

Fighting tooth and nail

An attorney still sees merit in a discrimination claim against an alleged vengeful dentist. In this week's Hearsay column.

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Be well

In celebration of Well-Being Week in Law, a commentary delves into the importance of civility within the legal profession and explores its connection to well-being.

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MASSACHUSETTS Lawyers Weekly

MASSLAWYERSWEEKLY.COM

VOLUME 53 NUMBER 19

Part of the BRIDGETOWER MEDIA network

MAY 6, 2024



The litigation involved property at 44 Christian Lane in Whately.

Shareholder acquired corporate property by adverse possession

By Eric T. Berkman

Lawyers Weekly Correspondent

In a case of first impression, a Land Court judge has ruled that a shareholder in a closely held family corporation acquired a parcel of the corporation's real property by adverse possession.

More than 100 years ago, John R. Szawłowski founded a potato-farming business in Northampton. Generations of the family kept the business going while adding acres of real estate in surrounding communities, including a property at 44 Christian Lane in Whately.

In the 1980s, Szawłowski's grandson, Stanley "Stash" Szawłowski, moved with

his family, including plaintiff Stanley Szawłowski Jr., known as "Stan Jr.," into a farmhouse on the property. The parcel was deeded in 1990 to defendant Szawłowski Realty, Inc., a closely held family corporation of which Stash was a 25-percent shareholder.

Though Szawłowski Realty paid the mortgage, Stash and his family continued to live there, treating the property as their own. By 1999, Stash insisted that the property was his and refused entreaties to vacate.

After Stash's death in 2020, Szawłowski Realty sought to evict his heir, Stan

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Shareholder acquired property by adverse possession

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Jr., who had lived there the whole time. Stan Jr. responded by filing suit for adverse possession.

Szawlowski Realty challenged the notion that Stash could have acquired real estate by adverse possession from a close corporation of which he was a shareholder.

Following a bench trial, Judge Michael D. Vhay found in Stan Jr.'s favor.

In addition to interpreting Supreme Judicial Court caselaw to suggest that shareholders indeed can obtain title to a corporation's real property by adverse position despite their duties of loyalty, he found that Stan Jr. proved adversity for the 20-year period.

"The Court views sympathetically SRI's evidence that the [other shareholders] wanted to support Stash by not evicting Stan Jr. prior to Stash's death," the judge said. "But preserving SRI's rights wouldn't have required eviction: chapters 231 and 240 of the General Laws present several avenues to resolve disputes over who owns real property apart from mounting a summary-process action."

The 16-page decision is *Szawlowski v. Szawlowski Realty, Inc.*, Lawyers Weekly No. 14-030-24. The full text of the ruling can be found at masslawyersweekly.com.

'Thoughtful decision'

Stan Jr.'s attorney, Michael E. Aleo of Northampton, called the decision "thoughtful" and noted that it sends a message to the Massachusetts real estate community that if you sleep on your rights, you lose them.

"Could other members of the close corporation have cut off the adverse period? Certainly. Did they take other legal action during the adverse period relating to other disputes between members of the corporation? They did. Did they take legal action relating to this property? They did not, and it's too late," Aleo said.

Boston attorney George W. Price, who represented the corporation, said his client respectfully disagreed with the decision.

"Having presented significant evidence at trial defeating every element of adverse possession, we very much look forward to having the Appeals Court review this novel issue," he said.

Leonard M. Davidson of Newton Highlands, who litigates real estate disputes, said the ruling is interesting in that Vhay recognized, in a sense, that while the shareholder probably breached the duties of utmost good faith and loyalty by taking ownership of the property and excluding other owners of the close corporation, "based on Massachusetts adverse possession law, there's no reason he couldn't do that. So, this holding could impact limited liability companies, trusts and partnerships because it's at least saying there could be an expansion into other areas where an individual seeks adverse possession against a larger entity of

which they're a part."

Boston attorney Daniel P. Dain noted that the case hinged on the issue of permission and, while the judge contemplated adopting a per se rule of permission for members of a closely held entity that owns real property, he decided that a case-by-case common law analysis would be a better approach.

