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COURT OF APPEALS
STATE OF NEW YORK

GOLOBE,

Respondent,

-against-

NO. 17

ALTCHEK,

Appellant.

20 Eagle Street
Albany, New York
February 13, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

LESLIE D. CORWIN, ESQ.
DUANE MORRIS, LLP
Attorney for Appellant
1540 Broadway
New York, NY 10036

JOHN M. BRICKMAN, ESQ.
MCLAUGHLIN & STERN, LLP
Attorney for Respondent
260 Madison Avenue
New York, NY 10016

Brandon Deshawn
Official Court Transcriber



1 CHIEF JUDGE WILSON: The last case on today's
2 calendar is Golobe v. Altchek.

3 (Pause)

4 MR. CORWIN: May it please the court. Leslie
5 Corwin, I represent Daniel Mielnicki in his capacity as the
6 successor trustee of the Emil Krause trust. I respectfully
7 request five minutes in rebuttal.

8 CHIEF JUDGE WILSON: Yes.

9 MR. CORWIN: Thank you. Respondents did not and
10 cannot possibly present clear and convincing evidence of
11 the requisite hostility, open, and notorious elements of
12 adverse possession. I respect that it is simply impossible
13 for respondents to prove that the possession of these
14 premises at issue has been adverse to the interest of the
15 trust for the twenty-year period for adverse possession in
16 co-tenancy because it is undisputed that the respondent
17 himself was unaware he owned the premises as a co-tenant in
18 common until after the statutory period passed and had
19 become aware of the co-tenancy - - -

20 JUDGE RIVERA: So why does that matter? Why is
21 that relevant to adverse possession?

22 MR. CORWIN: Because under the statute and New
23 York law, there is a presumption that the - - - that a co-
24 tenant, which it is conceded, Judge Rivera, that there is
25 co-tenancy here in this record, that once you concede that

1 the other tenant under New York law, and that's the
2 doctrine under Myers v. Bartholomew, holds it for the
3 benefit of the other co-tenant so that anything that was
4 done here was for the benefit of the trust.

5 JUDGE RIVERA: Well, what about the twenty-year
6 statute of limitations for adverse possession for co-
7 tenants?

8 MR. CORWIN: I'm sorry?

9 JUDGE RIVERA: The twenty-year statute of
10 limitations for co-tenants under adverse possession, why
11 doesn't that apply here?

12 MR. CORWIN: Because the - - - because during
13 that entire period of time, there was not adverse
14 possession because there was never the intent - - - when
15 this - - - when this plaintiff took possession, he didn't
16 think that he was doing this adverse to a co-tenant.

17 JUDGE GARCIA: Isn't that always the case - - -

18 MR. CORWIN: He didn't know of it.

19 JUDGE GARCIA: Isn't that always the case with
20 adverse possession? I mean, now you're looking at the
21 tenant's state of mind, right? So in an adverse possession
22 case, co-tenant, I'm taking possession because I think it's
23 mine, right?

24 MR. CORWIN: No. He - - - under this scenario,
25 Judge Garcia, he took it because it went intestate. He

1 submitted to the Surrogate's Court of New York County that
2 there was only one heir, his father, and then he deeded the
3 property to himself, believing that there was nobody there.

4 JUDGE GARCIA: Right.

5 MR. CORWIN: So he went - - -

6 JUDGE GARCIA: Right.

7 MR. CORWIN: - - - in a state of mind - - -

8 JUDGE GARCIA: So he - - - you're not saying that
9 that was - - -

10 MR. CORWIN: - - - that he didn't know of the
11 cotenancy.

12 JUDGE GARCIA: I'm sorry. You're not saying that
13 that was a bad faith belief, right? He really believed he
14 was the only owner.

15 MR. CORWIN: No. That would - - - no. That - -
16 - that's where we have a problem here. It was unreasonable
17 under the circumstances that are in this record that there
18 was no semblance of any investigation that was ever
19 conducted - - -

20 JUDGE SINGAS: Wasn't there a judgement?

21 MR. CORWIN: - - - whether that was pure
22 negligence or was fraudulent - - -

23 JUDGE CANNATARO: Wasn't that reasonable enough
24 for the Surrogate to give title?

25 MR. CORWIN: No. The Surrogate did not give

1 title. That's the issue here. He gave himself title. All
2 the Surrogate did was issue letters of administration. And
3 if you look at the timeline here, it is critical of why I
4 believe this was not only unreasonable, but possibly
5 fraudulent. Dorothy Golobe dies on February 24th. By
6 March 10th, they are in court with a petition to appoint
7 the son as the administrator in that petition, and it's in
8 the record. If you look at the record at - - -

9 JUDGE HALLIGAN: Is there something problematic
10 about that window of time?

11 MR. CORWIN: It's very problematic. How could
12 you in two weeks have conducted a proper heir search?
13 Their own attorney who did this - - -

14 JUDGE HALLIGAN: Well, it depends on what - - -

15 MR. CORWIN: - - - it - - -

16 JUDGE HALLIGAN: It depends on what a proper
17 search - - -

18 MR. CORWIN: The - - - that's - - -

19 JUDGE HALLIGAN: - - - concludes, right?

20 MR. CORWIN: Clearly, nothing was done here. And
21 in fact, nobody went to the court records - - -

22 JUDGE HALLIGAN: What would you - - -

23 MR. CORWIN: - - - nobody looked at the probate
24 files, nobody looked at social security records - - -

25 JUDGE HALLIGAN: So - - -

1 MR. CORWIN: - - - nobody looked at death
2 certificates.

3 JUDGE HALLIGAN: So just to pursue that for a
4 minute. So in a typical circumstance where someone passes
5 away, if I have a good faith belief, let's say I'm an only
6 child, that there are no other heirs, do I have to, in your
7 view, go through all of those steps? This was at a time, I
8 believe, when an internet search was not available. So we
9 can set that to the side, I think. But does someone have
10 to go through all of those steps?

11 MR. CORWIN: Yes. They must do at least a
12 reasonable search and they cannot, and that's not in the
13 record.

14 JUDGE HALLIGAN: So - - -

15 MR. CORWIN: And if - - -

16 JUDGE HALLIGAN: - - - just to make sure I
17 understand, so if I'm an only child and my one remaining
18 parent passes away, I have to go through all of the steps
19 to confirm that neither of my parents had another child
20 that I was not aware of?

