COUNTY OF TAOS

No. 79-233 cv

RECORDED
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KRISTEN SELPH a/k/a/ CHRISTINE PADILLA,

FILED IN OFFICE OF CLERK
OF DISTRICT COURT OF TAOS COUNTY,
NEW MEXICO, AT 10:55 o'clock A M.
ON
FEB 20 1984
DOLORES G. GONZALES
CLERK OF SAID DISTRICT COURT
BY Louise Martinez
DEPUTY CLERK Judges Ext.

Plaintiff and Counter-

Defendant

vs.

LT. GEN. JAMES D. ALGER, THE WEIMER PROPERTIES, a Colorado Limited Parthership, MARSHALL VIGIL, AND ANDREA VIGIL, his wife,

Defendants, Counter-Plaintiffs and Cross-claimants

vs.

ALISO INVESTMENT CO., PETER McATEE et ux,

Defendants and Cross-Claimants

THE CRISTOBAL DE LA SERNA LAND GRANT ASSOCIATION,
and CORA BACA, et al.

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Defendants, Counterclaimants and
Cross-claimants.

vs.

DORA M. ARMIJO, et al.

Defendants.

AMENDED-MEMORANDUM DECISION

In 1710, Spanish army captain Cristobal de la Serna petitioned Governor Joseph Chacon Medina Salazar y Villasenor, Marques de Pinuela, for a grant of land in the Taos Valley. The Marques was the provincial governor under authority of Juan Fernandez de la Cueva, Duque de Albuquerque, Viceroy of Mexico, whose authority came straight from, and only from Phillip V, Duke of Anjou, King of Spain.

Governor Penuela granted Serna's petition in April of that year, but Serna could not take posession of the grant because of his military duties. He therefore requested revalidation of the grant on May 31, 1715 to then governor Flores Mogollon, who approved the grant the same day.

Crucial and foremost among the issues in this case, This court has been asked to decide whether the grant to Cristobal de la Serna is to be considered a private or community grant under New Mexico Law. The Court is aware of the line of cases which hold that the evidence should go no farther back than the United States patent, which would establish the grant as private. The Court is nevertheless convinced of the need in this case to look beyond the patent to Spanish or Mexican law, (primarily Spanish, since the brief Mexican period of New Mexico history provides no important events relevant to this lawsuit).

The parties have diligently submitted more than 400 exhibits ranging from grant documents, maps and survey plats, to historical treatises, private letters, and videotaped and transcribed depositions of witnesses. They have given the court the benefit of dozens of witnesses, lay and expert, and the best of years of research into the legal and demographical history relevant to this case.

The case is unique because the research transcends centuries. In fact, we begin with the efforts of Alfonso X, (the Wise), King of Castilla and Leon from 1252 to 1284 a.d. I must as a personal note comment upon the aptness of Alfonso's involvement in this lawsuit.

Alfonso was an erudite king who recognized the need to document man's efforts. He was probably rightly accused of ignoring the daily and mundane duties of ruler and commander in chief, and was content to devote himself to scholarly tasks while war raged around him.

he admitted his interest was to leave his mark in the future, and through his efforts he did provide, among other things, translations of Latin and Greek language, arts and sciences from Arabic to Midieval European language. They had, before that, been dead languages on the continent and lost to Europeans.

He did indeed leave his mark. So much so that in 1983 we are using his codification of laws,"Las Siete Partidas" as one factual and legal basis for this court's decision. The scholarly presentation of evidence by all parties has been a destinct pleasure to the court, who is privileged by those efforts.

It is the Court's opinion that virtually all evidence points to the grant as a private one. In fact, with one exception, no claim of right to transfer title was ever made by the Association. It's claims are of a recent nature. Examination of the minutes of the association, as well as the entire history of the grant and related statutes reveal simply that no one seriously raised the idea the grant was a community land grant until 1980. At that time a Land Grant Project attorney, Mr. Jaime Chavez presented to the Board the fruit of recent research labors which was, in effect a new theory to substantiate the beliefs of a century of claimants of ownership to the lands of the Serna Grant.

