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CENTRO INCORPORATED, d/b/a PHILADELPHIA CATHOLIC WORKER, Plaintiff, v. MAYRONE, LLC, et al., Defendants.	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS CIVIL TRIAL DIVISION MARCH TERM, 2016 DOCKET NO. 01647 CONSOLIDATED CASE
MAYRONE, LLC, Plaintiff, v. CENTRO INCORPORATED, Defendant.	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS CIVIL TRIAL DIVISION MAY TERM, 2016 DOCKET NO. 00174

REPLY TO CENTRO INCORPORATED'S RESPONSE TO MAYRONE LLC'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Centro's Response to Mayrone's Motion for Summary Judgment, filed on July 20, 2017, creates no genuine issue of fact that would require this case to proceed to trial.[1] Throughout its

[1] For purposes of this Reply the terms: "Centro," "Philadelphia Catholic Worker or PCW," and "Plaintiff" all refer to the Plaintiff in this suit.

Response Centro mischaracterizes facts and case-law, misinterprets the statute relating to adverse possession, and generally attempts to minimize the undisputed bad facts that destroy its claim by calling them "random events" or "inconsequential." However, no matter how hard Centro tries to create an issue of fact, it cannot escape the fact that use of the property at 428-438 West Master Street, Philadelphia, Pennsylvania, 19122 (the "Property") was not exclusive, hostile, or continuous. Since 1988, the Property was being used as a community garden where everyone was permitted access.

Centro even admits that the Philadelphia Catholic Worker ("PCW") is an amorphous that has no structure that would allow it to actually prove the elements of adverse possession. In its Response each Catholic Worker community is described as "autonomous."[2] "There are no overarching systems of governance, no endowment, no pay checks, and no pension plans for the Catholic Workers themselves. Anyone can start a Catholic Worker house. According to the Catholic Worker website, one does not need permission to call oneself a Catholic Worker. . . There is no formal process for identifying someone as a 'Catholic Worker;' rather people involved with PCW may self-identify as Catholic Workers. Further, volunteers who contribute to the mission and activities of PCW may not and need not identify as "Catholic Workers" *per se*. Over twenty-nine years, many Catholic Workers and an extended community of volunteers have contributed to the ongoing stewardship of the Property and the community garden upon it."[3]

If everyone can be a Catholic Worker, then for adverse possession purposes the term is meaningless. The claims that Danny or Junior Rodriguez, volunteers, gardeners, and/or community members were acted on behalf of PCW is inconsistent with the way the Catholic

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[2] Centro's Memorandum of Law in Response to Mayrone's Motion for Summary Judgment ("Centro's Response"), at 5.

[3] Centro's Response, at 5, 7.

Worker describes itself. Nobody is ever acting on behalf of, or against the Catholic Worker because there is no process to identify who is a Catholic Worker and who is not. While this may be a laudable notion in general, for purposes of proving the elements of adverse possession it is fatal to Centro's claim.

II. CENTRO'S MUST RELY ON THEIR OWN STRENGTH OF TITLE TO PROVE ADVERSE POSSESSION; RELIANCE ON PURPORTED WEAKNESSES (WITHOUT OFFERING ANY EVIDENCE) IN MAYRONE'S TITLE IS IRRELEVANT AND HAS NO BEARING ON THIS MOTION

Centro's first attempt to misguide the Court away from the obvious issues it has in proving adverse possession is to try and attack Mayrone's title to the Property. More than three pages of Centro's Memorandum of Law are devoted to describing what Centro believes occurred in the transfer of ownership in the Property to Mayrone, an issue that is entirely irrelevant to Centro's claim of adverse possession.[4] It is well settled in Pennsylvania that in order to succeed on an adverse possession claim the adverse possessor must rely on the strength of their own title, or in other words they must prove adverse possession, they cannot simply attack the title of the record holder. In *Henry v. Grove*, 52 A.2d 451 (Pa. 1947), two parties required proof of adverse possession to establish their respective title and although the lower court found "a complete gap in (appellee's) chain of title," the Supreme Court of Pennsylvania held that, that gap "cannot aid appellants. They must rely upon the strength of their own title, not upon the weakness of that of appellee." *Id.* at 451. This concept is also recognized in *Parks v. Pennsylvania R. Co.*, 152 A. 682 (Pa. 1930), a case where the plaintiffs "contend they have a valid title by abandonment or by adverse possession." *Id.* at 684. The Court is flummoxed as to "how abandonment could give [plaintiffs] title . . . since they must recover, if at all, on the strength of their own title and not on

