STATE OF VERMONT
WINDSOR COUNTY

DAVID ROY et al	)	
	)	**Windsor Superior Court**
v.	)	**Docket No. 678-10-07 Wrcv**
	)	
WOODSTOCK COMMUNITY	)	
TRUST, INC.	)	

DECISION RE: MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs are a group of landowners abutting the proposed affordable housing project in West Woodstock, Vermont. Most of the plaintiffs seek a declaration that the construction not interfere with certain water line easements and other rights of way. In addition, two landowners allege that they have adversely possessed strips of land along the driveway that provides access to the project from U.S. Route 4.

Plaintiff David Roy contends that he has adversely possessed a strip of land 18 feet wide along the easterly edge of the driveway. Plaintiffs Michael and Tonia Hirschbuhl allege that they and their predecessors have adversely possessed a strip of land 14 feet wide along the edge of the driveway, as well as a strip 20 feet wide along the back border of their property, which is adjacent to the church parking area. All three claims for adverse possession are based upon activities such as landscaping, planting bushes, and maintaining a lawn.

Defendant Woodstock Community Trust seeks partial summary judgment on the claims for adverse possession. The community trust contends that the disputed property was used for public and pious purposes between 1981 and 2005, and that the property was therefore exempt from claims for adverse possession by operation of statute.

Summary judgment is appropriate when the moving party demonstrates that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). In assessing the motion, the court views all of the evidence in the light most favorable to the non-moving party and grants the non-moving party the benefit of all reasonable doubts and inferences. *Id.* "It is not enough, however, for the nonmoving party to rest on allegations in the pleadings to rebut credible documentary evidence or affidavits." *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 5, 175 Vt. 413 (citation omitted). Instead, once the moving party has met its initial burden, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (citation omitted).

The following facts are established for purposes of summary judgment. The property consists of two adjacent parcels. The first parcel contains a grange building and approximately one-half acre of land. The second parcel contains seven and one-half acres of fields and undeveloped property, and includes the church parking lot as well as the driveway that provides access to the property from U.S. Route 4.[1]

Between 1981 and 2005, both properties were owned by a religious organization known as the Woodstock Baptist Fellowship, and later known as The Rock Church. The church used the properties for numerous religious activities, including weekly church services and Sunday School programs. In addition, the church held bible studies during the week and a youth bible camp during the summer.

The public also used the properties. Community groups used the grange building for a variety of secular events and programs, and the local middle and high schools used and maintained the fields for sports practices and games.[2]

The complaint alleges that Mr. Roy and the Hirschbuhls each adversely possessed strips of land adjacent to the driveway and parking area by planting bushes, landscaping, and maintaining lawns. The central question presented by the motion for partial summary judgment is whether the property was exempt from claims of adverse possession by operation of 12 V.S.A. § 462.

Vermont law requires adverse possession claimants to demonstrate that their use or possession of the disputed property was open, notorious, hostile, and continuous throughout the limitations period of fifteen years. 12 V.S.A. § 501; *First Congregational Church of Enosburg v. Manley*, 2008 VT 9, ¶ 13, 183 Vt. 574 (mem.). No claims for adverse possession may be asserted, however, against "lands given, granted, sequestered or appropriated to a public, pious or charitable use, or to lands belonging to the state." 12 V.S.A. § 462. In essence, this means that the limitations period for adverse possession claims never begins to run against property that is given, granted, or appropriated to a public or pious use. *Chittenden v. Waterbury Center Community Church, Inc.*, 168 Vt. 478, 483 (1998). The underlying policy consideration is that it would be detrimental to the public interest to allow private individuals to adversely possess lands dedicated to the public benefit. *In re .88 Acres of Property*, 165 Vt. 17, 19–20 (1996).

---

[1] Plaintiffs contend that there is a legitimate dispute as to whether the driveway provides access to the property from Route 4. However, the motion for summary judgment was accompanied by numerous affidavits stating that "[t]he only way to access the property is through a right of way off of Route 4." See, e.g., *Affidavit of Ed Frizzell* (Exhibit #C), at ¶ 8. Plaintiffs denied this statement in their responsive statement of material facts, but did not come forward with any specific facts showing a genuine issue for trial. The court must accordingly conclude for the purposes of summary judgment that the driveway provides access to the property from Route 4. V.R.C.P. 56(e).

[2] Plaintiffs do not dispute any of the religious uses of the property, but contend that community sports activities were not the primary use of the fields. Again, the plaintiffs have not come forward with any specific facts to contest the assertions made in the various affidavits attached to the motion for summary judgment: e.g., that the fields were used by the middle school lacrosse and soccer teams on weekdays and occasional weekends during the sports seasons, and by the town recreation center at other times of the year. *Affidavit of Wendy Wannop* (Exhibit #E), at ¶¶ 8–18. In addition, the plaintiffs have not come forward with evidence of any other uses of the fields. The court accordingly concludes that the facts set forth above are established for the purpose of summary judgment.

