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ADVERSE POSSESSION. Where title to property has vested through adverse possession, it may not be disturbed retroactively by newly-enacted or amended legislation.

Franza v. Olin, 897 N.Y.S.2d 804 (N.Y. App. Div. 2010).

Plaintiff sought a declaration that the Plaintiff had acquired title to a specific property surrounding the Plaintiff's home through adverse possession. Plaintiff's claim was based upon regular maintenance and lawn mowing on the disputed property over a number of years, together with erection of a shed and satellite receiver.. Under the New York adverse possession statute in effect at the time that the statutory period had run, possession may be established where the claimed property is "usually cultivated."

The trial court denied the Plaintiff's claim to title based, because, at the time of the lawsuit, New York had changed its statute, and the statute became effective approximately six weeks before the Plaintiff brought suit. Under the newly-enacted statute the "cultivation language" was removed and the adverse possession test is stated to be "where there have been acts sufficiently open to put a reasonable person on notice." In addition, certain de minimis non-structural encroachments are deemed permissive and non-adverse, including fences, hedges, shrubbery, plantings, sheds and non structural walls." Another part of the statute stated that lawn mowing is deemed permissive. These amendments seemed to fit plaintiff's activities very closely

The appeals court nevertheless reversed the trial court's judgment, holding that although the Plaintiff did not seek judicial relief until after the operative statute was amended, the Plaintiff's title to the property would have vested long before the amendments were enacted in 2008 and thus, application of the newly enacted statutes would be unconstitutional. "Although a statute is not invalid merely because it reaches back to establish the legal significance of events occurring before its enactment, ... the Legislature is not free to impair vested or property rights"

Comment: The New York statute is part of a group of statutory responses upholding the "property rights" view of adverse possession following some unfortunate outcomes favoring willful possessors in New York, Colorado, and possible elsewhere. We may see other statutes be tested as this one was over the next few years.

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