

COMMONWEALTH OF PENNSYLVANIA

THE STATE BOARD OF PROPERTY

**STEVEN G. THOMPSON, PRESIDENT, AND
WILDCAT HUNTING CLUB, INC.,
Petitioners**

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
Respondent**

DOCKET NO. BP-2014-0002

FINAL ADJUDICATION AND ORDER

**Karen L. Cummings, Esquire, designee of the
Secretary of the Commonwealth, Chairman**

**Arthur F. McNulty, Esquire, designee of the Secretary
of Community and Economic Development**

**Tyrone A. Powell, Esquire, designee of the
General Counsel**

**Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 400 Plaza Level
Harrisburg, PA 17120**

TAB

HISTORY

This matter comes before the State Board of Property (Board) to determine ownership of certain real estate within this Commonwealth otherwise claimed by the Commonwealth pursuant to section 1207 of the Administrative Code of 1929, 71 P.S. § 337. By complaint filed on August 29, 2014, Steven G. Thompson, President, and Wildcat Hunting Club, Inc. (Petitioner) sought to quiet title in certain real estate situate in Beech Creek Township, Clinton County. On September 30, 2014, Petitioner filed a first amended complaint (complaint) correcting the name of the Commonwealth agency.

On October 17, 2014, the Department of Conservation and Natural Resources (Commonwealth) filed preliminary objections. In objections concerning the form of the complaint,¹ the Commonwealth objected that the complaint failed to state on a claim on which relief may be granted, because rights cannot be obtained against the Commonwealth by adverse possession.

In accordance with the Board's order of May 21, 2015, on June 5, 2015, the Commonwealth filed a brief supporting its final preliminary objection. On June 26, 2015, Petitioners filed their brief in opposition. The Commonwealth filed a reply brief on July 15, 2015.

The Board deliberated this matter at its meeting July 30, 2015, and now issues this adjudication and order as a final determination of Petitioner's complaint.

¹ Because the Board is resolving this matter on the demurrer, it is not addressing the Commonwealth's other preliminary objections to format.

FINDINGS OF FACT

1. Steven G. Thompson is president of the Wildcat Hunting Club, an unincorporated association. (First Amended Complaint at ¶ 1).

2. Respondent is the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources (DCNR), an agency of the Commonwealth of Pennsylvania. (First Amended Complaint at ¶ 2).

3. From about 1912 through the present, Petitioner's predecessors and then Petitioner occupied certain real property in Beech Creek Township, Clinton County, Pennsylvania, (the Property) by hunting on the Property, and erecting tents and then a camp known as Wildcat Hunting Club on the Property. (First Amended Complaint at ¶¶ 3-5).

4. On November 3, 1980, Petitioner's predecessors filed with the Clinton County recorder of deeds a statement of claim by adverse possession for the Property against Texas Gulf Sulfur Company, Armstrong Realty Company, Willsboro Realty Company, and NyPenn Corporation. (First Amended Complaint at ¶ 6).

5. At all times relevant, DCNR has marked the boundary of its real estate immediately to the west of the Property with white blaze marks on trees. (First Amended Complaint at ¶ 8).

6. At the time of filing the statement of claim, Petitioner's predecessor contacted the Commonwealth to make it aware of the claim, and DCNR's representatives have told Petitioner that the boundary line between their properties was undisputable and that it had been the boundary line between the properties for as long as the boundary line had been on record. (First Amended Complaint at ¶¶ 7, 9).

7. During its occupancy of the Property, Petitioner has cleared area around the

hunting camp, has built additional structures to improve the Property and demonstrate its dominion over the Property, and has regularly paid taxes on the Property from 1980 to the present. (First Amended Complaint at ¶¶ 11, 13).

8. The Commonwealth has not disputed Petitioner's ownership from its predecessor's first use of the Property up until approximately 2010. (First Amended Complaint at ¶ 12).

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter under section 1207 of the Administrative Code of 1929, 71 P.S. § 337.

2. Because claims of adverse possession or consentable line by recognition and acquiescence cannot run against the Commonwealth, Petitioner cannot establish ownership of the disputed property and the Commonwealth is entitled to judgment as a matter of law.

DISCUSSION

Petitioner brought this action to quiet title against the Department of Conservation and Natural Resources, a Commonwealth agency claiming the real estate. The Board has jurisdiction under section 1207 of the Administrative Code of 1929,² 71 P.S. § 337. *See, International Dev. Corp. v. Davidge*, 26 A.3d 1234 (Pa. Cmwlth. 2011) (Board of Property has exclusive jurisdiction to adjudicate action to quiet title to mineral estate where a Commonwealth agency owns and occupies the surface estate and asserts claim to mineral estate).

