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CENTRO INCORPORATED, d/b/a PHILADELPHIA CATHOLIC WORKER, Plaintiff, v. MAYRONE, LLC, et al., Defendants.	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS CIVIL TRIAL DIVISION MARCH TERM, 2016 NO. 001647
MAYRONE, LLC, Plaintiff, v. CENTRO INCORPORATED, Defendant.	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS CIVIL TRIAL DIVISION MAY TERM, 2016 NO. 00174

MEMORANDUM OF LAW OF PLAINTIFF CENTRO INCORPORATED D/B/A PHILADELPHIA CATHOLIC WORKER IN OPPOSITION TO DEFENDANT MAYRONE, LLC'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Centro Incorporated d/b/a Philadelphia Catholic Worker ("Philadelphia Catholic Worker" or "PCW") submits this memorandum of law in support of its opposition to the Motion for Summary Judgment (the "Motion") filed by defendant Mayrone, LLC ("Mayrone").

I. MATTER BEFORE THE COURT

Presently before the Court is Mayrone's Motion for Summary Judgment and the opposition of plaintiff PCW.

II. STATEMENT OF QUESTIONS INVOLVED

A. Should Mayrone's Motion for Summary Judgment be denied because there is a genuine issue of material fact as to whether the seller in the purported transaction lacked authority to convey title to the Property in question, located at 428-438 Master Street, Philadelphia, Pennsylvania, 19122 (the "Property")?

***Suggested Answer*: Yes.**

B. Should Mayrone's Motion for Summary Judgment be denied because the evidence will show that PCW exclusively possessed the Property in question for twenty-nine years – eight years beyond the statutory requirement, and, at a minimum, there are genuine issues of material fact as to whether PCW's possession was exclusive?

***Suggested Answer*: Yes.**

C. Should Mayrone's Motion for Summary Judgment be denied because PCW's possession of the Property was hostile, adverse, and continuous, and, at a minimum, there are genuine issues of material fact as to whether PCW's possession of the Property was hostile, adverse, and continuous?

***Suggested Answer*: Yes.**

D. Should Mayrone's Motion for Summary Judgment be denied because the evidence will show that Mayrone had notice of the presence of PCW on the Property before allegedly purchasing the Property and, thus, is neither a bona fide purchaser for value, nor can Mayrone rely on 68 Pa. Stat. Ann. §§ 81-86?

***Suggested Answer*: Yes.**

III. STATEMENT OF FACTS & PROCEDURAL HISTORY

This case is about Philadelphia Catholic Worker's lawful adverse possession of abandoned Property at 428-438 Master Street (the "Property") in the Kensington section of Philadelphia. In the spirit of the Catholic Worker Movement's inclusive mission of land stewardship and enrichment of urban community life, PCW has cultivated and maintained a community garden on this Property continuously for twenty-nine years. PCW has invested resources, energy, and time in creating and maintaining the garden for nearly three decades. As set forth below, the evidence demonstrates that PCW is entitled to judgment in its favor in its quiet title action and on Mayrone's ejectment action. At a minimum, there are more than sufficient genuine issues of material fact to require denial of Mayrone's Motion for Summary Judgment.

There are four sets of critical facts in this case, which, as demonstrated in this brief, are plainly in dispute: (1) as a threshold matter, facts relating to whether the seller in the purported transaction, Pyramid Tire & Rubber Co. ("Pyramid"), even had authority to convey title to Mayrone; (2) facts relating to PCW's exclusive possession of the Property for twenty-nine years; (3) facts relating to PCW's continuous, hostile and adverse possession of the Property; and (4) facts relating to Mayrone's notice of a claim to the Property before allegedly purchasing the land, which demonstrate that Mayrone is neither a bona fide purchaser for value, nor entitled to rely on 68 Pa. Stat. Ann. §§ 81-86.

- Mayrone contends that as a matter of law a party cannot obtain ownership by adverse possession of property used as a community garden. Mayrone alleges that because community residents work at a community garden, an owner cannot meet the test for exclusive possession. Mayrone offers no legal support for this proposition, which is contrary to existing

law. Under Pennsylvania law, possession is based upon the character and use of the property, which takes into account differing uses. This principle includes use of property as a community garden. As set forth in this memorandum, there are, at a minimum, genuine issues of material fact regarding PCW's exclusive use of the Property. These factual disputes preclude summary judgment.

- Mayrone also contends that as a matter of law PCW repeatedly recognized Pyramid's ownership, and that this precludes a finding of hostile occupancy. Mayrone cites to two instances over a thirty-year period to support this argument. The first was when PCW took possession of the Property in 1988 and sought unsuccessfully to find the record owner, Pyramid Tire & Rubber. The second was in 1994, when in compliance with an administrative requirement to obtain a grant, PCW wrote a letter to Pyramid. The letter was returned as undeliverable, which PCW used as evidence that the Property was abandoned. These facts demonstrate that PCW's possession of the Property was hostile to Pyramid, and the Court is required to draw this favorable inference at this summary judgment stage. In any event, there are genuine issues of material fact as to this alleged acknowledgement issue – an issue that really does not exist – that preclude summary judgment.

- Mayrone contends that the evidence demonstrates that PCW was not in continuous possession for twenty-one years. To support this contention, Mayrone points to random events over the thirty-year period during which PCW was in possession. This includes a time during which PCW asked Julio "Junior" Rodriguez, and his father, Danny Rodriguez, to handle keys to the locked fence door on the Property. Mayrone alleges that this somehow shows that PCW's possession was not continuous. The Rodriguez's, however, were affiliated with PCW, and acting on its behalf, and this involvement did not interrupt PCW's possession. In any

event, PCW has maintained the garden since 1988, cleared and prepared the lot for use as a garden, erected first a wooden and then a chain link fence, put up signage, obtained hydrant permits, laid out garden plots, recruited volunteers, and generally excluded all other uses of the Property. There are, in sum, genuine issues of material fact that preclude summary judgment on the continuity issue.

- Mayrone contends that 68. P.S. Stat. Ann. §§ 81-86 entitle it to summary judgment because PCW was not in possession when Mayrone purported to purchase the Property, it had no knowledge of the adverse possession claim, and PCW did not file a statement of its claim. There are material facts in issue that show that PCW was in fact in possession of the Property at all times and that Mayrone had actual and constructive notice of the garden on the Property. This precludes any reliance by Mayrone on 68 Pa. Stat. Ann. §§ 81-86.

The Catholic Worker Movement

Philadelphia Catholic Worker is part of a national Catholic Worker Movement (the "Movement").[1] The Movement was founded in 1933 during the Great Depression by Dorothy Day. The Movement is best known for houses of hospitality located in run-down sections of cities, though a number of Catholic Worker centers exist in rural areas. Food, clothing, shelter and welcome are extended by unpaid volunteers to those in need. Each Catholic Worker community is autonomous. There are no overarching systems of governance, no endowment, no pay checks, and no pension plans for the Catholic Workers themselves. Anyone can start a Catholic Worker house. According to the Catholic Worker website, one does not need permission to call oneself a Catholic Worker.[2]

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[1] *See* Transcript of the Deposition of Centro Incorporated/Phoebe Centz ("Centro Dep") at 19:23-20:17, true and correct portions of which are attached hereto as **Exhibit G.**

[2] *See The Aims and Means of the Catholic Worker*, The Catholic Worker Movement (May 2016), http://www.catholicworker.org/cw-aims-and-means.html.

The *Aims and Means of the Catholic Worker*, set forth in *The Catholic Worker* newspaper in May 2016, describes the central tenets of the Movement. One tenet is the fostering of a decentralized society, including encouraging efforts such as family farms; rural and urban land trusts; worker ownership and management of small factories; homesteading projects; and food, housing and other cooperatives.[3] As owner of the Property, PCW has exemplified the mission and ideals of the Movement in all of its activities, including the exercise of ownership of the Property, while at the same time inviting and permitting the South Kensington community to share the use of the Property. In fact, PCW has treated the Property – a community garden – exactly as an owner of a community garden would be expected to treat a community garden.

Philadelphia Catholic Worker

The PCW Sister Peter Claver House (the "PCW House") at 430 West Jefferson Street was founded in 1988 as a center for PCW activities and home for some PCW members.[4] On November 17, 1989, PCW created Centro Inc., a Pennsylvania nonprofit corporation formed, at least in part, so that the nonprofit could hold title to land.

Consistent with its mission, PCW welcomed the surrounding neighbors to share in the use and work of the Property as gardeners and to take on leadership roles over time.[5] PCW retained control of the Property, and explicitly designated that it be used as a garden, giving permission to neighboring residents to use the space strictly for gardening purposes.[6] That is how the land has been used continuously since the establishment of the garden.

Physical residence at the PCW House is not *sine qua non* for identity as a Catholic Worker – while a resident lives at the PCW house, a volunteer may live elsewhere, and both may

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[3] *See Id.*
[4] *See* Centro's Response to Mayrone's First Set of Interrogatories ("Centro Responses"), ¶ 4, true and correct portions of which are attached hereto as **Exhibit H.**
[5] *See* **Exhibit G,** Centro Dep., 40:24-41:4.
[6] *See id.* at 40:24-41:10.

be considered Catholic Workers.[7] There is no formal process for identifying someone as a "Catholic Worker;" rather people involved with PCW may self-identify as Catholic Workers.[8] Further, volunteers who contribute to the mission and activities of PCW may not and need not identify as "Catholic Workers" *per se*.[9] Over twenty-nine years, many Catholic Workers and an extended community of volunteers have contributed to the ongoing stewardship of the Property and the community garden upon it.

Pyramid Tire and Rubber's Company's Purported Possession of the Property

Mayrone purports to have purchased the Property in January 2016 from Pyramid, a corporation that is listed as the previous record owner of the Property.[10] Based on the record, there are genuine issues of material fact as to whether the purported grantors had authority at all to convey title to the Property on behalf of Pyramid to Mayrone.[11]

Pyramid operated a business on the Property until the late 1970s and was, until recently, listed in the Philadelphia Department of Records database as owner of the Property.[12] Pyramid has never been dissolved and continues as a corporation.[13] Pyramid, therefore, is the entity that would have to transfer title if there were a sale to Mayrone or any third party.[14] The deed on which Mayrone relies for its claim of ownership was executed by two individuals, Elliott Fields

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[7] *See id.*, 26:7-27:2.
[8] *See id.*, 81:18 -24.
[9] *See* Transcript of the Deposition of Zachary Prazak ("Prazak Dep") at 18:1 -21, 28-30, true and correct portions of which are attached hereto as **Exhibit L.**
[10] PCW has retained Nina Segré as an expert in real estate issues. Ms. Segré's expert report summarizes the facts relating to the Mayrone transaction, all of which are set forth in documents and deposition testimony. A copy of Ms. Segré's expert report ("Segré Report") is attached as **Exhibit B.** *See* Segré Report, 7.
[11] *See* Transcript of Deposition of Elliott Fields ("Fields Dep."), 70:23–71:4, true and correct portions of which are attached hereto as **Exhibit A;** Segré Report, p. 6 ("[I]t is speculative at best to conclude from the evidence we have that the grantors had the authority to convey the Property in their capacity as executors for the estate of the beneficial owner of Pyramid.").
[12] *See* Segré Report, 4.
[13] *See* Fields Dep., 31:18-25; Segré Report at 7.
[14] *See* Segré Report, 7.

and his sister, Arlene Zitin.[15] These individuals executed the deed as "co-executors of the Estate of Emma Fields," who was, according to the purported deed to Mayrone, the last surviving "beneficial owner of Pyramid."[16]

Elliott Fields and Arlene Zitin are the children of Emma Fields and Frank Fields and, according to Emma's will were the co-executors of her estate, but did not, through this document or any other document produced in this case, inherit any interest in Pyramid.[17] Elliott Fields and Arlene Zitin each personally received $15,000 from the purported transaction.