21 MR. CORWIN: But - - - that - - - but - - -

22 JUDGE HALLIGAN: That's surprising because - - -

23 MR. CORWIN: - - - he was aware of that. He was
24 aware that there was another - - - that there was an uncle.
25 And in fact, he presented false testimony to the

1 Surrogate's Court - - -

2 JUDGE CANNATARO: Knowingly false testimony?

3 MR. CORWIN: I believe so because - - -

4 JUDGE CANNATARO: What - - -

5 MR. CORWIN: - - - if I may, at page 71 of the
6 record - - - and this was by a referee in Surrogate's
7 Court. This is two weeks after she dies. At the - - - at
8 the time Dorothy Golobe died, were both of her brothers
9 living? No. This is the person who testifies only
10 Zangwill was alive. Do you know - - -

11 JUDGE HALLIGAN: Okay. So your - - -

12 MR. CORWIN: - - - what person - - -

13 JUDGE HALLIGAN: - - - point - - - your point, I
14 take it is that there has to be some further effort to
15 confirm that there's no one still living, but - - -

16 MR. CORWIN: Correct.

17 JUDGE HALLIGAN: - - - but not that there might
18 be other possible heirs out there which no one is aware.

19 MR. CORWIN: That's the first reason where they
20 lose. The second where - - - reason where they lose is - -
21 -

22 JUDGE HALLIGAN: I just want to make sure I
23 understand, which of those two is it? Is it that the - - -
24 in your view, the search has to include checking to make
25 sure - - - just let me finish if I can - - - that no one -

1 - - that there's no one still living, or do you also have
2 to search to see if there are additional relatives out
3 there that no one is aware of?

4 MR. CORWIN: No. You - - - you - - - it's the
5 first, Judge Halligan.

6 JUDGE HALLIGAN: Okay.

7 MR. CORWIN: But here, they completely
8 misrepresented what they also did in that petition, which
9 is where we - - - I find it very interesting, is that in
10 that petition, if you look in the record under the petition
11 that's filed, they stated - - - they don't even list that
12 there's real property here. They say there's \$160,000 in
13 cash, and that's it. And they say there are no other
14 relatives.

15 JUDGE GARCIA: Counsel, you know, you spoke about
16 Myers, and Myers with the ten years and plus ten years, and
17 I know you're familiar with - - - it gives you twenty years
18 unless there's an ouster. Under your view here, there
19 would be no running of the statute of limitations at any
20 point, thirty, forty, fifty years later, somebody could
21 come in and say, hey, wait, you didn't do the right amount
22 of probate due diligence?

23 MR. CORWIN: Correct. Because neither of the - -
24 - neither of what we now know it's conceded were co-tenants
25 was ever aware of the fact. So the only time - - -

1 JUDGE GARCIA: It could be a hundred years and -
2 - -

3 MR. CORWIN: Correct. The only time it comes
4 into play here, and that's what's interesting also, is that
5 two years before he starts the action, he goes to the trust
6 - - -

7 JUDGE GARCIA: Doesn't that original point
8 somewhat cut against this idea of finality in titles,
9 right?

10 MR. CORWIN: No, it doesn't. In fact, if you
11 look at - - - there - - - I respectfully submit, I know of
12 no case in this state where there were - - - it's conceded
13 that there were co-tenants and where under Bartholomew and
14 every and the statute, RPAPL 501, 554 - - -

15 JUDGE GARCIA: Do you know one where they let
16 them go back more than twenty years because of that?

17 MR. CORWIN: That's correct because - - -

18 JUDGE GARCIA: Where? What case?

19 MR. CORWIN: No. There is no case that says
20 that. But what the cases do say is that when you have
21 cotenants and it is conceded, every other state that has
22 addressed this issue has held that there cannot be adverse
23 possession to the possessor.

24 JUDGE GARCIA: But our statutory scheme is
25 somewhat different than that, right? Our ten plus ten in

1 Bartholomew and Myers, the cases I looked at that you cite
2 are somewhat different statutory or common law scheme.

3 MR. CORWIN: All the statute says, Judge Garcia,
4 is that - - - and that's under the Trevisano case - - - is
5 that it triggers the - - - the fact. It doesn't guarantee
6 that it's adverse possession. It triggers an inquiry into
7 it. Under this record before this court, there is - - -
8 there - - - there can't possibly be a finding of hostile
9 intent because - - -

10 JUDGE GARCIA: Under our statute - - - I'm sorry.

11 MR. CORWIN: No. Go ahead.

12 JUDGE GARCIA: Under our - - -

13 MR. CORWIN: No. Go ahead. Go ahead.

14 JUDGE GARCIA: - - - our statute, do you need
15 ouster? Not this case, let's say a regular co-tenant case,
16 would you need ouster during the ten plus ten? Or do you
17 get ten plus ten, you're done?

18 MR. CORWIN: No. You would need an ouster during
19 some time. That's what the statute says. But my - - - the
20 - - - the - - -

21 JUDGE GARCIA: You need an ouster - - -

22 MR. CORWIN: - - - the - - -

23 JUDGE GARCIA: - - - under our statute?

24 MR. CORWIN: Right. The appellant here had no
25 opportunity to - - - the - - - first of all, the - - - the

1 owner here had no opportunity to try ouster because he
2 didn't know about it and - - -

3 JUDGE GARCIA: The way I read our statute, the
4 New York statute, is you can have an ouster, which starts
5 your ten-year statute of limitations running, or you get
6 ten years and then you get another ten on top of that. So
7 without an ouster, you get twenty years. With an ouster
8 that's less than ten, you get whatever the ouster period of
9 time you run from the ouster, ten years. So five years you
10 have an ouster. It's a total of fifteen years. That's
11 different than other states to me.

12 MR. CORWIN: No. I don't - - - I respectfully
13 submit - - - I mean, take the case in the State of Montana.
14 And I'm, you know, I like - - - I like - - -

15 JUDGE RIVERA: Then let's stay with adverse
16 possession in New York. Let's not go to Montana.

17 MR. CORWIN: Okay. But - - -

18 JUDGE RIVERA: But I think the question is about
19 the way our statute reads. The - - - Myers, I thought it
20 starts out.

21 MR. CORWIN: The - - - the - - -

22 JUDGE RIVERA: Judge Kaye starts out saying we're
23 going to resolve a question that perplexed people. It's
24 twenty years, period.

25 MR. CORWIN: Correct. But - - - but there hasn't

1 been adverse possession here.

2 JUDGE RIVERA: So let's - - - I just want to
3 clarify here because I think there's - - - it is concerning
4 when you say there's absolutely no end in sight. So let's
5 just be a little bit clear here. I take that your argument
6 only refers to a situation where you have co-tenants and
7 neither one knows about the existence of the other, not
8 because they don't know who the person is, but they don't
9 even know it's a co-tenancy.

