

BFA Wins Land Ownership In Historic Settlement for Children's Magical Garden

After 10 years of contentious litigation, BFA has won outright ownership of the disputed New York City property for its pro bono client Children's Magical Garden. 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" that has played a "vital role in transforming the Lower East Side environment."

In 2014, Children's Magical Garden was threatened with destruction when a developer claimed title and announced plans to build on the land. 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. New York Supreme Court Appellate Division sustained 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."^[1] The Court upheld 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." BFA's motion for summary judgment was pending at the time of settlement.

Separately, BFA prosecuted an action against the developer for interfering with the Garden's operations on adjoining City-owned land. There, BFA successfully argued that, even as a mere licensee, the Garden could hold the developer liable as a trespasser because the developer disrupted the Garden's peaceful occupancy and lacked superior right to the City-owned property. New York Supreme Court granted summary judgment on liability to the Garden, and the Garden was awaiting a trial on damages at the time of settlement.^[2]

In the same action, BFA won a historic ruling that awarded the Garden a permanent injunction against the developer that barred interference with the 40-foot tall Mulberry Tree at the heart of the community garden.^[3] BFA successfully argued that the Mulberry Tree "forms an integral part of its habitat and ecosystem" such that interference poses a threat of irreparable harm sufficient to warrant a permanent injunction. BFA's motion to enforce the injunction by awarding arborist fees, and to hold the developer in contempt, was pending at the time of settlement.

Additionally, BFA filed a third lawsuit, pursuant to New York’s anti-SLAPP statute (New York Civil Rights Law §70-a), alleging that the developer abused the judicial process when he attempted to bring baseless defamation claims against the Garden and community members speaking out against plans to develop the site. These civil-rights claims were also pending at the time of settlement.

In a March 4, 2024 settlement, the developer agreed to settle the Garden’s claims by turning over ownership of the land and executing 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.

On March 10, 2024, the Garden celebrated its historic victory by removing the developer’s fence that had blocked the contested lot, and reclaiming the land by planting flowers in its place, at a press conference attended by Assemblymember Grace Lee, state Senator Brian Kavanaugh, City Councilmember Christopher Marte, along with many other Garden members and supporters.

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 the outset of litigation in 2014.

[1] *Children’s Magical Garden, Inc. v. Norfolk St. Dev., LLC*, 164 A.D.3d 73, 74 (1st Dep’t 2018). [2] *Children’s Magical Garden v. Marom*, 2021 WL 6114009, 2021 N.Y. Slip Op. 32814(U) (N.Y. Sup. Ct. Dec. 27, 2021) & Index No. 654960/2019, at NYSCEF 138 (N.Y. Sup. Ct. May 4, 2021) (transcript of February 2021 ruling), *aff’d* 211 A.D.3d 524 (1st Dep’t 2022). [3] *Children’s Magical Garden v. Marom*, No. 654960/2019, 2023 WL 6388180 (N.Y. Sup. Ct. Sep. 30, 2023).