IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GEORGE L. TEREGEYO,
Plaintiff/Appellant,

v.

BENIGNO T. FEJERAN, AHN Y. GOLD, INC., JOHN DOES 1 THRU IV, ROSA M. FEJERAN, and LOURDES M. RANGAMAR
Defendants/Appellees.

Supreme Court Appeal No. 02-0021-GA
Civil Action No. 96-0909-CV

FOR PUBLICATION

OPINION

Cite as: *Teregeyo v. Fejeran*, 2004 MP 18

Argued and submitted on August 12, 2003
Saipan, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; TIMOTHY H. BELLAS, Justice *Pro Tempore*; F. PHILIP CARBULLIDO, Justice *Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Appellant George L. Teregeyo ("Teregeyo") appeals the trial court's determination that Rosa M. Fejeran ("Rosa") and Lourdes M. Rangamar ("Lourdes") are, through adverse possession, the owners of a parcel of land known as Lot 367-1. We AFFIRM in part and REMAND in part for further findings.

I.

¶2 This case involves an Oleai Village piece of property known as Lot 367-1. Lot 367-1 consists of 1,285 square meters of land on the northwestern portion of a larger piece of property, Lot 367. Lot 367, owned by Teregeyo, is adjacent to two lots owned jointly by Rosa and Lourdes: Lots 348 and 349.

¶3 Despite Teregeyo's holding of title, Rosa's and Lourdes's family and/or tenants have been making use of, and excluding others from, this northwestern portion of Lot 367 for more than thirty years. In the early 1960s, Rosa's and Lourdes' family assumed control over the land by repeatedly destroying Teregeyo's family's crops and by preventing them from replanting. In 1972, Rosa and Lourdes leased Lots 348 and 349 to Benigno T. Fejeran ("Benigno"), who thereafter built a structure on Lot 367-1. Subsequently, Benigno leased the structure to Ahn Y. Gold, Inc., a small corporation.

¶4 Claiming that he had been denied the use of his property since 1972, Teregeyo brought a suit against Benigno (the other parties were added at various times during the suit). In his complaint, Teregeyo sought, *inter alia*, removal of the "encroaching structure from Lot 367." The Court has not been provided with copies of the answers to Teregeyo's complaint, but in its Order the trial court noted that:

> [Benigno] Fejeran asserted five affirmative defenses: failure to state a claim upon which relief can be granted, laches, estoppel, lack of standing, and statute of limitations . . . Fejeran simultaneously filed a cross-claim against Ahn Y. Gold, Inc. . . .
>
> The Second Amended Complaint, filed on May 21, 1998, added Rosa M. Fejeran (now Rosa T. Malite) and Lourdes M. Rangamar as joint owners and lessors of Lots 348 and 349. On June 22, 1998, Fejeran's Answer to the Second Amended Complaint asserted that "title [is] vested in Defendants Rosa and Lourdes by adverse possession." The court granted Fejeran's motion to join Rosa and Lourdes as indispensable parties to the action . . . .

Teregeyo v. Fejeran, Civ. No. 96-0909 (N.M.I. Super. Aug. 8, 2002) (Order at 2) ("Order") (internal citations omitted).

¶5 During the proceedings, the trial court was presented with a range of unclear and at times conflicting evidence - including two old maps, a land title investigation, and in-court testimony - regarding past and present ownership of Lot 367 and Lot 367-1. Weighing the evidence, the court found that Teregeyo was indeed the title holder of Lot 367, but that Lot 367-1, on which the encroaching structure is located, had been adversely possessed by Rosa and Lourdes.

¶6 Teregeyo timely appeals.

II.

¶7 This Court has jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution and Title 1, Section 3102(a) of the Commonwealth Code.

III.

¶8 The issues on appeal are: (1) Did Rosa and Lourdes actually "possess" Lot 367-1?; (2) Was "intensified" scrutiny applicable due to the in-law relationship shared by Teregeyo and Benigno?; (3) Did Benigno lack the requisite "hostility" to establish adverse possession?; and (4) Did the trial court grant Rosa and Lourdes more land than they had adversely possessed? Whether the title to a property was acquired by adverse possession presents a mixed question of law and fact, and is reviewed *de novo* on appeal. *Apatang v. Mundo*, 4 N.M.I. 90, 92 (1994).

