IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maxine Brown,	:	
Appellant	:	
	:	
v.	:	No. 293 C.D. 2007
	:	Argued: October 29, 2007
City of Philadelphia and Philadelphia Housing Development Corporation	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY FILED: February 21, 2008

Maxine Brown, Appellant, appeals the grant of summary judgment by the Court of Common Pleas of Philadelphia to both the City of Philadelphia (City) and the Philadelphia Housing Development Corporation (PHDC)[1] (collectively, Appellees). We affirm for the reasons stated below.

On October 19, 2005, Appellant, filed a complaint seeking reformation of deed, declaratory judgment, and to quiet title to properties titled to Appellees. In support of her complaint, Appellant testified that in the early 1980's she met with Victor Banks whom she believed to be a PHDC representative and who showed her

[1] The PHDC is a non-profit corporation formed to provide services and activities that would develop new housing employment opportunities, improve living conditions for the elderly, and improve housing and living facilities and home management skills in the City in general. Weinerman v. City of Philadelphia, 785 F. Supp. 1174, 1178 (E.D. Pa. 1992). Toward this end, PHDC is empowered by its charter to acquire and rehabilitate derelict properties so that they may be returned to the housing market for lower income residents. Id.

an available property located at 1041 Mount Vernon Street. (R.R. at 221a, 229a, 241a). Appellant explained that Mr. Banks encouraged potential buyers to invest in a neighborhood redevelopment plan and to purchase and restore specific properties. (R.R. at 234a). She submitted an application for the property in early 1982. (R.R. at 236). Appellant stated that she understood that if she purchased 1041 Mount Vernon Street, she would have to work on the cosmetics of the house. (R.R. at 235a, 248a). She asserted that at the time, there was no fence surrounding the backyard. (R.R. at 238). It was not until a formal walk-through two weeks prior to the closing of the property that that she noticed a fence had been erected. (R.R. at 238a, 249a-250a). She explained that she was told by Mr. Banks that her property ran from Mount Vernon Street to Lemon Street. (R.R. at 242). The fence runs from the back of her house to Lemon Street. (R.R. at 264a). According to Appellant, upon reading a copy of the deed at closing, she believed it to be inaccurate. (R.R. at 251a). She questioned why the description of the property did not include the fenced in portion that extended out to Lemon Street. (R.R. at 255a). Appellant asserted that a PHDC representative who was present at closing acknowledged that the property line should extend to Lemon Street and asserted that a correction would be made. (R.R. at 256a-257a). Appellant went ahead and signed the deed.[2] (R.R. at 260a).

[2] The deed at issue in this case, executed March 8, 1983, describes the property, in pertinent part, as follows:

> ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected,
>
> SITUATE on the Northeast Corner of Mount Vernon Street and Eleventh Street in the Fourteenth Ward of the City of Philadelphia
>
> CONTAINING in front or breadth on said Mount Vernon Street eighteen feet, and extending of that width in length or depth Northward between parallel lines at right angles to said Mount

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Appellant testified that she soon came to know that the yard behind her house actually consisted of three separate properties.[3] (Id.) She was provided copies of the deeds. (Id.) Appellant explained she was initially told by a PHDC representative that she had to fill out an application for the additional property and did so accordingly. (R.R. at 262a-263a, 268a). Much time elapsed and Appellant was eventually told later that she could purchase the property for $30,000.00. (R.R. at 271a). Claimant explained that she would not pay the $30,000.00 because she believed that she was the rightful owner of the properties and PHDC should have corrected its mistake. (Id.)

Appellant agreed that during the formal walk-through, she observed a great deal of debris in the fenced in area behind her house. (R.R. at 249a, 274a). According to Claimant, she spent roughly $3,000.00 in restoring the lots at 621, 623, and 625 North 11th Street. (R.R. at 275a).