In truth, the research efforts of the project have been extraordinary. almost as much has been discovered about the history of this area in these last few years as was known beforehand. Mr. Chavez

and the project to be congratulated in their efforts. It is 232
unfortunate for the Association and the project that almost without exception every fact uncovered by them substantiates the conclusion that the grant to Cristobal de la Serna was, and continues to be a private land grant.

I. THE PARTIES' CLAIMS.

A. PLAINTIFF SELPH, COUNTER-PLAINTIFF AND CROSS-CLAIMANTS ALGER, THE WEIMER PROPERTIES, VIGIL & McATEE

Except for their respective chains of title, the position of these parties is identical. They will therefore be referred to henceforth as "Plaintiffs" respecting their position on the grant's status. Only as to their chains of title will they be reffered otherwise; Christine Selph, an individual, as "Selph", and Alger, an individual as "Alger", Marshall and Andrea Vigil, husband and wife as "Vigil", Aliso Properties, a New Mexico Corporation, and the McAtees, husband and wife as "McAtee", and Weimer Properties, a Colorado Limited Partnership doing business in New Mexico, as "Weimer".

These parties have no dispute with each other as to their claims. McAtee raises no affirmative claim, but declares himself bound by the court's decision regarding ownership of all properties at issue in this lawsuit.

1. PLAINTIFFS' CLAIMS

Plaintiffs claim ownership through diverse chains of title on land in dispute in this case as against The Cristobal de la Serna land grant Association (henceforth " the Association "), and Cora Baca, et al ("Baca"). Their claim is based upon the following facts, adopted by the Court:

a. The grant to la Serna was a private Spanish Land Grant; and

b. They (except McAtee) and their predecessors in title have acquired deeds to land within the grant, have paid taxes for more than ten years, and have possessed in diverse ways their respective lands, also for more than ten years; and

c. The Association and its predeccessors have never operated as a statutory land grant association, nor, until recently have they challenged ownership of lands within the grant; and

d. No deeds exist to the name of the Association or its predecessors in title; and

e. No document exists to Baca as tenants in common.

Based upon those facts the Plaintiffs claim:

a. There is no limitation upon their acquisition of title within the grant by adverse possession; and

b. They (except McAtee) have title by adverse possession; and

c. The Association and Baca have no standing to dispute title within the grant; and

d. The Association and Baca are estopped from disputing title within the grant, or, in the alternative, that laches applies to the facts in this case.

B. THE ASSOCIATION AND CORA BACA, et al

The position of these parties against the plaintiffs is identical, even though the legal theories of their claims are different. They raise no counterclaim against the other and declare themselves bound by this decision as against each other. They are, in fact, represented by the same counsel in this case.

1. AS A BOARD OF TRUSTEES OF A COMMUNITY LAND GRANT

THE CRISTOBAL DE LA SERNA LAND GRANT ASSOCIATION (The Association) claims it has quasi-governmental authority to govern the common lands of the Cristobal de la Serna Grant, and therefore has standing to dispute Plaintiff's claims, and is the owner of those common lands.

The Association bases its claim that the grant is a community land grant on the following facts, which the Court does not adopt:

a. Even though the Serna grant document is named to an individual, the 1715 revalidation of the grant, which contains the phrase

"pastures and watering places being in common" make the grant neither fully private nor fully public, but something in-between ("quasi-community", or "quasi-private"). 235

b. The law of Spain at the time of the grant allowed its ownership to be determined by future occupation and use (private if privately used, community if used in common).

c. A sizeable community had developed within the outboundaries of the grant by the end of the eighteenth century, Complete with church, plaza and private lots and the name, San Francisco, which would not have come into existance unless it owned that land.

d. Since at least the time of the U.S. patent to the grant a de facto association has operated a portion of the grant roughly as a land grant association under the authority of section 49-1-1-et seq. nmsa 1978 comp.

