

In re Estates of Allen (v. Rupe Slate Co., Inc.)

2011 VT 95 (30 A.3d 662), Supreme Ct. of VT

- ▶ How are years of continuous possession counted?
Does constructive possession apply?

Protecting private interests

12 VSA § 5794. Landowner protection

(a) The fact that an owner has made land available without consideration for *recreational uses* shall not be construed to: ...

(3) support or create any claim or right of eminent domain, adverse possession, or other prescriptive right or easement or any other land use restriction

Protecting public interests - navigation and waters

25 VSA § 141. Public easement

“A public easement in a stream shall not be lost or abridged by prescription or adverse possession. “

Utilities and franchises

- ▶ Public utilities versus private utilities
- ▶ The right to be in public roads
- ▶ The right to be on private property
- ▶ Record-keeping practices

30 VSA § 2519. No prescriptive rights

“Enjoyment of any length of time of the privilege of maintaining a line of telegraph, telephone or electric wires, poles, conduits or other apparatus, upon or over the buildings or lands of other persons, ***shall not give a right*** to the continued enjoyment of such easement ***or raise a presumption*** of a grant thereof.”

Marketable title

“... one acceptable to a reasonable purchaser, informed as to the facts and their legal meaning, willing to perform his contract, in the exercise of that prudence which businessmen usually bring to bear on such transactions...”

[Black's Law Dictionary]

Insurable Title vs. Marketable Title

- ▶ **What is the quality of the title?**
 - ▶ “Good & marketable” or “marketable & insurable”?
- ▶ Perfect title vs. defects revealed
- ▶ Who is taking the risk?
- ▶ Willing insurer?
- ▶ Willing purchaser?

27 VSA § 541. Deeds of lands held adversely

Deeds, leases and other conveyances of lands, duly executed, acknowledged and recorded, shall have the effect to convey such title therein as the grantor or lessor may have, ***notwithstanding any actual possession*** thereof by any other person claiming the same.

Marketable Title and Adverse Claims

27 VSA § 601. [Unbroken chain of title for 40 yrs. deemed marketable]

27 VSA § 602(b). [Absence, incapacity, disability, or lack of knowledge does not suspend the 40 years]

27 VSA § 604. [failing to file does not bar adverse claims not evidenced by a recorded document]

27 VSA § 606. [Marketable title statutes do not extend any other statutes of limitation]

Protecting public interests

19 VSA § 1102. Acquiring highways by adverse possession

A right or interest within the limits of a highway ***shall not*** be acquired by anyone by possession or occupation.

19 VSA § 1105. Obstructing travel

Okemo Mountain Inc. v. Town of Ludlow Zoning Board of Adjustment

(671 A 2d 1263, Supreme Ct. of VT, 1995)

(762 A 2d 1219, Supreme Ct. of VT, 2000)

A suit for right to access -

There is no distinction between “public road” and “highway” as they are commonly understood and defined; the statutory definition of highway is consistent with the plain meaning of “public road or highway” - a road over which the public has a right to pass and which the government has the obligation to maintain.

Protecting public and private interests

Railroads

5 VSA § 3425. Adverse possession in roadway confers no right

A person shall not by reason of adverse possession acquire title to lands belonging to a railroad corporation, where such lands lie within the limits of the roadway of such corporation *as recorded* in the town clerk's office.

Deeds matter

- ▶ Quit claims versus warranty deeds
- ▶ Expressed intent of the parties
- ▶ Clarity of description
- ▶ Is there notice from recordation?

Protecting tax sales in VT

32 VSA § 5263. Limitation of actions against grantee in possession

An action for the recovery of lands, or the possession thereof, shall not be maintained against the grantee of such lands in a tax collector's deed, **duly recorded**, or his or her heirs or assigns, when the grantee, his or her heirs or assigns have been in **continuous and open possession** of the land conveyed in such deed and **have paid the taxes** thereon, unless commenced within one year after the cause of action first accrues to the plaintiff or those under whom he or she claims.

What about areas with shared interests and responsibilities?