[4] Centro's Response, at 7-10.

the weakness of defendant's." *Id*; *see also Adams v. Johnson*, 227 Pa. 454, 459, 76 A. 174, 175–76 (1910) ("Whether they have a good or bad title is immaterial so far as the plaintiff's right to recover in this case is concerned. In this, as well as in all actions of ejectment, the plaintiff must recover on the strength of his own title, and not on the weakness of the defendants' title.").

Furthermore, Mayrone's action in ejectment is appropriate because Mayrone has made out a prima facie case. The rule that a plaintiff in an action of ejectment must recover on the strength of his own title "places upon the plaintiff the burden of proving a prima facie title, which proof is sufficient until a better title is shown in the adverse party. 'The plaintiff in an ejectment suit, as in other cases, need not go further than to make out a prima facie case.'" *Hallman v. Turns*, 482 A.2d 1284, 1287 (Pa. Super Ct. 1984) (citing *Golden v. Ross*, 186 A. 249, 249 (Pa. Super. Ct. 1936) (emphasis added). Mayrone has clearly made out a prima facie case for title as it has provided, in numerous filings (included in its Motion for Summary Judgement), the deed establishing Mayrone's purchase,[5] the Mortgage Mayrone took on the Property,[6] and the Tax Statement and Proof of Payment for the Property.[7] Centro even makes Mayrone's prima facie case in its Response when it describes Mayrone's purchase of the Property on January 5, 2016, and attaches the deed, the agreement of sale, and the purchase money mortgage for the Property.[8] Since Mayrone has made a prima facie case Centro cannot merely rely on alleged gaps in the chain of title. Centro must "prove [its] alleged title if [it] wishes to defeat [Mayrone's] apparent ownership" and Mayrone enjoys the presumption of that ownership "until a better title is shown in the adverse party." *Hallman*, 482 A.2d, at 1287.

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5 *See* Exhibit 7, to Mayrone's Motion for Summary Judgment ("Mayrone's Motion").

6 *See* Exhibit 15, to Mayrone's Motion.

7 *See* Exhibit 16, to Mayrone's Motion.

8 *See* Centro's Response, at 19-20; Exhibits C, U, and V, respectively.

III. IT REMAINS UNDISPUTED THAT ANYBODY WHO WISHED TO USE THE PROPERTY WAS PERMITTED TO DO SO, A FACT THAT PRECLUDES CENTRO FROM PROVING THAT IT HAD EXCLUSIVE POSSESSION OF THE PROPERTY

A. Centro's Claim that Because the Property was Intended for Public Use, it Acted as the Owner by Permitting the Public to Use it at Will is Insufficient to Establish the Exclusive Element of Adverse Possession

In its Response, Centro takes the peculiar position that it can establish exclusive possession because the nature of the Property could be characterized as a community garden and therefore by "allowing neighbors to come onto the Property and garden, PCW is behaving precisely as would the owner of a community garden."[9] To be clear, Centro never "allowed" neighbors to come onto the Property, it was always intended for use by the community (a fact Judge Padilla recognized in her Opinion denying Centro's Motion for Preliminary injunction)[10] and nobody was ever turned down, but for space limitations.[11] If Centro's argument regarding exclusivity is accepted it would undermine the doctrine of adverse possession by allowing any party who participates in community activities on a property to lay claim to that property after being a part of those community activities for 21 years. Centro's argument fails to recognize the difference between one who holds record title to a piece of land and wishes to operate a community garden; and themselves, a party who does not hold record title and is attempting to prove ownership of a community space by adverse possession. The former can do with his or her property as he or she

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[9] Centro's Response, at 33.

[10] See Judge Padilla's Opinion, at 5, attached as Exhibit 13 to Mayrone's Motion ("In the instant case, Appellant states in its own complaint that "during the course of the operation" of the garden, it had divided the property into lots for use by volunteers and neighbors to work and plant portions of the garden; additionally, an organization of neighborhood representatives unaffiliated with Appellant, known as La Finquita, uses the garden as a small market farm and food stand. Appellant's possession, by its own admission, has not been exclusive during the course of its operation.")