Corporations are owned by shareholders.[18] There is no evidence as to the identity of the shareholders of Pyramid now or at any time.[19] Frank Fields founded and operated Pyramid, and was listed as one of three directors in a 1956 merger document.[20] Frank L. Fields died in 1990 or 1991.[21] There is no will for Frank Fields in the record, and there is no evidence as to what Property, if any, he may have owned at his death, or how this Property may have been distributed.[22]

Emma Fields was the wife and widow of Frank Fields.[23] Emma Fields died in 1992.[24] A copy of a will for Emma Fields has been produced in this case.[25] According to her will, Emma

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[15] *See* Segré Report, 5; *See also* Deed, attached hereto as **Exhibit B.** The deed states that Pyramid became inactive in 1956. Elliot Fields, who signed the deed, testified at his deposition that this was not an accurate statement. According to Mr. Fields, a lawyer who worked for Pyramid, but was not a shareholder, Pyramid was active at least until 1979. *See* Fields Dep., 18:11 - 18:14, **Exhibit A.** Mr. Fields could not explain why he signed an inaccurate deed on a subject of which he had personal knowledge. *See id.* at 136:14 - 137:18. He also had no knowledge of the shareholders for Pyramid. *See id.* at 37:3 – 11.
[16] *See* **Exhibit** A, Fields Dep, 50:17-51:5
[17] *Id.* at 19:18-10:3.
[18] *Id.* at 159:3-13.
[19] *Id.* at 70:23–71: 4 (admitting the identity of Pyramid's shareholders is unknown).
[20] *See* Pyramid Tire & Rubber Co. Articles of Merger attached hereto as **Exhibit D**; *see also* Fields Dep, 64:21-65:12.
[21] *See* Fields Dep., 49:23-25.
[22] *Id.* at 158:4-159:2.
[23] *Id.* at 143:11-19.
[24] *Id.* at 54:18-22.
[25] *See* Will of Emma Fields, attached hereto as **Exhibit E.**

Fields' assets did not pass through her estate, but were given instead to a trust.[26] The trust document is not part of the record in the case.[27] There is no evidence of what assets may have been included in the trust, or who were the trust beneficiaries.[28]

In summary, there is no deed from Pyramid, the record owner of the Property; there is no corporate resolution supporting a transfer of the Property from Pyramid to Mayrone; and there is no evidence of the current ownership of Pyramid, or indeed of the ownership of the corporation at any time.[29] There is no evidence regarding Frank Fields' will or the passage of his assets.[30] There is no evidence that Emma Fields ever owned any shares of stock of Pyramid; there is no evidence, if she did own any stock, that the stock was ever part of Emma Fields' estate; and there is no evidence that Elliott Fields or Arlene Zitin had legal authority to execute a deed as executors for the estate of the alleged "beneficial owner" of Pyramid.[31]

In fact, in his deposition, Elliot Fields admitted that he has no documentation to show who owned the Pyramid stock.[32] He further testified that, prior to the transaction, earlier prospective buyers had alerted him to the existence of title issues, and advised him it might be necessary to transfer title out of Pyramid in some fashion in order to convey marketable title.[33]

Elliot Fields also made numerous references to a bankruptcy during his deposition.[34] He testified that this was the personal bankruptcy of Frank Fields and/or Emma Fields,[35] but

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[26] *Id.* at 2.
[27] *See* **Exhibit A**, Fields Dep, 102:5-24 (demonstrating that Ms. Fields's son has never seen the trust document).
[28] *Id.*; *See* **Exhibit B,** Segré Report, 6.
[29] *See* Segré Report, 5.
[30] *See* Fields Dep, 158:4-159.
[31] *Id.* at 133:6-25; *See* Segré Report at p. 5 (Nina Segré opines that she is not familiar with the conception "beneficial owner" of a corporation).
[32] *See* Fields Dep., 70:23–71:4.
[33] *Id.* at 86:4-90:17
[34] *Id.* at 10:20-11:16, 34:10-42:19, 156:23-25.
[35] *Id.* at 10:22-11:12.

he did not know whether Pyramid was involved.[36] Even assuming *arguendo* that Frank Fields (alone or together with his wife, Emma Fields) was the sole shareholder of Pyramid, without evidence of the probating of his will, there is no way to determine whether he bequeathed to Emma whatever shares in Pyramid he owned at his death, and it is speculative at best to conclude from the evidence that the grantors had the authority to convey the Property in their capacity as executors for the estate of the "beneficial owner" of Pyramid.[37] At a minimum, based on the evidence in the record, there is a genuine issue of material fact as to whether or not Elliot Fields or Arlene Zitin, on behalf of Pyramid, ever had authority to convey title to the Property to Mayrone at all.[38]

1987- 1994: Formation of PCW Garden

In its motion, Mayrone contends that as a matter of law PCW cannot establish that its alleged possession was continuous for 21 years. But to the contrary, there are more than sufficient facts demonstrating that PCW had possession for more than 21 years. These facts preclude summary judgement.

When Catholic Workers established PCW in South Kensington, the Property had long been forsaken.[39] At least a decade before, Mayrone had abandoned the Property, which became an eyesore and a danger, gave the neighborhood a feeling of neglect and disrepair, and detracted from the community.[40] The Property was, in 1987, filled with trash and used as a dumping ground. [41] There had been a fire on the Property, and there had been no noticeable effort to clean the Property for years.[42]

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[36] *Id.* at 10:22-11:12, 31:2-32:14, 33:21-36:2.
[37] *See* **Exhibit B,** Segré Report, 6.
[38] *See id.*
[39] *See* **Exhibit** H, Centro Responses, ¶ 12.
[40] *Id.*
[41] *Id.* at ¶¶ 12-13.
[42] *Id.*

PCW established the garden to transform the blighted space for the benefit of the neighborhood.[43] The plan to establish the garden was developed by a founding member of PCW, Patty Burns, with a PCW volunteer named Don Remmey.[44] In or around the late winter of 1988, Ms. Burns and Mr. Remmey began efforts to clear the Property.[45] They recruited a student group from Villanova University, as well as students from St. Joseph's University, to assist during a spring break week of service.[46] PCW initially brought in a large dumpster, intending to fill it by hand. Because of the large amount of rubble on the lot, however, PCW, with a financial donation from Mr. Remmey, eventually retained a construction company to bring a backhoe.[47] The backhoe was used to clear the Property of major debris, which filled four to five large dumpsters.[48]

In or around the spring of 1988, Philadelphia Catholic Worker placed a sign on the Property that stated "FUTURE SITE OF A Community Garden PLEASE DO NOT DUMP Sponsored by the PHILADELPHIA CATHOLIC WORKER 430 W. Jefferson St. 2327823."[49] On April 22, 1988, PCW applied for fire hydrant access from the Philadelphia Water Department for the hydrant at the Northeast corner of Lawrence & Master St. for the period from April 22, 1988, to December 16, 1988.[50] The Water Department granted PCW a permit for the purpose of "filling vehicle a/c community garden" for the period June 20, 1988 to December 31,1988.[51] Fire

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[43] *Id.* at ¶ 14.
[44] *Id.* at ¶ 15; *see also* **Exhibit G,** Centro Dep., 18:6-7.
[45] *See* **Exhibit H,** Centro Responses at ¶ 16.
[46] *Id.* at ¶¶ 17, 19.
[47] *Id.* at ¶ ¶ 17-18.
[48] *Id.* at ¶ 18.
[49] *Id.* at ¶ 20.
[50] *Id.* at ¶ 21.
[51] *Id.* at ¶ 22.

hydrants were used in the ensuing years, until water service was installed at the Property in 2013.[52]

In or around the spring of 1988, PCW planted a Christmas tree in the middle of the Property dubbed the "Tree of Hope".[53] Around the same time, PCW held a meeting with neighborhood residents to organize how PCW would divide and make plots available in the garden.[54] The attendees included Ms. Burns, Mr. Remmey, Mary Ancharski, Danny Rodriguez, Elizabeth VanUmesseren,[55] and Julio "Junior" Rodriguez, together with approximately eight to ten additional neighbors.[56]

In or around 1989, a Catholic Worker publication called "Common Life" profiled the garden in an article entitled "Rubble to Radishes: The Peter Maurin Community Garden."[57] The article described how PCW had transformed the Property from a "trash-strewn wasteland" to an "urban mini- farm."[58] In or around the spring of 1988, the Philadelphia Green program of the Pennsylvania Horticultural Society held workshops to instruct PCW on how to start a garden and delivered soil for the first year of operations.[59] At this time, PCW installed the first wooden fence, which surrounded the garden on three sides.[60] Philadelphia Catholic Worker Bill Gavula, a former signpost digger, was involved in the fence installation.[61] PCW initially called the

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[52] *Id.*
[53] *Id.* at ¶ 23.
[54] *Id.*
[55] *Id.*; *see also* Josh Wilgruber, Kensington: Garden Brings Camaraderie Back to Community, Philadelphia Neigborhoods (October 10, 2012), *available at* https://philadelphianeighborhoods.com/2012/10/10/kensington-garden-brings-camaraderie-back-to-community/.
[56] *See* **Exhibit H,** Centro Responses at ¶ 24.
[57] See **Exhibit DD,** "Rubble to Radishes: The Peter Maurin Community Garden."
[58] *Id.* at ¶ 28.
[59] *Id.* at ¶ 25.
[60] *Id.* at ¶ 26.
[61] *Id.*; *See also* Mayrone's Motion for Summary Judgement ("Mayrone's Motion"). In its motion, Mayrone alleges that the wooden fence that PCW erected on the property in 1989 included only two sides of the property and did not include a gate or lock. *See* Mayrone's Motion, ¶ ¶ 9, 14. Mayrone apparently would have the Court somehow infer from this that PCW did not have possession of the Property or that its possession was not open and obvious. Initially, there is no support for the allegation that the fence was on only two sides of the property. In any event, the

garden the "Peter Maurin Community Garden."[62] However, Spanish-speaking residents in this Puerto Rican neighborhood called the garden "La Finquita" or "the little farm."[63] Throughout the history of the garden, it has been referred to as La Finquita.[64] La Finquita was written on a scarecrow, which stood for many years in the garden,[65] and new signage with the name was installed on the chain link fence in 2012.