Sandra Barnhill, Deputy Director of Operations at PHDC, testified that PHDC at one point between, 2002 and 2004, was in talks to sell the 621 and 625 properties to Lawrence Rust, a developer, but those talks fell through. (R.R. at 294a-

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(continued…)

> Vernon Street on the Easterly line thereof fifty-three feet, eight and three-eighths inches and along the East side of said Eleventh Street, on the Westerly line thereof fifty-four feet, including on the rear end thereof the Westernmost part of a certain three feet wide alley leading into and from said Eleventh Street.
>
> BEING NO. 1041 Mt. Vernon Street…

(R.R. at 49a).

[3] Two lots were identified as 621 and 625 North 11th Street and are titled to PHDC. The third lot is titled to the City and was identified as 623 North 11th Street.

296a). She explained that in the same timeframe, PHDC received a request from Appellant sometime to purchase those lots. (R.R. at 295a). She acknowledged that Appellant made a similar request several years earlier. (R.R. at 297a). According to Ms. Barnhill, her request to purchase the lots was granted at one time, but she never went through with settlement. (Id.)

Appellees submitted an affidavit from A. Victor Banks wherein he stated that he was a former employee of the Office of Housing and Community Development (OHCH) for the City, not an employee of PHDC. (R.R. at 659a). He denied that he represented to Appellant that the property at 1041 Mount Vernon Street included any part of the properties located at 621, 623, and 625 North 11th Street. (R.R. at 660a). On the contrary, he suggests he informed Appellant of the ownership status of the properties and explained the process on how to acquire the lots from the respective owners. (Id.) Mr. Banks further denied that he made any reference to Appellant that the legal description of 1041 Mount Vernon Street was inaccurate or that, following closing, an amended to the legal description would be prepared upon application to the PHDC. (Id.)

Appellees filed a Motion for Summary Judgment requesting the Court of Common Pleas of Philadelphia County to dismiss Appellant's complaint with prejudice asserting that her claims are barred by the parole evidence rule, the doctrine of *nullum tempus occurrit regi*, and the statute of frauds.[4] Ultimately, summary judgment was granted in an Order entered January 26, 2007.[5]

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[4] Appellees filed an Amended Motion for Summary Judgment that added further legal argument but no new legal issues.

[5] The matter before us contains somewhat of a convoluted procedural history most likely caused by Appellees' amended filing. The Court of Common Pleas originally granted the Appellees' Motion for Summary Judgment and dismissed Plaintiff's complaint with prejudice in an

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In an opinion dated April 10, 2007, the trial judge concluded that Appellant failed to establish any genuine issues of material fact. He reasoned that as both Appellant and PHDC were aware that the deed did not include the properties adjacent to 1041 Mount Vernon Street, there was no mutual mistake and that the parol evidence rule prohibited consideration of prior oral representations. Consequently, he determined that the deed could not be reformed. He further stated, relying on Department of Transportation v. J.W. Bishop & Co., 497 Pa. 58, 439 A.2d 101 (1981), that a claim for adverse possession cannot lie against City property defeating Appellant's claim to 623 North 11th Street.[6] Moreover, he concluded that a claim for adverse possession cannot lie against a political subdivision that holds land for a public purpose. The judge found that PHDC was a political subdivision and that it acquired the two remaining properties with the intent to redevelop the land and improve the neighborhood. Based on this public purpose, he found that a claim for adverse possession could not be maintained for the two properties owned by PHDC. This appeal followed.[7]

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Order entered October 26, 2006 marked "uncontested." This Order was vacated in a subsequent Order entered November 15, 2006 and oral argument on Appellees' Motions for Summary Judgment was scheduled for December 20, 2006. Nonetheless, an Order entered November 29, 2006 denied Appellees' Motion for Summary Judgment. The January 26, 2007 Order granting summary judgment followed.

[6] The Court, in Bishop, actually held that a claim of title by adverse possession does not lie against *Commonwealth* property.