A. Adverse Possession

¶9 Adverse possession may be established either under the common law or pursuant to statutory provisions. *Striefel v. Charles-Keyt-Leaman P'ship*, 733 A.2d 984, 989 (Me. 1999). In the Commonwealth of the Northern Mariana Islands, adverse possession may only be established under the common law, because no statutory provisions defining the elements of adverse possession exist, although the period throughout which the requisite elements of adverse possession must concurrently exist is 20 years. *Apatang*, 4 N.M.I. at 93; *see also* 7 CMC § 2502(a)(2). And the passing of the statutory time period effectively creates a new title in the adverse possessor. *Devins v. Borough of Bogota*, 592 A.2d 199, 201 (N.J. 1991).

¶10 The doctrine of adverse possession, which permits someone to take title away from the lawful owner of land simply by using the land openly for a sufficient period of time, is often justified by references to one or more of three explanations which are as follows: (1) the owner who fails to assert her ownership within the statute of limitations deserves to lose her property for having slept on her rights; (2) the adverse possessor has earned title to the land by working it and putting it to use during the period of the statute of limitations; or (3) adverse possession provides certainty in title. Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457-477 (1897); *see also* PAUL E. BASYE, CLEARING LAND TITLES 54 (2d ed. 1970) (noting that the "great purpose" of adverse possession is "to quiet title"). Accordingly, to establish adverse possession, the possession must be (1) exclusive, (2) actual and uninterrupted, (3) open and notorious and (4) hostile under a claim of right. *Chaplin v. Sanders*, 676 P.2d 431, 434 (Wash. 1984); *Mackinac Island Dev. Co., Ltd. v. Burton Abstract & Title Co.*, 349 N.W.2d 191, 195 (Mich. Ct. App. 1984).

¶11 In this case, the trial court found that the property in question – a parcel of land known as Lot 367-1 – had been in the possession of Rosa and Lourdes since the early 1960s, when the Malites (Rosa's and Lourdes' family) ripped out the crops of the land's title holder and prevented the title holder from re-planting. The trial court found that Rosa and Lourdes had adversely possessed Lot 367-1 due to their exclusive, actual, continuous, open, visible, notorious, and hostile possession of Lot 367-1 for far more than 20 years.

¶12 Teregeyo disputes the court's finding on several grounds: that Rosa and Lourdes never actually "possessed" Lot 367-1; that because Teregeyo and Benigno are brothers-in-law, the trial court should have applied an "intensified" scrutiny to the claim of adverse possession; that Benigno lacked the requisite "hostility" to establish adverse possession; and that the trial court granted Rosa and Lourdes more land than they had adversely possessed. We address each of these contentions in turn.

i. Did Rosa and Lourdes Actually "Possess" Lot 367-1?

¶13 Though the trial court found that Lot 367-1 was entered onto in the early 1960s by Rosa's and Lourdes' family, the continuing possession of the land had been accomplished not by Rosa and Lourdes or by their family, but by their tenant, Benigno. This Court has never before examined the issue of whether a tenant's actual, continuous, open, visible, notorious, and hostile occupation of land results in adverse possession by the tenant's landlord.

¶14 Courts in other jurisdictions have ruled that where a tenant meets the requisite elements of adverse possession, while believing the land to be covered by his or her lease, the land is adversely possessed and is inured in the landlord; otherwise, the land is inured in the tenant. *See, e.g., Capps v. Merrifield*, 198 N.W. 918 (Mich. 1924); *Berryhill v. Moore*, 881 P.2d 1182 (Ariz. Ct. App. 1994). Other courts go further, holding that in all cases:

> [t]he possession of a tenant inures to the benefit of the landlord, and constitutes the possession of the landlord for the purposes of securing to him the benefits of the adverse possession so as to gain prescription thereby, and also to secure to him the benefits of the bar of the statute of limitations as against an action begun by a hostile claimant.

Beckett v. City of Petaluma, 153 P. 20, 21 (Cal. 1915). This Court is persuaded by the latter view and holds that in all cases the adverse possession of a tenant inures to the benefit of the landlord, regardless of the mental state of the tenant.

