STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(FILED: September 22, 2017)

KAREN F. CARROLL *Plaintiff*	:	
v.	:	**C.A. No. NC-2009-0142**
LISA RODRIQUES, MICHAEL RODRIQUES, PRICILLA N. ESTES, in her capacity as Co-Trustee of the Testamentary Trust established under the Will of John G. Nelson, and **MARK W. ESTES,** in his capacity as Co-Trustee of the Testamentary Trust established under the Will of John G. Nelson *Defendants*	:	

DECISION

VAN COUYGHEN, J. This case is before the Court for decision following a nonjury trial on a Complaint by Karen F. Carroll (Plaintiff) against Lisa and Michael Rodriques—individually—and Pricilla N. and Mark W. Estes—in their capacities as co-trustees of the testamentary trust of John G. Nelson (collectively, Defendants). Plaintiff seeks to quiet title to certain property in Little Compton via adverse possession pursuant to G.L. 1956 § 34-7-1. Jurisdiction is pursuant to G.L. 1956 § 8-2-14. For the reasons set forth herein, judgment shall enter for Plaintiff.

I

Standard of Review

In a nonjury trial, the "trial justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). "Consequently, [the trial justice] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." Id.

Rule 52(a) of the Superior Court Rules of Civil Procedure states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law . . ." Super. R. Civ. P. 52(a). At times, parties will stipulate to certain facts and execute an agreed statement of facts. When certain facts are stipulated to, "the [ ] court does not play a fact-finding role, but is limited to 'applying the law to the agreed-upon facts.'" Delbonis Sand & Gravel Co. v. Town of Richmond, 909 A.2d 922, 925 (R.I. 2006) (quoting Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005)). Facts in dispute are decided by the Court, and the law is applied accordingly.

In accordance with the appropriate standard, this Court makes the following findings of fact and conclusions of law.

II

Facts

A. Background

The Town of Little Compton is a quiet, rural community that sits at the Southeastern tip of Rhode Island. At some point prior to November 1986, Francis Carroll—Plaintiff's late husband—began searching the Little Compton Land Evidence Records and Tax Rolls for properties that were not on the tax rolls or were otherwise unaccounted for.[1] After identifying a property that was not on the tax rolls and had no apparent owner of record, Mr. Carroll would deed the property from himself, to himself and his wife, as tenants by the entirety. Mr. Carroll would then record the deed. Subsequently, the tax assessor would be notified of the newly

[1] At trial, Mrs. Carroll described her late husband's practice of finding lots that were otherwise absent from the tax rolls as his hobby.

recorded deed and begin assessing taxes to the property. The Carrolls would then proceed to pay the property taxes as assessed and treat the property as their own.[2]

Mr. Carroll's interest in the area surrounding Amy Hart Path in Little Compton began at a time after his parents' divorce when he received a lot of his own in the same area.[3] While researching his lot, Mr. Carroll discovered that certain other lots in the nearby area were missing from the tax rolls. In other words, the Lots were not being assessed property taxes. Two of the lots Mr. Carroll identified as being absent from the tax rolls, and for which he could not locate record owners, were lots 103 and 105 of the Little Compton Tax Assessor's Plat Map 41. These are the lots at issue in the instant lawsuit.

Historically, the lots in question as well as real estate in the surrounding area were used as woodlots and were otherwise undeveloped and forested.[4] Up to and until 2009, the year this lawsuit was filed, the record owners of the lots in question were unknown to both the Town of Little Compton and the record owners themselves.

B. Lots 103 and 105
(The disputed land)

Lots 103 and 105 are located to the east and to the west of Amy Hart Path, respectively, and directly abut Defendants' properties to the north. The lots are between six and seven acres apiece and, to date, remain mostly undeveloped and wooded. Upon identifying lots 103 and 105 as not being on the tax rolls, Mr. Carroll had his attorney at the time prepare a quitclaim deed

[2] The number of properties for which Mr. Carroll has successfully completed this endeavor is not clear from the record.
[3] It remains unclear how he obtained title to the lot that was referenced at trial and in the parties' papers. Plaintiff simply stated that Mr. Carroll received a lot in the area of Amy Hart Path after his parents' divorce, and Defendants state the same in their papers with no explanation.
[4] Historically, a woodlot was a privately maintained tract of land used as a source of fuel, posts, and lumber. "Woodlot" Merriam-Webster.com last visited June 2017. A woodlot would be maintained as a property separate from the owner's residence.

conveying the lots from himself, to himself and Plaintiff, as tenants by the entirety. On November 19, 1986, Mr. Carroll recorded the deed in the Little Compton Land Evidence Records in Book 67 at Page 674. The properties were subsequently assigned lot numbers 103 and 105, and taxes were assessed by the Little Compton Tax Assessor. Plaintiff testified at trial that the couple originally planned to subdivide lots 103 and 105 and sell the lots as house-lots. In furtherance of this goal, they took certain actions in an effort to prepare the lots for sale.