In the years after 1988, Philadelphia Catholic Workers assigned plots, cleaned and maintained the garden, obtained necessary permits, turned over soil in spring, and watered the garden.[66] Community residents from the neighborhood who wanted a garden plot were directed to the PCW's Sister Peter Claver House.[67] PCW House residents granted interested neighbors permission to garden when plots were available.[68] In other words, individuals interested in using the garden asked the PCW House residents for permission.[69] There was a waiting list for many years due to the limited number of the plots and the strong interest in the garden.[70] Over many years, food grown in garden was used at the PCW house, as well as its food pantry.[71]

PCW focused on ensuring access to food, while providing training, empowerment and leadership to neighborhood residents to ensure the continuity of the garden.[72] This resulted in additional gardeners becoming active in or around 1992, including then PCW and current

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existence of the fence, regardless of its exact dimensions, demonstrates that PCW's possession of the Property was open and obvious and that it was exercising control to the exclusion of others. In other words, the wooden fence supports PCW's position on adverse possession.

[62] *See* **Exhibit H,** Centro Responses, ¶ 27.
[63] *Id.*
[64] *Id.* at ¶ 47.
[65] *Id.*
[66] *Id.* at ¶ 29.
[67] *Id.* at ¶ 30.
[68] *See* **Exhibit G,** Centro Dep, 43:1-10.
[69] *Id.* at 43: 11-14.
[70] *See* Centro Responses at ¶ 30.
[71] *Id.* at ¶ 31.
[72] *Id.* at ¶ 33.

gardener Jeff Monjack.[73] At the end of each season, the Philadelphia Catholic Workers and garden volunteers cleared plants and deposited them in a compost bin on the Property.[74] In the fall and late winter, work was done to enhance soil, which at first was in poor condition.[75] Gardeners maintained paths with woodchips to inhibit weeds.[76] PCW performed "overwintering," *i.e.* planting crops in the fall to emerge in spring and planted rye in the winters to enhance the soil's nutrients.[77]

1994-1999

In the mid-1990's, as some residents moved, Philadelphia Catholic Worker Jeff Monjack remained at the PCW House and was responsible for coordinating garden activities.[78] Mr. Monjack made sure the garden stayed neat and clean, ensured that the plots were utilized, planted and harvested.[79] On May 27, 1994, Philadelphia Green Program of the Pennsylvania Horticultural Society formally accepted the garden into the "Clean and Green Program," funded by the Philadelphia Department of Licensing and Inspections ("L&I") to help "groups develop gardens."[80] The letter accepting the garden into the program referred to the PCW garden at the "SWC of Master & Lawrence Streets."[81]

To participate in the Clean and Green Program, gardens must provide proof either that the record owner approved the gardening use, by signing an "Agreement for Community Gardening," or that there have been failed attempts made to contact the record owner, by

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[73] *Id.*
[74] *Id.* at ¶ 36.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.* at ¶ 37.
[79] *See* **Exhibit G,** Centro Dep, 55:15 -22.
[80] *See* **Exhibit H,** Centro Responses at ¶ 37.
[81] *Id.*; *See* **Exhibit** EE, May 27, 1994 Philadelphia Green Letter.

supplying a "returned registered letter" demonstrating that the owner was unreachable.[82] On June 16, 1994, PCW sent a certified letter to Pyramid at the last known 428 Master Street address.[83] The letter was returned to PCW stamped "Return to sender" and "Moved not forwardable." [84] As Mayrone admits in its motion and memorandum, PCW never received permission or even any type of acknowledgement from Pyramid to use the Property.[85] In essence, the letter to Pyramid was a formality to confirm Pyramid's abandonment of the Property.

On May 5, 1995, Philadelphia Green sent a letter to L&I, stating that Philadelphia Green supported the community greening project at 428-38 Master Street, and enclosing a check for $9.00 for a hydrant permit at the Northeast corner of 5lh and Master Streets.[86] In or around 1994, Philadelphia Green funded the construction of a locked chain link fence surrounding the Property.[87] From that time, the gates to the chain linked fenced were locked.[88] PCW and PCW volunteers issued keys to individuals who had a plot, but all others in the general public were prevented from walking in at will.[89]

1999-2010

By 1999, Jeff Monjack moved from the PCW House, although he remained in the neighborhood. Philadelphia Catholic Workers Karen Lens and Magda Elais were resident in the

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[82] *Id.* at ¶ 38.
[83] *Id.* at ¶ 39.
[84] *Id.*
[85] *Id.*; *See* Mayrone's Memorandum of Law in Support of its Motion for Summary Judgment, p. 7.
[86] *See* Centro Reponses at ¶ 40; *See* Letter from Ernestine Cook, Dept. of Licenses and Inspections, to Philadelphia Catholic Worker (May 5, 1995) ("PHILADELPHIA GREEN supports the community greening project at 428 Master Street. Enclosed is a check for $9.00 for the permit for the hydrant located at NEC of 5th and Master Streets. Please issue permit to: Susan C. Dietrich[,] Philadelphia Catholic Worker . . . . "), attached hereto as **Exhibit S.**
[87] *See* Centro Reponses at ¶ 41.
[88] *Id.*; *see also* **Exhibit G,** Centro Dep., 78:17-79:5.
[89] *See* **Exhibit H,** Centro Reponses, ¶ 42.

PCW House.[90] Unfortunately, Ms. Lens became terminally ill.[91] Ms. Elias, who was a college student while living in the PCW house, simultaneously cared for Ms. Lens and helped with PCW programming.[92]

During this time, PCW entrusted PCW volunteer Julio "Junior" Rodriguez, along with his father, Danny Rodriguez, with the role of handing out keys to new gardeners.[93] As a PCW volunteer, Junior Rodriguez was involved in the garden on behalf of PCW on a daily basis.[94] Both Junior and Danny Rodriguez were original gardeners and lived within blocks of the garden.[95] Junior Rodriguez died in or around 2003.[96] While Danny Rodriguez fulfilled the role of providing keys from approximately 2003-2010, he did not have absolute discretion.[97] Indeed, Danny "would check with Karen [Lens] . . . before he gave another [key] out."[98] Danny Rodriguez handed out keys and looked after the garden on behalf of PCW.[99] The PCW House residents remained responsible for the Property, and Danny Rodriguez would discuss administration of and decisions related to the garden with the PCW residents.[100] Karen Lens remained a resident in the PCW House and responsible for PCW operations until she died on August 5, 2009.[101]

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[90] *Id.* at ¶ 43; *see also* **Exhibit G,** Centro Dep., 58:19 - 59:18.
[91] *See* Centro Responses, ¶ 42.
[92] *See* Centro Dep., 64:24 – 65:2.
[93] *See* Centro Responses, ¶ 43; Transcript of the Deposition of Jessica Noon ("Noon Dep.") at 67:10-12, true and correct portions of which are attached hereto as **Exhibit T; A**ffidavit of Daniel Rodriguez, ¶ 4 ("Rodriguez Affidavit") attached hereto as **Exhibit K.**
[94] *See* Rodriguez Affidavit, ¶ 4.
[95] *See* Centro Responses, ¶ 43; Rodriguez Affidavit, ¶¶ 2-4.
[96] *See* Centro Responses, ¶ 43; Centro Dep., 84:7-9.
[97] *See* Centro Dep., 65:20 - 66:3.
[98] *Id.*
[99] *See* Rodriguez Affidavit, ¶ 4.
[100] *See* **Exhibit G,** Centro Dep., 84:9 - 16; **Ex. K**, Rodriguez Affidavit, ¶ 5.
[101] *See* Centro Dep., 59:2-18.

After Karen Lens' death, Philadelphia Catholic Worker Phoebe Centz moved into the PCW House and assumed responsibility for PCW activities.[102] Ms. Centz consulted Danny Rodriguez for an update on the garden and to obtain a key.[103] From that time on, Danny Rodriguez consulted with PCW via Ms. Centz regarding decisions related to the garden.[104]

2010-Present

The 21 year adverse possession period ended in 2009 (1988-2009).[105] In 2010, realizing the garden belonged to PCW, Cliff Brown, a new neighborhood resident, requested permission for a plot.[106] PCW, through Ms. Centz, gave Mr. Brown permission to take action to maintain and improve the garden, such as building the garden beds back up and turning part of the garden into a community farm.[107] Mr. Brown offered to grow and harvest vegetables to share on behalf of PCW.[108] Mr. Brown consulted Ms. Centz before making any substantial changes in the garden.[109] Mr. Brown received a key and was permitted to garden on and improve the Property.[110] With the arrival of Mr. Brown and a new gardener, Zach Prazak, Mr. Monjack became reengaged in the garden, as well.[111]

Currently, about two thirds of the garden uses a collective farm system.[112] This has helped grow more food, with the ability to offer more food at the market and the PCW food

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[102] *See* **Exhibit H,** Centro Responses, ¶ 44.
[103] *See* Centro Dep., 85:18 - 86:17
[104] *See* Rodriguez Affidavit, ¶ 8.
[105] As of 2010, the twenty-one year period for Pyramid to bring an action for ejectment ended and PCW became owner of the Property. The events after this time, therefore, are not relevant to PCW's claim for adverse possession and right to ownership.
[106] *See* Centro Responses, ¶ 45; Centro Dep., 62:6-15; 120:12-19; 122:4-9; Affidavit of Clifford Brown, ¶¶ 4, 5 ("Brown Affidavit"), attached hereto at **Exhibit I.**
[107] *See* Centro Dep., 61:13 - 62:15; 120:12-19; 122:4-9; Brown Affidavit, ¶¶ 5, 6; Affidavit of Phoebe Centz, ¶¶ 7, 8 ("Centz Affidavit"), attached hereto as **Exhibit J.**
[108] *See* Centro Responses, ¶ 45; Centro Dep., 62:6-15; 120:12-19; 122:4-9; Brown Affidavit, ¶ 5; Centz Affidavit, ¶ 7.
[109] *See* **Exhibit G,** Centro Dep., 121:1-3; Centz Affidavit, ¶ 6; Brown Affidavit, ¶ 8.
[110] *See* **Exhibit H,** Centro Responses, ¶ 45.
[111] *Id.*
[112] *See* Centro Responses, ¶ 50.

pantries, as well as to a food pantry at the Drueding Center at 413 Master Street. The collective model also engages as many volunteers as possible, perhaps more than if each individual or family had their own plot.[113] There are approximately eight to ten individual garden plot holders who have been grandfathered and continue to maintain individual plots,[114] including a plot maintained by Danny Rodriguez, which serves as a memorial to his son.[115]

Similar to its original structure, PCW now hosts a hybrid between a community garden and a collectively-run "urban mini-farm," as described in the 1989 article.[116] In 2012, the gardeners began extensive composting operations, reducing the need to bring soil and compost from outside, and built a farm stand and brick patio.[117] Produce from the garden is sold to neighborhood residents on Sundays.[118]

In 2013, a group of gardeners, including Cliff Brown and Zach Prazak, formed a corporation under Pennsylvania law named after the garden called La Finquita, Inc.[119] This corporation was formed to facilitate acquisition of grants, formalize income and expenses related to the farm stand and the garden, and to allow the farm stand to serve neighborhood residents using benefits from the U.S. Department of Agriculture ("USDA") Supplemental Nutrition Assistance Program ("SNAP").[120] However, the corporation never applied for nonprofit 501(c)(3) status through the I.R.S. and all grants received were through the fiscal sponsorship of SKCP.[121]

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[113] *Id.*
[114] *See* Centro Responses, ¶ 51.
[115] *See* **Exhibit K**, Rodriguez Affidavit, ¶ 9.
[116] *See* Centro Responses, ¶ 52.
[117] *See* Centro Responses, ¶ 53.
[118] *Id.*
[119] *Id.*
[120] *Id.*; *see* **Exhibit L**, Prazak Dep., 49:14 -50:15.
[121] *See* Centro Responses, ¶ 53.