10 MR. CORWIN: Right.

11 JUDGE RIVERA: That's what they don't know.

12 MR. CORWIN: Right.

13 JUDGE RIVERA: Right? And so the person who's
14 the nonpossessory co-tenant for the moment, we'll just call
15 it, that person has no reason to think there's an ouster,
16 has no reason to go looking for anything. And the person
17 who's the possessory cotenant would never act on an ouster
18 because they don't think they need to. They think they
19 hold it in fee simple, is it? I'm just trying to get
20 straight what the - - -

21 MR. CORWIN: The - - -

22 JUDGE RIVERA: - - - argument is.

23 MR. CORWIN: Correct. That's it.

24 JUDGE RIVERA: And if that's your argument, then
25 is there ever an end in sight?



1 MR. CORWIN: The - - - there's an end in sight
2 once there's a confrontation and - - -

3 JUDGE RIVERA: Well, what if that doesn't happen
4 until a hundred years later?

5 MR. CORWIN: Then - - - then I - - - then I say
6 you can't have adverse possession under this fact pattern
7 here.

8 JUDGE RIVERA: Okay.

9 MR. CORWIN: You could never have - - - you could
10 - - - you could - - - as Judge Garcia said, you could go on
11 - - - this could have gone on for forty years, but once the
12 point in time - - - and the irony of this thing, the whole
13 thing comes about because they go to try to sell this
14 property, which is in - - - maybe even more valuable now
15 than when all this started because it's in the Penn Station
16 relocation thing. And very quickly, a title company and a
17 real estate broker pick up on the fact what happened to
18 Yale. He was an heir. Now, that - - - the fact that
19 that's picked up on so simply and that that was never
20 picked up on - - -

21 JUDGE RIVERA: Could perhaps - - - could perhaps,
22 sir - - -

23 MR. CORWIN: - - - that - - - that that was - - -
24 that - - -

25 JUDGE RIVERA: So could perhaps - - -



1 MR. CORWIN: That was?

2 JUDGE RIVERA: - - - there be a limit in sight
3 given just the parameters of the way you're - - - you've
4 constructed the problem here and these two parties, could
5 there perhaps be a limit in sight if you're tracking back
6 the possessory tenant's belief in the fee simple to some
7 error in that chain, right? That they are going to be held
8 accountable for. In your example it is, they didn't do
9 their due diligence.

10 MR. CORWIN: Correct.

11 JUDGE RIVERA: That's why we've got the error to
12 begin with, right? That - - - I understood you correctly.

13 MR. CORWIN: That's - - - he never did due
14 diligence.

15 JUDGE RIVERA: And if that's your limiting
16 principle that just two co-tenants, for whatever reason,
17 they don't put blame on anybody's shoulder. They don't
18 really know they're co-tenants. Maybe there you've got
19 some limiting principle under adverse possession. But when
20 one person who benefits from it, in your argument, is the
21 source of the error for themselves and for the
22 nonpossessory cotenant, there's where you say the adverse
23 possession statute has to give way. Am I getting?

24 MR. CORWIN: Yes. That's exactly it. And - - -
25 and whether it was just negligence that got them there in

1 the first place to this building where they never should
2 have been, or it was outright fraud, I'll leave to this
3 court.

4 CHIEF JUDGE WILSON: Well, I don't understand - -
5 -

6 MR. CORWIN: And all I ask you to do is - - -

7 CHIEF JUDGE WILSON: Sorry. I don't understand
8 how you could conceive it as being fraud, right, if - - -
9 if you start from the proposition that neither knew of the
10 other. If he didn't know the operative fact, how can that
11 be fraud?

12 MR. CORWIN: I - - - because I would tell you, if
13 you look in the record here when I took his deposition, he
14 said that he - - - he did nothing to investigate whether
15 Yale had died.

16 CHIEF JUDGE WILSON: How do you deal with the
17 Rules of Surrogate's Court 207.16?

18 MR. CORWIN: Which - - -

19 CHIEF JUDGE WILSON: Which says that the way you
20 can prove where there's a sole person - - - decedent is
21 survived by only one distributee, proof of the - - - the
22 death of others can be done - - - must be made, actually,
23 by an affidavit or testimony of a disinterested person, and
24 shall include as an exhibit, a family tree table or
25 diagram. And that's exactly what the attorney did here,

1 complied with that rule.

2 MR. CORWIN: But the - - -

3 CHIEF JUDGE WILSON: Why can't - - - why can't
4 the executor rely on that?

5 MR. CORWIN: Because she - - - they lied. They -
6 - - they - - - that was - - - it was untrue.

7 CHIEF JUDGE WILSON: They - - -

8 MR. CORWIN: He - - - he - - -

9 CHIEF JUDGE WILSON: Well - - - well - - - hold
10 on. Those are two different things, lying - - - and I do
11 this with my kids all the time - - - lying about something
12 and saying something that you believe - - -

13 MR. CORWIN: So - - - so - - -

14 CHIEF JUDGE WILSON: - - - to be true - - -

15 MR. CORWIN: - - - I respectfully submit, Chief
16 Judge, that - - -

17 CHIEF JUDGE WILSON: Yeah.

18 MR. CORWIN: - - - putting something - - - and he
19 did it twice. And I - - - I'll get to it. If you - - - I
20 ask this court to look at the record, to look at the
21 petition - - -

22 CHIEF JUDGE WILSON: Uh-huh.

23 MR. CORWIN: - - - between R-85 and - - -

24 CHIEF JUDGE WILSON: I'm asking a really much
25 simpler question, I guess. When the rule says that and



1 there is something that complies with that, why can't the
2 executor rely on that?

3 MR. CORWIN: Because they didn't comply with it,
4 in my opinion. They went to a referee, and it wasn't that
5 the referee awarded the building. All the referee said - -
6 - all the referee granted was that he could have letters of
7 administration. And ironically, if you go through that
8 petition at those pages that I just said, they don't even
9 list the building in that - - - in - - - in that as being
10 an asset. So it shows right then they didn't know it was -
11 - -

12 JUDGE RIVERA: I'm not clear. You're saying that
13 there was no determination in Surrogate Court that there
14 was only one surviving heir?

15 MR. CORWIN: I'm - - - I'm saying - - - what I'm
16 saying is that he was entitled to be the administrator.
17 That's - - - he was - - - he was granted the petition.

18 JUDGE CANNATARO: But isn't it true that - - -

19 MR. CORWIN: And - - - and then - - - and then
20 his - - -

21 JUDGE CANNATARO: - - - as part of that process -
22 - -

23 MR. CORWIN: - - - then his - - - then his father
24 renounced his interest.

25 JUDGE CANNATARO: But in order to become the

1 executor, he had to - - - part of that was the submission
2 of the proof of who was still alive and who remained as
3 heirs, which was submitted to the court and accepted by the
4 court.