[11] Mayrone's Memorandum of Law in Support of its Motion for Summary Judgment ("Mayrone's Memorandum"), at 21-22.

pleases (including allowing all members of the community to garden on it) with no chance of losing claim to the property because the ownership is recorded. The adverse possessor is not entitled to the presumption of ownership that a record holder has and must affirmatively prove that he or she had "actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years." *Conneaut Lake Park, Inc. v. Klingensmith,* 362 Pa. 592, 594-95 (1949). Centro's argument that it can establish exclusive possession because it is using the Property in a way that a record owner may use a community garden fails to understand this distinction and fundamentally misinterprets what is required to prove adverse possession.

B. Centro's Misinterpretation of What is Required to Prove Exclusive Possession Leads to it Citing Cases that are not Analogous and do Not Advance its Theory

Due in part to this misunderstanding, the cases Centro relies on in its Response do not advance its case because they do not contemplate situations such as the one at issue here. The first case Centro cites in support is *Reed v. Wolyniec*, 417 A.2d 80, 84 (Pa. Super Ct. 1983), a case in which "homeowners asserted title by adverse possession to a lot adjacent to their residence."[12] Centro claims that "the homeowners maintained the lot by cutting the lawn and planting and maintaining various shrubbery and flowering plants . . . [and] that the exclusive character of the homeowners' possession was not destroyed because other persons passed over the lot."[13] Of course, this situation has no relevance to Centro's claim because the adverse possessors in *Reed* were maintaining the plot adjacent to their residence and "it has been held that use of a piece of land for lawn purposes in connection with a residence, together with continued maintenance of such lawn, is sufficient to establish adverse possession." *Reed*, 417 A.2d, at 84. Centro has never made any claim that it is maintaining the Property in connection with its residence, the Property is

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12 Centro's Response, at 34.

13 *Id.*

not connected to the PCW house as in *Reed* and the lower bar for establishing adverse possession over a plot connected to a resident simply does not apply in this case. Moreover, in *Reed*, the Court characterized the actions of the third parties as having "passed over the lot." Here, the community members did not "pass over the lot" they had gardens for varying, indeterminate periods of time.

Similarly, Centro cites to *Lyons* v. *Andrews,* 313 A.2d 313, 315-16 (Pa. Super. Ct. 1973), which considers an adverse possession claim of a property shared by two neighbors. Centro claims that "in *Lyons,* even where others had intruded on the land in question, the adverse possessor nonetheless met the element of exclusivity since such treatment of the land – a strip of land shared between neighbors – could reasonably be expected in view of its character."[14] Centro's statement seemingly refers to the fact that because the disputed strip of land was between two neighbors it is possible that "[t]wo neighbors on good terms may [] use each other's property to a limited extent without express consent, yet without a usurpatory intent." *Id.* at 316. Centro attempts to analogize the use of a strip of land by a neighbor to the use of the Property by the entire community, but by its nature a community garden is for use by the public, so no one person's use of the garden could ever have a "usurpatory intent" of another's and that includes the use of the garden by PCW.

Lastly, Centro cites to *McClelland v. Cragle*, 13 Pa. D. & C.4th 584, 591 (Com. Pl. 1992), a case in which an adverse possessor allowed relatives to park on the property, pump water from the property, and allowed visitors to come on to the property and these uses were found by the court to be permissive and not inconsistent with acts characterizing ownership.[15] As in *Reed*, the

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14 Mayrone's Memorandum, at 31.

15 Centro's Response, at 34-35.

adverse possessors actually "resided upon and otherwise used the land for their own purposes." *Id.* at 585. For that reason alone, *McClelland* is distinguishable from the present case. Additionally, as discussed above, the permissive uses of a property that is connected to a residence cannot be analogized to the community using a community space. Allowing relatives to park and pump water from one's property, and inviting people on to that property can be permissive uses whereas the use of a community garden by community members is not permissive it is merely using the property as it was intended.

Centro's Response raises no genuine issues of fact as to exclusivity, the Property was at all times used by the community and Centro cannot now claim exclusive possession of that community space.

