

9/11/12

LEGAL BYTE

Greetings to my valued connections!

Another byte of law for your interest: "Boundary by Agreement:" a fence alone is not enough.

Case: Martin v. Van Bergen (2nd Dist., 2012) ___ Cal.App.4th ___ (citing: Bryant v. Blevins (1994) 9 Cal.4th 47).

In the Martin case, a fence separated the 2 properties for decades. Both property owners presumed it was the correct boundary between the properties (they acquiesced). There was never a dispute until 2005 when surveys were done. The Van Bergen's had a lot to lose: 10% of their almond orchard encroached onto the Martin property. Van Bergen argued that the acquiescence with the loss amounted to an enforceable agreement.

To have a binding boundary agreement, the Martin case says the following must exist: "[1] an uncertainty as to the true boundary line, [2] an agreement [to resolve a dispute] between the coterminous owners fixing the line, and [3] acceptance and acquiescence in the line so fixed for a period equal to the statute of limitations or under such circumstances that substantial loss would be caused by a change of its position." Id. The court in the Martin case held that acquiescence is not sufficient to prove an agreed boundary. There must be evidence of an actual agreement to resolve a dispute. In the Martin case, there was no agreement resolving the dispute. The court also cautioned against a broad application of the Boundary by Agreement doctrine.

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