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CENTRO INCORPORATED, d/b/a
PHILADELPHIA CATHOLIC WORKER,

Plaintiff,

v.

MAYRONE, LLC, et al.,

Defendants.

MAYRONE, LLC,

Plaintiff,

v.

CENTRO INCORPORATED,

Defendant.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

MARCH TERM, 2016
NO. 001647

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

MAY TERM, 2016
NO. 00174

**SUR-REPLY 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 (“PCW”) files this Sur-Reply opposing defendant Mayrone, LLC’s (“Mayrone”) Motion for Summary Judgment. This is a case about the Philadelphia Catholic Worker and the community garden that it has cultivated and maintained year round since 1988 on a once abandoned, vacant lot on West Master Street in Philadelphia (the “Property”). *See* Memorandum of Law of Plaintiff Centro Incorporated d/b/a/ Philadelphia Catholic Worker in Opposition to Defendant Mayrone, LLC’s Motion for Summary Judgment (“PCW Summary Judgment Opposition Memorandum”), attached hereto as Exhibit A, p. 1. True to its ideals, from the start, PCW welcomed its South Kensington neighbors on to the Property to garden and to share in its bounty. *Id.* at p. 6. Mayrone now seeks to use PCW’s inclusive mission against it, claiming that the inclusive nature of PCW’s mission and practice precludes PCW from owning the Property by adverse possession.¹ But adverse possession is a fact-based inquiry, ill-suited for summary judgment. And here, PCW has raised numerous genuine issues of material fact that preclude summary judgment.

I. THERE ARE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER MAYRONE CAN RELY ON ITS RECORDED DEED IN SEEKING JUDGMENT IN ITS FAVOR

Mayrone argues in its Reply that its lack of title to the Property is “entirely irrelevant” to PCW’s adverse possession claim. This assertion, which is startling on its face, is not correct.

To prevail in an action to quiet title, a plaintiff has the burden of proving a prima facie title by a preponderance of the evidence. *Poffenberger v. Goldstein*, 776 A.2d 1037, 1041 (Pa. Commw. Ct. 2001). Thereafter, the burden shifts to the opposing party to show superior title. *Id.* at 1041. Contrary to Mayrone’s assertion in its Reply, PCW is relying on the strength of its own

¹ Mayrone seems to argue that PCW’s organizational structure somehow disqualifies it from taking ownership by adverse possession. PCW is a corporation – corporations, of course, can own property, and in fact, PCW does own property. *See* Exhibit A, p. 6. Mayrone cites to no legal authority to support its argument that a certain organizational structure is required to assert ownership by adverse possession. In any event, PCW respectfully submits that the Court cannot create an additional legal requirement for adverse possession.

title in its quiet title action. PCW has come forth with more than sufficient evidence that it has possessed the Property exclusively, continuously, adversely, and openly for 21 years and therefore has title to the Property. *See* Exhibit A, PCW Summary Judgment Opposition Memorandum, p. 10.

Mayrone claims that it purchased the Property for value from Pyramid and on the basis of this purchase appears to be claiming that it has superior title entitling Mayrone to judgment on the Amended Complaint.² *See* Mayrone's Memorandum of Law in Support of its Motion for Summary Judgment ("Mayrone Memorandum of Law"), attached hereto as Exhibit B, pp. 13-14; Reply to Centro Incorporated's Response to Mayrone LLC's Motion for Summary Judgment ("Mayrone Reply"), attached hereto as Exhibit C, pp. 14-16. This apparent assertion, without more, makes the status of its title relevant.

The record raises genuine issues of material fact as to Mayrone's ability to show superior title. These countervailing facts include:

- There is no deed to Mayrone from Pyramid, the record owner of the property.

² Mayrone is not seeking summary judgment on its ejectment action. *See* Mayrone's Proposed Order included with its Motion for Summary Judgment. In its Reply, however, Mayrone attempts to bring in the ejectment action and argues that it has made a prima facie case for title in its ejectment action. Even if that issue were properly before the court, at a minimum, there are genuine issues of material fact as to whether Mayrone has made a prima facie claim for title where the deed on its face is executed by "co-executors of the Estate of Emma Fields," who allegedly was the last surviving "beneficial owner of Pyramid" and where beneficial ownership is not a recognized concept for ownership of a corporation, and a claimed designation of beneficial ownership does not grant legal authority to transfer title. *See* Expert Report of Nina Segre, attached to PCW's Opposition to Summary Judgment as Exhibit B. Moreover, as discussed above, PCW has presented additional evidence that calls into question whether the purported grantors, Elliot Fields and Arlene Zitin, had authority to convey title to the Property on behalf of Pyramid Tire & Rubber Co. Finally, PCW presented evidence that Mayrone had constructive or actual notice of PCW's adverse possession claim. *See* PCW's Memorandum of Law in Opposition to Summary Judgment at pp. 7-10. For all these reasons, PCW will be unable to show that it has superior title in its ejectment action. *See Vandelay v. Jackson*, 31 Pa. D. & C.5th 545 (2013) (finding in favor of the property's occupant in a quiet title action and against the real estate developer on a corresponding ejectment action in a dispute over legal ownership of the property holding that the developer did not have superior title because he was not a bona fide purchaser for value entitled to protection under the recording statute, 21 Pa. Stat. Ann. § 351, where the developer was on constructive notice of the occupant's possession).