IV. IT REMAINS UNDISPUTED THAT CENTRO CANNOT ESTABLISH ACTUAL, VISUAL AND NOTORIOUS POSSESSION OF THE PROPERTY

In support of its claim that it can prove actual, visual, and notorious possession of the Property, Centro cites to two cases that are inapposite to the situation with the Property at Master Street. Centro first cites to *Moore v. Duran,* 687 A.2d 822, 827 (Pa. Super. Ct. 1996), for the proposition that "actual possession requires 'domination over the Property' and varies depending on the character of the Property."[16] Centro attempts to explain the holding in *Moore*, writing that "[w]hile the court in *Moore* found the pasturing of cattle alone did not establish actual possession of the land, the court did find that two fences on the southern and western boundaries were sufficient to establish actual possession of the land, even without a fence that fully encircled the Property."[17] However, Centro conveniently omits from its explanation that, in *Moore*, the disputed tract of land was adjacent to the adverse possessor's property and therefore the building of two

16 *See id.* at 30.

17 *Id.* at 30.

fences along the western and southern boundaries was sufficient to establish actual possession because those two fences demarcated a boundary line between the adverse possessors and their neighbors. *See Moore*, 687 A.2d, at 829. Building additional fences to enclose the entire disputed tract would have only separated the disputed "tract of land from the rest of the [adverse possessor's] farm [which] would render the land useless as a grazing area." *Id.* Furthermore, the adverse possessor in *Moore* exclusively used the tract for themselves, they did not allow or invite every member of the community to bring their own cattle onto the Property to graze on the disputed tract. *Id. Moore* is clearly distinguishable from the situation in the present case where anyone could use the Property to garden and where enclosing two or even three sides of the Property would serve no practical purpose because the tract of land sits alone and is not connected to the Catholic Worker house or any other tract of land that PCW owns.

Centro also relies on *In re Rights of Way & Easements Situate in Twp. of Mt. Pleasant,* 47 A.3d 166, 173 (Pa. Commw. Ct. 2012) in support of its claim that it has established visible and notorious possession of the Property.[18] Centro argues that in "*Rights of Way,* the adverse possessor constructed a fence on the Property in question, installed drainage pipes on the land, had animals grazing on the Property, and maintained the entire parcel. The court held these actions were sufficient to place the original owners on notice of the adverse possession and constituted visible and notorious possession."[19] Similar to *Moore* and *McClelland* the adverse possessors in *Rights of Way* maintained their primary residence on the disputed land and their maintenance of the land, including installing drainage pipes and allowing animals to graze was all in connection with their residence there. *See id.* Centro maintained no residence on the Property

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18 *See id.* at 31-32.

19 *Id.* at 31. (internal citations omitted).

and allegedly operating a community garden which the entire neighborhood was able to use cannot be compared to the adverse possessors in *Rights of Way* who maintained and improved the parcel in connection with their residence. *See id.*

V. IT REMAINS UNDISPUTED THAT CENTRO RECOGNIZED PYRAMID'S SUPERIOR TITLE, WHICH PRECLUDES IT FROM PROVING THAT IT HAD HOSTILE POSSESSION OF THE PROPERTY

Since Centro cannot deny the fact that it has repeatedly acknowledged Pyramid's claim of ownership, thus destroying the hostile element of adverse possession, it attempts to characterize these acknowledgments as "inconsequential events."[20] Certainly, given the high burden that adverse possession requires to gain ownership of land no event in which the alleged adverse possessor acknowledges the owner's rights is inconsequential, and the times Centro acknowledged Pyramid's ownership are no different. In its Response, Centro claims that "it attempted to contact the dormant record owner, and after failing, PCW took control of the Property."[21] However, Centro gives no explanation as to why it was necessary to try and contact the record owner of the Property if it was going to occupy the Property with hostile intent. As if the Court will overlook this gap in logic, Centro provides no further explanation with regards to PCW's acknowledgment of Pyramid's rights in 1988.

Centro also attempts to mischaracterize the second acknowledgment, in 1994, by PCW that Pyramid was the superior title holder. Centro claims that "PCW sent a single letter to Pyramid, not to recognize Pyramid's alleged ownership, but to assert control over the Property in response to an administrative inquiry."[22] In fact, not only did the letter that was sent recognize Pyramid's

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20 *Id.* at 38.