"The court's analysis was practical but also must be viewed in light of just how unusual it is for a member of a closely held corporation to adversely possess property owned by the corporation for 20 years or more," Dain said. "Without a pressing need to adopt a new per se rule, the court gave future courts flexibility by sticking with the traditional common law approach. It is hard to fault the Land Court."

Austin S. O'Toole of Boston said that as a matter of public policy, shareholder dis-

Szawlowski v. Szawlowski Realty, Inc.

THE ISSUE Did a shareholder in a closely held family corporation acquire a parcel of the corporation's real property by adverse possession?

DECISION Yes (Land Court)

LAWYERS Michael E. Aleo of Lesser, Newman, Aleo & Nasser, Northampton (plaintiff)
Christopher P. Maffucci, George W. Price and Alana Van der Mude Rusin, of Casner & Edwards, Boston (defense)

Adverse use

By the 1960s, Stash and his three brothers were running the family's potato farm as a partnership with each brother holding a 25-percent interest. Two of Stash's brothers were responsible for farming operations, another brother was responsible for the business side, and Stash handled seed-cutting and grading potatoes.

By 1980, Stash's brothers had each bought homes of their own, though the business paid many of their home expenses.

Stash, however, was living with his mother in a house that the business owned in Hatfield next to the farm operations center. When he got married, he moved to an apartment also owned by the business.

Over the next couple of decades, the brothers formed five separate corporate entities, including Szawlowski Realty, in which they were each 25-percent shareholders.

and insurance premiums. It also made payments on mortgages later taken out on the house.

Meanwhile, Stash and his family were the only ones with keys to the house, which nobody entered without their permission.

Stash also maintained and renovated the interior and exterior, usually at his own expense, and made all maintenance and repair decisions while applying for electrical permits.

By 1999, with their ailing mother vacating one of the family's other properties, the other brothers suggested Stash move his family to that property.

Stash angrily refused, referring to 44 Christian Lane as "his" house and calling it compensation for years of unpaid work for the family's business and for the bills he had paid regarding the property.

Despite subsequent demands that he and his family vacate, they remained.

In 2002, Stash's wife died, leaving Stash and Stan Jr., now 22, as the only ones in the house.

A decade later, Stan Jr.'s future wife moved in. During that time, Stash was in declining health, and, at one point, one of his brothers apparently expressed frustration to the others that "[n]othing's going to happen [with the home] until Stash is dead."

By late 2019, the brothers were embroiled in litigation with one another over a variety of matters unrelated to the house.

Stash died in 2020. In October 2021, SRI initiated a summary process action seeking to evict Stan Jr. and his wife from the house. Stan Jr. filed suit in Land Court for adverse possession a month later, and a trial was held in late 2023.

Non-permissive use

In addressing Stan Jr.'s claim, Vhay noted that while Massachusetts appellate courts had no case directly on point, at least two out-of-state courts had considered whether shareholders in a close corporation, given their fiduciary duty, could acquire the corporation's property by adverse possession.

"Neither court rejects the notion, although in both cases the courts held that, to overcome state-law presumptions that officers and directors act in accordance with their duties, such persons must give 'express notice' to the corporation that they are acting adversely," Vhay said.

As for whether Stash could actually claim adversity, Vhay continued, things shifted that way in 1999 when Stash put SRI on notice that he considered 44 Christian Lane to be "his" property.

"The Court thus concludes that, starting with the 1999 Meeting, Stash and Stan Jr.'s occupation ... was adverse and non-permissive," the judge concluded. "Stan Jr.'s claim for adverse possession ... thus ripened in 2019, shortly before Stash's death in 2020." **MLW**

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— Michael E. Aleo, Northampton

putes over occupation of a corporation's property should not favor the shareholder who self-servingly acted in breach of his fiduciary duty by making an adverse possession claim.

"However, this court cites elements of case law that treat that policy goal differently," he said. "This decision likewise awards the party in breach of that duty, even while recognizing the utmost duty of good faith to be due and owing from him to the [defendants], whose ownership interest was being challenged."

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