

BFA Proves NYC Developer “Willfully Destroyed” Evidence And Wins Spoliation Sanctions

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.

In 2019, the Garden sued 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 could build a seven-story luxury residence for himself. In the lawsuit, the Garden seeks to hold Marom responsible for a series of encroachments and attacks it made against the Garden following the Garden’s opposition to Marom’s development plans.

On October 5, 2022, Justice Andrea Masley of the Commercial Division of New York Supreme Court, New York County, granted BFA’s motion to sanction David Marom for having “willfully destroyed” evidence about his involvement in a brutal April 2019 attack against the Garden. In that attack, workers broke into the Garden, cut down trees, destroyed plants, smashed Garden supplies, and dumped at least fifty large traffic barriers filled with rotting garbage, construction debris, and broken glass onto the property.

The destruction of the Garden caused a public outcry. The NYC Parks Department issued a demand to Marom threatening criminal prosecution, and local leaders such as Councilmember Margaret Chin and Assemblymember Harvey Epstein issued statements condemning “the callous vandalization.” The destruction forced the Garden to cancel open hours for schoolchildren as well as its popular programming such as its Free Environmental Summer Camp and Peach Harvest Festival.

While Marom publicly denied any involvement in the incident, BFA developed, through rigorous factual discovery, a record showing that Marom systematically destroyed his correspondence and business records about the incident, permanently deleted his emails about the Property, and urged his employees to permanently delete their own email. At the conclusion of fact discovery, BFA moved for sanctions against Marom.

In granting BFA’s motion, Supreme Court ruled that “[t]hroughout this case, Marom has provided inconsistent testimony and statements as to his knowledge and his involvement with the Incident.” The Court found Marom responsible for “intentional deletion of emails” relating to the Property, including “emails that Marom did not produce in this action when he swore under oath that he had.” As a result, the

Court imposed multiple sanctions against Marom, including ordering that Marom pay attorney's fees, costs, and expenses. Due to Marom having "willfully destroyed" key evidence, the Court also ordered, among other things, an adverse inference "against defendants' position that Marom and/or his workers did not cut down branches or trees or inserted rotting garbage in the traffic barriers on the property."

This decision follows the Court's December 27, 2021 ruling that granted BFA's motion for summary judgment on the Garden's trespass claim, holding Marom personally liable for encroachments on two of the Garden's lots. (See [BFA Wins Summary Judgment for Children's Magical Garden.](#))

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.