

## CASENOTE LEGAL BRIEFS — PROPERTY

### VAN VALKENBURGH v. LUTZ

*Tract owner (P) v. Adverse possessor (D)*

304 N.Y. 95, 106 N.E.2d 28 (1952).

**NATURE OF CASE:** Appeal from judgment establishing title by adverse possession.

**FACT SUMMARY:** Beginning around 1920, Lutz (D) traveled across a triangular tract to reach his home on a nearby parcel, and also built a shed and kept a garden on the tract, but in 1947 Van Valkenburgh (P) purchased the tract at a tax sale, and when Van Valkenburgh (P) demanded that Lutz (D) vacate the land, Lutz (D) obtained a judgment that granted him a right of way by prescription over the tract and then in a judicial proceeding established title to the tract by adverse possession.

**CONCISE RULE OF LAW:** Title to a parcel may vest in an adverse possessor who occupies the parcel under claim of right, protects the parcel by an enclosure, improves or cultivates the parcel, and maintains that state of affairs for the statutory period.

**FACTS:** Lutz (D) and his family owned and occupied a parcel of land near a triangular tract in the City of Yonkers. Beginning around 1920, Lutz (D) used the tract to cross to his land. He then cleared part of the tract and built a shed thereon and maintained a garden, knowing that he had no title to the tract. In 1937, Van Valkenburgh (P) moved onto a parcel contiguous to the triangular tract and a small feud developed for unrelated reasons between the parties. In 1947, Van Valkenburgh (P) purchased the triangular tract at a tax sale and gave Lutz (D) notice to vacate the tract. At a meeting between the parties and counsel, Lutz (D) agreed to remove the shed and garden, but claimed a right of way by right of prescription across the tract. Though Van Valkenburgh (P) agreed, he erected a fence across the right of way path, whereupon Lutz (D) obtained a judgment awarding him a right of way, which was affirmed. Van Valkenburgh (P) then brought this suit to compel removal of encroachments and delivery of possession of the triangular tract. The trial court held for Lutz (D) granting title by adverse possession, and Van Valkenburgh (P) appealed.

**ISSUE:** May title to a parcel vest in an adverse possessor who occupies the parcel under claim of right, protects the parcel with an enclosure, improves or cultivates the parcel, and maintains that state of affairs for the statutory period?

**HOLDING AND DECISION:** (Dye, J.) Yes. In this case there was no proof offered of any protection of the parcel by enclosure by Lutz (D), and the proof shows that he did not cultivate the entire premises claimed. Furthermore there was no improvement of the land because the shed thereon, the only structure of any kind involved here, was built by Lutz (D) with the conceded knowledge

that he did not own the land under it. Title to a parcel may vest in an adverse possessor who occupies the parcel under claim of right, protects the parcel with an enclosure, improves or cultivates the parcel, and maintains that state of affairs for the statutory period. In this case, the elements permitting taking title by adverse possession were not present. Reversed, judgment directed for Van Valkenburgh (P).

**DISSENT:** (Fuld, J.) The weight of the evidence establishes Lutz' (D) right to the property in question by adverse possession. There was a "traveled way" across the property. Lutz (D) operated a truck farm there of substantial size. The fact that Lutz (D) knew he had no title to the tract is irrelevant so long as he intended to acquire title in himself, as he did. Lutz (D) actually occupied the property and title vested in him.

**EDITOR'S ANALYSIS:** The traditional requirements for adverse possession are that the possession be actual, open, notorious, exclusive, adverse or hostile, continuous, under a claim of right, and for the statutory period. These requirements are variously expressed in the statutes and in the cases.

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*[For more information on the requirements for adverse possession, see Casenote Law Outline on Property, Chapter 4, § II, Five Criteria to Acquire Title by Adverse Possession.]*

### QUICKNOTES

**ADVERSE POSSESSION** - A means of acquiring title to real property by remaining in actual, open, continuous, exclusive possession of property for the statutory period.

**CLAIM OF RIGHT** - Person claiming a right in property is in possession and intends to claim ownership of that property without regard to the record title owner.

**EASEMENT** - The right to utilize a portion of another's real property for a specific use.