21 *Id.* at 37.

22 Centro's Response, at 38.

ownership, but it actually requested permission to use the Property.[23] The letter, provided in discovery, reads:

> The residents of the community request permission to use your lot as a community garden. The gardeners agree to keep the lot clean and weed free according to City regulations. If you wish to sell or build on the lot in the near future, the gardeners request that you notify them so that they can remove their plants and other gardening items.
>
> This permission is for one (1) year and is automatically renewed each year unless the gardeners are notified otherwise in writing by you.[24]

This letter is as clear of a recognition of title as one can get, and interestingly although Centro has been adamant that it was operating the garden on behalf of the community, this letter provides even more proof that it was "the residents of the community request[ing] permission" not Centro or PCW.

In addition to a gross mischaracterization of these undisputed facts, Centro mischaracterizes the law it cites as well. In support of its claim to hostile possession of the Property Centro cites to *Brennan* v. *Manchester Crossings, Inc.*, 708 A.2d 815, 818 (Pa. Super. Ct. 1998):

> [i]n *Brennan,* the adverse possessors maintained a lawn on the Property for more than twenty-one years. Thus, the court found the possession continuous. . . . Hostile possession does not mean "ill will" or "hostility," but means "an assertion of ownership rights adverse to that of the true owner and all others." In *Brennan,* the adverse possessors maintained the land in dispute as if it was their own by planting grass seed, fertilizing, mowing the lawn, and storing firewood. *Id.* at 821. The owner of the land did not use or maintain the parcel in any manner. *Id.* Therefore, the court found the adverse possessors "satisfied their burden of proof as to this element."[25]

Following a predictable pattern, Centro omits the fact that the disputed tract in *Brennan* was adjacent to the Property of the adverse possessors, as it was in *Moore* and *McClellan*, and "[t]he land simply appeared to be an extension of appellants' own lawn. . . ." *Brennan*, 708 A.2d at

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23 *See* PCW00000097, attached hereto as Exhibit "A."

24 *Id.*

25 Centro's Response, 31-33 (internal citations omitted).

821.[26] As discussed above in regards to *Moore* and *McClellan* this is simply not the situation in this case. The Property in this case is a stand-alone piece of land, not connected to the Catholic Worker House and Centro has never claimed that it has maintained the Property as an extension of the Catholic Worker House's yard.

Centro also relies on *Truman v. Raybuck*, 56 A. 944 (Pa. 1904), a case cited in Mayrone's Motion for Summary Judgment.[27] Centro cites *Truman* and in its parenthetical citation characterizes the Court's finding as "failing to find hostility because there was such a 'clear and continuous recognition' of title so as to 'remove all doubt that the latter's occupancy of [the Property] was subservient."[28] A fuller explanation of the case, which Centro neglects to provide, shows that the Court found that each time the claimant acquiesced in a sale of a small parcel of the lot constituted a discrete "lowering of the hostile flag by [the adverse possessor] every time a deed was made. . ." *See Truman*, 56 A., at 944. There was no finding that the hostile element was destroyed only because the owner sold 14 small lots, rather the selling of 14 small lots was additional evidence that the adverse possessor's claim was not hostile. *See id.* Here, Centro never raised the flag of hostility because by its own admission it only entered the premises after it attempted to contact Pyramid (the rightful owner in 1988).[29] Furthermore, if Centro did raise the flag of hostility after 1988 (a fact for which it has provided no evidence) it is clear that it lowered

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[26] The issue of a disputed tract of land that is adjacent to one's property has been dealt with numerous times in Pennsylvania and it is not surprising that adverse possession claims often arise out of situations where a party uses an additional tract of land that is connected to his or her property. Of course, this is not the case here and Centro's attempt to analogize these cases to its situation is inapposite. S*ee Inn Le'Daerda, Inc. v. Davis,* 241 Pa.Super. 150, 360 A.2d 209 (1976) (use of disputed land along boundary as a lawn in connection with residence of adverse possessor for more than twenty-one years is sufficient to establish title); *Klos v. Molenda*, 513 A.2d 490, 492 ("The use of land for lawn purposes and the continuous maintenance thereof in connection with a residence, it has been held, are sufficient to establish adverse possession").