[7] The Pennsylvania Rules of Civil Procedure instruct, in relevant part, that a court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa. R.C.P. No. 1035.2(1). For purposes of summary judgment, the record includes any pleadings, interrogatory answers, depositions, admissions, and affidavits. Pa. R.C.P. No. 1035.1. Appellate review of

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Appellant argues on appeal that the grant of summary judgment was improper in this instance because she relied on assurances by PHDC's representatives that they would correct her deed to include not only 1041 Mount Vernon Street, but 621, 623, and 625 North 11th Street as well. She asserts that while contracts for land ordinarily must be in writing pursuant to the Statute of Frauds, there is an exception that provides that an oral contract may be enforced when there is specific evidence that would make rescission of the oral contract inequitable and unjust. Indeed, she notes that the Pennsylvania Courts have developed the rule of partial performance. According to Appellant, she partially performed under the oral contract by taking exclusive possession of the three properties and made improvements upon those properties. Therefore, equities compel that Appellees transfer title of the three lots that comprise her back yard to her.

The Statute of Frauds directs that agreements for the sale of real estate shall not be enforced unless they are in writing and signed by the seller. Hostetter v. Hoover, 547 A.2d 1247 (Pa. Super. 1988). The purpose of the statute of frauds is to prevent the assertion of verbal understandings in the creation of interests in land and to obviate the opportunity for fraud and perjury. Kurland v. Stolker, 516 Pa. 587, 533 A.2d 1370 (1987). It is not a mere rule of evidence, but a declaration of public policy. Id. at 592, 533 A.2d at 1372.

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questions of law, such as whether summary judgment was appropriate here, is plenary. Mullin v. DOT, 582 Pa. 127, 870 A.2d 773 (2005). A grant of summary judgment may be reversed if there has been an error of law, or an abuse of discretion. Scalice v. Pennsylvania Employees Benefit Trust Fund, 584 Pa. 161, 883 A.2d 429 (2005). We will view the record in the light most favorable to the non-moving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party. Minnesota Fire and Casualty Company v. Greenfield, 579 Pa. 333, 855 A.2d 854 (2004).

Where, however, a party seeking to enforce the conveyance has partially performed under an oral contract so as to render recission inequitable and unjust, the contract may be enforced as being outside the operation of the statute. Briggs v. Sackett, 418 A.2d 586 (Pa. Super. 1980). Accord Valvano v. Galardi, 526 A.2d 1216 (Pa. Super. 1987)(holding specific evidence that would make recission of an oral contract inequitable and unjust will take the contract out of the Statute of Frauds). The proof establishing the oral contract must not only be found credible, but of such a weight and directness as to make out the facts *beyond a doubt*. Kurland, 516 Pa. at 594, 533 A.2d at 1373. The contract cannot be inferred only from the declarations of one of the parties. Id. at 596, 533 A.2d at 1375. It is well settled that the statute prevents the entry of a decree of specific performance against the vendor under the oral contract unless it appears that continuous and exclusive possession was taken under the contract and improvements were made by the vendee not readily to be compensated in money, or other equitable considerations make it impossible to do justice save by specific performance. Briggs, 418 A.2d at 588; See also Hostetter, 547 A.2d at 1251.

In Galardi, Mr. and Mrs. Valvano (Sellers) signed an "Amendment to Agreement of Sale." This document was an amendment to an original unsigned document conveying ten acres to Mr. and Mrs. Galardi (Buyers). It contained an option that remained open for two years that allowed Buyers to purchase adjoining lands for $17,000.00. The amendment to the agreement of sale further provided that Buyers grant unto Sellers a right of way of access from Gravel Pond Road to the optioned premises that shall extend from Buyer's driveway and shall be twenty feet in width. Mr. Galardi signed the amendment to the agreement of sale. His wife did not although her name was typewritten under a signature line. In light of the fact that the

amendment to the agreement of sale added the option to purchase the adjoining land, the sale price was reduced by $2,000.00 to give the Sellers an easement to the additional acreage if the Buyers did not exercise their option.