5 MR. CORWIN: But it was - - - it was false.

6 JUDGE SINGAS: So you're saying this Harold
7 Kozupsky was in cahoots to give false testimony in the
8 Surrogate Court?

9 MR. CORWIN: There - - - there is certainly an
10 issue of fact with respect to that based on this record
11 that's before this court right now.

12 JUDGE SINGAS: But the Surrogate Court resolved
13 that issue of fact?

14 MR. CORWIN: How could somebody come out and when
15 - - - nobody did any investigation, zero within two weeks
16 she dies intestate.

17 JUDGE RIVERA: Well, you may - - - you may be
18 correct that more could have been done. And you may also
19 be correct that perhaps the referee and Surrogate's Court
20 should have required more. But given that they didn't, can
21 we revisit that in the context of adverse - - -

22 MR. CORWIN: You don't have to - - -

23 JUDGE RIVERA: How does that - - - how does that
24 impact the adverse possession analysis?

25 MR. CORWIN: Because - - - because you - - - you

1 don't even have to revisit that because you still have,
2 under the doctrine of the Court of Appeals decisions in - -
3 - in Hinckley and - - - and Bartholomew - - -

4 JUDGE RIVERA: Okay.

5 MR. CORWIN: - - - that there is a - - - that - -
6 - that there is a statutory presumption that any co-tenant -
7 - -

8 JUDGE RIVERA: Yes.

9 MR. CORWIN: - - - holds the property for the
10 benefit of the other co-tenant. And you could never get
11 around that.

12 JUDGE GARCIA: Get around for ten years.

13 MR. CORWIN: And that's exactly - - -

14 JUDGE GARCIA: - - - get - - - get around that in
15 - - -

16 MR. CORWIN: - - - that's exactly - - -

17 JUDGE GARCIA: But that's not how the statute
18 reads. That lasts for ten years.

19 JUDGE CANNATARO: Or twenty.

20 JUDGE HALLIGAN: Or twenty.

21 MR. CORWIN: No. Actually - - -

22 JUDGE GARCIA: The presumption - - -

23 MR. CORWIN: - - - if you look at Bartholomew, it
24 says it goes for twenty years.

25 JUDGE GARCIA: No.

1 MR. CORWIN: And then all it does is - - -

2 JUDGE GARCIA: No. I think it - - -

3 MR. CORWIN: - - - it triggers an inquiry into
4 it.

5 JUDGE GARCIA: - - - says that you get this
6 presumption for ten and then the statute runs. That's how
7 I read Bartholomew.

8 CHIEF JUDGE WILSON: Thank you.

9 MR. CORWIN: Thank you.

10 MR. BRICKMAN: May it please the court. John
11 Brickman for John Golobe. What - - -

12 JUDGE TROUTMAN: Counsel, can you indicate how -
13 - - what impact, if any, the determination of the
14 Surrogate's Court to allow the acceptance of testimony that
15 there was - - - that he had pre-deceased, how does that
16 impact this case?

17 MR. BRICKMAN: Well, it impacts the case because
18 it determines who's entitled to notice of the proceedings.
19 And it is a finding by a court of competent jurisdiction
20 that there was only one surviving heir.

21 JUDGE CANNATARO: And who bears the burden of the
22 factual error, which we now know there was not - - -

23 MR. BRICKMAN: Correct.

24 JUDGE CANNATARO: - - - only one surviving heir?
25 Who bears the burden of that error?

1 MR. BRICKMAN: And I would be a little Talmudic
2 and respond to the question with another question by
3 saying, and for how long?

4 JUDGE CANNATARO: So you - - - so I take it to
5 mean that even if you acknowledge that the error occurred
6 and even if you acknowledge that the blame for that should
7 be on the person who is asking to be the administrator,
8 that exposure only lasts for ten or maybe twenty years?

9 MR. BRICKMAN: Yeah. I - - - I certainly can see
10 there was an error. I'm not sure the blame lies with
11 anybody, but I think we have to review an order - - -

12 JUDGE RIVERA: But maybe it does. Maybe it does.
13 I mean, if you go back to the Surrogate's Court's Act that
14 the Chief Judge referenced, it does say an affidavit, but
15 the affidavit only has to include the attachment of a
16 family tree. That's just to establish who the potential
17 heirs may be. The heir is a parent.

18 MR. BRICKMAN: Uh-huh.

19 JUDGE RIVERA: But that affidavit - - - excuse me
20 - - - does not resolve the proof for what anyone did to
21 figure out if the uncle was alive and - - -

22 MR. BRICKMAN: We - - -

23 JUDGE RIVERA: - - - outlived the aunt. As far
24 as I can tell, the argument was, he's eleven years older.
25 He's in his 90s. He must be dead.

1 MR. BRICKMAN: There's more than that.

2 JUDGE RIVERA: Okay.

3 MR. BRICKMAN: Remember, there's a - - -

4 JUDGE RIVERA: Tell me what else. Tell me what
5 else.

6 MR. BRICKMAN: There's a witness at the hearing.

7 JUDGE RIVERA: Yes.

8 MR. BRICKMAN: There are several witnesses.

9 JUDGE RIVERA: Okay.

10 MR. BRICKMAN: But the primary witness is Harold
11 Kozupsky.

12 JUDGE RIVERA: Yes.

13 MR. BRICKMAN: He's a lawyer. He's known
14 Zangwill - - -

15 JUDGE RIVERA: Right.

16 MR. BRICKMAN: - - - for over thirty years.

17 JUDGE RIVERA: Yes.

18 MR. BRICKMAN: He's known the family.

19 JUDGE RIVERA: Okay.

20 MR. BRICKMAN: He - - -

21 JUDGE RIVERA: Yes. He knows them all. What - -
22 - what is his testimony that somehow establishes that he
23 has personal knowledge of the death of the uncle?

24 MR. BRICKMAN: There's two elements of his proof.
25 One is at the hearing.

1 JUDGE RIVERA: Okay.

2 MR. BRICKMAN: And the other comes in the
3 separate heirship affidavit. Let's stick with the hearing.

4 JUDGE RIVERA: I never got either one.

5 MR. BRICKMAN: He testifies that he knew Yale.

6 JUDGE RIVERA: Okay.

7 MR. BRICKMAN: That Yale was dead six or seven
8 years.

9 JUDGE RIVERA: And he knows that how?

10 MR. BRICKMAN: He's never asked that. And before
11 any - - -

12 JUDGE RIVERA: Well doesn't - - - it - - - it - -
13 - the burden - - - it's their burden to establish it.

14 MR. BRICKMAN: But the - - - they're precluded
15 when the court attorney referee steps in and says, okay,
16 I've got enough.