- There is no corporate resolution supporting a transfer of the Property from Pyramid to Mayrone, there is no evidence of the current ownership of Pyramid, or indeed of the ownership of the corporation at any time.
- There is no evidence regarding Frank Fields' will – the alleged shareholder for Pyramid – or the distribution of his assets, whatever they may have been.
- There is no evidence that Emma Fields – Frank Fields' widow - ever owned any shares of stock in Pyramid.
- There is no evidence, if she did own any stock, that the stock was ever part of Emma Fields' estate.
- There is no evidence that Elliott Fields or Arlene Zitin had legal authority to execute a deed as executors for the estate.

See Expert Report of Nina Segre, pp. 2-9, attached to PCW Summary Judgment Opposition Memorandum as Exhibit B.

Mayrone's lack of title is therefore relevant to the adverse possession case. Because there are factual issues relating to Mayrone's claim of title from Pyramid, the Court should deny Mayrone's Motion for Summary Judgment.

II. THE EVIDENCE SHOWS THAT PCW HAD EXCLUSIVE USE OF THE PROPERTY

Mayrone argues that PCW's use is not exclusive because "anybody who wished to use the property was permitted to do so." *See* Exhibit C, Mayrone Reply, p. 5. As set forth at length in PCW's Memorandum of Law, exclusivity in adverse possession does not mean to the exclusion of all others. *See* Exhibit A, PCW Summary Judgment Opposition Memorandum, p. 31. Moreover, it is simply not the case that anybody who wished to use the Property was permitted to do so. To the contrary, PCW has come forward with a plethora of evidence demonstrating exclusive use of the Property within the meaning of adverse possession, including documents and testimony that:

- PCW's use of the Property since 1988 has been consistent with acts of ownership given its character as a community garden.

- As a community garden, PCW naturally welcomed neighbors to garden and volunteers to help maintain the Property.
- PCW fenced the Property, initially erecting a wooden fence and eventually a locked, chain link fence communicating that it controlled the Property.
- Neighbors could not enter the Property without a key nor were neighbors or anyone else, including Pyramid and Mayrone, allowed to change the use of the Property.
- Neighbors had to ask permission to use the garden.
- Neighbors could not garden unless there was a plot available on the Property, and there were, at times, waiting lists.

See PCW's Response to Mayrone's Motion for Summary Judgment ("PCW Summary Judgment Response"), attached hereto as Exhibit D, ¶ 6-10 and attached exhibits. In short, whether PCW maintained exclusive use of the Property as would an owner is a genuine issue of material fact precluding summary judgment.³

III. PCW HAD CONTINUOUS USE OF THE PROPERTY FOR THE 21 YEAR STATUTORY PERIOD.

Mayrone claims that there was a "very clear, very substantial break in [PCW's] occupation of the Property . . . when Danny Rodriguez took over in 1999" precluding PCW from establishing continuous possession of the Property from 1988. *See* Exhibit C, Mayrone Reply, p. 13. Initially, Danny Rodriguez did not "take over." As set forth in his affidavit, Mr. Rodriguez's duties were limited, and he always understood PCW to be the owner of the garden. Indeed, PCW continued to possess the Property and maintain the garden upon that Property as it had in the past.

³ In its Reply, Mayrone, attempts to distinguish the cases cited by PCW relating to the meaning of exclusive possession. *See* Exhibit C, Mayrone Reply, 5-6. Mayrone contends that the facts of those cases differ from those relating to community gardens. The case law discussion confirms, as one would expect, that there are no two adverse possession cases with identical facts. Mayrone's discussion of PCW's possession of the detailed facts in the cited cases proves this point, but does not establish as a matter of law that PCW was not in continuous possession. There are, at a minimum, factual issues relating to the continuous use of the Property that preclude summary judgment.

PCW has produced additional evidence, which at a minimum, creates genuine issues of material fact as to whether its possession was interrupted or, in fact, continued by Mr.

