

Lee v. Konrad

[PROPERTY LAW]

In *Lee v. Konrad*,^[1] the supreme court held a property lot's boundary line has been established by acquiescence where adjoining owners have mutually recognized it and consent to trespass is an affirmative defense that invalidates a continuing trespass claim.^[2] Plaintiff owned a property lot and conducted a survey to determine the boundary line against the adjacent lot.^[3] Several owners of the adjacent lot agreed with plaintiff that the boundary line was correctly established and so plaintiff erected fence poles to demarcate the lots.^[4] Plaintiff later deposited excavation fill along the boundary line and the current adjacent property owner affirmatively disavowed any complaint or issue.^[5] Defendant bought the adjacent property, conducted a land survey, and claimed plaintiff's boundary line was incorrect.^[6] The superior court held (1) defendant's survey correctly determined the boundary line and (2) plaintiff's fill encroachment constituted a continuing trespass.^[7] The court ordered plaintiff to remove the fill material, erect a barrier to prevent future encroachment, and pay attorneys fees.^[8] On appeal, plaintiff argued the lower court selected the incorrect boundary line and improperly applied a new standard of adverse possession.^[9] The supreme court reversed the lower court's decision as to the boundary line, concluding that where property is reasonably marked and adjoining owners mutually recognize the boundary, the line has been established by acquiescence.^[10] As to the trespass claim, the supreme court reversed in part, reasoning that although additional encroachment by the fill material after defendant bought the lot constituted a trespass,^[11] the previous owner's consent to the encroachment was an affirmative defense to that prior trespass so there could be no continuing trespass claim.^[12] Reversing the lower court's decision in part, the supreme court held a new property owner's claims against the adjacent property owner's actions are limited by prior owners' express consent to those actions.

[1] 337 P.3d 510 (Alaska 2014).

[2] *Id.* at 526.

[3] *Id.* at 514.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 515.

[7] *Id.* at 516–17.

[8] *Id.* at 513.

[9] *Id.* at 518.

[10] *Id.* at 520.

[11] *Id.* at 524.

[12] *Id.* at 523.