

# REAL ESTATE LAW SECTION

## ANNUAL ALASKA CASE LAW UPDATE

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1. Lee v. Konrad, Nos. S-14503, S-14524, 2014 WL 4258365 (Alaska 2014). (5-0 opinion)

**Background:** Lee purchased lot 13 in 1989. In 1992, owner of adjacent lot 14 (Southern) had survey done of their mutual boundary line. Lee began construction of a fence along the boundary line in 1999 with Southern's permission. In 2003, lot 14 was sold to the Wilsons, who continued to treat the boundary line established by the 1992 survey as correct. In 2005-2006, Lee dug a basement on his lot and, as a result, some fill encroached onto lot 14, but the Wilsons stated that it did not bother them. Lee finished the fence in 2007. The Wilsons sold lot 14 to Konrad in 2008. Konrad hired a surveyor, who moved the boundary line so that Lee's fence encroached on Konrad's land. Lee had a survey conducted, which determined the boundary line to be much closer to the 1992 survey and the fence line. Lee brought quiet title action against neighbor Konrad. Konrad cross-claimed for trespass.

**Procedural Posture:** Superior Court (Anchorage) found Lee's encroachment was a trespass and ordered Lee to remove it. Lee appealed. Supreme Court affirms in part, reverses in part.

**Issues on Appeal:** Whether (1) the boundary line between the lots was correctly established by Konrad's surveyor; and (2) the dirt and gravel encroaching onto Konrad's property was a trespass and, if not, whether Lee should have to remove it and build a retaining wall.

**Conclusion:** The boundary line was established by acquiescence by Lee and Konrad's predecessors-in-interest. Any dirt and gravel encroaching onto Konrad's property prior to her purchase of the land was not a trespass; however, dirt and gravel that encroached onto her property after she purchased the land is a trespass.

**Relevant holdings and points of law:**

- In an apparent matter of first impression, a boundary line may be established by acquiescence where adjoining landowners (i) whose property is separated by some

- reasonably marked boundary line (ii) mutually recognize and accept that boundary line (iii) for seven years or more.
- The boundary line between lots 13 and 14 was conclusively established by Lee and Konrad's predecessors' undisputed acquiescence to the 1992 survey line over a period of more than seven years.
    - The boundary line was definitely marked by survey markers, fence posts, and later a fence, and the owners of the adjacent lots mutually recognized and accepted that boundary line for more than seven years. AS 09.45.052(a).
  - Initial trespass caused by property owner's placement of fill material along boundary line was vitiated by consent of Konrad's predecessor-in-title, but that consent terminated when Konrad purchased the lot. When consent ceased to be effective, Lee no longer had a privilege to enter or remain on the land because his interest terminated.