Based upon those facts, the Association disputes ownership by the plaintiffs, asserting as law:

a. Any land transaction not done by authority of the Board of Trustees by duly adopted resolution of the Board, and approved by the District Court is void under section 49-1-1 et seq. nmsa 1978 Comp.; and

b. The Plaintiffs lack color of title; and

c. The Plaintiffs lack either actual, visible, exclusive, hostile, continuous or otherwise adverse possession of their respective lands for a period of over ten years; and 236

d. The Association's board is a quasi-municipal statutory trustee of the common lands of the grant. It is therefore Fee simple titleholder of the common lands of the grant in the name of the Association in trust for a yet unidentified group of shareholders.

2. BACA'S CLAIMS AS TENANTS IN COMMON

Baca's claim is alternative to the Association's. It is based on these facts, which the Court does not adopt:

a. Even though the grant may not be a community grant, there is a strong history of common occupation and control of the grant by de facto associations; and

b. Baca, the plaintiffs and everyone else with a deed based upon a system of land describing it from (approximately) the Francisco Martinez ditch to the Picuris peak has a deed describing ownership of land within the grant which cannot be located on the ground.

Based upon those facts Baca claims:

a. All ownership of land from the Francisco Martinez ditch to the Picuris Peak ridgeline is owned in common;

b. Raca, or the Association have standing to claim trustee status for all common owners; and 237

c. Plaintiffs, if they own anything, only own an interest common with everyone else.

II. STATUS OF THE GRANT....COMMUNITY OR PRIVATE

A. FEDERAL CONFIRMATION OF GRANTS

1. IN GENERAL

The Treaty of Guadalupe-Hidalgo, which ended the Mexican-American War in 1848 required recognition of Spanish or Mexican land grants substantially as they would have been treated under Spanish or Mexican law.To comply with the treaty, Congress, when it was able to take up the matter after the American Civil War designated Surveyors general for the Territories (including New Mexico) to recommend to Congress the validation of Spanish and Mexican Land Grants. Enough surveyors-general (including Mr. Atkinson, for New Mexico at the time of the original 1876 Serna petition) appeared with substantial personal interest in enough land grants that Congress established the Court of Private Land Claims in the 1890's. Claimants were from that time required to present more public proof of their claim's validity before a decree would issue recommending validation to Congress.

It was not necessarily the task of the Court of Private land claims

to determine the nature of a grant. Section 11 of the Court's enabling legislation required that land granted originally granted to an individual would be presented by or in his name or that of his legal representatives even "...where the land upon which the said city, town or village is situated." Nevertheless, when, as in the case of the Serna Grant all proceedings represented the grant as a private one, without intervention or protest, the final patent's confirmation as a private grant is strong evidence how it was considered at the time of those proceedings.

2. SPECIFICALLY, THE SERNA GRANT

History of the grant is lost from 1841 until 1876, when a petition for confirmation of the grant was filed before surveyor General Henry M. Atkinson. The petition was to confirm the grant to Serna's heirs. Atkinson took no action, and a supplemental petition was filed by 302 claimants before Surveyor General Julian. Julian recommended confirmation in the name of the heirs and legal representatives of Serna.

Suit was filed before the Court of Private Land Claims for confirmation in 1892, A decree was issued confirming the grant in that same year.

Congress issued a patent for the grant on January 19, 1903.

In all of these documents the grant is represented as a private Spanish land grant.

B. NEW MEXICO LAND GRANT LAW.

1. COMMUNITY LAND GRANT ASSOCIATIONS---SEC. 49-1-1 ET SEQ.

New Mexico's efforts to honor the Treaty of Guadalupe-Hidalgo are found in Section 49-2-1 et seq. nmsa 1978, passed by the 1897 Territorial Legislature for certain grants already then established, and Section 49-1-1 et seq., passed by the Territorial legislature in 1907 in anticipation of statehood, applying to any others. The Serna grant is not among those listed in section two of chapter forty nine, so it must be found in section one if it is considered to be a community land grant at all.

