON GUERRERO AND ADOLF P. SGAMBELLURI, in their capacity as JOINT ADMINISTRATORS OF THE ESTATE OF PEDRO B. LEON GUERRERO, Petitioners for Registration of Title to Lot No. 186NEW, Municipality of Yona, Territory of Guam,**
Petitioners/Counter Oppositors/Appellants

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**IN THE MATTER OF THE APPLICATION DWIGHT LOOK for Registration of Title to Lot No. 186 NEW, Municipality of Yona, Territory of Guam,**
Oppositor/Counter Petitioner/Appellee

# OPINION

Supreme Court Case No. CVA98-018
Superior Court Case No. LR0120-73

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Appeal from the Superior Court of Guam
Submitted for oral argument on August 18, 1999
Hagåtña, Guam

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BEFORE: RICHARD H. BENSON, Chief Justice (Acting)[1], JOHN A. MANGLONA[2], and MICHAEL J. BORDALLO[3], Designated Justices

**BORDALLO, J.:**

**[1]** This case dates to 1973. In that year, Pedro B. Leon Guerrero filed a petition to register title to land. H. Dwight Look, Rufo Taitano, and others claiming to own interests in the subject land opposed this petition. In 1978, the trial court found in favor of Pedro B. Leon Guerrero and against all other oppositors. Only H. Dwight Look appealed. The District Court of Guam Appellate Division reversed the trial court and the Ninth Circuit Court of Appeals upheld the reversal. On remand, the trial court, following the mandate of the Appellate Division, ordered that Pedro B. Leon Guerrero owned only the undisputed portions of the subject land. In that order, the trial court invited Pedro B. Leon Guerrero to file an amended petition for the disputed portions. In 1990, the Estate of Pedro B. Leon Guerrero filed an amended petition to register the disputed portions. H. Dwight Look opposed and filed a counter- petition to register the same disputed portions. The trial court held that H. Dwight Look was the owner of the disputed portions and the Estate appealed. For the reasons set forth below, we reverse the trial court's decision and remand for further proceedings.

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[1] Chief Justice Benjamin J.F. Cruz, who was the trial judge in this matter, recused himself from this matter. Designated Justice Richard H. Benson, as the senior member of the panel, was designated Acting Chief Justice.

[2] Justice Manglona was appointed as a Designated Justice pursuant to 7 GCA 3103(b).

[3] Judge Bordallo was appointed as a Designated Justice pursuant to 7 GCA 3103(f).

**I.**

**[2]** Francisco B. Leon Guerrero (hereinafter "Francisco") owned Estate 278, which consisted of 3,200 hectares of real property in Yona, Guam. In 1954, Francisco borrowed $60,000 from the Government of Guam, securing the debt with a mortgage on this land. Francisco defaulted on the loan and the government foreclosed and purchased the property at the foreclosure sale. Frank Perez (hereinafter "Perez") redeemed the property in 1961 after Francisco sought his help. Francisco granted Perez a power of attorney to sell Estate 278. Perez convinced H. Dwight Look (hereinafter "Look") to purchase Estate 278 in its entirety.

**[3]** Look purchased the property for $80,000 and, at the request of Perez and Francisco, agreed to exempt from the conveyance 120 hectares to be given to Francisco. The quitclaim deed, which transferred Estate 278 from Francisco to Look, was recorded on October 11, 1961 and contained a provision that expressly exempted 120 hectares, as shown on the topographical map attached as an appendix. Perez's attorney, Mr. Ramon Diaz, penciled and shaded the exempted area (hereinafter "shaded area") on the topographical map. No other written agreement was ever entered into by the parties subsequent to the original land conveyance. The parties later learned that portions of the shaded area were owned by others not involved in this litigation.

**[4]** Both Look and Francisco used portions of the land, and there are conflicting stories and accounts of oral agreements as to the boundaries that each individual would recognize. No writing aside from the topographical map attached to the quitclaim deed evidenced the agreement between Look and Francisco as to the exempted area's boundaries. The litigation concerned whether Francisco would receive land only within the specific shaded area or the 120 hectares expressly noted in the deed's reservation.