- ▶ Condominiums
- ▶ Fences
- ▶ Party walls
- ▶ Utilities
- ▶ Driveways

Why doing nothing is not the best option

- ▶ **Laches** – “... Neglect to assert right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.”

[Black's Law Dictionary]

Why doing nothing is not the best option

- ▶ **Statute of limitations** – “...no suit shall be maintained on such causes of action ...unless brought within a specified period of time after the right accrued.”

[Black's Law Dictionary]

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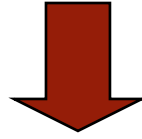
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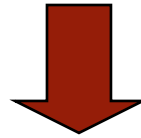
Quieting title

- ▶ The plaintiff brings the adverse claimant to court either to establish the opposing claim to land or interests in land or forever after be estopped from asserting such a claim.

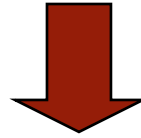
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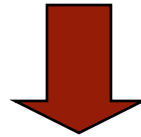
COMMISSION



REPORT



AGREEMENT



QUIET TITLE

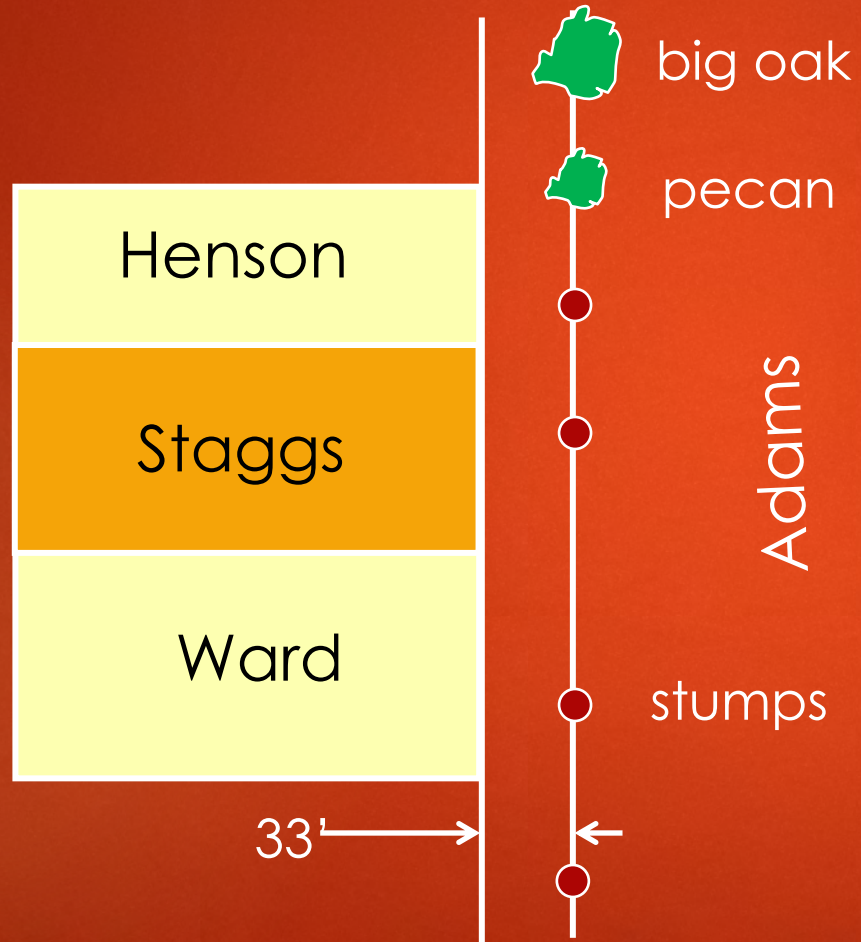
Smith v. Vermont Marble Company

133 A. 355, Supreme Ct. of VT, 1926

- ▶ The highest court in Vermont upholds the facts from the referee's report, but not his findings.
- ▶ How “hostility” is viewed in Vermont to satisfy a crucial aspect of a claim of adverse possession

Ward v. Adams

989 SW 2d 550, Ct. of Appeals of AR, 1999



When multiple adjoining landowners have similar situations, why does one succeed in a claim of adverse possession and another fail?