Section 49-1-2 applies itself to all grants of land made by the Spanish or Mexican governments to "...any community, town, colony or pueblo, or to any individual for the purpose of founding or establishing any community, town, colony or pueblo; to all grants that were prior to March 18, 1907, confirmed by the congress of the United States, or by the court of private land claims, to any community, town , colony or pueblo, and to all grants or private land claims recommended by any surveyor of New Mexico for confirmation by congress to any town, colony, community or pueblo, or designated as a grant to any town, colony, community or pueblo, in any report or list of land grants prepared by such surveyor general and confirmed by congress in accordance therewith..."

If a grant is indeed a community grant, section 49-1-1 requires

management and control of such a grant only as the chapter allows. The chapter creates quasi-governmental status for the Board of Trustees, and specifically grants them authority to operate and manage the portions of community land grants held in common substantially as Spanish law would allow.

If land is contained within the common lands of a community grant, it may not be alienated (sold, mortgaged, etc.) except "... by resolution duly adopted by the said board of trustees, and until approval of such resolution by the district judge of the district within which said grant or a portion thereof is situate." (49-1-11 nmsa 1878 comp.). Any alienation without compliance with this section is void, and without effect whatsoever. (Bibo v. Town of Cubero Land Grant 65 N.M. 103, 332 P. 2d 1020, 1958).

The grant to Cristobal de la Serna clearly was not confirmed as a community grant by Congress or the Court of Private Land Claims. Nor did any Surveyor General of New Mexico ever recommend its confirmation as a Community grant. In fact, The 1876, 1887 and 1892 petitions for confirmation, the Surveyor general's recommendations, 1892 Court of private land claims order and the United States Congress' final 1903 patent all designate it as a private grant. This grant is to an individual, Cristobal de la Serna. For this chapter to apply, the grant must have been made to him to establish a community, which the association argues, or it must be to a community, which the association also argues based upon a provision in the 1715 revalidation that "pastures and watering places are to be in common."

3. PRIVATE LAND GRANTS. Section 37-1-21, NMSA 1978 Comp. 241

Private Spanish grants are treated under New Mexico substantially as any other private property, and have been so treated since 1857, when chapter 37 was passed by the territorial legislature. It is subject to transfer as other lands, and, relevant to this lawsuit, is subject to alienation by adverse possession. (Montoya v. unknown heirs of Vigil , 16. N.M. 349, 1911).

The requirements for such possession are substantially the same as for any other private lands. Color of title by deed sufficient to locate the land on the ground, and open, actual, visible, exclusive, hostile and continuous possession for ten or more years is required. Marques v. Padilla 77 N.m. 620, 426 P. 2d 593. Payment of taxes is treated as evidence of possession, rather than as an additional requirement of title, as New Mexico law otherwise requires (Marques, supra.).

3. LOOKING BEYOND THE PATENT.

The Plaintiffs vigorously assert the patent's designation as a private grant as conclusive (Chadwick et al v. Campbell , 115 f. 2d. 401, and U. S. v. Price , 111 f. 21 206) under federal law, and unimpeachable under State law absent fraud or mistake (Martinez v. Mundy 61 N.M. 87, 295 P. 2d 209 [1956],

and Bustamante v. Sena , 92 N.M. 72, 582 P. 2d 1285 [1978]) . The Association asserts no fraud or mistake.

This Court considers section 49-1-2 to require consideration of the

history of the grant prior to a patent to determine the nature of the grant. Logically only confirmed community grants would need be listed if application of the section were limited only to them. Other kinds of grants are expressly considered as qualifying. Examination of the history of the grant is mandated by that section. Such examination is further not limited by the finding of the Court of Private Land Claim's decree, since such a finding was not that Court's purpose, in any event.