In 2012, a grant was received for the farm stand from Philly STAKE.[122] In 2013, grants were received for the installation of the water line and youth programming at the site.[123] In 2015, groups from Keep Philadelphia Beautiful, Repair the World, Philly Farm Crew, and the Sixth Street Mennonite Church volunteered in the garden.[124] Also in 2012, the current sign with the name La Finquita was erected, and the garden was accepted into the PHS City Harvest program, a successor to Philadelphia Green.[125] The garden has been part of the City Harvest program every year since 2013.[126]

All parties remain sensitive to ensuring that the ownership and origins of La Finquita are clear and lie entirely with PCW.[127] Produce from the garden is used for the PCW soup kitchen during growing season.[128] Current gardeners and the surrounding South Kensington community have known and continue to recognize La Finquita as Property of PCW.[129] Ms. Centz has maintained a presence in the garden, often visiting the garden and the farm stand.[130]

Mayrone's Alleged Purchase of the Property, Knowledge of a Claim to the Property, and the Ensuing Litigation

Mayrone purported to have purchased the Property for value from Pyramid, the owner of record on January 5, 2016.[131] The Deed, along with the Pennsylvania Realty Transfer Tax Statement of Value and Philadelphia Real Estate Transfer Tax Certification were recorded in Philadelphia, Pennsylvania, on February 10, 2016, under Document ID 53021731.[132] Mayrone

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[122] *Id.* at ¶ 55.
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *See* **Exhibit G,** Centro Dep., 138:11 -17.
[128] *Id.*
[129] *See* **Exhibit L**, Prazak Dep., 31:8 to 33:10; **Exhibit K**, Rodriguez Affidavit, ¶¶ 6, 7; **Exhibit I**, Brown Affidavit, ¶¶ 3, 4; **Exhibit J**, Centz Affidavit, ¶ 6.
[130] Prazak Dep., 45:20-46:17; Centz Affidavit, ¶ 9.
[131] *See* **Exhibit C,** Deed.
[132] *See id.*

paid $30,000 cash for the Property – $15,000 each to Arlene Zitin and Elliott Fields – together with a mortgage for the amount of $368,000.00 to John Clinton Goode a/k/a Maschavo, LLC ("Mr. Goode" and/or "Maschavo").[133] The $368,000 represented a "finder's fee" and was secured by a mortgage for that amount. Before purchasing the Property, Mayrone's principles, Gerard Regan and Errol McAlinden, made three visits to the Property between November and December of 2015.[134] Mayrone alleges that neither visit showed any evidence of a garden on the Property.[135] However, while Mayrone claims to have had no notice of the presence of the La Finquita garden on the Property, the facts show otherwise.

Mayrone first heard about the Property on or around November 3, 2016 through a phone call and text from Goode.[136] Mayrone's principles visited the Property multiple times before purchase[137] "to get a feel for" the Property,[138] and admitted to seeing signs of occupation.[139] Mayrone first visited the Property within hours of receiving information from Mr. Goode.[140] This visit lasted at least 10-15 minutes,[141] and long enough to assess that constructing on the Property "would be an easy dig."[142] According to Mayrone principle, Errol McAlinden, he "walked up and down Lawrence Street" on that first visit.[143] According to Mayrone principle, Gerard Regan, he and Mr. McAlinden "drove up to [the Property], drove up Lawrence Street,

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[133] *See* Agreement of Sale, attached hereto as **Exhibit U;** Purchase Money Mortgage, attached hereto as **Exhibit V.**
[134] *See* Transcript of the Deposition of Errol McAlinden ("McAlinden Dep.") at 38:4-44:2, true and correct portions of which are attached hereto as **Exhibit O;** Transcript of the Deposition of Gerard Regan ("Regan Dep.") at 20:17-26:2, true and correct portions of which are attached hereto as **Exhibit W;** Transcript of the Deposition of John C. Goode ("Goode Dep.") at 82:7-83:11, true and correct portions of which are attached hereto as **Exhibit X.**
[135] *Id.*; *See* Mayrone's Motion, ¶ 39 ("Given the decrepit state of the lot itself Mayrone had no reason to believe that the Property was currently inhabited.")
[136] *See* McAlinden Dep., 29:19-30:19.
[137] *Id.*, 67:16-19.
[138] *Id.*, 46:22.
[139] *Id.*, 40:6-41:19; 46:12-14; Regan Dep., 55:11-56:7.
[140] *See* McAlinden Dep., 30:6.
[141] *Id.*, 39:21-22, Regan Dep. 21:24-22:2.
[142] *See* McAlinden Dep., 40:3-10.
[143] *Id.*, 40:18-21.

made a left on Master, drove by it and stopped and just took at look at it."[144] The two "walked around," possibly on both accessible sides of the Property or "[j]ust maybe Master."[145] Both principles unequivocally stated that they were unable to step onto the Property during any of those visits because the Property was enclosed by a fence.[146] They also stated they noticed a shed on the Property at the first and subsequent visits.[147] Mayrone claims to have not taken a single photo during visits to the Property before the purchase. [148]

After closing, Mayrone visited the Property, cut and replaced the locks, and stepped onto the Property.[149] At that point, McAlinden acknowledged noticing a "kind of stall," as well as "borders set up out of old cobblestones and things . . . like little rows of cobblestones just in different sections down the center of the lot."[150] Evidence in the record directly contradicts Mayrone's description of the Property as "decrepit."

Boucher & James, Inc., environmental consulting engineers – hired by Mayrone – conducted an environmental assessment of the Property in January 2016, just one month after Mayrone admits to having visited the Property several times.[151] The cover photo of the Boucher & James Report shows a plainly visible fence, numerous garden structures, and garden beds with seasonal coverings.[152] The Boucher & James Report states that "the site is currently utilized as a community garden."[153] The Report even explains that a garden shed and greenhouse exist on the

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[144] *See* Regan Dep. 21:11-14.
[145] *See* Regan Dep. 21:20.
[146] *See* McAlinden Dep., 41:4 ("There's a fence around it."); Regan Dep., 22:14-15.
[147] *See* McAlinden Dep., 43:4-5 ("And there was a red shack shed type thing."); Regan Dep., 22:10-11; 55:11-56:7.
[148] *See* McAlinden Dep., 23:11-16.
[149] *See id.* 70:4-71:11.
[150] *See id.* 71:14-72:2.
[151] True and accurate portions of the Boucher & James Report are attached as Exhibit 1 to **Exhibit J**, Centz Affidavit. The photographs that were part of the Boucher & James report accurately depict the Property as it appeared in November and December of 2015. *See* Centz Affidavit, ¶¶ 3, 4.
[152] *See* Boucher & James Report, Exhibit 1 to **Exhibit J.;** Centz Affidavit, ¶¶ 3, 4.
[153] *Id.*, at 6.

site.[154] A copy of relevant portions of the Report are attached to the affidavit of Phoebe Centz, together with copies of the photographs produces by Boucher & James. The Centz affidavit confirms that the photographs accurately show the Property as it appeared in November and December 2015.

Photographs taken by Boucher & James that are part of the Report show a greenhouse, a shed, the structured pathways through the garden, raised garden beds, a fountain, and a chain link fence surrounding the Property.[155] Several of the Boucher & James photos show the garden infrastructure visible from outside of the chain link fence – the perspective of the Mayrone principles when they visited the Property prior to closing.[156] Even an aerial photo from Boucher & James clearly depicts a community garden with divided plots, various structures, garden beds, and a fence.[157]

The extensive evidence of a community garden on the Property as evidenced by the Boucher & James documents and photos make Mayrone's claims of being unaware of a community garden not credible. In fact, Errol McAlinden and Gerard Regan both acknowledged that the Property did not look any different during the November and December 2015 visits than

[154] *Id.*
[155] *Id.* at Exhibit 2 to **Exhibit J**, Centz Affidavit, ¶¶ 3, 4.
[156] *Id.*
[157] *Id.*

it did when Mayrone stepped onto the Property after closing a month or two later.[158] Further still, Mr. Regan was in attendance during the Boucher & James visit to the Property.[159]

Pamela Rader of First American Title Insurance Company, who served as the title agent for the closing involving the Property, testified to additional evidence that the Mayrone principles were on notice about the existence of the garden.[160] Ms. Rader testified at her deposition that she knew of the La Finquita garden before the closing. This was based on a conversation with the Philadelphia Water Department, which listed "La Finquita Garden" as the account holder on the bill.[161] Ms. Rader recorded her conversation in notes.[162]

Further, despite Mayrone's claim that La Finquita "was not mentioned by anyone at the closing and Mayrone did not become aware of the existence of La Finquita until two weeks later,"[163] Ms. Rader testified that she disclosed the debts of "La Finquita Garden" on the water bill to Mr. Goode/Maschavo before the closing, and that either she or Goode disclosed La Finquita's debts to Mayrone and Pyramid at closing.[164] In fact, according to Ms. Rader, Mayrone expressed reservations at closing about continuing with the transaction of the Property after learning about the water bills in the name of La Finquita:

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[158] *See* **Exhibit** O, McAlinden Dep. 75:2-4; **Exhibit W,** Regan Dep. 44:8-14. Mr. McAlinden and Mr. Regan have changed their story on the Property over time. In answers to interrogatories, Mayrone stated that Mr. McAlinden and Mr. Regan visited the Property twice in 2015 before the closing. *See* Mayrone's Objections and Responses to Plaintiff's First Set of Interrogatories, p. 3 ("Regan and McAlinden visited the Property together approximately two times in the winter of 2015 prior to Mayrone's purchase."). Mayrone alleged that on both occasions the Property was covered by snow. *See* Mayrone's Amended Third Party Complaint, at ¶ 77 ("Mayrone visited the Property during the winter of 2015 and saw a snow covered lot which Mr. Goode claimed was vacant and appeared to be so.") Mayrone has abandoned this story, perhaps because there was no snow in Philadelphia in November or December 2015. *See* McAlinden Dep., 44:4 to 44:11; 69:16 to 69:24; Regan Dep., 26:6 to 26:12.