**[5]** After suffering a stroke, Francisco conveyed his interest in Estate 278 to Pedro B. Leon Guerrero (hereinafter "Pedro") on January 15, 1971. On October 31, 1972, Look conveyed to Rufo Taitano (hereinafter "Taitano") Lot No. 184, consisting of the yellow and green portions of the shaded area on the color-coded Perry map (provided by the Estate and attached hereto) and now known as Lot No. 186 New-R1.

**[6]** On December 10, 1973, Pedro filed a petition to register the 120 hectares of Estate 278 designated as Lot No. 186. Oppositions were filed by Look, Taitano, and International Projects Development Corporation.[4] Look also filed a Counterclaim on June 25, 1974, alleging that he was the owner of the entire Estate 278 by valid conveyance as well as by adverse possession.

**[7]** Francisco died on March 18, 1974. The trial began in April 1977 before Judge John P. Raker. The basic issue before the court was whether the parties intended Francisco's exemption of land in the quitclaim deed to be paramountly a matter of quantity of land or location of land. The evidence presented at trial consisted of deeds, maps, drawings, and testimony under examination by counsel and the court. In his Decision filed June 14, 1978, Judge Raker ruled in favor of Pedro. Judge Raker found that "due to a mutual mistake of fact as to the size and ownership of the shaded area reformation of the exception in the Francisco-Look deed is proper." *In re Pedro B. Leon Guerrero*, LR120-73 (Super. Ct. Guam June 14, 1978). Therefore, Pedro was adjudged the record owner of Lot No. 186. Look subsequently appealed Judge Raker's Decision, whereas Taitano did not.

[4] International Products Development Corp. filed an opposition to the original petition to register but did not oppose the second petition. The corporation is not a party in this appeal.

**[8]** The District Court of Guam Appellate Division reversed the trial court's decision, finding that the shaded area of the map attached to the deed dictated what should have been transferred. *In re Leon Guerrero*, Civ. No. 78-00344A (D. Guam. App. Div. July 23, 1980). On further appeal to the Court of Appeals, the Ninth Circuit agreed and found that the parties did not intend to reserve a free-floating 120 hectare parcel. *Leon Guerrero v. Look*, No. 80-4398 (9th Cir. Nov. 27, 1981). Following the mandate of the District Court Appellate Division, the land registration Court issued an Order declaring Pedro the fee simple owner of the undisputed portion of Lot No. 186. *In re Leon Guerrero*, LR120-73 (Super. Ct. Guam June 28, 1982). In the same Order, Pedro was accorded the opportunity to file an amended petition in order to claim the disputed portions of the shaded area. *Id*. at 2.

**[9]** On September 18, 1984, Taitano conveyed Lot No. 184, also known as Lot No. 186-New R1, back to Look. Pedro died on December 7, 1985. Parties were substituted in a Stipulation and Order dated May 30, 1990. Peter B. Leon Guerrero and Adolf Sgambelluri, as joint administrators, represented Pedro's Estate (hereinafter "Estate") in the proceedings that followed.

**[10]** The Estate filed an Amended Petition on September 18, 1990, seeking to register the remaining disputed portion of Lot No. 186. Referring to the color-coded Perry map, attached hereto, the Estate sought to register the disputed yellow, orange, and green areas.[5] On October 1, 1990, Look filed an Opposition and Counter-Petition and sought to register the disputed yellow, orange, and green areas. Trial on the Amended Petition began on March 15, 1995.

[5] Pursuant to the second trial court's Findings of Fact and Conclusions of Law, Look submitted to the court a survey map of the subject land, which was prepared by Registered Land Surveyor Ron Perry. For its appeal, the Estate reduced the Perry map and color-coded the three disputed portions as yellow, orange and green areas. This color-coded Perry map was filed by the Estate along with its Opening Brief and is used extensively by both parties in their Briefs. The figure attached hereto is a scanned copy of the Perry map submitted by the Estate.