Shortly after recording the 1986 deed, around the spring of 1987, the couple cleared the land around the lots' boundary lines by cutting away brush and trimming trees. Plaintiff testified that she and her husband also had the lots surveyed in order to identify the exact boundaries. The Carrolls directed the surveyor to place granite boundary markers—six in total—around the properties and to also place metal rods in the middle of Amy Hart Path. The lots extended into, and met in the middle of, Amy Hart Path. After having the lots surveyed and the perimeter marked, the Carrolls applied to the Town of Little Compton to subdivide the lots.

Plaintiff testified that the town council[5] approved the application to subdivide the lots; however, the approval was conditioned upon several factors. First, the Carrolls had to widen Amy Hart Path between the boundary lines of lots 103 and 105 to a width of twenty feet, with an additional ten foot setback on each side. To accomplish this, the Carrolls hired an engineer. Plaintiff testified that gravel and stone were brought in to improve the path's structural integrity, and drainage pipes were installed. Additionally, the Town of Little Compton required the Carrolls to get the land resurveyed as the perimeter surveys they provided were insufficient. On February 9, 1989, a deed memorializing the subdivision was recorded in the Little Compton Land Evidence Records in Book 74 at Page 416. The lots in question are now reflected in Little

[5] It is unclear whether the town council or planning board of review provided the requisite approval.

Compton Tax Assessor's Plat Map 41 as lots 103-1 and 103-2 and lots 105-1 and 105-2 (collectively, the Lots). On August 20, 1989, Mr. Carroll passed away.

In addition to subdividing the Lots, Plaintiff brought suit in Newport County Superior Court in 1995 in order to have Amy Hart Path declared a public road. The lawsuit was necessitated because certain property owners, who are not parties to the instant action, would not allow Plaintiff to use Amy Hart Path. The defendants in that case were asserting that Amy Hart Path was a private road and thus denied access to the Lots in question, which prevented Plaintiff from bringing utilities to them.

On May 7, 1996, judgment entered in Plaintiff's favor. The court declared Amy Hart Path a public highway and permanently restrained and enjoined the defendants from, inter alia, "impeding, interfering with or otherwise denying [Ms. Carroll]'s right to utilize the Amy Hart Path for the purpose of bringing utility services to her land." Pl.'s Trial Ex. H, 2-3[6]. Subsequently, Plaintiff brought utilities to the Lots, which required installing utility poles to carry the necessary cables.

Plaintiff testified that she posted no trespassing signs around the properties in an effort to notify the public that the land was private property. Plaintiff also hired engineers to conduct perc tests[7] throughout the Lots in order to assess their ability to properly drain water. In addition, Plaintiff engaged a realtor, Rosemary Bowen of Spinnaker Realtors, to market the Lots for sale. Ms. Bowen was successful in her endeavors, and Plaintiff entered into Purchase and Sales Agreements for all four lots, ultimately obtaining security deposits on each. The individual who

[6] The parties mismarked their exhibits. Plaintiff used letters and Defendants used numbers.

[7] A "perc test," otherwise known as a percolation test, is a test to determine the water absorption rate of soil in preparation for the installation of a septic tank. The test is conducted by digging a hole, or several holes, in and around the proposed site, filling the hole/s with water, and timing the rate at which the water absorbs into the soil.

executed a Purchase and Sales Agreement for lot 105-2, Christian LeBlanc, testified that he cleared an acre of the lot, installed a driveway, and burnt brush; however, construction has since been halted as a result of this lawsuit.[8]

The parties do not dispute that Defendants are the record owners of the subject properties. The Rodriques Defendants are the record owners of lots 103-1 and 103-2, and the Estes Defendants are the record owners of lots 105-1 and 105-2. Neither the Rodriques Defendants nor the Estes Defendants have ever occupied the subject properties, nor have they paid any real estate taxes on the subject properties. Additional facts will be provided as needed.

