

BFA Wins Permanent Injunction to Protect Children's Magical Garden

BFA has achieved another 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. It has been recognized by the New York City Council as a "neighborhood treasure," noting its "vital role in transforming the Lower East Side environment."

On September 30, 2023, Justice Andrea Masley of the Commercial Division of New York Supreme Court, New York County, granted the Garden's summary judgment motion for a permanent injunction 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.

The Supreme Court held that Marom's interference and disturbances threatened irreparable harm and endangered the life of the Garden's prized 40-foot-tall Mulberry Tree that is at the heart of the community garden and is central to its ecosystem. Specifically, the Court found that the Garden had demonstrated two forms of irreparable harm. First, Marom's obstructions would ultimately kill the Mulberry Tree, causing it to come crashing down in this high-traffic pedestrian area, "pos[ing] the potential risk of hurting or even killing passerby." Second, the injunction is necessary to protect the Mulberry Tree because it provides "significant shade and climate control for the Garden . . . and forms an integral part of its habitat and ecosystem, which can only be achieved by growing a tree to maturity over the course of many years."

Accordingly, the Court permanently enjoined Marom from maintaining encroachments on these portions of the Garden; ordered Marom to "safely remove" the encroaching fence within 14 days, with failure to do so "result[ing] in a \$1,000/day fine against defendants every day thereafter until it is removed"; and further ordered that "any pruning shall be conducted by a licensed professional on 10 days' notice to the Garden." Additionally, the Court granted a "reparative injunction" in the form of awarding the Garden fees for arborist services needed to remedy the harm done by Marom to the site and restore the Garden to its pre-existing position.

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.