Buyers took possession of the ten acres. They did not exercise their option to purchase the additional land. Ultimately, Sellers filed an action in equity seeking specific performance of the Agreement to grant a right of way. The trial court ruled in favor of Sellers and, on appeal, Buyers argued before the Superior Court, which affirmed, that the amendment to the agreement of sale was unenforceable because of the Statute of Frauds. The Superior Court acknowledged that the Agreement was not signed by Mrs. Galardi. Nevertheless, it recognized sufficient performance by the Sellers to make the terms of the amendment to the agreement of sale enforceable notwithstanding the absence of complete compliance with the Statute of Frauds. The Court pointed out that the terms of the purchase money mortgage signed by both Mr. Galardi and Mrs. Galardi were identical with the amendment to the agreement of sale with respect to the terms of the mortgage, interest rates, and monthly payments. Moreover, it stated that Sellers fully performed their obligations under the contract, which were to convey the ten acres of land to buyers and to give buyers a two year window to purchase adjoining land. The Court held that Buyers, having received full performance of the obligations owed to them, will not be permitted to raise the statute of frauds as a defense against the performance of their obligations that included the grant of an easement. Id. at 1220.

In Briggs, Mr. Briggs and his wife were record owners of a home located in Levittown. Mr. and Mrs. Sackett had occupied the home since 1962. In 1976, Mr. Briggs filed an ejectment action in equity against the Sacketts. The Sacketts responded that although the Briggs were record owners of the home, the Sacketts

were the equitable owners by virtue of an oral agreement for sale entered into in 1962. They further contended that in 1961, the Briggs were in financial difficulty and did not want the house to be sold at a sherriff's sale because of the absence of a resale market at that time. The alleged consideration for the sale of the home was the payment of the mortgage arrearages and the water bill by the Sacketts. Mrs. Briggs testified to the existence of the oral agreement. Consequently, the Sacketts entered a counterclaim for specific performance of the oral contract. The Court found part performance by the Sacketts sufficient to preclude the application of the statute of frauds in that they moved from their home into that of the Briggs, giving up the opportunity to acquire an equity interest in another property, with the understanding that they were buying the Briggs' home. Moreover, during the fourteen years in which the Sacketts inhabited the home, Mr. Briggs never visited, sought rent, checked on the condition of the home, or otherwise asserted any interest in the property. Thus, the Court found the oral contract enforceable.

In Hostetter, George Hoover entered into a written agreement to sell and the Hostetters agreed to buy premises known as 136 North Street in Hanover for the purchase price of $13,000.00. The house situated on the 1/7th acre lot was badly in need of repair. Settlement was set for April 15, 1980, but time was not made of the essence. In February, 1980, the Hostetters occupied the premises paying the sum of sixty dollars per month until final settlement. Prior to settlement, Mr. Hostetter was laid off and the parties orally agreed to extend the time for settlement until July of 1980. Prior to July, 1980, the Hostetters attempted to make arrangements for final settlement, but Mr. Hoover said it was inconvenient for him to make settlement at that time, and final settlement was delayed indefinitely. Neither party attempted to reschedule final settlement for several years thereafter, although the matter was

discussed generally from time to time. The Hostteters continued to occupy the premises during this time as well as make repairs including wallpapering, replacing a toilet, enlarging the garage, and replacing a brick patio.

In August of 1985, Mr. Hostetter again attempted to arrange for final settlement only to be told that Mr. Hoover now wanted $35,000.00 for the property and would not transfer title for less. An action for specific performance of the written agreement was commenced. The Court awarded specific performance noting first that an oral agreement that extends the time of carrying out a written agreement of sale does not affect the character of the instrument as a writing and do not reduce the contract to one in parol. Hostetter, 547 A.2d at 1251. Moreover, the Court found that the Hostetters presented specific evidence that they had expended over $3,000.00 in material costs and at least 452 hours of labor in making improvements to the interior of the home alone. Further, it found that the Hostetters settled into the once dilapidated house and transformed it into a comfortable home for more than eight years. The Court reasoned that these facts were sufficient to take the contract out of the statute of frauds.