[159] *See* Regan Dep., 42:15-24.

[160] *See* Transcript of the Deposition of Pamela Rader ("Rader Dep.") true and correct portions of which are attached hereto as **Exhibit M.**

[161] *See* Rader Dep., 37:22-38:16.

[162] *Id.*, 82:5-83:16; *See also* E-mail from J. Goode to Pamela Rader dated 10/16/15, attached hereto as **Exhibit N.** Such notes specifically state "La Finquita *Garden*." *Id.* (emphasis added).

[163] *See* Mayrone's Motion, p. 14.

[164] *See* **Exhibit M,** Rader Dep., 77:2-78:6; 84:12-84:25.

Ms. Schluckebier: Okay. And did you share with any of the parties that there were water bills in the name of La Finquita?

Ms. Rader: Yes. I did share with everybody.

Ms. Schluckebier: So, you shared with Mayrone?

Ms. Rader: Yes.

Ms. Schluckebier: You shared with Mr. Goode –

Ms. Rader: Yes.

Ms. Schluckebier: -- slash Maschavo. And do you recall exactly when you shared that with them prior to closing?

Ms. Rader: I'm not sure if I -- I think I did it prior to closing. I can't swear to that one. I do know that we talked at closing about it.

Ms. Schluckebier: Okay. So, when you were all seated at the table --

Ms. Rader: Yes.

Ms. Schluckebier: -- on the day of closing –

Ms. Rader: Yes.

Ms. Schluckebier: -- you discussed with them that there were water bills in the name of La Finquita?

Ms. Rader: Yes.

Ms. Schluckebier: Did you talk about why La Finquita might be listed on a water bill as opposed to –

Ms. Rader: We thought it might be a community garden or something.

Ms. Schluckebier: And what else was said about that at closing?

Ms. Rader: That I -- they asked me if they should go through. I said, Up to you and – you know. I thought it was a community garden. Go talk to the community because that's who is supposed to be doing this.

> Ms. Schluckebier: When they asked you why they should go through with it, were they concerned about someone else being on the Property?
>
> Ms. Rader: They were.[165]

Errol McAlinden, a principle of Mayrone, acknowledged that he learned about the "outstanding water bill" at closing.[166] Moreover, as Mayrone admits, Mr. McAlinden and Mr. Gerard Regan saw the bills referenced on the HUD-1 settlement statement at closing.[167] Mr. Goode, Mr. Fields, and Mayrone all testified, over and over again, to having relied on Ms. Rader's services in conducting the alleged sale of the Property.[168]

Further still to this point, a denial of coverage letter issued to Mayrone by First American Title Insurance Company – its title insurer – demonstrates the visibility of the La Finquita garden on the Property:

> Here, line items 1301 and 1302 of the HUD-1 settlement statement show payments by Mayrone to the City of Philadelphia Water Revenue Bureau in the amounts of $606.20 and $522.80. Said payments were made by Mayrone for substantial pre-existing delinquent water usage. The attached water bill issued by the City of Philadelphia Water Revenue Bureau shows that the delinquencies were incurred prior to your purchase and said water accounts are in the name of "LaFinquita Garden." According to the filed complaint, Plaintiff asserts that they opened the water accounts with the City of Philadelphia for use in irrigating a pre-existing urban garden on the Property known as "LaFinquita Garden." Further, a visual inspection of the Property will show evidence that the Property is being used as an urban garden. For example, small individual lots have been created and existing vegetable plants (i.e. corn stalks and flowers) are present. A shed and concrete patio have also been constructed and the entire Property is fenced in with a locked gate. *Based on the aforementioned facts, Mayrone knew or should have known that the Property was being used by another party as an urban garden.*

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[165] *See* Rader Dep., 77:5-78:17.
[166] *See* **Exhibit O,** McAlinden Dep. 76:4-7.
[167] *See* Mayrone's Motion, p. 14; *see also* Regan Dep. 45:11-46:5.
[168] *See* Goode Dep., 101:14-24, 112:20-113:2; McAlinden Dep., 97:4-11; Regan Dep., 46:16-24; Fields Dep., 161:4-9.

> *As a result, Mayrone assumed the adverse claim brought by Plaintiff in the Lawsuit and exclusion 3(a) of the Policy applies.*[169] (emphasis added).

Despite Mayrone's claims that they were unaware of the presence of the La Finquita garden until after closing and that the Property was uninhabited, the record shows otherwise. At a minimum, there are disputed factual issues that preclude summary judgment.

PCW as Plaintiff

Mayrone attempts to characterize meeting minutes and two emails from gardener Jessica Noon as depicting current gardeners "scrambl[ing] to find a Plaintiff" and turning, allegedly inappropriately, to PCW.[170] Mayrone's motion refers to notes that Jessica Noon prepared following a meeting with PCW counsel and gardeners, which included Beth Centz, to review the history and events surrounding the PCW garden.[171] Of course, counsel suggested PCW would be the Plaintiff – an entirely justified and sensible suggestion in light of the facts of this case.[172] As would be expected, PCW counsel explained legal concepts that might be applicable to any case brought by PCW.[173] Jessica Noon is not an attorney and has no background in legal matters, and the notes on which Mayrone relies are no more than Ms. Noon's attempt to summarize the legal discussion at the meeting – not the "search for a Plaintiff" that Mayrone claims.[174]

In fact, there was no discussion at the meeting of a "search" for a plaintiff.[175] All present agreed that PCW was the owner of the property and would obviously be the party bringing the

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[169] *See* First American Title Insurance Company Denial of Coverage Letter, attached hereto as **Exhibit P.**
[170] *See* Mayrone's Motion, ¶¶ 43-47.
[171] *See* Affidavit of Jessica Noon, ¶ 2, attached hereto as **Exhibit R.**
[172] *Id.* at ¶ 5.
[173] *Id.* at ¶ 3.
[174] *Id.*
[175] *Id.* at ¶ 5.

suit.[176] No weaknesses or problems in a potential case were discussed.[177] And yes, gardeners who wanted to assist with the lawsuit would in fact be acting on behalf of PCW – also a common sense directive from PCW counsel.[178] Mayrone's attempts to misportray the words and character of PCW counsel add nothing to its motion and discussions at the meeting are not relevant to issues in the case.

Procedural History

PCW filed a quiet title complaint on March 18, 2016. The complaint alleges that PCW acquired title to the Property by adverse possession because of the continuous, open and notorious possession of the Property for more than 21 years.[179] In January 2016, a then unknown third party cut PCW's locks on the entrance to the Property and put on locks for which PCW did not have a key. Their unknown third party likewise placed a "no trespassing" sign on the fence surrounding the Property.

On Saturday, March 26, 2016, two representatives of Mayrone appeared at the Property and told gardeners that they intended to "clear" the Property and would bring in equipment to accomplish that goal. The Mayrone representatives said that they would take this action as early as Monday morning, March 28, 2016.[180]

At this time, Mayrone knew of PCW's lawsuit. During a conversation on Thursday, March 24, 2016, counsel for Philadelphia Catholic Worker told Errol McAlinden of the lawsuit, asked him to have Mayrone's attorney call, and asked for Mayrone's address for service of

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[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *See* PCW's Complaint, a true and correct copy of which is attached hereto as **Exhibit Y.**
[180] *See* Verification of Zachary Prazak, Exhibit B at ¶ 4, to PCW's Motion for Preliminary Injunction, a true and correct copy of which is attached hereto as **Exhibit Q.**

process.[181] During that conversation, Mr. McAlinden said that Mayrone intended to have the Sheriff at the Property on Saturday, March 26, 2016. To PCW's knowledge, the Sheriff did not appear.[182]

On Monday, March 28, 2016, counsel for PCW delivered a letter to Mayrone, Mr. McAlinden, and Mr. Regan summarizing the situation and requesting that they refrain from further action.[183] The letter requested that Mayrone tell PCW that they would not take any action adverse to PCW's possession of the Property until resolution of the lawsuit or PCW would seek preliminary relief from the Court.[184] Mayrone did not respond, and on March 30, 2016, PCW filed an Emergency Motion for a Preliminary Injunction to maintain possession of the Property while the case proceeded.[185]

PCW's Motion was denied without a hearing and on April 5, 2016, PCW filed an appeal to the Superior Court. PCW also filed an Emergency Motion to Stay Proceedings on April 5, 2016.[186] On April 6, 2016 The Honorable Linda Carpenter, in her capacity as Emergency Motions Court Judge issued an order granting the stay.[187]

On July 12, 2016, the Court issued its Opinion supporting the denial of Centro's Motion for a Preliminary Injunction.

Respectfully, the Opinion mistakenly stated – without a hearing and without hearing any evidence on the development of the record and examination of the pertinent law in this case – that the complaint did not sufficiently allege the exclusive and hostile elements of adverse possession for a preliminary injunction. As will be discussed thoroughly below, this is not the

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[181] *See* **Exhibit Q,** PCW's Motion for Preliminary Injunction.
[182] *Id.*
[183] *Id.*
[184] *See* Letter, Exhibit C to PCW's Motion for Preliminary Injunction, **Exhibit Q.**
[185] *See* **Exhibit _Q,** PCW's Motion for Preliminary Injunction.
[186] *See* PCW's Emergency Motion for Stay, attached hereto as **Exhibit Z.**
[187] *See* Order Granting PCW's Motion for Stay, attached hereto as **Exhibit AA.**

case. At a minimum, there are sufficient genuine issues of material fact as to whether PCW has established both the hostile and exclusive elements of adverse possession, which preclude summary judgment.

After PCW withdrew its appeal on August 24, 2016, Mayrone filed its own complaint, an action in ejectment, on May 2, 2016.[188] That suit has since been consolidated with PCW's Action in Quiet Title.[189]

ARGUMENT

A. Legal Standard

1. Summary Judgment Standard

PCW respectfully submits that the well-settled standards that govern summary judgment require that Mayrone's motion for summary judgment be denied. Summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Pa.R.Civ.P. 1035.2; *See Denlinger, Inc. v. Dendler*, 608 A.2d 1061 (Pa. Super Ct. 1992). In making this determination, a court must view the record in the light most favorable to the non-moving party, accepting as true all well-pleaded facts and all reasonable inferences that can be drawn therefrom. *Id.* Any doubt regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *Id.*; *See also Ott v. Unclaimed Freight Co.*, 577 A.2d 894 (Pa. Super. Ct. 1990).

In other words, the court may grant summary judgment only when the right to such a judgment is clear and free from doubt. *Novosel v. Seneca Res.*, No. 1704 WDA 2014, 2016 WL 237954, at *3 (Pa. Super. Ct. Jan. 20, 2016). The party opposing summary judgment must

[188] *See* Mayrone's Complaint, attached hereto as **Exhibit BB.**
[189] *See* Order to Consolidate Cases, attached hereto as **Exhibit CC.**

identify "one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion," or "evidence in the record establishing the facts essential to the cause of action . . . ." Pa. R. Civ. P. 1035.3(a).