The Commonwealth has demurred to the allegations in the complaint, arguing that Petitioner, the party with the burden of proof, cannot prevail on the legal theories it has presented. The General Rules of Administrative Practice and Procedure apply to quiet title actions before the State Board of Property, and the Board may grant the respondent Commonwealth agency's motion to dismiss under 1 Pa. Code § 35.54 for lack of legal sufficiency appearing on the face of the complaint. *McCullough v. Commonwealth, Dept. of Transp.*, 578 A.2d 568, 571-72 (Pa. Cmwlth. 1990). In ruling upon a motion to dismiss for lack of legal sufficiency, an agency must follow the well-known standards of Pa. R.C.P. No. 1028 (preliminary objections). In ruling on preliminary objections in the nature of a demurrer for legal insufficiency under Pa. R.C.P. 1028(a)(4), a court must accept as true all well-pleaded material allegations, as well as all inferences reasonably deduced therefrom; in order to sustain a demurrer, it must appear with certainty that the law will not permit recovery, and any doubt

² Section 1207. Board of Property.

The Board of Property shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the said board.

* * *

The Board of Property shall also have jurisdiction to hear and determine cases involving the title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth.

* * *

² 71 P.S. § 337.

should be resolved by a refusal to sustain the demurrer. *Podolak v. Tobyhanna Tp. Bd. of Supervisors*, 37 A.3d 1283, 1287 (Pa. Cmwlth. 2014).

The dispute in this matter does not appear³ to be whether Petitioner owns the Property. Instead, the dispute is over the narrower question of where the boundary line is between the Property and DCNR's acknowledged property to the west. In its reply to the Commonwealth's brief in support of its demurrer, Petitioner asserts that this boundary line has been established under the doctrine of consentable lines. Accepting as true all of Petitioner's factual allegations and assuming that Petitioner has acquired the Property itself, the Board concludes that Petitioner cannot establish any boundary line on this theory and therefore dismisses Petitioner's complaint with prejudice.

Our Supreme Court has explained the doctrine of consentable lines.

The establishment of a boundary line by acquiescence has been recognized in Pennsylvania. Two elements are prerequisites: 1) each party must have claimed and occupied the land on his side of the line as his own, and 2) such occupation must have continued for the statutory period of twenty-one years. *See Jedlicka v. Clemmer*, 450 Pa. Super. 647, 654, 677 A.2d 1232, 1235 (1996); *Plott [v. Cole]*, 377 Pa. Super. 585, 594, 547 A.2d 1212, 1221 (1988)]. As recognized by the Superior Court and the common pleas court, the doctrine functions as a rule of repose to quiet title and discourage vexatious litigation. *See id.* at 592, 547 A.2d at 1220.

Although the elements are simply stated, courts have had difficulty tracing the theoretical underpinnings of the acquiescence precept. In Pennsylvania, courts frequently have distinguished the doctrine from adverse possession, *see, e.g., Niles v. Fall Creek Hunting Club, Inc.*, 376 Pa. Super. 260, 267, 545 A.2d 926, 930 (1988); *Inn Le'Daerda, Inc. v. Davis*, 241 Pa. Super. 150, 163 n.7, 360 A.2d 209, 215 n.7 (1976), and in recent cases have categorized it, under the umbrella of "consentable boundaries," with a separate theory premised on dispute and

³ Petitioner has not attached to its complaint the survey it alleges describes the Property. Nor has Petitioner attached its statement of claim nor alleged how those against whom it apparently acquired by adverse possession acquired their ownership. In its preliminary objections, the Commonwealth appears to contest Petitioner's ownership of the Property. Because Petitioner's complaint assumes ownership of the Property and challenges the Commonwealth only as to the boundary line, the Board will consider only this question. Notwithstanding this limitation, the Commonwealth's arguments as to sovereign immunity would apply equally to Petitioner obtaining ownership by adverse possession against the Commonwealth as it would to Petitioner establishing the property boundary by consentable line against the Commonwealth.

compromise. An examination of the decisional law demonstrates, however, that the doctrinal roots of acquiescence are grounded in adverse possession theory; indeed, occupancy with open manifestations of ownership throughout the statutory period will generally satisfy the traditional elements of adverse possession. Decisions involving acquiescence are frequently distinguishable from adverse possession cases only in that possession in the former are often based on a mistake as to the location of property lines. See generally Annotation, *Adverse Possession Involving Ignorance or Mistake as to Boundaries – Modern Views*, 80 A.L.R.2d 1171, 1173 (1961 & Supp. 2002).

Zeglin v. Gahagen, 571 Pa. 321, 325-27, 812 A.2d 558, 561-62 (2002) (footnotes omitted). The

Supreme Court further noted:

The earlier decisions generally reserved the terms “consentable line” and “consentable boundary” for the dispute and agreement paradigm. See *Culver v. Hazlett*, 13 Pa. Super. 323, 328 (1900) (describing “consentable line” as “a technical term, the basis of which is a dispute between adjoining owners and the compromise of such a dispute by a line agreed upon between them” (citing *Perkins v. Gay*, 3 Serg. & Rawle 327 (Pa. 1817))); accord *Beals v. Allison*, 161 Pa. Super. 125, 129, 54 A.2d 84, 86 (1947); *Ross v. Golden*, 146 Pa. Super. 417, 423, 22 A.2d 310, 313 (1941); *Miles v. Pennsylvania Coal Co.*, 245 Pa. 94, 95, 91 A.2d 211, 212 (1914); *Newton v. Smith*, 40 Pa. Super. 615, 619 (1909). Nevertheless, despite the distinction between acquiescence and consentable line theories, courts used the term “consent” loosely in acquiescence cases, see, e.g., *Dimura [v. Williams]*, 446 Pa. 316, 319, 286 A.2d 370, 370-71 (1972)], and ultimately the “consentable boundaries” rubric emerged to cover both theories, apparently in *Niles*, 376 Pa. Super. at 267, 545 A.2d at 930.