[27] *See* Mayrone's Memorandum, at 38.

[28] Centro's Response at 38; *see also id*, at 40.

[29] *See* Centro's Response, at 37.

that flag again in 1994, when it requested permission to use the Property as a community garden.[30] While Centro continues to call these instances "inconsequential events" the facts prove otherwise and unequivocally show that Centro did not occupy the Property with hostile intent.

VI. IT REMAINS UNDISPUTED THAT CENTRO DID NOT MAINTAIN CONTINUOUS POSSESSION OF THE PROPERTY FOR THE STATUTORY PERIOD

In responding to Mayrone's assertion that Centro did not maintain continuous possession of the Property for the statutory period, Centro spends a majority of its Response discussing case law that refers to minor interruptions in continuous possession (i.e. "where an adverse possessor maintains the Property, such as cutting and planting grass, an allegation that he abandoned the Property in the winter time will not establish an interruption or break in continuity.").[31] However, Mayrone has never asserted that Centro cannot maintain continuous possession because of a winter off, or because it has not performed day to day ownership activities. Rather, Mayrone's argument centers on the very clear, very substantial break in occupation of the Property that occurred when Danny Rodriguez took over in 1999.[32]

In an attempt to rebut the facts asserted in Mayrone's Motion for Summary Judgment, Centro had Danny Rodriguez sign an affidavit that sets forth facts that are inadmissible in evidence and therefore should not be considered in deciding this Motion. Pennsylvania's Rule for Summary Judgment provides that: "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

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30 If Centro's possession became hostile after 1994 (another fact for which no evidence exists) Centro would still have to prove all the elements of adverse possession and the statutory time period would not be complete until 2015, at which point Centro was clearly out of possession because La Finquita Incorporated was occupying the premises.

31 *See* Centro's Response, at 40-42.

32 *See* Mayrone's Memorandum, at 27-29.

affirmatively that the signer is competent to testify to the matters stated therein." Pa. R.C.P. No. 1035.4. An affidavit used to support an opposition to a motion for summary judgment is no place for ultimate facts and conclusions of law. *See McFadden v. Am. Oil Co.*, 257 A.2d 283, 289 (Pa. Super Ct. 1969). "The mere assertion that a genuine issue exists, without any showing of evidence, would defeat the whole purpose of summary judgment." *Id.* In his affidavit Mr. Rodriguez's twice makes the self-serving and inadmissible conclusion of law that he "understood PCW to be the owner of the Property and in control of decisions related to the garden"[33] and that he "recognized PCW as owner of the Property . . . [and that] PCW was at all times in possession and control of the Property."[34] These legal conclusions in Danny Rodriguez's affidavit are entirely inadmissible and may not be relied on in deciding this Motion for Summary Judgment. Other than Mr. Rodriguez's inadmissible affidavit, Centro provides no further evidence to rebut Mayrone's assertions or to create an issue of fact with regards to the lack of continuity in its possession of the Property.

VII. MAYRONE'S PURCHASE OF THE PROPERTY IS STILL PROTECTED UNDER 68 PA. STAT. ANN 81-86 BECAUSE IT IS UNDISPUTED THAT MAYRONE HAD NO CONSTRUCTIVE OR ACTUAL NOTICE THAT CENTRO HAD A CLAIM FOR ADVERSE POSSESSION AND THAT AT THE TIME MAYRONE PURCHASED THE PROPERTY CENTRO WAS NOT IN POSSESSION

In responding to Mayrone's claim that 68 Pa. Stat. Ann. § 81 – 86 precludes a possible finding of adverse possession, once again Centro misinterprets the statutes and mischaracterizes the case law it cites. Centro incorrectly argues that because, as Centro alleges, "Mayrone had actual and constructive notice that the Property was susceptible to an adverse possession claim"

33 Rodriguez Affidavit at ¶ 3, attached to Centro's Response as Exhibit K.

34 *Id.* at ¶ 5.

