



CALIFORNIA
BOUNDARY LAW:

CRITICAL ISSUES AND SOLUTIONS
EVERY PRACTITIONER
NEEDS TO KNOW

BOUNDARY DISPUTES ARE ABOUT
MORE THAN JUST THE LAW







COMMON BOUNDARY ISSUES

- **Encroachments**
- **Trees & Vegetation**
- **Views**
- **Road & Driveways**
- **Lateral Support**
- **Water Intrusion**



Encroachments

Fences

Retaining walls

Planters

Irrigation

Pools



Do not assume that fences mark property lines!



Topography often causes encroachments



TREES AND VEGETATION

- ❖ **Tree trunk located wholly on one property.**
 - That property owner is the owner of the tree even if its root and branches extend over to the adjacent property. Civ. Code §833.
 - Overhanging branches and roots are a nuisance
 - The property owner affected by the nuisance has the right of self-help to cut the branches back to the property line. *Bonde v. Bishop* 112 Cal. App. 2d 1 (1952).
 - But that right is not an absolute right. Every property owner must act reasonably. See *Booska v. Patel* (1994) 24 Cal. App. 4th 1786

TREES AND VEGETATION

- ❖ **Tree trunk is on the common boundary line.**
 - Tree is owned by both neighboring landowners. California Civil Code §834.
 - Neither owner has a right to cut down a tree located on the boundary line, even if the continued existence of the tree or its overhanging branches will cause damage to his or her property.

❖ Views

- No right to view in California
- Must have granted view easement or restrictions in CC&Rs. But, a row of trees planted for the purpose of annoying the owner may constitute a spite fence under CC 841.4 (Fence over 10') entitling the plaintiff to a court order enjoining a nuisance.
- *Wilson v. Handley* (2002) 97 Cal.App. 4th 1301

❖ Roads and driveways

❖ Lateral support (Civ. Code §832)

❖ Water intrusion

- Surface water (uphill owner always liable for changing natural surface water flow unless downhill owner is unreasonable)
- *Keys v. Romley* (1966) 64 Cal. 2d 396



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LAND



RESOLVING THE DISPUTE

Prelitigation Considerations

- ❖ **Initial Client Consultation:** Obtain All Review Relevant Title Documents and other documents relating to the dispute
- ❖ **Research Local Ordinances**
- ❖ **Is insurance available?** Homeowners Insurance? Title Insurance?
 - ALWAYS TENDER THE CLAIM! ←
- ❖ **Alternative Dispute Resolution:**
 - Easement agreements, Encroachment and license agreements, Lot line adjustment, Party wall agreements, Mediation, Arbitration
- ❖ **Cost of litigation**
- ❖ **Damage to neighbor relationship**

Litigation of Boundary Disputes

❖ Investigation and Fact Gathering:

- Conduct a Site inspection: take your expert
- Locate All Existing Surveys And/or Obtain a New Survey
- Choosing a Surveyor
- Other experts: Civil Engineer, Appraiser, Cost Estimator, Consulting Arborist, Certified Arborist
- Photographs (aerial photos); Google maps; Bing Maps, Ariel Photo Archives

Litigation of Boundary Disputes

- ❖ **Do you want to be a Plaintiff or Defendant?**
- ❖ **Invite the lawsuit to trigger insurance coverage.**
 - May get attorney's fees if they apply for preliminary injunction.
 - Bond: It is well settled that reasonable attorney's fees, expert witness fees and related litigation expenses are recoverable as "damages" within the meaning of the undertaking. *Abba Rubber Co. v. Seaquist*, (1991) 235 Cal. App. 3d 1, 15-16.
 - If the amount of the bond becomes too low, go back and ask for more, C.C.P. 996.010(a).

Pleadings

- ❖ **Quiet Title CCP §760.010 et seq.**
 - Specific description of property claimed required
 - Verified Complaint
 - Lis Pendens CCP §405 et seq.
 - Acquire Litigation Guaranty from Title Company.
- ❖ **Declaratory Relief CCP §1060**
- ❖ **Trespass**
- ❖ **Nuisance**
- ❖ **Key Defenses :**
 - Balancing of the hardships
 - Adverse possession/prescriptive easement
 - Irrevocable license
 - Statutes of Limitations : Permanent/continuing trespass: 3 years; Recovery of real property: 5 years
[*Harrison v. Welch* (2004) 116 Cal App 4th 1084]
- ❖ **Cross-Complaint**

Special Considerations for Trial

- ❖ Motion in Limine: Jury or court view CCP §651
- ❖ Burden of Proof for adverse possession/prescriptive easement: clear and convincing
- ❖ Proving payment of taxes [See *Fredricks v. Sorensen* (1952) 113 Cal.App.2d 759]
- ❖ Residential Building Record—shows increases in taxes based upon improvements
- ❖ Demonstrative evidence is important: Blowups, Elmo, Trial presentation software (Trial Director) Trial presentation Apps (TrialPad, Trial Director)
- ❖ Jury or court trial? Right to jury trial despite equitable nature of quiet title and declaratory relief [*Arciero Ranches v. Meza* (1993) 17 Cal. App. 4th 114, 125-126]
- ❖ Jury Instructions: Special instructions necessary. Source for easement jury instructions: Matthew Bender California Forms of Jury Instructions, 7700A

Jerry D. Hemme, Esq.
Managing Partner
GOODE HEMME, APC
6256 Greenwich Drive, Suite 500
San Diego, CA 92122
T: 858-587-3555
jhemme@sandiegoattorney.com



GOODE | HEMME