17 JUDGE RIVERA: And again, there - - - there may
18 have been perhaps an error. So let's go back, I think, to
19 where Judge Troutman was. How at all would that possible
20 error impact the adverse possession analysis? Now, going
21 to Judge Cannataro's question, who bears the burden of this
22 error when the error is based on the evidence - - -

23 MR. BRICKMAN: If the - - -

24 JUDGE RIVERA: - - - presented by the person who
25 is going benefit from the error?

1 MR. BRICKMAN: If there were any evidence at all
2 rather than pure speculation and conjecture of bad faith,
3 I'd have - - -

4 JUDGE RIVERA: Well, even if there's not bad
5 faith - - -

6 MR. BRICKMAN: Well, if there is - - -

7 JUDGE RIVERA: - - - put aside the bad faith.

8 MR. BRICKMAN: But - - -

9 JUDGE RIVERA: Put aside the bad faith. I mean,
10 the uncle and his heirs have no opportunity - - - I could
11 see if you came in and said they had all the opportunity in
12 the world to challenge what went on in Surrogate's Court,
13 but they - - - they can't. They have no information.

14 MR. BRICKMAN: And the man who testified
15 testifies at length that he's known the family. He's been
16 friends with him. And by the way, he's - - -

17 JUDGE RIVERA: But it's not about that. It's
18 what is the basis for saying, I have personal knowledge
19 that the gentleman is dead.

20 MR. BRICKMAN: He's - - - he's a - - - a - - -

21 JUDGE RIVERA: And I thought there was a lawyer
22 who said, well, this is usually what we do to determine
23 whether or not the person is dead. And none of those
24 things were done here.

25 MR. BRICKMAN: And that lawyer, when he testified

1 in his deposition in the current era, couldn't remember
2 what was done because it was thirty odd years earlier.

3 JUDGE RIVERA: Did someone look for a death
4 certificate?

5 MR. BRICKMAN: I'm sorry, Your Honor?

6 JUDGE RIVERA: Did someone look for a death
7 certificate?

8 MR. BRICKMAN: The - - -

9 JUDGE RIVERA: Did - - - you don't need internet
10 to do that. Did anyone look for a death certificate?

11 MR. BRICKMAN: We don't know that because the
12 lawyer didn't remember. But I want to - - - I have to
13 reemphasize that Kozupsky, the father, Harold, was - - -

14 JUDGE RIVERA: Let me - - - let me just ask you,
15 was there a representation that someone tried to look for a
16 death certificate?

17 MR. BRICKMAN: There is no such representation,
18 nor is there any evidence of whatever the precise diligence
19 was. But when someone comes in and says, I've known this
20 family for thirty years. I know these people. I - - -

21 JUDGE HALLIGAN: But suppose we were to decide
22 that the efforts made were insufficient - - - I understand
23 you have a different view - - - what consequence does that
24 have for the adverse possession question - - -

25 MR. BRICKMAN: Well - - -

1 JUDGE HALLIGAN: - - - if any?

2 MR. BRICKMAN: - - - then maybe - - - and this -
3 - - again, this is speculative, but I can't think of any
4 other way to respond, Judge Halligan, somebody would have
5 gone back, and there would have been further efforts. But
6 they might have called social security - - -

7 JUDGE HALLIGAN: No. No. I guess I'm - - - I'm
8 asking a different question.

9 MR. BRICKMAN: Then I'm not following you.

10 JUDGE HALLIGAN: Sorry. Let me try again. If we
11 were to conclude that the efforts that were made way back
12 were not sufficient to, you know, adequately probe whether
13 he was or wasn't deceased - - - and I understand you think
14 it was sufficient, but - - - but if you have a different
15 view, what consequence, if any, does that have for the
16 adverse possession question in front of us?

17 MR. BRICKMAN: And I'm saying that we can't tell
18 because if it had gone back and more effort had been made,
19 we still don't know if they would have determined - - -

20 JUDGE HALLIGAN: So - - - so it's your answer
21 that it's irrelevant because it wasn't established? I
22 mean, what we do know, in fact, is that it was incorrect,
23 right?

24 MR. BRICKMAN: Incorrect.

25 JUDGE HALLIGAN: Yeah. Okay. And - - -

1 MR. BRICKMAN: I agree.

2 JUDGE HALLIGAN: Right. And - - -

3 JUDGE CANNATARO: I would have thought your
4 answer to Judge Halligan's question would have been, it has
5 no consequence for the adverse possession.

6 MR. BRICKMAN: Well, in the consequence of the
7 passage of time, it has no consequence.

8 CHIEF JUDGE WILSON: Well, let me try a harder
9 question for you then. Sorry, right in front of you.
10 Suppose all of a sudden we had a letter between the
11 attorney and John saying, we know Yale is alive, but I need
12 a false affidavit from you, let's put that in. So we have
13 clear evidence of fraud. What - - - how then does that
14 affect the - - - and we're outside the twenty-year period.
15 What's the result that has to adverse possession?

16 MR. BRICKMAN: First day of law school, they
17 taught us that hard questions make lousy law.

18 CHIEF JUDGE WILSON: Yeah. That's hard cases.
19 You can go ahead.

20 JUDGE CANNATARO: Yeah. Hard cases.

21 CHIEF JUDGE WILSON: I still would like an
22 answer.

23 MR. BRICKMAN: I know. I mean, it might well
24 taint my guy's position. But once again, we have a time
25 issue here, and - - - and the law values the passage of

1 time and certainty. I - - - I'm compelled - - -

2 JUDGE RIVERA: Not that much more time passed the
3 twenty, right? This is not a hundred years.

4 MR. BRICKMAN: Well, it's thirty years. 1992,
5 twenty-six years, twenty-eight years - - -

6 JUDGE RIVERA: It sounds like a pretty cabined
7 period of time.

8 MR. BRICKMAN: I'm sorry?

9 JUDGE RIVERA: It sounds like a pretty cabined
10 period of time.

11 MR. BRICKMAN: Pretty?

12 JUDGE RIVERA: Cabined - - -

13 MR. BRICKMAN: Cabined.

14 JUDGE RIVERA: - - - period of time.

15 MR. BRICKMAN: Yes and no. I mean, nobody who
16 was around then other than John, who's pushing eighty - - -
17 and by the way, has - - - as the record reflects, has had
18 two strokes compromising his ability to remember some of
19 the events. I - - - I - - - I'd like to read something, a
20 - - - a quotation in the court that I think really resolves
21 - - - really - - - really is on point. We must be
22 cognizant that every time we upset precedent, we upset
23 people's expectations and the stability of law. It rocks
24 the boat in a way that makes people uneasy about whether
25 they're protected or not protected by the law. And that