Based on our review of the relevant case law, we do not believe the doctrine of partial performance compels specific performance of the transfer of title to 621, 623, and 625 North 11th Street as suggested by Appellant. We note that pursuant to Kurkland, an oral contract must be established by proof of such weight and directness as make out its terms beyond a doubt. Although unsigned, the amendment to the agreement of sale, in Galardi, specifically indicated that Sellers were entitled to a right of way and described its dimensions. Because of the parties' conduct as it related to the other terms of the contract, specific performance was awarded. Likewise, in Hostetter, the property to be transferred was described in a

writing. There was no dispute as to the dimensions of the property subject to the oral contract. While there was an oral contract in its purest sense in Briggs, there again was no dispute as to the dimensions of the property. Rather, the issue was whether a contract existed at all. The existence of the contract was testified to by the vendor's own spouse.

In the present matter, the deed signed by Appellant transferred title to her of only 1041 Mount Vernon Street. While Appellant alleged that there was an agreement that her deed would be amended to include the properties at 621, 623, and 625 North 11th Street, she presented no one else to corroborate her testimony. Pursuant to Kurland, the declaration of one of the parties is legally insufficient to establish an oral contract. We reiterate that Mr. Banks, in his affidavit denied that he represented to Appellant that the property at 1041 Mount Vernon Street included the property that extended to Lemon Street.[8] Because he did not corroborate the existence of an oral contract, Appellant had to present some other evidence to establish the terms of an oral contract beyond a doubt by other means. Unfortunately for Appellant, her case rests on what she believed to be the terms of the agreement. There is no independent evidence that suggests the parties' agreement was for anything other than the land described in the deed.[9] Furthermore, the conduct of

[8] Appellant contends, pursuant to Penn Center v. Hoffman, 520 Pa. 171, 553 A.2d 900 (1989), that no weight could be attributed to Mr. Bank's affidavit for the purpose of summary judgment. It is true that Penn Center precludes "trial by affidavits." Id. at 175, 553 A.2d at 902. Nonetheless, it simply restates the rule that summary judgment should be granted when there are no genuine issues of fact. Id. at 179, 553 A.2d at 904. It further reiterates that, pursuant to Pa. R.C.P. No. 1035.1, in considering whether to grant summary judgment, the trial judge may consider, *inter alia*, pleadings, depositions, and affidavits.

[9] *Assuming arguendo* that Appellant is capable of establishing there was a mutual agreement for the transfer of the lots in question, it is unclear whether the deed can be "reformed" as she wishes. City, owner of lot 623 North 11th Street was not a party to the signing of the deed that Appellant seeks to be reformed.

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PHDC in asking Appellant to file an application for the properties that comprise her back yard just as she had done to acquire the property at 1041 Mount Vernon Street upon Appellant's inquiry is contradictory to her alleged agreement. While we acknowledge that Appellant spent time and money cleaning up the debris from the property that makes up what she considers to be her back yard, she has no remedy as she failed to establish a factual issue as to the existence of an oral contract.[10]

Appellant further argues that the trial judge erred in determining that it could not reform the deed because there is no evidence of mutual mistake. She contends that at the time she signed the deed at issue, both she and the representative from PHDC agreed the property she was purchasing extended to Lemon Street and thus included the lots at 621, 623, and 625 North 11th Street.

