

BFA Wins Summary Judgment for Children's Magical Garden

BFA has achieved an important win for pro bono client Children's Magical Garden, Inc. Children's Magical Garden is a beloved and historic community garden across the street from P.S. 20 Elementary School in the Lower East Side of Manhattan. Since 1982 it has hosted educational programs and provided after-school supervision for children to play and learn about nature, and has been recognized by the New York City Council as a "neighborhood treasure" and for its "vital role in transforming the Lower East Side environment."

In 2019, the Garden filed a lawsuit against real estate developer David Marom and his company, the Horizon Group, who have sought to seize a piece of the Garden and bulldoze it so that Marom can build a seven-story luxury residence for himself. The Garden alleges that as part of his campaign to bully and harass the Garden volunteers, Marom unlawfully built encroachments on two of the Garden's lots; launched raids onto the Garden property to destroy plants and Garden supplies; and unloaded dozens of containers filled with rotting garbage onto their beloved community garden, forcing the Garden to cancel events and programming.

On December 27, 2021, Justice Andrea Masley of the Commercial Division of New York Supreme Court, New York County, granted the Garden's motion for summary judgment on its trespass claim. Marom had argued that he could not be held personally liable for the encroachments because his actions should be attributed one of his shell companies, which he claimed was responsible for his activities at the site. Marom also argued that the Garden lacked standing to sue for trespass because it is a "mere licensee" and the lots at issue are owned by the New York City Parks Department. The Court rejected Marom's arguments on all issues and found him and his company liable for trespass.

Critically, on the question of standing, the Court held that "Defendants are wrong on the law" and that as long as "plaintiff is in actual possession of the property, it can maintain a trespass claim." This is a significant decision because it recognizes the rights of not-for-profit organizations and community gardens holding events on City-owned land to sue private developers who encroach and interfere with community activities. The Court found that a community garden has standing to recover for trespass even when it is not owner and does not have a lease to the property.

The Court ordered "an immediate trial" on trespass damages to be imposed on Marom. The Garden's remaining claims against Marom are still pending as well.

Children's Magical Garden, Inc. is represented by Joseph A. Fonti and Benjamin F. Burry, along with their co-counsel at Sidley Austin LLP. Benjamin F. Burry has represented Children's Magical Garden since 2014 in a series of lawsuits against real estate developers who have sought to interfere with and seize pieces of the historic community garden.