**[11]** The second trial court found that the transaction between Look and Taitano was a sham and that Look was the real party in interest. Record on Appeal, Tab 171, p. 7 (Findings of Facts and Conclusions of Law, Sept. 25, 1997). Additionally, the trial court found that Look was the true owner of a portion of Lot No. 184 because Look received it from third parties and not from Francisco. Record on Appeal, Tab 171, p. 10 (Findings of Facts and Conclusions of Law, Sept. 25, 1997). The trial court also found that Look was entitled to portions of the disputed property *via* the doctrine of agreed boundaries. Record on Appeal, Tab 171, p. 9 (Findings of Facts and Conclusions of Law, Sept. 25, 1997). The Estate appealed.

## II.

**[12]** Because the decree is a final judgment, we have jurisdiction pursuant to Title 7 GCA §§ 3107 and 3108(a) (1994). Moreover, the Guam Land Title Registration Law provides in pertinent part: "Any party aggrieved by such decree may appeal therefrom in the manner now or hereafter provided by law for appeals in civil actions." Title 21 GCA § 29116 (1998).[6]

**[13]** We review the trial court's findings of fact under the clearly erroneous standard and the trial court's conclusions of law *de novo. Guam Economic Development Agency v. Island Equipment Co*., 1998

[6] In 1933, the Governor of Guam, United States Navy Captain Edmund S. Root, promulgated the first Guam Codes. M. Dean Zenor, United States Naval Government and Administration of Guam (1949) (unpublished Ph.D. dissertation, University of Iowa) at 80, 82-83. These codes were compiled by Lt. Commander Stephen B. Robinson at the request of Governor Root and were based entirely on the laws of California. *Id*. Thus, in 1933, the naval government of Guam adopted California's system of land title registration. *See, e.g., Wells v. Lizama*, 396 F.2d 877 (9th Cir. 1968). This system of land title registration, commonly known as the Torrens System, *see Pelowski v. Taitano*, 2000 Guam 34, ¶ 30, was created in 1858 by Sir Robert Torrens, the Registrar-General for the Territory of South Australia. BLAIR C. SHICK & IRVIN H. PLOTKIN, TORRENS IN THE UNITED STATES 17 (1978). Sir Torrens modeled this system on the British method to record ownership interests in ships. *Id*.

Guam 7, ¶ 4 (citations omitted). In *Yang v. Hong*, we stated:

> A finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake. The appellate court accords particular weight to the trial judge's assessment of conflicting or ambiguous evidence. The applicable standard of appellate review is narrow; the test is whether the lower court rationally could have found as it did, rather than whether the reviewing court would have ruled differently.

*Yang v. Hong*, 1998 Guam 9, ¶ 7 (citation omitted).

**III**.

**[14]** When Look appealed the original Petition to the District Court Appellate Division and then to the Ninth Circuit Court of Appeals, the holding of the land registration court, that Francisco was entitled to 120 hectares, was reversed and Francisco was found to be entitled, at most, only to land within the shaded area on the map. *In re Leon Guerrero*, Civ. No. 78-00344A (D. Guam. App. Div. July 23, 1980), *aff'd*, *Leon Guerrero v. Look*, No. 80-4398 (9th Cir. Nov. 27, 1981). The Appellate Division found, and the Ninth Circuit agreed, that a certain portion within the shaded area was uncontested, and the case was remanded for the registration of this undisputed area to Francisco. *Id*.

**[15]** From the record, we see that the undisputed area is situated to the east of the fence-line, which Look alleged in the original trial to be an agreed boundary setting the western edge of Francisco's reserved land. Thus, not only did Look assert that Francisco was entitled only to land within the shaded area, but Look attempted to claim a portion of the shaded area as his by way of the doctrine of agreed boundaries and, in the instant Amended Petition, by adverse possession.

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**[16]** In the instant Amended Petition, the trial court first found that Look was not barred by *res judicata* from claiming what was Taitano's interest, and then found that Look prevailed on the agreed boundary issue. It is important to note that the issue of agreed boundaries was brought forth in the first trial by Look. The trial court found no agreed boundary. However, the Appellate Division made no decision as to this finding, and merely remanded for registration of the undisputed portions. Thus, Look has twice asserted the agreed boundary issue. This issue is critical because Look's ownership of the property he conveyed to Taitano was partially based upon the alleged agreed boundary.