Reformation of a deed is permitted upon evidence of mutual mistake. Regions Mortgage, Inc. v. Muthler, 585 Pa. 464, 889 A.2d 39 (2005). A mutual mistake is a mistake that is shared and relied on by both parties to a contract. Id. at 468, 889 A.2d at 41. A party who seeks reformation on the ground of mutual mistake

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[10] Appellant argues, relying on Glasgow v. G. R. C. Coal Co., 442 A.2d 249 (Pa. Super. 1981), that in determining whether an oral contract exists, consideration should be given to the length of time that passed before the seller challenged the buyer's possession. We do not agree that Glasgow instructs that the passage of time is to be considered when determining whether an oral contract exists. Rather we read Glasgow to indicate that when there is an oral contract for land, which is otherwise unenforceable, specific performance will be ordered when equitable considerations such as the passage of time make it impossible to do justice otherwise. Glasgow, 442 A.2d at 251. As Appellant failed to create a factual issue as to whether an oral contract existed, we do not reach the step of whether equitable considerations require specific performance under that contract. Claimant further argues that her sophistication as a buyer should also be considered. Given the fact that she acquired an associate degree in accounting, managed musical groups, and acted as an assistant manager to a retailer prior to her land purchase at issue, we reject this argument. (R.R. at 217a-220a).

must establish in the clearest manner that the intention proffered as the basis for the reformation of the deed existed and continued concurrently in the minds of the parties down to the time of the execution of the deed. Dudash v. Dudash, 460 A.2d 323 (Pa. Super. 1983).

We cannot agree that Appellant has produced sufficient evidence to establish "in the clearest manner" that in signing the deed, both she and PHDC intended to enter into an agreement to transfer title to not only 1041 Mount Vernon Street, but 621, 623, and 625 North 11th Street.[11] While Appellant urges that at closing a PHDC representative acknowledged she would be acquiring an interest in all four properties and that a correction would be made to the deed, her testimony is the only evidence of record to support this notion. As noted in Kurland, this is insufficient to establish an oral contract. Logically, it follows that her testimony alone is legally inadequate to establish the intentions of both parties when executing the deed. Consistent with Dudash, she cannot establish entitlement to all properties based on mutual mistake.

Appellant further argues that the judge erred in determining that claims for adverse possession cannot lie against PHDC and City. Specifically she asserts that the judge misapplied Bishop in finding that a claim of adverse possession cannot lie against City. She points out, as noted above, that the holding of Bishop is that claims of adverse possession cannot lie against Commonwealth property. Moreover, Appellant claims that no public purpose is attributable to the lots in question. She

[11] As we have found that Claimant has not raised a genuine issue as to whether PHDC intended to convey the lots behind 1041 Mount Vernon to Claimant upon the executing of the deed, we need not address Appellees' arguments that the individual Appellant allegedly spoke with lacked authority, or apparent authority, to bind them in contract or that her claim is untimely.

contends that she has used the properties that make up her back yard for the total of twenty-one plus years without intrusion from the PHDC or City. Appellant further contends that claims of adverse possession can be asserted against municipal property and that held by political subdivisions so long as it is not used for a public purpose. Appellees counter that Appellant did not possess the land with hostility.

One who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years. Baylor v. Soska, 540 Pa. 435, 658 A.2d 743 (1995); Watkins v. Watkins, 775 A.2d 841 (Pa. Super. 2001). The word "hostile," as an element of adverse possession, does not mean "ill will" or "hostility," but implies an assertion of ownership rights adverse to that of the true owner and all others. Watkins, 775 A.2d at 846. "An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his acts … He must keep his flag flying and present a hostile front to all adverse pretensions." See Brennan v. Manchester Crossings, Inc., 708 A.2d 815 (Pa. Super. 1998)(citing Klos v. Molenda, 513 A.2d 490 (Pa. Super. 1986)). The possession must be such as to connote a denial of the owner's title. Brennan, 708 A.2d at 818.

The Supreme Court, in Myers v. Beam, 551 Pa. 670, 713 A.2d 61 (1998), held that seeking a quitclaim deed prior to the running of the prescription period destroys the element of continuous hostility thereby defeating a claim to adverse possession. It reasoned that such action was an acknowledgment of superior title in the record owners. Id. at 673, 713 A.2d 62.