C. SPANISH LAW

1. IN GENERAL

At the precise time of the Serna 1710 petition, government in Europe was mostly a family affair. The rulers of Europe were related by blood or marriage to the ancient families of Hapsburgs of Austria and Bourbons of France, and, in most cases, to both families and to each other. Phillip V was by blood or marriage, then, King of not only all (for once) of the present provinces of peninsular Spain, but most of the Western world, including the Taos Valley. Within the remaining thirty six years of his reign he would have ceded most of his kingdom outside of the Iberian peninsula to one or the other of his rival relatives, and Spain would cease to be a major European power.

The common thread (other than family ties) among rulers in 1710 was the belief that their rule was absolute. There may have been dispute between rivals about who was king of a given place at any given time, but no Monarch would have disagreed with French Bourbon King Louis

XIV's advice to his grandson, the same Phillip V, that "Kings are absolute rulers. Disposition of all properties, lay or eclesiastic, naturally falls to them for their use as good administrators, without need of any other State". 1.

Grants of property were only by the King's grace, and only to the extent allowed by the king (hence the name "merced" for such a grant). What was set forth in the Document of Grant was it's absolute designation of authority.

2. AS TO PRIVATE GRANTS.

The law applicable to Spain's colonies was set forth in a seventeenth century Recompilacion de laws known as La Recopilacion de las leyes de Reynos de Los Indias . It is specific, and would apply to any grant to Serna.

The Recompilation provides for efforts to reduce vacant and other common lands to private ownership by grants to defenders of the country, Recopilacion Vol. I, P. 397. by specific dictate in its paragraph XII, such grants could be made only "...to those who serve or may have served in the present war, or in the pacification of the actual disturbances in some of the Provinces beyond the sea...."

The King could give land to anyone he wished. The Recopilacion establishes a strong precedent for private grants to soldiers.

1. Bustamante, Historia de Espana p.438, Ediciones Atlas, 1964.

Serna was a soldier, who applied for a grant for his military service. The speed of the Governor's response is appropriate to reward a man who was captain of the Santa Fe Fortress. The text of the document indicates a private grant.

3. AS TO COMMUNITY GRANTS.

Las Siete Partidas, for peninsular Spain, and The Recopilacion as it extends to the New World establish Specific grants for settlement known as community grants. The elements are : 1. The grant be made to several individuals or families or to a community, town or pueblo; 2. certain lands would be set aside as "Alotted lands" to be divided among grantees; Certain land for the plaza, the church, and unirrigable farmland be held in common. Recopilacion , Book 4, Title 5 Law X.

These grants in effect created municipalities, with governmental power to elect "..Alcaldes of ordinary jurisdiction and officers of the council." They were subject only to control by the King's representatives.

Other grants providing common ownership, such as pasturage grants are recognized in Spanish law. These are specifically not a community grant, but are privately commonly owned.

The Association argues that since the Serna Grant revalidation provides "pastures and watering places be held in common" It is

neither private nor community, but quasi-community. Alfonso X's Law 4 of the First Part of Title II of the Siete Partidas would therefore require custom as the unwritten law which would guide a determination of land ownership. Spanish law never allowed such a thing.

First, Under the Recopilacion's book 2,Las Siete Partes would be used only if the Recopilacion was silent.Second, Alfonso's compilation of laws recognized, as further set forth in law 6 only the obvious... Absent written law, custom would control disputes. At a time when few things were written, Alfonso's declaration was useful. In later centuries, custom would certainly decide commercial transactions, copywrites of art works or disputes between suitors but it never decided ownership of land. Only the King decided ownership of land.

Custom as fact, or usage could be used to resolve ambiguity within a document. Cutter v Waddingham 22 Mo. 206. 284. The phrase "pastures and watering places being in common" contained within Serna"s revalidation document can mean one of several things under Spanish law, and so is ambiguous.