**[17]** The parties are in agreement that at issue herein is ownership of the three disputed parcels. The issues raised by the Estate are whether Look is barred by *res judicata* from claiming the disputed areas and whether Look may claim the disputed areas under the doctrine of agreed boundaries. Look argues that even if we find on appeal that the doctrine of agreed boundaries does not apply, he has established ownership by adverse possession. Henceforth, these parcels shall be referred to in their designated colors as assigned in the attached color-coded Perry map.

### A. *Res Judicata*

**[18]** The first issue raised on appeal by the Estate is whether Look's claim to the property at issue is barred because his predecessor in interest, Taitano, failed to appeal Judge Raker's first decision in the original trial. Essentially, the Estate argues that Look is barred by *res judicata* from claiming Taitano's interest.

**[19]** Preliminarily, we address Look's assertion that the Estate failed to specifically raise the defense of *res judicata* in the trial court and therefore cannot raise this defense on appeal. Rule 8(c) of the Guam Rules of Civil Procedure requires a party to set forth *res judicata* as an affirmative defense. Because the

Estate failed to expressly state "*res judicata*" in its Opposition to Look's Counter-Petition, the question becomes whether the Estate provided such a defense in other terms. **[20]** We previously defined *res judicata* as the doctrine by which a "judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Trans Pacific Export Co. v. Oka Towers Corp.*, 2000 Guam 3, ¶ 13 (citation omitted). In the Estate's Opposition, the first defense provides: "Counter Petitioner's claim to portions of the property is barred by portions of the earlier decision of this court which were not appealed from." Record on Appeal, Tab 98, p. 2 (Petitioner's Opposition to Counter Petition for Land Registration, Oct. 15. 1990). The Estate claims, and we agree, that the provision "portions of the earlier decision of this court which were not appealed from" refers to Judge Raker's initial decision from which Taitano failed to appeal. Although that initial decision was reversed on appeal, Taitano's failure to appeal raises the question of whether that decision still applied to him or his privies. Because Look claims a right to portions of the property by conveyance from Taitano, Look is Taitano's privy and may be bound to that extent by Taitano's failure to appeal. For these reasons, we hold that the Estates' first stated defense fits within the definition of *res judicata* set forth in *Trans Pacific*. Thus, the issue of whether Look is barred by Taitano's failure to appeal is properly before this court.

**[21]** Turning to the trial court's decision, it concluded as a matter of law that the reversals by the District Court Appellate Division and the Ninth Circuit would not inure to the benefit of Taitano because of his failure to appeal. However, by finding that the Look-Taitano conveyance was a sham and that Look was the real party in interest, the trial court was able to reason that Taitano had no interest in the subject property and therefore Taitano's failure to appeal was irrelevant. The trial court was then able to allow

Look's claim to the subject property and eventually rule in his favor.

**[22]** The trial court based its decision that the Look-Taitano transaction was a sham and that Look was the real party in interest upon the following factual findings: (1) Taitano never had any interest in the property, never acted as owner, and never occupied the property; (2) Taitano deeded the property back to Look almost immediately; and (3) Look continued to farm the property. The trial court further found that Look's opposition to Pedro's original petition encompassed all the land outside the undisputed portion of Lot No. 186, which included the portions claimed by Taitano. Therefore, the trial court found that Look, as the real party in interest, preserved his opposition because he appealed the case and because his opposition to the original petition included the land he deeded to Taitano.

**[23]** On March 14, 1974, Taitano filed his Entrance and Statement of Opposition to contest Pedro's petition to register title to the subject property on the ground that the land sought to be registered "encroaches on land owned by this oppositor." By this act, Taitano became a party in this case. Further, the record contains the 1984 deed from Taitano to Look wherein Taitano professed to be the owner and grantor of Lot No. 184. In the face of these facts, we cannot see how the trial court could have rationally concluded that Taitano did not have an interest in the property and never acted as owner. We also note the trial court's consideration of Taitano's admission that he never occupied the property and Look's statement that he farmed the property. However, this is not sufficient to show that the conveyance was a sham and that Look was the real party in interest with respect to Taitano's claim. The record in its entirety produces a definite and firm conviction that the trial court erred, and so we hold that the trial court's finding of a sham conveyance and its conclusion that Look was the real party in interest are clearly erroneous.