1 was in The New York Times yesterday, an interview with
2 Justice Sotomayor. And while, obviously, the context was
3 wildly different than what we're talking about here, it
4 underscores the notion that what the law does has finality,
5 the very reason for the existence - - -

6 JUDGE RIVERA: But why can't the uncle rely on
7 the law to ensure that proper efforts - - - due diligence
8 is exercised to try and identify his existence and those of
9 his heirs so that they can share in the inheritance that
10 they're entitled to? Why is - - -

11 MR. BRICKMAN: Well - - -

12 JUDGE RIVERA: Why are their interests somehow
13 going to pay the price here for the error?

14 MR. BRICKMAN: Well, the reality seems to be that
15 the uncle absented himself from any involvement in the
16 family, wasn't aware that his sister had died.

17 JUDGE RIVERA: I don't think our rules of
18 intestacy punish that way.

19 MR. BRICKMAN: No. But I'm not sure that he's
20 punished - - -

21 JUDGE RIVERA: And the only question is whether
22 or not he predeceased her under our law. That's the issue.

23 MR. BRICKMAN: Yeah. And - - - and - - -

24 JUDGE RIVERA: And he did not as a matter of
25 fact.

1 MR. BRICKMAN: He did not. But - - -

2 JUDGE RIVERA: Yeah.

3 MR. BRICKMAN: But why do we have a twenty-year
4 statute? And I agree with Judge Garcia that it - - - it's
5 effectively a ten-year waiting period.

6 JUDGE RIVERA: Yes. But under that statute, the
7 co-tenant - - - the nonpossessory co-tenant either knows -
8 - - they both understand that there is a co-tenancy, or
9 they have the opportunity to appreciate the possibility of
10 an ouster. Here, there is none.

11 MR. BRICKMAN: There doesn't need to be an ouster
12 once the - - -

13 JUDGE RIVERA: No, I know that.

14 MR. BRICKMAN: - - - ten-year period passes.

15 JUDGE RIVERA: That's the - - - that's the
16 additional ten years. It's an implied ouster after the ten
17 years. That's - - - that's how you get to twenty. One is
18 express and one is not.

19 MR. BRICKMAN: Yeah. And that period passes and
20 nothing happens. And - - - and while I don't think it's
21 dispositive, I would point out that we have another
22 fiduciary who enters the picture here in 2000 - - -

23 JUDGE RIVERA: Uh-huh.

24 MR. BRICKMAN: - - - still during the unfinished
25 period, and that is the trustee.

1 JUDGE RIVERA: Uh-huh.

2 MR. BRICKMAN: And the trustee comes in, and he's
3 the record owner of this chosen action. And what did he do
4 to determine - - - I'm talking about Mr. Altchek, who was
5 the current trustee's predecessor. What, if anything, did
6 he do to determine whether there were any additional assets
7 remaining in the trust for which he bore a fiduciary
8 obligation? He didn't do anything. But - - - I'm sorry.
9 I - - - I - - - the - - -

10 JUDGE TROUTMAN: So are you suggesting, as
11 trustee, he had an obligation to go back and check heirs
12 and see if there was something else that was supposed to
13 properly be a part of the trust?

14 MR. BRICKMAN: He had no lesser - - - well, let
15 me say it differently. If he had an obligation - - - and I
16 don't know because I don't think that issue was posed
17 squarely by this case, but it's pretty clear that if he had
18 that obligation, he flunked it. I'd like to go back to
19 something that - - - that, Judge Rivera, you dealt with in
20 some of your questions. And that is, you know, why did
21 Kozupsky know that - - - or believe that Yale was dead. He
22 was a friend of the family. And we know from our own
23 personal experiences that if you're involved with a family,
24 you know what's going on. You learn things. Now, some of
25 the things you learn are accurate and some of them are

1 inaccurate. And - - - and remember - - -

2 JUDGE HALLIGAN: That's a big inaccuracy.

3 MR. BRICKMAN: I'm sorry, Your Honor?

4 JUDGE HALLIGAN: It's a significant inaccuracy,
5 alive or dead.

6 MR. BRICKMAN: But not one - - - notwithstanding
7 the trustees claim, not one of which there is a scintilla
8 of evidence - - -

9 JUDGE HALLIGAN: That sounds - - -

10 MR. BRICKMAN: - - - of bad faith.

11 JUDGE HALLIGAN: - - - sounds like also no
12 evidence as to what the basis for his belief was, right?

13 JUDGE RIVERA: Well, he - - - he - - -

14 JUDGE HALLIGAN: - - - other than that he's a
15 friend of the family, but more specifically, why he is of
16 the view that he's passed away.

17 MR. BRICKMAN: But why don't we take a look at
18 what he - - - what - - - what he said.

19 JUDGE HALLIGAN: I think he said that he
20 predeceased him by six or seven years.

21 MR. BRICKMAN: Six or seven years. Now, in the
22 heirship affidavit, he's even more specific. He says that
23 Yale died in June 1985.

24 JUDGE HALLIGAN: And equally incorrect, right?

25 MR. BRICKMAN: Precisely.

1 JUDGE HALLIGAN: Right.

2 MR. BRICKMAN: Precisely.

3 JUDGE RIVERA: If I'm understanding the affidavit
4 you're referring to, all I saw was his name, a
5 parenthetical, June '85. Nothing that - - - maybe I missed
6 something. Nothing that suggests the basis for the 6/85.

7 MR. BRICKMAN: I don't believe - - -

8 JUDGE RIVERA: Which I'm - - - I'm hard pressed
9 to see how that could possibly satisfy the Surrogate's
10 Court Act. But - - -

11 MR. BRICKMAN: But - - -

12 JUDGE RIVERA: - - - here we are.

13 MR. BRICKMAN: The court - - - you're here.
14 Perfect. Exactly right. Here we are.

15 JUDGE RIVERA: So we're back to the question of,
16 what, if anything, does that potential error - - - how does
17 that affect this analysis with respect to the claim under
18 adverse possession?

19 MR. BRICKMAN: I think if - - -

20 JUDGE RIVERA: All this in fee simple?

21 MR. BRICKMAN: I think if you let it affect the
22 claim for adverse possession, you destroy the finality of
23 adverse possession as a mechanism for the resolution of
24 claims.

25 JUDGE RIVERA: Even as narrowly defined for

1 purposes of the unique circumstances here?