¶15 It was proper, then, for the trial court to find that Rosa and Lourdes – as the landlords – took possession of Lot 367-1 by virtue of their families' actions in the early 1960s, and that this possession continues to the present day by virtue of the encroaching structure erected by the tenant Benigno sometime soon after 1972.

ii. Should the Trial Court Have Applied an "Intensified" Burden on the Party Attempting to Establish Adverse Possession, Given That Teregeyo and Benigno are Related Through Marriage?

¶16 This Court applies an "intensified" burden on a party attempting to establish adverse possession where "the parties are related by blood." *Apatang*, 4 N.M.I. at 93. What this "intensified" burden means is that the court will presume permissiveness when the occupied land belongs to a blood-relative of the occupier, and the occupier must show that the title holder of the land had "actual knowledge" of the occupation. *Pioneer Mill Co., Ltd. v. Dow*, 978 P.2d 727, 738 (Haw. 1999) (*citing* 3 AM. JUR. 2D *Adverse Possession* § 202 (Supp. 1997)); *see also, Yin v. Midkiff*, 481 P.2d 109, 111 (Haw. 1971); *City and County of Honolulu v. Bennett*, 552 P.2d 1380, 1389 (Haw. 1976). While in this case, Teregeyo has asserted – rather than proved – that a familial relationship existed between Teregeyo and Benigno, the purported relationship is one through marriage, not of blood. Although this Court has never addressed whether in-law relationships command an intensified burden of proof, we are persuaded by, and adopt, the

Hawaii Supreme Court's articulation that although a non-blood familial relationship raises a genuine issue of material fact as to whether the land was possessed permissively, the presumption of permissiveness applied in cases commanding an "intensified" burden of proof is limited to blood-relations. *Pioneer Mill Co., Ltd.*, 978 P.2d at 738. Here, Teregeyo and Benigno purportedly have an in-law relationship, and the "intensified" burden was inapplicable.

¶17 Additionally, this Court notes that even if the "intensified" burden was applicable, the burden would have been met because there was ample evidence that Teregeyo had actual knowledge of the occupation of Lot 367-1. To take one compelling example, as the trial court noted in its Order, Teregeyo himself requested that Benigno remove the structure with which Teregeyo's property was first encroached in the early 1970s.

iii. Did Benigno Lack the Requisite "Hostility"?

¶18 Teregeyo asserts that because Benigno believed his leased property included Lot 367-1 and did not believe himself to be encroaching on land held by another, Benigno lacked the hostility required to establish adverse possession.

¶19 Teregeyo misunderstands "hostility."

> A showing of force or actual dispute is not necessary to constitute hostile entry or to lay a foundation for a claim of adverse possession. All that is required to establish hostility is that the person claiming adverse possession occupy the property adversely to the rights of the record holder.

Barker v. Bd. of County Comm'rs, 49 F. Supp. 2d 1203, 1215-16 (D. Colo. 1999). In this case, Benigno's occupation of Lot 367-1 was adverse – and therefore "hostile"-- to Teregeyo's rights as the record holder because Benigno did not have the title to the land and built the encroaching structure without Teregeyo's consent.

iv. Did the Trial Court Wrongly Grant Rosa and Lourdes More Property Than They Adversely Possessed?

¶20 Teregeyo contends that the trial court erred in granting to Rosa and Lourdes a greater piece of property than was adversely possessed. When, as here, adverse possession is established by encroachment rather than under a color of title, the adverse possessors gain title to the land actually possessed, and not to the entire lot. *See, e.g., Jones v. Mitchell*, 64 So. 2d 816, 820-21 (Ala. 1953).

¶21 However, we have been presented with no evidence by which to evaluate whether the trial court granted Rosa and Lourdes more land than they adversely possessed – we know that Lot 367-1 consists of 1285 square meters, but we do not know the size of the piece of land where the crops were ripped out in the 1960s, and we also do not know the size of Benigno's building.

¶22 We must therefore remand this issue to the trial court for further findings regarding the size of the land actually possessed by Rosa and Lourdes.

IV.

¶23 For the foregoing reasons, we AFFIRM the trial court's decision that Rosa and Lourdes are the owners of the land adversely possessed. We REMAND the issue of how much of Lot 367-1 was actually possessed.

SO ORDERED THIS 8th DAY OF SEPTEMBER 2004.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

/s/_____
TIMOTHY H. BELLAS
Justice *Pro Tempore*

/s/_____
F. PHILIP CARBULLIDO
Justice *Pro Tempore*