

Children's Magical Garden, Inc. v. Norfolk Street Development

Consumer, Privacy & Antitrust

Role	BFA represented Children's Magical Garden pro bono in this matter.
Background	The Children's Magical Garden litigation arises from a real estate developer's prolonged campaign to seize a portion of a historic Lower East Side community garden in Manhattan.
Status	Settled

BFA represented Children's Magical Garden pro bono in this matter, a litigation that arises from a real estate developer's prolonged campaign to seize a portion of a historic Lower East Side community garden in Manhattan. Since 1982, Children's Magical Garden has hosted educational programming and after-school activities and has been recognized by the New York City Council as a "neighborhood treasure." In 2014, Children's Magical Garden was threatened with destruction when a developer claimed title and announced plans to build on the land. That same year, BFA attorney Benjamin Burry led the pro bono litigation to save the Garden by first filing an adverse possession suit claiming that the Garden owned the disputed land.

In 2019, the Garden filed an additional lawsuit against developer David Marom and his company, the Horizon Group, alleging repeated acts of trespass and harassment, including illegal encroachments, destruction of garden property, and dumping rotting garbage on the premises. In 2021, the Garden filed a third lawsuit against the developer under New York Civil Rights Law, alleging that the developer unlawfully attempted to silence the Garden and its supporters from speaking out against plans to develop the site.

On November 23, 2015, New York Supreme Court sustained the Garden's adverse possession claim against the developers' motions to dismiss. On appeal, New York Supreme Court Appellate Division affirmed the Garden's claim, noting the "extremely rare occurrence" of "adverse possession of prime real estate located in the Lower East Side neighborhood of Manhattan," and endorsing the Garden's theory that, despite its formation as an unincorporated association, a "succession of different individual Garden members" could establish adverse possession by transforming an abandoned lot into a "treasured community resource." On

December 27, 2021, the New York Supreme Court granted the Garden summary judgment on its trespass claim, holding the developer personally liable. On October 5, 2022, the Court sanctioned the developer for willfully destroying evidence. On December 15, 2022, the Appellate Division unanimously affirmed the trespass ruling, rejecting the developer's challenge to the Garden's legal standing. On September 30, 2023, the Supreme Court issued a permanent injunction protecting the Garden's land and its 40-foot Mulberry Tree, ordering Marom to remove his illegal encroachments and awarding the Garden reparative relief.

Finally, on March 4, 2024, the parties reached a global settlement whereby the developer turned over ownership of the land and executed a deed that transfers title to Children's Magical Garden. The settlement achieves the Garden's central goal of making make the Garden "permanent," so that it will forever be a community garden where Lower East Side children can safely play and learn about nature.