Ambiguous, maybe, but such custom and usage over the next two hundred fifty years reveals the grant treated almost entirely as a private grant.

4. SPANISH HISTORY IN TAOS.

IN Addition to those facts found above, the court adopts these and considers them of evidence of custom before U.S. occupation:

a.In 1710 Francisco de Vargas had just reconquered New Mexico after the Pueblo revolt of 1691. By 1715, the Pueblos and the Spanish considered themselves more as allies against other tribes, primarily the Comanches and Apaches , whose raids would devastate settlements for another 150 years.

b.At the time of the revalidation to Serna, Spanish law required Pueblo approval of any grant proximate to the Pueblos. The Pueblos were as eager as the Spaniards to populate the grants, and both races wished peaceful coexistence with each other."In common"probably meant used by all, as it was used in the grant document.

c.In 1725 Diego Romero gave a bull and an Apache squaw to Serna"s widow and children (probably all of them) to purchase the grant. His purchase was validated by the Viceroy In the manner of a private, not a community grant.

e.In 1745 Diego Romero's children petitioned for and were granted a partition of the grant after Romero's death. the partition was made in all respects as a partition of a private grant.

f.By the end of the 16th century a sizeable community had established itself within the vecinity of Ranchos de Taos. A number of those citizens were certainly members of the extended Romero family. Such communities are common within the Spanish Southwest and Mexico.

Their existence is a fact to consider in determining the status of the grant. The community members may have been successful in a re-petition to the Viceroy to change the status of the grant, but no petition was ever made from that time until the end of Spanish rule, No King of Spain or anyone with his authority ever changed the nature of the grant from a private grant to a community grant.

g.Spanish rule was replaced by Mexican rule in 1821. The Mexican government took no action about the grant. Mexican rule was replaced by the United States in 1848.

5. HISTORY SUBSEQUENT TO UNITED STATES RULE.

These facts are adopted as to treatment of the grant after U.S. occupation:

a.By at least the time of the 1876 petition to the Surveyor General, the grant claimants recognized the existence of "lineas", running from the northern boundary of the grant to the ridgeline of the Picuris Peak, the southern boundary of the grant.

b.These lines were accepted as boundaries of land privately owned and subject to ownership and sale under warranty of title. Virtually all of the Commissioners, and everyone else has bought and sold land under warranty deed by such descriptions.

c.Since the date of the patent the land within the boundaries of the

grant have been treated as private, subject to transfer by deed. Land conveyed by such deeds is capable of location on the ground.

d.Taxes have been assessed to private owners, according to deed descriptions using the description of lineas surrounding property owners and , since the 1941 reassessment survey, map tract & survey references.

e.Forty to fifty houses have been built, nine quiet title suits and one condemnation action has been completed within the boundaries of the alleged common lands of the grant. Only once, in 1967 did the grant attempt to intervene. No timely appeal of that ruling denying standing was filed;

f.In 1924 an association, predecessor to the defendant land grant association was formed under private law to operate "as if it were" a community land grant association. The association never claimed to be, in fact or law, a community land grant of the kind subject to quasi-governmental status of section 49-1-1 et seq. nmsa 1978 comp; until 1981. That Association designated itself " the Association of the Lines to the Picuris peak. " Its stated purpose was to manage those lines on behalf of the owners of those lines.

g.Since its formation, that association could not have gone out of its way to conform less to the statutory requirements of chapter 49. The 1924 effort was to associate as a private association, and not as a statutory, quasi-governmental entity under Chapter 49.