Here, the facts show that between 1981 and 2005, the property was owned by a non-profit church and dedicated to religious and community uses. The grange hall and surrounding parking and fields were used not only by members of the church for worship and communal purposes, but also by the general public for secular programs and sports activities. The uses of the property therefore meet all of the requirements for qualification as public and pious uses exempt from adverse-possession claims. See *MacDonough-Webster Lodge No. 26 v. Wells*, 2003 VT 70, ¶ 12, 175 Vt. 382 (explaining that test of whether property is exempt from adverse-possession claims is the same as whether property qualifies for similar tax exemption for public and pious uses under 32 V.S.A. § 3802(4)); see also *Herrick v. Town of Marlboro*, 173 Vt. 170, 173–74 (2001) (explaining that property tax exemption for pious use requires proof that the property was dedicated unconditionally to pious use, that the primary use of the property directly benefitted the general public and conferred a benefit on society, and that property was owned and operated on a non-profit basis).

Plaintiffs argue that the property would not qualify for a tax exemption under § 3802(4) because the pious uses of the property benefitted only the members of the church, and not the general public. Cf. *Wells*, 2003 VT 70, ¶ 16 (holding that the primary use of a fraternal lodge benefitted members of the lodge rather than the general public). It is generally recognized, however, that churches provide benefits to a wide segment of the population, and there has been no suggestion here that the doors of the church were not open to anyone who wished to attend. See *Sigler Foundation v. Town of Norwich*, 174 Vt. 129, 134 (2002) (explaining that public uses are characterized by "the breadth and scope of the users who need not, as a prerequisite to availing themselves of these uses, belong to any exclusive group"). Furthermore, there is no apparent factual distinction between the pious uses in this case and the church functions that warranted an exemption from adverse possession claims in *Waterbury Center Community Church*. See 168 Vt. at 480 (religious property was exempt from adverse possession claims where church held weekly services, occasional weddings and funerals, and chicken pie suppers). For these reasons, the court concludes that there are no genuine issues for trial as to whether the property was primarily used for pious and public purposes between 1981 and 2005.

Plaintiffs also argue that § 462 is not available because the property is no longer used for pious and public purposes, but rather is owned by a community housing trust. The present ownership status of the property is not relevant, however, because the protections afforded by § 462 accrued to the property itself while it was used for pious and public purposes between 1981 and 2005. *Waterbury Center Community Church*, 168 Vt. at 483. It would be contrary to the purposes of the statute to interpret the exemption as evaporating retroactively upon the sale of the property to a private owner—such an interpretation would cloud title and encourage, rather than discourage, hostile possession of public and pious lands. Here, therefore, the court does not view the community trust as standing in the shoes of the church, or otherwise asserting that it is entitled to an exemption for pious use. Instead, the community trust has pointed out in the motion for partial summary judgment that the limitations period was not running between 1981 and 2005, and accordingly that plaintiffs have not established continuous possession of the property for more than fifteen years.

Plaintiffs further contend that the community trust waived the § 462 exemption by failing to plead "statute of limitations" as an affirmative defense. See *Herrera v. Union No. 39 Sch. Dist.*, 2006 VT 83, ¶ 19, 181 Vt. 198 (explaining that "[t]he statute of limitations and other avoidance defenses must be pled as affirmative defenses, or else they are waived"). It is true that § 462 and § 501 are both set forth within the chapter of Title 12 establishing statutes of limitations for a wide variety of actions, including actions for the recovery of lands, contract claims, tort claims, etc. This is due in large part to the history of the statutes, which were enacted as part of the so-called 1785 quieting acts in order to address the widespread problem of defective land titles held by early Vermont settlers. See *Wells*, 2003 VT 70, ¶ 7 (discussing history of quieting acts).

Nevertheless, it is always the burden of the adverse possession claimant to establish all of the elements necessary to a claim of title, including possession the property for more than fifteen years. *Higgins v. Ringwig*, 128 Vt. 534, 538 (1970). A defendant may therefore defeat a claim for adverse possession simply by denying the allegations in the complaint, and then demonstrating that the claimant has not proven all of the elements of the prima facie case, including continuous possession for the required period of time. See *Ransom v. Bebernitz*, 172 Vt. 423, 433 (2001) (explaining that claimants must prove that their possession lasted for a sufficient duration to satisfy the statutory period of fifteen years). Here, the community trust denied the allegations in the complaint, and then demonstrated in the motion for partial summary judgment that any adverse possession of the property has been no longer than four years, at the most, since the clock was not running between 1981 and 2005. It was not necessary for the community trust to affirmatively plead § 462 as a special defense in order to move for summary judgment on the grounds that the plaintiffs had not established their prima facie claim to lawful title of the disputed property.

Finally, plaintiffs argue that summary judgment must be denied because the evidence demonstrates acquiescence to a common, defined boundary. *Okemo Mountain, Inc. v. Lysobey*, 2005 VT 55, ¶ 14, 178 Vt. 608 (mem.). However, the complaint does not set forth a claim for acquiescence, and even if it did, the motion for partial summary judgment does not seek a declaration regarding the boundaries of the properties. It is directed only at the counts alleging adverse possession. Since any factual issues involving acquiescence do not preclude summary judgment on the claims for adverse possession, there is no reason here why the motion should not be granted.

ORDER

For the foregoing reasons, Defendants' Motion for Partial Summary Judgment (MPR #4), filed Mar. 31, 2009, is ***granted***.

Dated at Woodstock, Vermont this ____ day of September, 2009.

_____
Hon. William D. Cohen
Superior Court Judge