Here, Mayrone's motion for summary judgment is clouded by numerous issues of material fact. As discussed in this memorandum of law, PCW has identified genuine issues of material fact, which directly controvert the evidence Mayrone has cited in support of its motion.

2. Adverse Possession Doctrine

In Pennsylvania, "one who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years." *Flannery v. Stump*, 786 A.2d 255, 258 (Pa. 2001); *Conneaut Lake Park, Inc. v. Klingensmith*, 66 A.2d 828, 829 (Pa. 1949). If the true owner has not ejected the interloper within the 21-year period (the time allotted for an action in ejectment), the possessor takes title and the former owner has no further rights. *Tioga Coal Co. v. Supermarkets Gen. Corp.*, 546 A.2d 1 (Pa. 1988).

In cases of adverse possession, actual possession requires "domination over the Property" and varies depending on the character of the Property. *Moore v. Duran*, 687 A.2d 822, 827 (Pa. Super. Ct. 1996). This domination can be established by maintaining a residence on the parcel, erecting an enclosure around the Property, or by making improvements to the land. *Id.* at 828. In *Moore*, one party claimed title over a parcel of land after using the Property for the pasturing of cattle. *Id.* While the court in *Moore* found the pasturing of cattle alone did not establish actual possession of the land, the court did find that two fences on the southern and western boundaries were sufficient to establish actual possession of the land, even without a fence that fully encircled the Property. *Id.*

Continuous possession is required for the statutory period for adverse possession to mature into title. *Brennan v. Manchester Crossings, Inc.*, 708 A.2d 815, 818 (Pa. Super. Ct. 1998). In *Brennan*, the adverse possessors maintained a lawn on the Property for more than twenty-one years. *Id.* at 821. Thus, the court found the possession continuous. *Id.*

For possession to be visible and notorious in cases of adverse possession, the adverse party must show "conduct sufficient to place a reasonable person on notice that his or her land is being held by the claimant as his own." *In re Rights of Way & Easements Situate in Twp. of Mt. Pleasant*, 47 A.3d 166, 173 (Pa. Commw. Ct. 2012) (citing *Brennan v. Manchester Crossing, Inc.*, 708 A.2d 815, 818 (Pa. Super 1998)). In *Rights of Way*, the adverse possessor constructed a fence on the Property in question, installed drainage pipes on the land, had animals grazing on the Property, and maintained the entire parcel. *Id.* at 173-74. The court held these actions were sufficient to place the original owners on notice of the adverse possession and constituted visible and notorious possession. *Id.* at 174.

To constitute distinct and exclusive possession for purposes of establishing title to real property by adverse possession, the claimant's possession need not be absolutely exclusive. *Id.* at 174 (citing *Brennan,* 708 A.2d at 818). Rather, the possession need only be a type of possession which would characterize an owner's use. *Id.* Further, courts consider the character of the land itself in determining whether or not it has been exclusively possessed. *See Lyons v. Andrews*, 313 A.2d 313, 315–16 (Pa. Super. Ct. 1973). For example, in *Lyons*, even where others had intruded on the land in question, the adverse possessor nonetheless met the element of exclusivity since such treatment of the land – a strip of land shared between neighbors - could reasonably be expected in view of its character. *Id.* at 316.

Hostile possession does not mean "ill will" or "hostility," but means "an assertion of ownership rights adverse to that of the true owner and all others." *Brennan*, 708 A.2d at 818. In *Brennan*, the adverse possessors maintained the land in dispute as if it was their own by planting grass seed, fertilizing, mowing the lawn, and storing firewood. *Id.* at 821. The owner of the land did not use or maintain the parcel in any manner. *Id.* Therefore, the court found the adverse possessors "satisfied their burden of proof as to this element." *Id.*

PCW respectfully submits that adverse possession, by its nature, is a fact based doctrine. Accordingly, cases alleging ownership by adverse possession are rarely, if ever, appropriate for summary judgment. Indeed, Mayrone has not cited to a single adverse possession case decided on summary judgment. This applies to Mayrone's motion, which is based on factual concepts such as "continuous" possession of the Property, or "exclusive" use of the Property.

Here, PCW possessed the Property by adverse possession after continuously operating a community garden on the land for more than twenty-one years. Like the possessors in *In re Rights of Way* and *Moore* who constructed a fence around their Property and maintained the land they possessed, PCW constructed fences, first around three sides of the Property in 1988, and then, encircling the entire parcel in 1994, all while maintaining the Property as a community garden. Further, like in *Brennan,* in which the claimants possessed the land for more than 21 years and treated the land as if it were their own, PCW has possession of the Property for over 27 years before the parcel became subject to litigation. PCW treated the land as if it was their own in managing the operations of the community garden, acquiring volunteers, obtaining licenses for water, and clearing the lot of trash and debris. Thus, at minimum, the facts in the record identified here by PCW in support of its adverse possession claim present genuine issues of material fact, precluding summary judgment.

B. PCW's Continuous, Open and Exclusive Use of Property as a Community Garden Is Subject to a Claim of Adverse Possession.

Mayrone contends that as a matter of law, a community garden is not the type of exclusive use contemplated by the adverse possession doctrine. Mayrone cites to no case law that supports this claim. PCW respectfully submits that the Court should reject this novel and frankly illogical contention.

Mayrone suggests that exclusivity means to the exclusion of all others, and that because PCW allowed volunteers and neighbors to assist in stewarding the Property and gardening that PCW now is precluded from claiming the Property adversely. But that is not what exclusivity means in the context of adverse possession. Rather PCW's exclusive possession need only be the type of exclusive possession that would characterize an owner's use. Here, in allowing neighbors to come onto the Property and garden, PCW is behaving precisely as would the owner of a community garden. At a minimum, whether PCW has maintained exclusive use of the Property as would an owner is a genuine issue of material fact precluding summary judgment.

In order to constitute distinct and exclusive possession for purposes of establishing title to real property by adverse possession, the claimant's possession need not be absolutely exclusive. *Reed v. Wolyniec*, 471 A.2d 80, 84 (Pa. Super. Ct. 1983) (citing *Lyons*, 313 A.2d at 315–16). Indeed, "exclusive possession can be established 'by acts, which at the time, considering the state of the land, comport with ownership; viz., such acts as would ordinarily be exercised by an owner in appropriating land to his own use and the exclusion of others.'" *Lyons*, 313 A.2d at 315–16. Thus, the claimant's possession needs only be a type of possession which would characterize an owner's use. *Reed v. Wolyniec*, 471 A.2d 80, 84 (Pa. Super. Ct. 1983) (citing *Lyons*, 313 A.2d at 315–16); *Watkins v. Watkins*, 775 A.2d 841, 846 (Pa. Super. Ct. 2001);

Jennings v. Delaware & Hudson Canal Co., No. 2413 EDA 2012, 2013 WL 11256851, at *3–4 (Pa. Super. Ct. July 17, 2013)).

In *Reed v. Wolyniec,* homeowners asserted title by adverse possession to a lot adjacent to their residence. *Reed*, 471 A.2d 80 at 84. The homeowners had maintained the lot by cutting the lawn and planting and maintaining various shrubbery and flowering plants. *Id.* In affirming the trial court's determination that the homeowners had established title by adverse possession, the Superior Court opined that the exclusive character of the homeowners' possession was not destroyed because other persons passed over the lot. *Id.* Rather, it was enough that appellees' possession was to the general exclusion of others. *Id.*

Lyons v. Andrews involved a dispute over a strip of land between two neighbors. The Superior Court held that the adverse possessors had met the exclusive element even where the other neighbor had used a clothesline pole on the disputed strip, maintained a trash barrel within the strip, and planted a corn patch that extended onto the disputed strip, eventually turning the area into a garden. *Lyons*, 313 A.2d at 315–16 (Pa. Super. Ct. 1973). The Superior Court found that limited intrusion did not destroy the exclusivity of adverse possession. *Id.* at 315. The court specifically pointed out that in assuring its maintenance and using the area for family activities, the adverse possessor had exercised all the control over the strip that could reasonably be expected *in view of its character*. *Id.* at 316. (emphasis added).

In *McClelland v. Cragle*, the court held that exclusivity of possession need only be that which would normally characterize an owner's use. *McClelland v. Cragle*, 13 Pa. D. & C.4th 584, 590–91 (Lawrence Cty., 1992). The defendants, who raised adverse possession as a defense, had allowed relatives to park on the property, allowed relatives to pump water from the property, and allowed visitors to come upon the property. *Id.* at 590. The court held that all of

these uses were permissive by the defendants, and that none of them were inconsistent with acts characterizing ownership. *Id.* The court went so far as to opine that "barring relatives from parking or visitors from visiting would only be considered unfriendly and unneighborly, so allowing same would not be inconsistent with ownership." *Id.* at 591. In terms of allowing relatives to pump water from the property, the court held that permitting its use by relatives in a water rich state could not be considered so extreme as to be inconsistent with ownership. *Id.* Indeed, the court held that "these specifics strengthen[ed] rather than weaken[ed] [defendant's] claim . . . because these "uses" by his friends and relatives [were] not inconsistent with the exercise of his claim . . . ." *Id.*

Mayrone contends that land used for a common purpose cannot result in exclusive possession. To support its argument, defendant cites *Parks v. Pennsylvania Railroad. Co.*, where the court determined that a reasonable jury could have determined that an adverse possessor failed to establish exclusivity based on the unique facts of that case. 152 A. 682, 685 (Pa. 1930) (noting that "there was no proof whatever from which the jury could so clearly" establish exclusivity). Similarly, *Henry v. Grove*, another case cited by Mayrone, left the determination of exclusivity to the fact finder. 52 A.2d 451 (Pa. 1947). The *Parks* court further held that the adverse possessor could not establish exclusivity because it did not fence or otherwise enclose the Property, and "anybody that wanted to could run around" on the land. *Parks*, 152 A. at 685.

In this case, unlike *Parks*, neighbors could not simply "run around" on the Property nor has anyone been allowed to change the use of the Property as a garden, including Pyramid or Mayrone. Rather, PCW fenced the Property, sent a clear message that the Property would, henceforth, be a garden, through signage and ongoing communication to and with the surrounding community, controlled the Property's use for that community, and, as detailed

below, otherwise maintained exclusive control of the Property. Therefore, as in *Parks* and *Henry*, this case is not appropriate for summary judgment and is best left to the factfinder to determine exclusivity.

PCW's use of the Property since 1988 has been consistent with acts of ownership given its character as a community garden. *See McClelland*, 13 Pa. D. & C.4th at 590. Community gardens play an important role in bringing neighbors together, improving urban blight, and maintaining a sense of pride in a neighborhood.[190] Thus, by their very nature, community gardens are inclusive, welcoming individuals to garden (assuming there are plots available) and help from volunteers.[191] At the same time, community gardens have an understanding or sometimes written rules that at a minimum require permission or an invitation of some type before an individual can garden.[192] In that sense, a community garden is no different than a homeowner who invites neighbors to enjoy the backyard.[193]

Typical of a community garden, PCW allowed volunteers and neighbors to use the garden. In light of the character of the Property – a community garden space – this permissive use is not inconsistent with exclusive ownership. *McClelland* , 13 Pa. D. & C.4th at 591. Like *McClelland*, PCW's allowance of others to utilize plots or community garden space is perfectly consistent with PCW's ownership of a *community* space.