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h. At the time of the 1924 association, so many properties had been designated by linea boundaries many of them were unmanageable. Some would literally be one yard wide by fifteen miles long. owners of such tracts understandably needed a supervisor of those tracts. The 1924 Articles are an effort to provide common management, which was entirely permissive by those owners. The minutes from that time are replete with examples of the Board's acknowledgement of such required permission.

h. Specifically, the Association never designated itself as a Land grant, never held an election, never registered voters nor members, paid salaries, adopted resolutions for land transactions, or treated sales of land within the grant boundaries in any way approximating the specific requirements of Chapter 49 until after the filing of this lawsuit.

j. The Association was never assessed taxes, nor has it ever attempted such and assessment of lands, nor taken any interest in such assessments until after filing of this lawsuit.

k. The Board's minutes contain fifty years of acquiescence to private conveyances within the alleged common lands. The hundreds of deed transactions undertaken within such lands throughout the entire period of United States' occupation never mention such community ownership, nor have efforts been made to claim such ownership during the numerous surveys conducted for persons within such lands.

l. The Grant exterior boundaries are those Crowl Survey Exhibit 26, as they pertain to this lawsuit. 250

m. Selph, Alger, Vigil and Weimer's claims emanate from deeds acquired more than 10 years prior to the filing of this lawsuit. All their predecessors in title were claimants of ownership of Lineas, and all their claimed lands are locatable on the ground, and are contained within the outboundaries of the Grant.

n. Selph's land claimed in her complaint is described in Crowl Survey Exhibits 9 & 38.

o. Alger's land claimed in his complaint is described in Winslow Survey Exhibit AA to Alger Deposition Exhibit 112.

p. Vigil's land claimed in their complaint is described by 1941 Reassessment Survey, in their deeds, exhibits 40, 41 & 42.

q. Weimer's land claimed in its complaint is described in Crowl Survey Exhibit 9 & Winslow Survey Exhibit 10.

r. Selph, Alger, and Weimer and their predecessors in title have paid taxes on all lands described in their respective surveys for a period of more than ten years.

s. Selph, Alger and Weimer and their predecessors in interest have actively claimed and possessed their respective tracts described in their surveys for a period of more than ten years, as against all the world.

t. The Association has never made any written transaction of lease, deed, contract, or otherwise effecting lands claimed by Plaintiffs prior to the filing of this lawsuit. 251

u. Cora Baca, nor any claimant of tenancy in common appeared in this lawsuit to submit evidence. No deed nor any other document was tendered to the court specifying expressly or impliedly such tenancy in common.

v. Vigil and their predecessors have paid taxes on their claimed tracts and have actively asserted ownership of them for a period of more then ten years before this lawsuit.

w. Vigil's land, though locatable on the ground, is not described by licensed survey description.

x. The Association has received no deeds to lands within the Grant from any owner or claimant of parcels within the alleged common lands of the Grant.

y. The major part of the land in dispute is mountainous, with difficult access. Until recent emphasis on residential development no one bothered to establish fences except on the flatter portions of the Grant. It was simply economically unfeasable to fence such land.

IV. CONCLUSIONS

Based on the foregoing the Court concludes:

1. Under Spanish, Mexican, and United States' law, the Cristobal de la Serna land grant was and continues to be a private land grant.

2. The Association owns no land which it can claim in trust, or otherwise.

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3. No tenancy in common exists within the grant except what may have been created by private deed and not relevant in this lawsuit.

4. The defendant Association has no standing to challenge the title of any person claiming title within the grant boundaries.

5. All plaintiffs except Vigil and McAtee are the owners in fee simple of the lands contained within their respective survey descriptions.

6. As against Defendants Association and Baca, Vigil is the owner of the lands claimed by them. The precise boundary is not at this time determined, subject to survey metes and bounds description.

7. McAtee is bound by the decision regarding the legal status of the Grant.

8. The Association is estopped from asserting claims of ownership of the Grant except through any deeds to the Association as grantor.

9. Baca has no standing to challenge ownership of lands contained in Plaintiff's respective complaints.

DONE by the Court Nunc Pro Tunc as of December 13, 1983, by agreement of the parties.

DISTRICT JUDGE