**[24]** We now determine whether Look is barred from claiming Taitano's interest by *res judicata*. Section 4209 of Title 6 of the Guam Code Annotated codifies Guam's *res judicata* law. This section provides:

> **Effect of judgment or Final Order**. The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:
>
> 1. In case of judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person;
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> 2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

Title 6 GCA § 4209 (1998). Three requirements must be met in order for *res judicata* to apply: (1) a final judgment on the merits; (2) the issue decided in the prior suit is identical with the issue presented in the later suit; and (3) the party against whom *res judicata* is asserted was a party or is in privity with a party in the prior suit. *See Trans Pacific,* 2000 Guam 3 at ¶¶ 13-16 (citations omitted); *Caswell Realty v. Andrews Co.*, 496 S.E.2d 607, 610 (N.C. Ct. App. 1998).

**[25]** In the instant case, we find that the three aforementioned requirements are present. First and as previously discussed, Judge Raker issued his original decision on the merits in 1978, and although this decision was reversed, Taitano failed to appeal. The general rule is: "where only one of several parties appeals from a judgment, the appeal includes only that portion of the judgment adverse to the appealing party's interest, and the judgment is considered final as to the nonappealing parties." *In re Estate of McDill*, 537 P.2d 874, 879, 14 Cal. 3d 831, 840 (1975) (citation omitted). Therefore, the original

decision was a final judgment on the merits as to Taitano. We note that the trial court recognized this rule, concluding as a matter of law that Taitano, because of his failure to appeal, could not benefit from the reversals by the District Court Appellate Division and the Ninth Circuit Court of Appeals, Record on Appeal, Tab 171, pp. 6-7, (Findings of Facts and Conclusions of Law, Sept. 25, 1997), before finding that the Look-Taitano transaction was sham. *Id*. Second, because Look purported to obtain Taitano's interest in the 1984 deed, Look's claim in the instant proceeding is the same as that previously raised by Taitano.[7] Third, as discussed above, there is insufficient evidence to find that the Look-Taitano conveyance was a sham, and therefore Look is in privity with Taitano. We hold under 6 GCA § 4209 that because Judge Raker determined Taitano's interest in Lot No. 186 in his initial decision, and Taitano failed to appeal, that Look is barred by *res judicata* from relitigating the issues raised by Taitano.

**[26]** Look argues that because his and Taitano's interests were so intertwined, Taitano's failure to appeal is irrelevant. Look claims that this works as an exception to the general rule that a reversal does not inure to the benefit of non-appealing parties. *McDill*, 537 P.2d at 879, 14 Cal. 3d at 840. While we acknowledge such an exception, we find it is inapplicable herein.

**[27]** The exception provides: "[W]here the part [of a judgment] appealed from is so interwoven and connected with the remainder, . . . that the appeal from a part of it . . . involves a consideration of the whole, . . . if a reversal is ordered it should extend to the entire judgment." *Id.* (alterations and omissions in original) (citation omitted). Look asserted that he held a mortgage in Taitano's property, and as a mortgagee his interest was intertwined and not severable from that of Taitano. On this basis, Look claims

[7] Viewed another way, as Taitano's grantee in the 1984 deed, Look obtained only what interest Taitano owned. Taitano's failure to appeal Judge Raker's decision left him with no interest in the property. Thus, Look took nothing by this deed.

that Taitano's failure to appeal is irrelevant.