Moreover, as in *Lyons*, PCW exercised all the control that could reasonably be expected in view of the Property's character as a community garden space. *See Lyons* 313 A.2d at 316.[194] Likewise, PCW retained authority over the use of the Property. All groups or neighbors

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[190] *See* Expert Report of Sally McCabe ("McCabe Report"), attached hereto as **Exhibit F**, 3.
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *See* McCabe Report, 4 (quoting Philadelphia Zoning Code § 14-601(11)(b)) ("A community garden area may be divided into separate plots or orchard areas for cultivation by one or more individuals or may be farmed collectively by members of the group. A community garden may include common areas (e.g. hand tool storage sheds) maintained and used by the group.").

gardening on the Property did so with the permission of PCW. PCW assured the use and maintenance of the Property. PCW erected a fence around the Property. PCW established water supply to the Property. PCW utilized food grown on the Property to feed neighbors in its community soup kitchen. Certainly, PCW's actions over the course of the statutory period demonstrate precisely the type of control an owner of a community garden space would exercise.[195]

In sum, there is no legal support for Mayrone's contention that a community garden cannot as a matter of law be subject to adverse possession. Possession instead requires a fact-based analysis. There are more than sufficient facts to support the conclusion that PCW has been in possession for more than 21 years. At a minimum, genuine issues of material fact preclude summary judgment on this issue.

C. PCW's Actions Do Not Constitute Clear or Unequivocal Recognition That Pyramid Is the Proper Owner So as to Defeat Hostility.

Mayrone contends that PCW's use of the Property was not hostile and adverse for the statutory period. Specifically, Mayrone claims that PCW cannot satisfy the hostility requirement because PCW recognized and acknowledged Pyramid's alleged ownership. This assertion, however, is premised on a mischaracterization of Pennsylvania law and the facts of the case.

Mayrone cites to only two instances of PCW's alleged recognition and acknowledgment of Pyramid's ownership. At the beginning of PCW's control over the Property in 1988, it attempted to contact the dormant record owner, and after failing, PCW took control of the Property. In 1994, PCW sent a single letter to Pyramid, not to recognize Pyramid's alleged

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[195] As in *Reed*, where the Superior Court explained the claimant's possession need not be absolutely exclusive, PCW oversaw, for the duration of the statutory period, the management of the Property, ensuring the Philadelphia Catholic Workers, volunteers, and/or neighbors maintained the garden year round. *Reed,* 471 A.2d at 84. Further, the Superior Court noted that persons passing over the lot involved did not destroy exclusive possession. *See id.* Likewise, while PCW granted permission for volunteers and neighbors to use the Property, PCW still possessed the Property to the general exclusion of others. *Id.*

ownership, but to assert control over the Property in response to an administrative inquiry. Other than these inconsequential events, Mayrone does not cite to any example, other than filing this lawsuit, to support a contention that PCW "recognized" and "acknowledged" Pyramid's alleged ownership. As a result, taking the facts most favorably to the non-moving party, there is, at a minimum, a genuine issue of material fact as to whether PCW's actions were a "clear" and "unequivocal" recognition so as to defeat hostility under Pennsylvania law.

Generally, in Pennsylvania only clear and unequivocal acknowledgement of a prior title holder destroys the continuous hostile element of an adverse possession claim. *Truman v. Raybuck*, 56 A. at 944–45 (failing to find hostility because there was such a "clear and continuous recognition" of title so as to "remove all doubt that the latter's occupancy of [the Property] was subservient"). Courts look at the circumstances and motive surrounding recognition and acknowledgement and, in light of the facts of each case, determine whether there was a "real intention" for the adverse possession. *Wolff v. Moore.*, 5 Pa. D. & C. 345, 345–46 (Phila. Cty. 1924).

In this case, PCW did not make an unequivocal, clear, or even continuous recognition that Pyramid was the proper owner. One attempt, at the beginning of PCW's control of the Property in 1988, to contact the dormant record owner does not qualify as clear and continuous recognition of title.[196] As discussed above, on June 16, 1994, in order to join the Clean and Green Program funded by L&I, Jeff Monjack was required to show that PCW had attempted to contact potential record owners of the Property. Mr. Monjack sent a certified letter to Pyramid, but the letter was returned to PCW stamped "Return to sender" and "Moved not forwardable." The purpose of the letter was not to purchase Property, or recognize Pyramid's ownership, but to

[196] It is hardly surprising that PCW knew early that Pyramid was listed as the owner of record. The ownership listing was public information.

assert control over the Property by showing the absence of competing Property claims. The letter did not acknowledge ownership, but established that Pyramid was *not* the owner of the land. Even if this single letter were deemed to be recognition of title, which PCW denies, this lone act was not a sufficiently continuous recognition so as to defeat hostility.

Finally, Mayrone asserts that by filing the present lawsuit, PCW still recognizes Pyramid as the proper title owner. This conveniently overlooks the fact that PCW was forced to file suit after Mayrone interfered with its right of possession and claimed ownership on the basis of Pyramid's prior title. The proposition that filing a quiet title action on the basis of adverse possession defeats a claim of adverse possession would stand the law and civil procedure on its head.

Mayrone cites to *Pistner Bros., v. Agheli*, 518 A.2d 838, 840–41 (Pa. Super. Ct. 1986). The *Pistner* court rejected a finding of hostility after the adverse land possessor *offered to purchase* the Property from the true owner, and the offer to purchase the land was an "unequivocal" recognition that his title was subservient. *Id.* Here, PCW never made an offer to purchase the Property.

Mayrone also cites to *Crowe v. O'Hagan*, 106 A.2d 872, 874–75 (Pa. Super. Ct. 1954) and *Truman v. Raybuck*, 56 A. 944, 944–45 (Pa. 1904) for the proposition that repeated acknowledgement of Pyramid's title defeats the hostile element. In *Crowe*, the defendant sought to extinguish an express easement on its Property by invoking adverse possession. The defendant's mortgage, however, contained a provision acknowledging that its land was "subject to [the] twenty (20) foot easement across [its Property]." As a result, the court determined that the defendant failed to satisfy the hostile element of adverse possession because the defendant recognized or acknowledged that its Property was subject to an express easement. *Crowe*, 106

A.2d at 874 (holding that "recitals in the mortgages and the acknowledgement of one of the defendants are inconsistent with the element of hostility to support defendants' position. . . . The defendants upon their acceptance of the conveyance . . . knew or should have known that their Property was subject to the easement."). Again, here PCW did not execute a deed, a mortgage, or other document in which it acknowledged Pyramid's ownership.

In *Truman*, the court specifically held that hostility is defeated only if the possessor clearly and continuously recognizes the prior land owner. *Truman*, 56 A. at 944 (stating that "there was such a clear and continuous recognition of [prior land owner's] title" so as to "remove all doubt that the latter's occupancy [of the Property] was subservient."). Furthermore, there must be an "unequivocal" acknowledgement of the prior landowner to defeat the element of hostility. *Id.* The facts in this case simply do not warrant a finding of clear and continuous recognition of a prior landowner. Again, at a minimum, there are genuine issues of material fact that preclude summary judgment on this issue.

D. The Facts Demonstrate That PCW Was in Possession of the Property Continuously for the Statutory Period.

Mayrone asserts that PCW cannot establish continuity of ownership for the statutory period because in 1999, the responsibility of overseeing the garden shifted to individuals who allegedly had no "official" roles at PCW. Mayrone cites no support for its proposition that, due to PCW's decision to permit various individuals to work at the community garden, PCW cannot satisfy the continuity requirement. Furthermore, Mayrone ignores the fact that individuals who farmed at the Property did so with the permission of PCW. As explained below, continuity is judged based on the character of the Property in light of the facts of each case. In the present case, PCW's possession and ownership, and its decision to permit different individuals to farm

on the Property, is consistent with the character of a community farm or garden.[197] As a result, there are at least genuine issues of material fact as to whether PCW has met the continuity requirement under Pennsylvania law.

In order for adverse possession to result in title to the Property, the possession must be continuous and uninterrupted for the full statutory period of 21 years. 42 Pa.C.S. § 5530; *Tioga Coal Co. v. Supermarkets Gen. Corp.*, 433 A.2d 483, 489 (Pa. Super. Ct. 1981) (holding that Section 5530 governs acquisition of title by adverse possession in Pennsylvania); *Watkins v. Watkins*, 775 A.2d 841, 846 (Pa. Super. Ct. 2001). The period commences upon the initial adverse entry onto the land, but it is not necessary to establish the exact date upon which the period of adverse possession commenced. *Wampler v. Shenk*, 172 A.2d 313, 315 (Pa. 1961) (stating that the possessor did not have a duty to show the exact date when the adverse period began). There are no fixed rules by which actual possession of Property is determined in all cases; but rather, *the determination depends on the facts of each case and the character of the property*. *Rose v. Thomas*, 58 Pa. D. & C.4th 225, 230 (Fayette Cty. 2002) (emphasis added).

Adverse possession is judged based upon presence *consistent with the nature of the property*. *Hoover v. Jackson*, 524 A.2d 1367, 1369 (Pa. Super. Ct. 1987) (emphasis added). Actual possession requires acts signifying permanent occupation of the land that are performed continuously throughout the year, but Pennsylvania law does not require the possessor to perform acts of ownership from day to day. *Johnson v. Tele-Media Co. of McKean Cnty.*, 90 A.3d 736, 741 (Pa. Super. Ct. 2014) (stating that acts signifying permanent occupation done continuously for statutory period will confer adverse possession); *Rose*, 58 Pa. D. & C.4th at 230

[197] *See* **Exhibit F,** McCabe Report, at 3 ("Community gardens by their very nature are inclusive, welcoming individuals to the garden (assuming there are plots available) and help from volunteers . . . . In that sense, a community garden is no different than a homeowner who invites neighbors to enjoy the backyard.").

(noting that possession "requires acts signifying permanent occupation of land, which are performed continuously throughout the year"); *Watkins*, 775 A.2d at 846 (providing that the "law does not require that the claimant remain continuously on the land and perform acts of ownership from day to day").

A temporary break or interruption does not destroy the continuity of possession. *Watkins*, 775 A.2d at 846. In order to break continuity of possession, there must be either abandonment, or a third-party must take possession. *Id.* (stating that "a temporary break or interruption, not of unreasonable duration, does not destroy the continuity of an adverse claimant's possession. In order to break the continuity of possession, there must either be an abandonment or possession must be taken by one disconnected with the previous holder"). Where an adverse possessor maintains the Property, such as cutting and planting grass, an allegation that he abandoned the Property in the winter time will not establish an interruption or break in continuity. *Ewing v. Dauphin County Tax Claim Bureau*, 375 A.2d 1373 (Pa. Commw. Ct. 1977). This allegation apparently is a reference to Danny and Junior Rodriguez.