Id. at 328 n.3, 818 A.2d at 562 n.3.

The elements of establishing a consentable line by dispute and compromise are 1) a dispute with regard to the location of a common boundary line, 2) the establishment of a line in compromise of the dispute, and 3) the consent of both parties to that line and the giving up of their respective claims which are inconsistent therewith. *Niles* at 267, 545 A.2d at 930. By contrast, proof of a consentable line by recognition and acquiescence may be of a long-standing fence or other recognition and acquiescence in such a boundary by adjoining landowners for the requisite twenty-one years. *Id.*

In the matter before the Board, Petitioner asserts that the Commonwealth has consistently

asserted the boundary as DCNR has marked it. Petitioner has not asserted that there has been a dispute and that such a dispute was resolved with any boundary line agreed upon by Petitioner and the Commonwealth. Certainly, nothing has been alleged to show the giving up of the parties' respective claims that are inconsistent with the consented line. Accordingly, following *Zeglin* and *Niles*, this matter is not one of consentable line by dispute and compromise, but is solely an acquiescence case under an adverse possession theory. Petitioner must thus establish that it and the Commonwealth have acquiesced in the consentable line for the requisite number of years – an adverse possession claim.

A party may acquire title through adverse possession by proving actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years. *See, e.g., Connecticut Lake Park, Inc. v. Klingensmith*, 363 Pa. 592, 594 (1949). Title by adverse possession was legislatively recognized under the act of March 26, 1785, *as amended*. *See*, 68 P.S. § 81.

The Commonwealth's demurrer follows from the doctrine of *nullum tempus occurrit regi*.⁴ Under this doctrine, statutes of limitation do not apply to the Commonwealth unless the statute specifically provides that they do. *Smith v. Mognet*, 618 A.2d 1215, 1217 (Pa. Cmwlth. 1992). While section 1 of the act of May 31, 1901 (P.L. 352, No. 217), 68 P.S. §§ 81-88, permitted one who has acquired title by adverse possession to register that claim with the county recorder of deeds,⁵ under section 8 of Act 217 of 1901, "no claim of title adverse to the Commonwealth of Pennsylvania shall be made or recorded under the provisions of this act." 68 P.S. § 88. The Commonwealth would thus be free to assert its ownership beyond the statutory time period

⁴ "Time does not run against the king." This maxim is sometimes expressed, *Nullum tempus occurrit reipublicae* – "Time does not run against the commonwealth or state." BLACK'S LAW DICTIONARY 963 (5th ed. 1979).

⁵ Presumably this was the basis for Petitioner to record its claim in 1980.

against an adverse possession claim.

Because it is an adverse possession theory, the recognition and acquiescence version of the consentable line doctrine cannot be asserted against the Commonwealth. See, *Henry v. Henry*, 5 Pa. 247, 249-50 (1847) (no title is acquired against the Commonwealth by the user of land lying outside of the lines of a tract on which the claimant resides). See also, *Pennsylvania Canal Co. v. Harris*, 101 Pa. 80, 94 (1882) (“as time does not run against the Commonwealth, and this suit was brought in less than twenty-one years after it parted with the title, no adverse possession can bar the plaintiff’s right to recover” in ejectment).

Accordingly, accepting as true the allegations of Petitioner’s complaint and all inferences reasonably deduced therefrom, it appears with certainty that because adverse possession cannot be obtained against the Commonwealth, the law will not permit Petitioner to prevail. The Commonwealth is therefore entitled to judgment as a matter of law.

Wherefore, the Board enters the following order.


COMMONWEALTH OF PENNSYLVANIA
BEFORE THE STATE BOARD OF PROPERTY

Steven G. Thompson, President, and	:	
Wildcat Hunting Club, Inc.,	:	
 Petitioners	:	
 v.	:	
	:	Docket No. BP-2014-0002
Commonwealth of Pennsylvania,	:	
Department of Conservation and	:	
Natural Resources,	:	
 Respondent	:	

FINAL ORDER

AND NOW, this 23rd day of October, 2015, having duly convened and considered the entire record of the proceedings, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the State Board of Property hereby **SUSTAINS** the Commonwealth's preliminary objections and **DISMISSES** this matter with prejudice.

BY ORDER:



Karen L. Cummings, Esquire
Designee of the Secretary of the Commonwealth
Chairman, Board of Property

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10/23/2015