**[28]** It has been held that the exception is applicable where the decree appealed from affects the bequest of a non-appealing party, thereby requiring the appellate court to distribute the portions of the decree appealed from to the non-appealing parties. *Murphey v. American Jewish Congress (In re Murhpey's Estate)* 62 P.2d 374, 376, 7 Cal.2d 712, 717 (1936). It has also been held that the failure of an insurer to appeal did not preclude reversal as to them because their liability was inextricably interwoven with the rest of the judgment. *Continental Casualty Co., v. Phoenix Const. Co.*, 296 P.2d 801, 811, n.8 46 Cal.2d 423, 440, n.8 (1956) (*En Banc*). Thus, in the instant case we must determine whether the reversal so affected the judgment of the initial land registration court that Taitano's failure to appeal was inconsequential. Both Look and Taitano contested the original land registration petition and claimed ownership of areas of land within the shaded area. However, at that time Look did not and could not make a valid claim to the land claimed by Taitano because, by his own admission, he deeded that land to Taitano. On Look's appeal to District Court Appellate Division and Leon Guerrero's further appeal to the Ninth Circuit Court of Appeals, it was held that the shaded region, not the numerical designation of 120 hectares, controlled the reservation in the deed and that the trial court was not free to reform the deed. The appellate court did not make any conclusions as to whether Look should have prevailed in his counter-petition to register the land or, more importantly, that Leon Guerrero could not claim the disputed parcels within the shaded region. Thus, the Ninth Circuit decision did not necessarily reverse the trial court's decision as to Taitano. Therefore, the trial court's decision as to Taitano was not so interwoven with the judgment as to Look. Moreover, Look fails to give authority for the proposition that a mortgage proves his interest was intertwined and not severable from Taitano's interest. We hold that Look is not entitled

to the exception from the general rule that a reversal does not inure to the benefit of a non-appealing party.

**[29]** Look also argues that because a petition to register land is an action *in rem*, Taitano's failure to appeal is irrelevant. This argument is not persuasive. Look fails to give any compelling reasons to distinguish actions *in rem* from other actions to justify a holding that a party need not appeal an *in rem* action to benefit from another party's appeal. There is no question that Taitano opposed Pedro's initial petition and that Taitano was aggrieved by Judge Raker's first decision, which found Pedro to be entitled to Lot No. 186, including the portions claimed by Taitano. The policy behind the doctrine of *res judicata*, specifically, the protection of litigants from the burden of relitigating identical issues with the same party or his privy and the promotion of judicial economy, weigh against an exception based on Look's argument. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S. Ct. 645, 649 (1979).

**[30]** We note the trial court's finding that Look was entitled to the panhandle portion of Lot No. 184 (known also as Lot No. 186 New-R1 and identified as the orange portion on the color-coded Perry map) because this land was never owned by Francisco and Look received it in trade from third parties. Record on Appeal, Tab 171 pp. 3, 10 (Findings of Facts and Conclusions of Law, Sept. 27, 1997). However, this area was included in Look's conveyance of Lot No. 184 to Taitano and was part of Taitano's objection to the original petition to register land. This evidence was presented to Judge Raker in the first trial and he nevertheless ruled against Taitano. Taitano failed to appeal and Look is barred from raising Taitano's claim by *res judicata.* Thus, we hold that Look may not claim the yellow and orange portions of the disputed property.

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### B. The Doctrine of Agreed Boundaries

**[31]** The trial court found that although no written agreement affecting the shaded area was entered into by the parties after the original conveyance of Estate 278, Look and Francisco impliedly agreed that the fence erected by Look would serve as the boundary between their properties. The doctrine of agreed boundaries provides that if there is uncertainty between adjoining landowners as to their common boundaries, their acts or conduct may give rise to an implied agreement to establish their boundaries. *See, e.g., French v. Brinkman*, 387 P.2d 1, 4, 60 Cal. 2d 547, 551 (1963); *Ernie v. Trinity Lutheran Church*, 336 P.2d 525, 528, 51 Cal. 2d 702, 707-08 (1959). Such a policy seeks to provide stability to agreements that the parties themselves have undertaken in good faith in an effort to settle an extant controversy. *See, e.g., Martin v. Lopes*, 170 P.2d 881, 885, 28 Cal. 2d 618, 624 (Cal. 1946) (citation omitted). The doctrine is well established and generally favored by the courts. *Finley v. Yuba County Water District*, 99 Cal. App. 3d 691, 699-700, 160 Cal.Rptr. 423, 428-29 (Ct. App. 1979).