Mayrone alleges that PCW fails to satisfy the continuity element because in 1999, PCW permitted allegedly new individuals "to oversee" the garden. The Rodriguez's were not new in 1999, but had been long time gardeners.[198] Junior Rodriguez was a PCW volunteer.[199] The fact that the Rodriguez's handled issuance of keys when Karen Lens became ill, does not destroy continuity. Indeed, this shows that PCW made arrangements to continue possession despite Ms. Lens' terminal illness. Moreover, the Rodriguez's consistently consulted the PCW residents regarding the garden. In any event, the transfer of an aspect of responsibility for the garden to long-time volunteers on behalf of and with permission of PCW is hardly sufficient to break the

[198] *See* Exhibit K, Rodriguez Affidavit, ¶ 3.
[199] *Id.* at ¶ 4

continuity requirement in light of the history of the garden.[200] Mayrone points to no case law that shows otherwise.[201]

In sum, there is more than sufficient evidence to support a finding that PCW's possession was continuous over 21 years from 1988 until 2009. Again, these facts, which at a minimum are genuine issues of material facts, preclude summary judgment.

E. The Lack of a Filing Statement Pursuant To 68 Pa. Stat. Ann. §§ 81-86 Does Not Defeat Title as Against Mayrone, Which Has Actual and Constructive Notice of the New Title By Adverse Possession.

As a final Hail Mary, Mayrone asserts that it is entitled to judgment pursuant to 68 Pa. Stat. Ann. §§ 81-86. Mayrone contends that PCW was not in possession of the Property in January 2016 when Mayrone "purchased" the Property, that PCW did not file a written statement of claim, and that Mayrone did not have notice of PCW's claim. Mayrone contends that these facts entitle it to judgment on PCW's adverse possession claim. Mayrone is wrong on all counts. Perhaps most importantly, Mayrone fails to cite to the relevant Pennsylvania case law on Sections 81-86.

Pennsylvania case law makes clear that the failure to file a statement pursuant to this statute does "not defeat the title as against a purchaser who has either actual or constructive notice of the new title by adverse possession." *Plauchak v. Boling*, 653 A.2d 671, 678 (Pa. Super. Ct. 1995); *see also Nulton v. Nulton*, 93 A. 630, 633 (Pa. 1915).[202] In this case, if it did not have actual notice – which PCW contends it did – Mayrone certainly had constructive notice

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[200] *Id.*

[201] In its motion and memorandum, Mayrone spends considerable time referring to events that occurred in 2009. This is moot as it relates to the 21 year period. The 21 year period ended in 2009, and at that time Pyramid lost its right to assert title.

[202] 68 Pa. Stat. Ann. § 86 provides that to benefit from that section a purchaser must be for value, and "without notice." Mayrone cannot meet the requirement of this section.

of the potential adverse possession titleholder. At a minimum, there are factual issues that preclude summary judgment on the notice issue. Accordingly, the Court should refuse summary judgment based on 68 Pa. Stat. Ann. §§ 81-86.

F. Mayrone Had Knowledge of PCW's Claim At the Time of the Purported Transaction with Pyramid

The evidence is frankly overwhelming that Mayrone had actual and constructive notice that the Property was susceptible to an adverse possession claim. As discussed above, the record shows that at closing, Mayrone knew of the water bill in the name of La Finquita Garden, and even questioned whether or not it should move forward with the purchase in light of the presence of the garden. This demonstrates that Mayrone knew that a third party had at least a potential claim. At the very least, the record demonstrates that genuine issues of material fact exist as to whether this conversation occurred.

In addition, according to Mayrone's principles, they made several visits to the Property between November and December of 2015.[203] While Mayrone alleges that neither visit showed any evidence of a garden on the Property,[204] photographic evidence shows otherwise. As set forth in the Centz affidavit, photographs from an environmental report by Boucher & James, which was commissioned by Mayrone, show the condition of the Property in November and December 2015. These photographs depict a visible greenhouse, shed, structured pathways through the garden, raised garden beds, a fountain, and a chain link fence surrounding the Property.[205] The Boucher & James Report explicitly states that "the site is currently utilized as a community garden."[206] The Report even explains that there is a garden shed and greenhouse on

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[203] *See* **Exhibit** O, McAlinden Dep., 38:4-44:2; **Exhibit W,** Regan Dep., 20:17-26:2; **Exhibit X,** Goode Dep., 82:7-83:11.
[204] *Id.*
[205] *See* Exhibit 2 to **Exhibit J,** Centz Affidavit.
[206] *Id.*

the site.[207] An aerial photograph from the Boucher & James report, as well as the other photographs, depicts a community garden with divided plots, various structures, garden beds, and a fence.[208] Even a cursory site inspection, which Mayrone was required to conduct, and which it claims to have made, would put a reasonable person on notice of a third party claim.

Mayrone principle, Gerard Regan, was present for the Boucher & James assessment in January 2016. Further, Errol McAlinden and Gerard Regan both acknowledged that the Property did not look any different during the November and December 2015 visits than it did when Mayrone stepped onto the Property after closing a month or two later.[209] Any claims by Mayrone of having no notice of the presence of a community garden on the Property are simply not credible. In light of these facts, a reasonable factfinder could conclude that Mayrone had at least constructive notice that the Property was subject to an adverse possession titleholder. As a result, Mayrone's argument related to 68 Pa. Stat. Ann. §§ 81-86 ought to be dismissed.

G. PCW Has Maintained Possession of the Property Since 1988.

Even if Mayrone did not have notice of PCW's claim, the facts show that PCW was always in possession of the Property. This makes Sections 81-86 inapplicable. Mayrone alleged that PCW gave up possession when Cliff Brown and others became gardeners in 2010. The facts show otherwise.

In 2010, recognizing that the garden belonged to PCW, Cliff Brown, requested permission from PCW for a plot and began to garden at the Property.[210] PCW, via Beth Centz, authorized Mr. Brown to take action that was necessary to maintain and improve the garden, such as building the garden beds back up and turning part of the garden into a community

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[207] *Id.*
[208] *Id.*
[209] *See* McAlinden Dep. 75:2-5; Regan Dep. 44:8-14.
[210] *See* **Exhibit H**, Centro Responses, ¶ 45; **Exhibit G,** Centro Dep. 62:6-15; 120:12-19; 122:4-9; **Exhibit J,** Centz Affidavit, ¶ 7; **Exhibit I,** Brown Affidavit, ¶¶ 3-5.

farm,[211] and Cliff Brown offered to grow and harvest vegetables to share on behalf of PCW.[212] Mr. Brown consulted Ms. Centz before making any substantial changes in the garden.[213] Mr. Brown recruited another new gardener, Zach Prazak,[214] and Mr. Monjack became reengaged as well.[215]

PCW did not relinquish possession during this period. Beth Centz kept abreast of events at the garden, continued to authorize work, and was present at the garden and farm stand.[216] All parties remain sensitive to ensuring the ownership and origins of La Finquita are clear and lie entirely with PCW.[217] Current gardeners and the surrounding community recognize La Finquita as Property of PCW.[218]

In a misguided effort to show that PCW was out of possession at the time of Mayrone's purported purchase of the Property, Mayrone alleges that Ms. Centz decided to add gardener Shazana Goff, Ms. Noon, and Mr. Brown to the PCW board only after the initiation of this litigation. The facts show otherwise. In 2013, PCW, via Ms. Centz, revitalized the Board of Directors of Centro Inc.[219] While a Board of Directors has always existed, the regular meetings stopped during the time Ms. Lens was hospitalized prior to her death.[220] In 2015 – well before the commencement of litigation in this matter – Ms. Centz discussed with Mr. Brown and Ms. Noon the need to have them on the Board to report as part of PCW on La Finquita, but it never

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[211] *See* Centro Dep., 61:13 - 62:15; 120:12-19; 122: 4-9.
[212] *See* Centro Responses, ¶ 45; Centro Dep., 62:6-15; 120:12-19; 122:4-9.
[213] *See* Centro Dep., 121:1-3
[214] *See* Centro Responses, ¶ 46.
[215] *Id.*
[216] *See* **Exhibit L,** Prazak Dep., 45:20-46:17. Mayrone seems to imply that the garden required constant on-site supervision. This is not the case. The garden consists of approximately one acre, and by its nature for the most took care of itself. Produce was planted, bed maintained on a periodic basis, and vegetables were harvested.
[217] *See* Centro Dep., 138:11 to 138:17.
[218] *See* Prazak Dep., 31:8 to 33:10; **Exhibit I,** Brown Affidavit ¶¶ 3-4, 6; **Exhibit R,** Noon Affidavit, ¶¶ 6, 7, **Exhibit K,** Rodriguez Affidavit, ¶¶ 3, 7.
[219] *See* **Exhibit G,** Centro Dep., 104:3-12; 106:3- 10.
[220] *Id.* at 103:19 - 104:12.

occurred.[221] With the filing of this litigation, creating more structure seemed appropriate, including the rewriting of bylaws, as much of the prior version had been lost, as well as including Ms. Goff, Ms. Noon, and Mr. Brown on the Board. Additions to the PCW Board in no way demonstrate that PCW was out of possession of the Property.

In its motion, Mayrone refers to an email from Natania Schaumburg to Phoebe Centz dated June 23, 2013. Ms. Schaumburg was an employee of South Kensington Community Partners, a registered community organization. The email asked Ms. Centz if Catholic Worker wanted food from the garden and alleged that Ms. Shaumburg and Cliff Brown were managing the La Finquita garden. Mayrone contends that this email shows that Centz was "uninvolved" with the Property. Initially, this email is inadmissible hearsay and cannot be used to support a motion for summary judgment. Moreover, PCW had been receiving food from the garden all along, so that if anything the email shows that Ms. Schaumburg was out of touch. In addition, Ms. Centz did not appoint Schaumburg as an alleged "manager," and Ms. Schaumburg was not in a position to self-appoint herself as an alleged manager.

In sum, there is no basis for Mayrone to claim summary judgment based on 68 Pa. Stat. Ann. §§ 81-86. PCW respectfully requests that this Court deny Mayrone's motion.

VI. CONCLUSION

For all of the foregoing reasons, and as demonstrated by the pleadings, testimony and documents, there is evidence from which a reasonable factfinder could conclude that as a threshold matter, Mayrone did not have authority to convey title to the Property; that PCW has established its ownership of the Property by demonstrating the elements of adverse possession consistent with Pennsylvania law; and that Mayrone had notice of the presence of PCW on the Property before purportedly purchasing the Property. As there are multiple genuine issues of

[221] *Id.* at 130:13 - 131:18.

material fact regarding Mayrone's claim, summary judgment is inappropriate and Mayrone's Motion should be denied.

Respectfully submitted,

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Dated: July 19, 2017

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Response in Opposition to Plaintiff Mayrone LLC's Motion for Summary Judgement and Memorandum of Law in Support thereof on the following parties by ECF.

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