Rodriguez's participation. That evidence includes:

- Testimony that Danny's son, Junior Rodriguez, was a longtime PCW volunteer, who had been gardening with PCW from the start of the garden.
- Testimony that Danny Rodriguez was a longtime PCW volunteer, who had been gardening with PCW from the start of the garden.
- Testimony that although PCW entrusted Danny Rodriguez to hand out the keys to new gardeners, he did not have control of the Property.
- Testimony that Danny Rodriguez would check with PCW House resident Karen Lens before he gave out keys.
- Testimony that Danny Rodriguez would discuss administration of and decisions related to the garden with PCW residents.
- Testimony that after Karen Lens' death, Phoebe Centz moved into the PCW house and Danny Rodriguez then consulted with her about the garden.

See Rodriguez Affidavit, attached as Exhibit K to Opposition Memorandum; *see also* Exhibit D, PCW Summary Judgment Response, ¶¶ 17, 19 and attached exhibits.⁴

IV. PCW'S POSSESSION OF THE PROPERTY WAS HOSTILE TO THE RIGHTS OF PYRAMID.

Mayrone contends that PCW has "repeatedly acknowledged Pyramid's claim of ownership, thus destroying the hostile element of adverse possession." *See* Exhibit C, Mayrone Reply, p. 10. This allegation stretches the facts on which it relies beyond all recognition.

Mayrone bases its "acknowledgment" argument on two events:

- In 1988, PCW attempted to contact Pyramid, and after this failed, PCW took over the Property anyway and established the community garden.

⁴ Mayrone argues that the affidavit of Danny Rodriguez contains "self-serving and inadmissible conclusions of law." The facts set forth in the affidavit, however, are directly on point. Mayrone alleges that Rodriguez "took over" the garden. The affidavit directly refutes this unsupported allegation. Mr. Rodriguez states that he understood that PCW was the owner and that PCW was at all times in possession and control of the Property. These are not conclusions of law, and Mayrone does not explain why they are. In any event, the affidavit, together with other facts in the record, raises issues of fact that preclude summary judgment.

- In compliance with the requirements to submit an application to obtain funds from the “Clean and Green Program,” administered by the Pennsylvania Horticultural Society and funded by the Philadelphia Department of Licensing and Inspections, PCW sent a letter to Pyramid to establish its abandonment of the Property. PCW never heard from Pyramid.

See Exhibit D, PCW Summary Judgment Response, ¶¶ 11-13, 85-86. These isolated, pragmatic steps do not defeat hostility, particularly in the face of PCW’s continued possession. At a minimum, there are genuine issues of material fact as to whether PCW’s possession was hostile.

V. MAYRONE HAD ACTUAL OR CONSTRUCTIVE NOTICE OF PCW’S CLAIM FOR ADVERSE POSSESSION.

Lastly, Mayrone contends that PCW was not in possession of the Property when Mayrone purchased the Property and that “the Property was being occupied by La Finquita Inc., a party with no connection to [PCW].” According to Mayrone, 68 Pa. State Ann. § 81-86 precludes a finding of adverse possession. *See* Exhibit C, Mayrone Reply, p. 14. But Mayrone’s underlying premise, that PCW and La Finquita are somehow unconnected, is an issue of material fact based on the following evidence from PCW:

- Cliff Brown and Zach Prazak had been working with PCW since approximately 2010 to further the goal of the garden and PCW mission of assistance to the neighborhood.
- Mr. Brown and Mr. Prazak, among others, formed La Finquita Inc. to facilitate the acquisition of grants, formalize income and expenses related to the farm stand and garden, and to allow the farm stand to serve the neighborhood residents using benefits from the US Dept. of Agriculture Supplemental Nutrition Assistance Program (“SNAP”).
- Current gardeners like Mr. Brown, Mr. Prazak, and Mr. Rodriguez acknowledged and continue to acknowledge PCW’s ownership of the Property in a variety of ways including by asking permission of PCW before undertaking various work on the Property.
- Ms. Schaumburg’s claim in an email that she was managing the garden is not only hearsay but is directly contradicted by Ms. Centz’s testimony that she did not appoint Ms. Schaumburg as the manager of the garden and by Ms. Centz’s testimony that Ms. Centz and Mr. Brown were in communication regarding Mr. Brown’s involvement at the garden long prior to Ms. Schaumburg’s email.

See PCW's Exhibit D, PCW Summary Judgment Response, ¶¶ 17, 21, 22, 24-25, 27 and attached exhibits.

CONCLUSION

The moving party has the burden of establishing the absence of a genuine dispute of material fact. Mayrone has not met that burden. Moreover, to avoid summary judgment, the nonmoving party need only designate specific facts showing that there are genuine issues for trial. PCW has more than met that burden. PCW has highlighted facts supporting that its possession was exclusive, continuous, and hostile, all of which must be decided by the trier of fact and which preclude the entry of summary judgment.

Respectfully submitted,

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Dated: August 4, 2017

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Sur-Reply of Plaintiff Centro Incorporated d/b/a Philadelphia Catholic Worker in Opposition to Defendant Mayrone, LLC's Motion for Summary Judgment on the following parties by ECF.

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Dated: August 4, 2017