Mayrone is not protected by the statute.[35] However, the notice provision of the statute contemplates much more specificity than merely being on notice that a property may be "susceptible to an adverse possession claim." This is exemplified in *Plauchak v. Boling*, 653 A.2d 671, 678 (Pa. Super Ct. 1995), the case cited by Centro in its Reply Memorandum.[36] In *Plauchak*, the Court held that the statute does "not defeat the title as against a purchaser who has either actual or constructive notice of the new title by adverse possession." 653 A.2d 671, 678 (Pa. Super Ct. 1995) (emphasis added).[37] The Court specifies "notice of the new title" because the notice has to be specific to the person or party that is claiming adverse possession. In *Plauchak*, that party was Mr. Holmes and the Court found that the appellants were not entitled to protection by the statute because they "never claimed that they purchased their property without actual notice that Mr. Holmes . . . was physically occupying Tract No. 2." *Id*; *see also Nulton v. Nulton*, 247 Pa. 572, 583, 93 A. 630, 633 (1915) (Holding that a man who witnessed his brother take possession of the land and continue to adversely possess it for 34 years was not entitled to protection by the statute because "the act [of May 31, 1901 (P. L. 352)] protects only a purchaser, a mortgagee or judgment creditor for value, without notice" of the title.).

Mayrone had neither constructive nor actual notice of Centro's claim because at the time Mayrone discovered the Property, Centro was not in possession.[38] Unbeknownst to Mayrone, the Property was being occupied by La Finquita Incorporated, a party with no connection to Centro or the Philadelphia Catholic Worker.[39] Even if Mayrone knew that La Finquita Inc. was occupying

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35 Centro's Response, at 44.

36 *See id.* at 43.

37 *See id.* at 43.

38 *See* Mayrone's Memorandum. At 30-32.

39 *See id*; *see also* Centro Dep. at 88:21-89:11 and 139:3-23 attached as Exhibit 4 to Mayrone's Motion for Summary Judgment.

the Property during that time, it would still not put Mayrone on notice of Centro's claim to the Property because the two parties are separate and distinct.[40]

In its response Centro attempts to argue that it still maintained possession of the Property in 2015 and therefore 68 Pa. Stat. Ann. § 81 – 86 is not applicable to this case. However, it is clear that La Finquita Inc. was the party occupying the Property at the time of Mayrone's purchase and Centro could not, and did not have possession at that time.[41] Once again, Centro relies on inadmissible affidavits to support its theory. In addition to the affidavit signed by Mr. Rodriguez, discussed above in section VI, Centro relies on affidavits prepared for Clifford Brown and Elizabeth Centz to support the theory that it was still in possession of the Property in 2015.[42] Following the same inadmissible form in which Mr. Rodriguez's affidavit was drafted, Clifford Brown's affidavits exclaims "I had to obtain permission from Ms. Centz for changes and additions to the garden because PCW owned the Property."[43] Mr. Brown's legal conclusion that PCW owned the Property when he first started gardening there in 2010, is both inappropriate for an affidavit and inadmissible as support for an opposition to a motion for summary judgment. *See* Pa. R.C.P. No. 1035.4. Similarly the affidavit prepared for Ms. Centz improperly concludes that "the garden was established in 1988 and has been in the possession of PCW since that time."[44]

In a final effort to preserve the assertion that Centro was still in possession at the time La Finquita Inc. was occupying the Property, Centro improperly attempts to characterize an e-mail from Natania Schaumburg as hearsay. In its Motion, Mayrone highlighted an e-mail that Ms.

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40 *See* Mayrone's Memorandum, at 30-31.

41 See *id.* at 30-33

42 *See* Centro's Response, at 45-46.