**[32]** In order for the doctrine of agreed boundaries to apply, three elements must be established: (1) uncertainty as to the true boundary between coterminous owners; (2) an express or implied agreement between the coterminous owners to fix the boundary line by fence or otherwise; and (3) acceptance or acquiescence of the agreed boundary for the requisite period of time equal to that prescribed in the applicable statute of limitations. *Id.* at 699, 160 Cal. Rptr. at 428. "The doctrine rightfully rests on the intent of the parties, and determining such intent is the province of the trier of fact." *Id*. at 700, 160 Cal. Rptr. at 429.

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**[33]** We hold as a matter of law that the doctrine of agreed boundaries is inapplicable in this case. The law of the case from the Ninth Circuit Court of Appeals is that the reservation had to be within the shaded area. However, when the deed was executed the shaded area had not been surveyed. Thus, there was no way for the parties to correctly ascertain the exact area contained in the shaded area. The reservation provided in the quitclaim deed indicates that the parties intended the shaded area to include up to 120 hectares, which was clearly emphasized by the use of capital letters:

> "All of the property in the Place of Tayagan and Laguina, Municipality of Yona, containing approximately 3,200 hectares . . . BUT EXCLUDING THEREFROM AND FROM THE PROPERTY HEREIN SOLD AND CONVEYED, one (1) contiguous portion measuring ONE HUNDRED AND TWENTY (120) HECTARES to be surveyed and located at a later date within Land square 26, Sections 2 and 3, and within the shaded area in the map. . . ."

Appellant's Excerpts of Record, p. 59 (Quitclaim Deed, Oct. 11, 1961).

**[34]** The land in dispute within the shaded area is shown by the blue, green, orange, and yellow parcels on the color-coded Perry map and has an area of approximately 50.5 hectares. The alleged fence-line ran between the blue and green parcels and separated the yellow from the orange parcels. Look's alleged fence-line boundary extended well into the disputed area. Eliminating the portions according to the alleged fence-line boundary, as suggested by Look, would reduce the reservation, at most, to the orange and blue parcels totaling approximately twenty-nine hectares.

**[35]** A common thread among the California cases cited by Look on the doctrine of agreed boundaries is that the property disputes concern mere strips of land. *See Ernie*, 336 P.2d at 526, 51 Cal. 2d at 704 (involving a strip of land nine to ten feet wide and 140 feet long); *Martin*, 170 P.2d at 882-83, 28 Cal. 2d at 620 (involving an east-west fence-line twenty feet off the actual boundary and a north-south fence-line up to eleven feet off the actual boundary); *French*, 387 P.2d at 2-3, 60 Cal. 2d at 549 (involving a three

and one-half foot strip of land). In the instant case, the amount of land Look claims by the doctrine of agreed boundaries is nearly twenty hectares. This immense area necessitates a finding that Look seeks much more than a mere boundary adjustment and that such a claim would amount to an oral conveyance of real property, which is of course prohibited by law. This jurisdiction's statute of frauds provides:

> **Requisites for certain Estates**. An Estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Title 21 GCA § 4101 (1994). "Mere agreement to locate a boundary known to be different from that called for by the deeds is insufficient, since such an agreement would be tantamount to a conveyance by parol, an unrecognized method of transfer of real property." *Mello v. Weaver*, 224 P.2d 691, 692-93, 36 Cal. 2d 456, 459 (1950). Moreover, the doctrine "is not and was never intended to be a means of divesting an uncontesting landowner of his property, as is the case with the laws pertaining to adverse possession." *Finley*, 99 Cal. App. 3d at 700, 160 Cal. Rptr. at 429. Thus, we hold that Look may not claim any of the disputed parcels by the doctrine of agreed boundaries. Our next determination is whether Look may claim the disputed parcels by adverse possession.

### C. Adverse Possession

**[36]** In response to the Estate's appeal, Look claims that if no agreed boundary is found, he nonetheless established ownership of the areas outside of the northern (consisting of the orange area) and western (consisting of the yellow and green areas) borders of the blue area by adverse possession. Appellee's Brief, pp. 37-44. The adverse possession argument was initially raised in Look's Counter-Petition to Register Land. Review of the record submitted in this appeal shows that evidence was submitted and this issue presented during the trial. However, the trial court made no finding of whether Look was entitled to

any of the disputed areas under this theory. Thus, we start by determining whether this issue is squarely before this court and review may be made.