III

Travel

On March 16, 2009, Plaintiff filed suit in Newport County Superior Court seeking to quiet title to the Lots via adverse possession. Plaintiff claims that in accordance with § 34-7-1, she had occupied the Lots under a claim of right and had been in open, notorious, adverse, exclusive, and uninterrupted possession and enjoyment for the statutory period. On June 27, 2016, the case was reached for trial and heard before another justice of this Court without the intervention of a jury. At the conclusion of the one-day trial, the trial justice reserved decision.

On December 15, 2016, another justice of this Court ordered a mistrial due to the illness of the original justice, and a new trial date was scheduled. On May 4, 2017, the two-day, nonjury trial concluded before this Court. At the close of Plaintiff's case, Defendants moved to dismiss Plaintiff's claim pursuant to Super. R. Civ. P. 41. The motion should have been made

[8] Plaintiff testified at trial that she could not recall the precise year she engaged Ms. Bowen. Ms. Bowen did not testify. The Purchase and Sales Agreements were not entered as exhibits. Mr. LeBlanc, however, testified that he believes he executed the Purchase and Sales Agreement in the year 2000 and, at that point, provided a $5000 deposit through Spinnaker Realtors.

pursuant to Super. R. Civ. P. 52(c). In any event, the Court reserved judgment. The parties also submitted post-trial memoranda.

IV

Analysis

A. Adverse Possession in Rhode Island

In 1896, the Rhode Island legislature codified the common law elements of adverse possession and enacted G.L. 1896 § 22-205-2. Sec. 22-205-2 stated in pertinent part:

> "Where any person or persons . . . shall have been for the space of twenty years, or for the space of ten years beginning at any time hereafter, in the uninterrupted, quiet, peaceable and actual seisin and possession of any lands . . . and during the said time, claiming the same as his, her or their proper, sole and rightful estate in fee-simple, such actual seisin and possession shall be allowed to give and make a good and rightful title to such person or persons[.]" Sec. 22-205-2.

Over the years, the legislature periodically amended § 22-205-2 until it reached its present form as set forth in § 34-7-1. Sec. 34-7-1 provides:

> "Where any person or persons, or others from whom he, she, or they derive their title, either by themselves, tenants or lessees, shall have been for the space of ten (10) years in the uninterrupted, quiet, peaceful and actual seisin and possession of any lands, tenements or hereditaments for and during that time, claiming the same as his, her or their proper, sole and rightful estate in fee simple, the actual seisin and possession shall be allowed to give and make a good and rightful title to the person or persons, their heirs and assigns forever; and any plaintiff suing for the recovery of any such lands may rely upon the possession as conclusive title thereto, and this chapter being pleaded in bar to any action that shall be brought for the lands, tenements or hereditaments, and the actual seisin and possession being duly proved, shall be allowed to be good, valid and effectual in law for barring the action." Sec. 34-7-1.

Applying § 34-7-1, our Supreme Court explained in Cahill v. Morrow, 11 A.3d 82 (R.I. 2011) that a claimant must prove "actual, open, notorious, hostile, continuous, and exclusive use of

property under a claim of right for at least a period of ten years." Cahill, 11 A.3d at 88. Those elements must be proved by clear and convincing evidence. See id. (quoting Corrigan v. Nanian, 950 A.2d 1179, 1179 (R.I. 2008)).[9]

Rhode Island does not require that an adverse possessor acquire possession in good faith. That is, one who possesses land to which another holds legal title need not do so under a good-faith mistake that they own the land.[10] In fact, an adverse possessor may take possession knowing full well that they are not the record owner. Our Supreme Court has addressed this conundrum, which seemingly cuts counter to the very fabric of justice, in two recent cases: first, in Tavares v. Beck, 814 A.2d 346 (R.I. 2003) and again in Cahill, 11 A.3d 82.