43 Brown Affidavit at ¶ 6. Attached to Centro's Response as Exhibit I. (emphasis added)

44 Centz Affidavit at ¶ 6. Attached to Centro's Response as Exhibit J. (emphasis added)

Schaumburg, a board member of La Finquita Inc., sent to Beth Centz saying that she and Cliff Brown manage La Finquita and that they "would like to partner with your food pantry program – maybe once a week?"[45] Mayrone used this e-mail to highlight how uninvolved PCW was with the Property during the time La Finquita Inc. was managing it.[46] In its response Centro says nothing of Ms. Schaumburg's role at La Finquita characterizing her only as "an employee of South Kensington Community Partners."[47] Centro, goes on to claim, with no legal support, that this e-mail is "inadmissible hearsay," a claim which fails on its face because as Centro even admits in the preceding sentence of its brief "Mayrone contends that this email shows that Centz was 'uninvolved' with the Property."[48] Even taking Centro's explanation of its purpose, this email is not hearsay because it is not being offered to prove the matter which it asserts, namely that Natania Schaumburg offered to give food to PCW once a week. *See* P.a.R.E. 801. Centro goes on to claim that "PCW had been receiving food from the garden all along, so if anything the email shows that Ms. Schaumburg was out of touch . . . Ms. Centz did not appoint Schaumburg as an alleged 'manager,' and Ms. Schaumburg was not in a position to self-appoint herself as an alleged manager."[49] Once again, Centro neglects to tell the entire story as they do not discuss Ms. Centz's response, which is certainly not hearsay, in which she says "natania fresh produce would be wonderful look forward to hearing from you . . ."[50] This is a classic example of Centro cherry-picking evidence in an effort to create an issue of fact. Centro wants the Court to believe that Ms.

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45 *See* Exhibit 9 to Exhibit 4 of Mayrone's Motion; *See also* Centro Dep. at 88:21-89:11, attached as Exhibit 4 to Mayrone's Motion. (This e-mail was sent on June 17, 2013, not on June 23, 2017 as Centro claims in its Memorandum of Law).

46 *See* Mayrone's Memorandum, at 31.

47 Centro's Response, at 47.

48 *Id.* at 47.

49 Centro's Response, at 47.

50 Exhibit 9 to Exhibit 4 of Mayrone's Motion for Summary Judgment.

Schaumburg was not in a position to self-appoint herself as a manager, but in her response, Ms. Centz and PCW, the party who is apparently supposed to be acting as an owner for adverse possession purposes makes absolutely no objection to Ms. Schaumburg's claim that she is in fact managing the Property. The inconsistencies between what Centro describes in its Response and what the evidence shows only magnify just how little PCW was involved in the 2010s when La Finquita Inc. occupied the Property.

VIII. CONCLUSION

For all of the foregoing reasons, Centro's Response to Mayrone's Motion for Summary Judgment creates no genuine issue of fact that would require the denial of summary judgment in favor of Mayrone and Mayrone respectfully requests that the Court grant the present Motion and enter an Order in the form attached therewith.

Date: July 28, 2017

BLANK ROME LLP

By: */s/ Francis X. Crowley*

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CERTIFICATE OF SERVICE

I, Jeremy N. Kolman, hereby certify that on July 28, 2017, I served a true and correct copy of the foregoing Reply to Centro's Response to Mayrone's Motion for Summary Judgment on the following parties by ECF:

George E. Rahn, Jr., Esquire
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and

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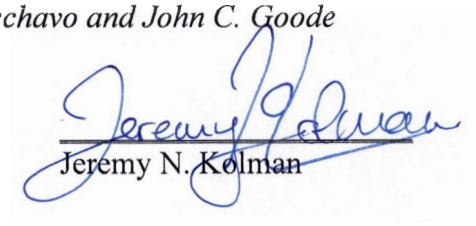

Jeremy N. Kolman

EXHIBIT A

AGREEMENT FOR COMMUNITY GARDENING

Name of Gardener: Cathleen Worker
Organization: 430 W. Jefferson St.
(Address)
Phila. Pa 19122
(City, State, Zip)
232-7823
(Telephone #)

6/16/94
Date

Pyramid Tire & Rubber Co.
Owner
428 W. Master St.
Address
Phila. Pa 19122
(City, State, Zip)

Dear Mr./Mrs. _____,

According to City records, you are the listed owner of the property located at:

428-38 W. Master St.

The residents of the community request permission to use your lot as a community garden. The gardeners agree to keep the lot clean and weed free according to City regulations. If you wish to sell or build on the lot in the near future, the gardeners request that you notify them so that they can remove their plants and other gardening items.

This permission is for one (1) year and is automatically renewed each year unless the gardeners are notified otherwise in writing by you.

If you grant permission, please sign below and keep the **pink** copy for your records.

_____
(Signature)

WHITE copy - Return to Gardener
YELLOW copy - Return to Gardener to forward to PHILADELPHIA GREEN
PINK copy - Kept by Owner
GOLDENROD copy - Kept by Gardener

/dmj
2/20/92