**[37]** Generally, an appellee is entitled to assert any ground supported by the record regardless of whether the argument was rejected or ignored by the trial court, so long as the appellee's rights under the judgment are not enlarged. *See, e.g., Evans v. Romer*, 854 P.2d 1270, 1275 n.7 (Colo. 1993), *cert. Denied*, 510 U.S. 959, 114 S. Ct. 419 (1993); *Aldridge v. Valley Steel Const., Inc*., 603 So. 2d 981, 983 n.1 (Ala. 1992); *Am. Nat'l Bank & Trust Co. of Chicago v. Nat'l. Advertising Co*., 594 N.E.2d 313, 316 (Ill. 1992).

**[38]** In this appeal, aside from noting that the trial court did not address the issue, the Estate did not object to the raising of this issue by Look. Appellant's Brief, pp. 40-42. Thus, because the issue was briefed and argued by both parties without objection, and because Look does not seek to enlarge his rights under the trial court's decision, the adverse possession issue is appropriately before this court. *See, e.g., In re Estate of Morrel*, 687 P.2d 1319, 1322 (Colo. Ct. App. 1984) (stating the issue was properly before the court because it was briefed by the parties, no objection was made, and no enlargement of rights was sought).

**[39]** We note first that Look claims the orange area by adverse possession. However, we have already held that Look may not claim this area because it was part of the lot (Lot No. 184) that he transferred to Taitano, who failed to appeal from Judge Raker's initial decision. Look's claim that he adversely possessed this area against Francisco cannot be reconciled with the fact that Look surrendered any interest he may have had in this area to Taitano prior to the initial land registration petition in 1973. Thus, at the time of the 1973 petition, only Taitano could have claimed adverse possession of any part of Lot No. 184

against Leon Guerrero. In addition, we are not convinced that the Quitaro deed to Look of the orange portion offers Look any support. Even if the Quitaros owned the orange portion, they failed to object to Leon Guerrero's initial petition or the Estate's 1990 petition, and have never made themselves party to these proceedings. Thus, they are in the same position as Taitano and bound by Judge Raker's initial decision. Therefore, we hold that as a matter of law, Look may not claim any part of Lot No. 184, the orange and yellow areas, by adverse possession.

**[40]** However, with respect to the green parcel, the question is not as easily answered. The issue here is whether there is a sufficient factual record to find as a matter of law that Look may claim the area by adverse possession. The record submitted on appeal includes extracts of trial transcripts ordered by the Estate. The entire transcript of the trial was not ordered and this court does not have the record necessary to render a just decision on this issue. Understandably, Look, as Appellee, did not request transcripts nor did he bear the burden to do so. Therefore, we find that it is necessary to remand the case to the trial court solely for the determination of whether Look may claim the green parcel by adverse possession. Because adverse possession was raised and argued at trial, on remand the trial court shall not take further evidence. *Cf. Oliver v. Skinner*, 226 P.2d 507, 521 (Or. 1951) (recognizing that an appellate court has discretion to remand for further evidence; however, such remand should only be made when the ends of justice require it as where a party has been denied the opportunity to present evidence on a material issue); *In the Interest of M.M.*, 483 N.W.2d 812, 815 (Iowa 1992) ("[A]n appellate court can, in limited circumstances, remand to supplement the record.").

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## IV.

**[41]** For the foregoing reasons, we hold that Look is barred by the doctrine of *res judicata* from claiming any interest forfeited by Taitano when Taitano failed to appeal the judgment against him. We further hold that Look may not claim any portion of the disputed property under the doctrine of agreed boundaries. Finally, we hold that Look may not claim the orange or yellow areas by adverse possession. However, the record is insufficient to determine whether Look is entitled to the green portion by adverse possession. The trial court's decision is hereby **REVERSED** and this matter is hereby **REMANDED** to the trial court for proceedings consistent with this opinion.

JOHN A. MANGLONA
Designated Justice

MICHAEL J. BORDALLO
Designated Justice

RICHARD H. BENSON
Chief Justice, Acting

# ATTACHMENT
**(Opinion, CVA98-018)**

## Perry Map