2 MR. BRICKMAN: What title company is going to
3 write insurance in that circumstance anymore?

4 JUDGE RIVERA: I'm not sure what you mean by
5 that.

6 MR. BRICKMAN: What that means is you're not
7 going to be able to convey - - - remote grantees are not
8 going to be able to convey - - -

9 JUDGE RIVERA: Well, they weren't willing to move
10 forward with the sale because they found them. Apparently,
11 they could easily find out that there was an heir.

12 MR. BRICKMAN: But they weren't able - - - they
13 weren't willing to do it and now that there's going to be a
14 judicial resolution, depending on how it turns out, they
15 will sooner or later be prepared to write insurance.

16 JUDGE RIVERA: Yes.

17 MR. BRICKMAN: But if the sword of Damocles hangs
18 over these circumstances, then you - - - and I'm saying
19 this is a - - - an unlikely case or - - - or a remote
20 possibility.

21 JUDGE RIVERA: And all I'm saying is, why should
22 the uncle and the heirs pay this price when they were both
23 laboring under this misunderstanding so both could not act
24 in the way at the point of that statute intends and seeks
25 to incentivize them to act?

1 MR. BRICKMAN: Judge, if you and I enter into a
2 contract and we have a mutual mistake, and we put in there
3 that you're going to pay X - - -

4 JUDGE RIVERA: Yes.

5 MR. BRICKMAN: - - - when we really both thought
6 you were going to pay Y, you have six years to move to
7 reform that agreement. And if you don't do it within that
8 six-year period, you lose even though you were right. Why
9 is this circumstance - - -

10 JUDGE RIVERA: I don't understand because in your
11 example, we both knew about the contract. Both voluntarily
12 entered this agreement. We both face the consequences of a
13 breach - - -

14 MR. BRICKMAN: We were mistaken.

15 JUDGE RIVERA: - - - or not or the statute
16 limitations.

17 MR. BRICKMAN: We were both mistaken. In the
18 other case, everybody was mistaken.

19 JUDGE RIVERA: What's mistaken? We both know
20 we're in a contract in your example, you know.

21 MR. BRICKMAN: All I'm suggesting is that
22 statutes of limitations are there for a reason.

23 JUDGE RIVERA: Yes, they are.

24 MR. BRICKMAN: For finality, for certainty, for
25 repose, and the law puts a great value on that.

1 JUDGE RIVERA: And they're sometimes tolled based
2 on the conduct of the parties.

3 MR. BRICKMAN: I'm sorry, Your Honor?

4 JUDGE RIVERA: They're sometimes tolled, T-O-L-L-
5 E-D.

6 MR. BRICKMAN: Yeah. Of course.

7 JUDGE RIVERA: Okay.

8 MR. BRICKMAN: Yes. Of course. But often, it's
9 when a party is incompetent or perhaps when a party has
10 acted in bad faith. And again, there is no - - - I mean,
11 it's a claim, but there's no evidence at all of bad faith
12 here.

13 JUDGE RIVERA: Okay. Okay.

14 MR. BRICKMAN: As much as the trustee may have
15 sought to argue that, it's just not there.

16 JUDGE RIVERA: Okay.

17 MR. BRICKMAN: Unless the court has anything more
18 to ask me - - -

19 CHIEF JUDGE WILSON: Thank you.

20 MR. BRICKMAN: - - - I'm going to rest.

21 JUDGE GARCIA: Counsel, can I ask you, how
22 important is it to your claim that these are co-tenants?
23 Is that a key fact here?

24 MR. CORWIN: Absolutely. It - - - absolutely.

25 JUDGE GARCIA: So - - - so let me ask you a

1 hypothetical. If in this case - - - this is a
2 hypothetical. I know it isn't the facts here. But if your
3 client had been entitled to the property, the will said the
4 eldest surviving, you know, sibling or child gets the
5 property. Same facts that come in. The eldest child is
6 dead; it goes to the next one. The next one takes sole
7 possession of this land. Under the same facts, just
8 different will, right? And now, ten years - - - twenty
9 years later, come in, they say no adverse possession.
10 Would you have the same argument?

11 MR. CORWIN: No. Definitely not because I knew
12 about it.

13 JUDGE GARCIA: No. No. No. Same facts as here.
14 Nobody knows anything except your client would be the sole
15 owner of the property under the will if they knew that he
16 was still alive, not a co-tenant, just sole owner of the
17 property.

18 MR. CORWIN: Okay.

19 JUDGE GARCIA: That changes things for you?

20 MR. CORWIN: Yes.

21 JUDGE GARCIA: Why?

22 MR. CORWIN: Because - - - because under - - -
23 for there to be adverse possession - - - and it goes back
24 to the questions you - - - you asked initially. For the -
25 - - there was no - - - and I say this record is completely

1 devoid of - - -

2 JUDGE GARCIA: But I'm sorry - - -

3 MR. CORWIN: - - - of any hostility - - -

4 JUDGE GARCIA: Right.

5 MR. CORWIN: - - - because nobody - - - because
6 how could you be hostile - - - either party be hostile when
7 neither - - -

8 JUDGE GARCIA: But my - - - my set of - - -

9 MR. CORWIN: - - - party knew about it.

10 JUDGE GARCIA: - - - facts scenario, neither
11 party knows. It's just the will says this - - -

12 MR. CORWIN: Right.

13 JUDGE GARCIA: - - - person now takes everything.
14 Your client was entitled to everything. Neither party
15 knows - - -

16 MR. CORWIN: Right.

17 JUDGE GARCIA: - - - they were entitled to
18 anything - - - that the other person was entitled to
19 anything.

20 MR. CORWIN: So what - - - what this - - -

21 JUDGE GARCIA: So how does that change - - -

22 MR. CORWIN: - - - what this court says and what
23 the statute says, and this is Myers v. Bartholomew, late
24 Chief Judge Kaye says that there's a statutory presumption
25 that a tenant in common - - - in possession holds for the

1 benefit of the other co-tenant. The presumption is that it
2 lasts for twenty years rather than ten years. And we - - -
3 we got into that discussion. And here's the key thing
4 because it goes back to the example you gave me.

5 JUDGE GARCIA: Well, the statute - - -

6 MR. CORWIN: The expiration of the statutory
7 period - - -

8 JUDGE GARCIA: Well, the statute actually says
9 this presumption shall cease after the expiration of ten
10 years.

11 MR. CORWIN: Right. But - - -

12 JUDGE GARCIA: So the statute sets up a ten plus
13 ten.

14 MR. CORWIN: Right.

15 JUDGE GARCIA: And that goes to a tenant in
16 common in the time line.

17 MR. CORWIN: Correct. But then the last - - -

18 JUDGE GARCIA: But why, under these facts, if you
19 have the same representations in Surrogate's Court, except
20 the result is your client would be entitled to everything,
21 not a tenancy in common, would that make any difference?