Based on the Myers Decision, we do not believe that the requisite hostility element is present thereby defeating any claim to the lots known as 621, 623, and 625 North 11th Street via adverse possession. We note that pursuant to Watkins

and Brennan, in order to meet the hostility element, Claimant must have possessed the lots that she considered to be her back yard in a fashion that was truly adverse to the true owners, the City and PHDC. On the contrary, the Claimant's own testimony indicates that upon signing the deed, she was aware the document did not include the lots behind 1041 Mount Vernon Street. Immediately after signing the deed, she began the process of attempting to have the deed "corrected" to include the lots in question because she believed she purchased all four properties. Her testimony indicates that, at least on one occasion shortly after executing the deed, she was told to file an application for the lots comprising her back yard and completed the application as requested.[12] Moreover, her in brief, Appellant indicates that "[f]rom the time of closing in early March, 1983 and for the next twenty-two years, Ms. Brown repeatedly contacted PHDC regarding the promised correction of her deed."[13] While we sympathize with Claimant's plight, her attempts to contact PHDC and acquire documentation transferring title and definitively memorializing her ownership of 621, 623, and 625 North 11th Street acknowledge the fact that, as in Myers, she did not possess superior title to these properties.[14] Indeed, her conduct reflects that she

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[12] As previously indicated, Sandra Barnhill testified that somewhere between 2002 and 2004, PHDC received a request from Appellant to purchase the lots behind her home. Because Appellant signed her deed in March of 1983, the earliest her prescription period could have ended is March of 2004. Because the evidence of record can be read to indicate this latter request testified to by Ms. Barnhill was made after the running of the twenty-one year prescription period, we do not consider this testimony against Appellant when considering whether she created a genuine issue as to whether she possessed the land it issue with the requisite hostility.

[13] Claimant provided testimony similar to this proposition. (R.R. at 268). The record is silent, however, to the full extent, timeframes, and subject matter concerning her conversations with PHDC representatives.

[14] This is so notwithstanding the fact that she believed she was the rightful owner. We point out that Claimant recognized that the deed she signed did not include the properties that currently

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was seeking to have Appellees follow through on the alleged oral contract as she had yet to obtain full title to these properties. Consequently, as a matter of law, she cannot have acquired title to these properties via adverse possession.[15]

Upon review, we are satisfied that there was "no genuine issue as to any material fact" raised by Appellant that would entitle her to relief. Consequently, we see no abuse of discretion necessary, pursuant to Scalice, to reverse the award of summary judgment. As such, we affirm the Order of the Court of Common Pleas of Philadelphia.

JIM FLAHERTY, Senior Judge

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comprise her back yard. She was provided copies of the deeds to the other properties and attempted to have the deed amended to include lots 621, 623, and 625 North 11th Street. Her actions were contrary to that of an adverse possessor who holds herself out as the rightful owner with her flag flying and present a hostile front to all as she recognized a defect in her "title." Brennan.

[15] We recognize that the trial court granted summary judgment ruling that a claim for adverse possession cannot lie against city property or property held by a political subdivision for public use. Appellant argues that she could maintain a claim for adverse possession regarding all three properties so long as they were not utilized for a public purpose. She avers that there is no evidence of record attributing a public purpose to the lots in question. On the contrary, Appellant contends that she has used the properties that make up her back yard for over two decades without intrusion from the PHDC or City. In light of our conclusion, we need not address whether the City or PHDC established a public purpose for 621, 623, and 625 North 11th Street respectively.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maxine Brown,	:	
Appellant	:	
	:	
v.	:	No. 293 C.D. 2007
	:	
City of Philadelphia and Philadelphia Housing Development Corporation	:	

O R D E R

AND NOW, this 21st day of February, 2008, the Order of the Court of Common Pleas in the above-captioned matter is affirmed.

JIM FLAHERTY, Senior Judge