VERMONT SUPERIOR COURT

SUPERIOR COURT **Windsor Unit**	**CIVIL DIVISION** **Docket No. 454-8-11 Wrcv**

Michael Gacioch,
Plaintiff

v.

P. Ruth Zezza Family Revocable Trust, Patricia Ruth Zezza as Trustee for the P. Ruth Zezza Family Revocable Trust, Joan Morey, and Barrett & Walley Associates, Inc.
Defendants.

Decision on Motion for Summary Judgment

Plaintiff sues Defendants for adverse possession and Defendants counter-claim for trespass. On March 4, 2013, Plaintiff moved for summary judgment on both his claim for adverse possession and Defendants' counter-claim for trespass. Defendants opposed the motion on April 9, 2013. Plaintiff responded to Defendants' opposition on April 11, 2013.

The facts of the case are mostly undisputed, although there are some questions about the details. In 1962, Peter Gallerani, Plaintiff's predecessor, received the property, including a twenty feet by twenty feet camp. Gallerani and his family used the property regularly between 1962 and 1990. From the mid-1960s until the mid-1980s, the Galleranis used an outhouse near the house. The Galleranis also built a garage, mudroom, and mailbox on the property around 1990. Also around 1990, the Galleranis made the property their primary residence. The Galleranis cleared trees, planted apple trees, and maintained a lawn. The Galleranis also moved boulders to the tree line.

The Galleranis sold their property to the Robertsons in 2000. Around the year 2000, the Robertsons built a stone wall near the driveway. The Robertsons also maintained the lawn, planted flowers, stored firewood on the lawn, and plowed the driveway. Plaintiff received the property in 2007. Plaintiff also maintained the driveway and lawn, kept firewood on the property, and keeps lawn furniture on the property.

The current dispute arose when the parties realized Plaintiff did not own all of the property he used. Specifically, Defendants own most of the land under Plaintiff's garage, mudroom, driveway, and lawns. Plaintiff asks the Court to award him title to all of the land up to the tree line near his house. The Court grants summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

matter of law." V.R.C.P. 56(a). The Court makes all reasonable inferences and resolves all doubts in favor of the non-moving party. *Lamay v. State*, 2012 VT 49, ¶ 6, 191 Vt. 635.

The issue in this case is whether Plaintiff presented sufficient evidence to show he adversely possessed the property as a matter of law. "Adverse possession is a mixed question of law and fact." *First Congregational Church of Enosburg v. Manley*, 2008 VT 9, ¶ 12, 183 Vt. 574. "To achieve title through adverse possession, a claimant must show that use of the land was open, notorious, hostile and continuous throughout the statutory period of fifteen years." *Id.* ¶ 13 (internal quotations omitted); *see* 12 V.S.A. § 501 (statutory period). "A person can gain title by adverse possession even without the intention of taking land not belonging to him so long as he does intend to exclude all others." *MacDonough-Webster Lodge No. 26 v. Wells*, 2003 VT 70, ¶ 24, 175 Vt. 382 (internal quotations omitted).

Plaintiff satisfied his burden for some, but not all, of the land. *See Manley*, 2008 VT 9, ¶ 12. Plaintiff's predecessors constructed the garage and mudroom in 1990 and used them for more than fifteen years. Constructing a building is open and notorious, a diligent landowner would not overlook a building constructed on the landowner's property. *See Jarvis v. Gillespie*, 155 Vt. 633, 641 (1991) ("Acts of possession are deemed sufficiently open and notorious if they are conducted in a manner which would put a person of ordinary prudence on notice of the claim."). Moreover, it is unimportant that Plaintiff's predecessors believed they owned the land under the garage and mudroom. *See MacDonough-Webster*, 2003 VT 70, ¶ 24. Plaintiff's predecessors used the property under the garage and mudroom and excluded all others. In regard to the garage and mudroom, the Court must grant Plaintiff's motion for summary judgment.

The outside areas present a closer question and the Court must make all inferences in favor of Defendants in this motion for summary judgment. *See Lamay*, 2012 VT 49, ¶ 6. Defendants objected not only to affidavits submitted by Plaintiff, but also to the amount of land claimed by Plaintiff. Plaintiff likely satisfies the elements of adverse possession for some of the land surrounding the house. *See Manley*, 2008 VT 9, ¶ 12. For example, constructing and using an outhouse and mailbox is likely an open, notorious, and hostile use.

Nevertheless, Plaintiff has not shown he is entitled to judgment as a matter of law for the entire claimed area. Plaintiff asks the Court to award him clear title to the area up to the tree lines. Even with the pictures and affidavits, the Court is not confident the undisputed facts indicate Plaintiff and his predecessors continuously used all of this land for fifteen years. Because this is a motion for summary judgment, the Court must infer that Plaintiff cannot satisfy his burden for the entire area up to the tree line. *See Lamay*, 2012 VT 49, ¶ 6. Accordingly, the Court must deny summary judgment on the areas outside of the garage and mudroom. The Court will have a limited trial to determine which areas Plaintiff and his predecessors used for the statutory period.

The Court declines to grant summary judgment over the lands under the driveway because the Court is uncertain of the dimensions. The Court believes Plaintiff established adverse possession of the driveway. Plaintiff will be entitled to clear title of the lands under the driveway once Plaintiff proves the dimensions of the driveway.

The Court also considered Defendants' other arguments and found them unpersuasive. Much of Defendants' arguments attack the sufficiency of Plaintiff's evidence because Plaintiff submitted affidavits to show the use of the land. The affidavits Plaintiff submitted appear to be based on personal knowledge and conform to V.R.C.P. 56(c)(4). *See Openaire, Inc. v. L.K. Rossi Corp.*, 2007 VT 120, ¶ 14, 182 Vt. 636 (indicating the Court may rely on affidavits based on personal knowledge). Moreover, the Court finds there is nothing inherently unreliable about the affidavits. Defendants' consent to allow Plaintiff's predecessor setting up a septic system is not relevant to Defendant constructing a garage and using the lawn and driveway. Defendants' vague claims that she believes her predecessors consented to the construction of the garage and breezeway are also insufficient to create a disputed fact. Plaintiff submitted credible affidavits suggesting his predecessors never received consent, and Defendant did nothing to contradict these affidavits. *See id.*

Order

The Court *grants in part* and *denies in part* Plaintiff's motion for summary judgment. The Court *grants* the motion in regard to the lands under the garage and mudroom. The Court *denies* the motion in regard to the area surrounding the house.

The parties are to submit a Rule 16.3 discovery stipulation and order within 10 days.

Dated at Woodstock, Vermont on June 14, 2013

Harold E. Eaton, Jr.
Superior Court Judge

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WINDSOR UNIT