22 MR. CORWIN: No. Because the expiration of the
23 statutory period only triggers the possibility of adverse
24 possession. It doesn't establish it.

25 JUDGE GARCIA: I think we're talking past each

1 other. So why, in my hypothetical, would they have adverse
2 possession, but if it's a co-tenancy, they wouldn't after
3 the expiration time?

4 MR. CORWIN: Because there - - - there would be
5 nobody adverse to - - - to - - - under your scenario, there
6 is nobody adverse. There was only one person who had it.

7 CHIEF JUDGE WILSON: In his example, the wrong
8 person had it.

9 MR. CORWIN: Right. Right.

10 JUDGE GARCIA: So - - -

11 MR. CORWIN: But there was nobody adverse.

12 CHIEF JUDGE WILSON: The right person would be
13 adverse.

14 JUDGE CANNATARO: The person who was supposed to
15 - - -

16 JUDGE GARCIA: Your client - - -

17 MR. CORWIN: Right.

18 JUDGE GARCIA: - - - would be adverse in that
19 hypothetical.

20 MR. CORWIN: He wouldn't be adverse. And if that
21 - - - my - - - my client then found out about it - - -

22 JUDGE GARCIA: Right.

23 MR. CORWIN: - - - and really was, as - - - as a
24 matter of law which is the case here, a co-tenant, then
25 there could never - - - that could never be adverse

1 possession under that scenario.

2 JUDGE GARCIA: But what if he was entitled to be
3 the tenant - - - the sole tenant?

4 MR. CORWIN: Because that's what the will said?

5 JUDGE GARCIA: Yes.

6 MR. CORWIN: That would be a different scenario.

7 JUDGE GARCIA: That would be?

8 MR. CORWIN: If that's what the will said. But
9 the - - - you got to understand, she died intestate here.
10 There was no will. And - - - and - - - and - - -

11 JUDGE GARCIA: No. But in my hypothetical, there
12 is a will.

13 MR. CORWIN: But there's a will. Then - - - then
14 - - - then he's - - - they're entitled to it. That's
15 correct.

16 JUDGE GARCIA: And then - - -

17 JUDGE CANNATARO: Who's entitled? I'm sorry. I
18 mean, I - - -

19 MR. CORWIN: To - - - to - - - if the will said
20 that you're entitled to possession, then you're entitled to
21 possession.

22 JUDGE CANNATARO: And the oldest surviving child
23 - - -

24 MR. CORWIN: And - - - and you keep it for the
25 twenty years - - -



1 JUDGE RIVERA: I believe the hypothetical is,
2 we'll just take two children. We'll make it easy for the
3 moment. The will says, the eldest child takes it all.
4 They've won the lotto. They're getting everything.

5 MR. CORWIN: Yeah.

6 JUDGE RIVERA: Okay? But they are not in
7 possession. So they don't take possession. The other
8 child who's not entitled to a blessed thing, if I'm
9 understanding this - - -

10 MR. CORWIN: Yes.

11 JUDGE RIVERA: - - - hypo correctly, under the
12 will takes possession. So I believe Judge Garcia's
13 question was, does that make a difference that they were
14 not co-tenants - - -

15 MR. CORWIN: Yes.

16 JUDGE RIVERA: - - - at all?

17 MR. CORWIN: Under your - - -

18 JUDGE RIVERA: Because under your - - - right - -
19 - your - - - this appeal, they both had an interest in the
20 property - - -

21 MR. CORWIN: Correct.

22 JUDGE RIVERA: - - - fifty percent interest. But
23 in this hypothetical, the person in possession under the
24 will has no interest. Have I got it right?

25 JUDGE GARCIA: Yes. Yes.

1 JUDGE RIVERA: I just want to make sure.

2 MR. CORWIN: Okay.

3 JUDGE RIVERA: Did - - -

4 MR. CORWIN: Under that scenario - - -

5 JUDGE RIVERA: Do you now get this hypo?

6 MR. CORWIN: Yes. Under that scenario, it would
7 be - - - it would be adverse possession because that other
8 tenant, the one who knew and had it under the will but did
9 nothing about it should have protested during that twenty-
10 year period.

11 JUDGE GARCIA: No, Judge, he - - - he was - - -

12 MR. CORWIN: That - - - there was no opportunity
13 here.

14 JUDGE RIVERA: I - - - I didn't explain this hypo
15 properly. Assume, for purposes of this hypo, that the
16 nonpossessory fee simple owner under that will does not
17 know there's a will, does not know that they have this
18 inheritance, correct?

19 JUDGE GARCIA: Yes. And the first child says
20 they're dead.

21 MR. CORWIN: The - - - the nonpossessory tenant -
22 - -

23 JUDGE RIVERA: Doesn't know about the will,
24 doesn't know they have an interest.

25 MR. CORWIN: And the will says that that person



1 is entitled to it?

2 JUDGE RIVERA: Correct.

3 JUDGE GARCIA: Yeah.

4 JUDGE RIVERA: Yes.

5 MR. CORWIN: Okay.

6 JUDGE GARCIA: And the other child comes in and
7 says, no, that person is very old. They're dead. Yeah.
8 Same facts.

9 MR. CORWIN: Doesn't know about the will that
10 that's what it says?

11 JUDGE RIVERA: Right. Oh, I don't know. That's
12 his hypo.

13 MR. CORWIN: Right. Then - - - then - - - then
14 it can't be adverse possession.

15 JUDGE GARCIA: It cannot be.

16 MR. CORWIN: It - - -

17 JUDGE GARCIA: So co-tenancy - - -

18 MR. CORWIN: It cannot be.

19 JUDGE GARCIA: - - - doesn't matter. So it
20 doesn't matter if it's a cotenant or not. It just matter -
21 - -

22 MR. CORWIN: Yes. It does. It does. Because
23 the - - - there was - - - there was a legal document that
24 said what was supposed to happen. That's not the case
25 here.

1 JUDGE RIVERA: It - - - it matters this way, it's
2 ten years, not twenty.

3 JUDGE GARCIA: Right.

4 JUDGE RIVERA: Yeah.

5 MR. CORWIN: Correct.

6 CHIEF JUDGE WILSON: Thank you.

7 MR. CORWIN: Thank you.

8 (Court is adjourned)

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C E R T I F I C A T I O N

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the Court of Appeals of Golobe v. Altchek, No. 17 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Brandon Deshawn

Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: February 19, 2025