In Tavares, the plaintiff property owners—the Tavareses—purchased three lots from James Amarantes, who, some years earlier, had conducted a survey and discovered that he did not hold legal title to the lands that he would eventually sell to the Tavareses. See 814 A.2d at 350. After receiving the survey results, Amarantes deeded the property to himself and his wife. See id. at 349. Amarantes also posted no trespassing signs, constructed a stone wall, improved drainage on the property, and cleared timber. See id. at 352. After purchasing the lots from Amarantes, the Tavareses attempted to quiet title pursuant to § 34-7-1. They sought to remove any cloud that existed on the title by having the court declare that they were the rightful owners

[9] "'Clear and convincing evidence is defined in a variety of ways; for example, to establish a fact or an element by clear and convincing evidence a party must persuade the jury that the proposition is highly probable, or must produce in the mind of the factfinder a firm belief or conviction that the allegations in question are true. The clear and convincing evidence standard does not require that the evidence negate all reasonable doubt or that the evidence must be uncontroverted.'" R.I. Mobile Sportfishermen, Inc. v. Nope's Island Conservation Ass'n, Inc., 59 A.3d 112, 121 n.16 (R.I. 2013) (quoting Cahill, 11 A.3d at 88 n.7 (quoting 29 Am. Jur. 2d Evidence § 173 at 188–89 (2008))).

[10] Contra twenty-seven out of fifty states where legislatures have enacted adverse possession statutes, or amended prior versions, require a party seeking to quiet title via adverse possession do so under a good-faith color of title. See Leiter, Richard A., and Hein & Co., Inc., William S., Adverse Possession (Statutes), 2016.

and that in conjunction with Amarantes, they had been in open, adverse, exclusive and uninterrupted possession and enjoyment of the property for more than seventy years.[11]

The case was tried without a jury, and, at its conclusion, the trial justice held that the Tavareses could not quiet title pursuant to § 34-7-1 because they had not occupied the property for the requisite ten-year period. Principally, the trial justice found that the Tavareses could not tack on Amarantes's occupation because Amarantes had not occupied the property under a claim of right hostile to the record owners' interests. The trial justice also concluded that the action was equitable in nature, and, therefore, Amarantes's attempt to bootstrap himself into ownership via a "self-deed" rendered his hands unclean; thus, the trial justice was precluded from granting the relief sought by the Tavareses. The trial justice reasoned that Amarantes's decision to deed the property to himself and his wife upon discovering that they were not the record owners, coupled with activity that, in the justice's view, was not sufficiently open and notorious, negated the requirement that adverse possessors occupy a property under a claim of right. The trial justice observed that he was "not aware of any authority that allows someone who knows he does not own land to occupy it and divest the true owner of his interest." Id. at 350 (citation omitted).

On appeal, our Supreme Court vacated the judgment and remanded the case back to the Superior Court for further proceedings. The Supreme Court found that the trial justice had "misconstrued the claim-of-right doctrine when he ruled that the Tavareses and their predecessors failed to satisfy the elements of adverse possession." Additionally, the Court held that Amarantes's allegedly inequitable conduct did not preclude the assertion of title via adverse possession. Id. at 348.

[11] The parties conceded that the Tavareses' occupation fell short of the statutory ten-year period; thus, in order to succeed in their § 34-7-1 claim, the Tavareses needed to prove by clear and convincing evidence that their predecessor, Amarantes, satisfied the elements of adverse possession when he was in possession of the parcels.

The Court explained that an adverse possession analysis must focus on the possessor's objective manifestations and not, as the trial justice presumed, his or her subjective knowledge. See id. at 351 (explaining "[t]hus, in establishing hostility and possession under a claim of right, the pertinent inquiry centers on the claimants' objective manifestations of adverse use rather than on the claimants' knowledge that they lacked colorable legal title" (citing 5 Restatement Law and Property § 458, comment d at 2927 (1944); 3 Am. Jur. 2d Adverse Possession § 45 (2002))). "Contrary to the trial justice's belief, [ ], a person attempting to obtain title through adverse possession 'need not be under a good faith mistake that he or she had legal title to the land.'" Id. (quoting 16 Powell on Real Property, § 91.05[1] at 91-23 (2000)). Our state's adverse possession statute does not require, and never has required, good faith. "Simply having knowledge that he was not the title owner of the parcels was not enough to destroy his claim of right given his objective, adverse manifestations otherwise." Cahill, 11 A.3d at 90-91 (summarizing the holding and rationale in Tavares). Thus, "even when claimants know that they are nothing more than black-hearted trespassers, they can still adversely possess the property in question under a claim of right to do so if they use it openly, notoriously, and in a manner that is adverse to the true owner's rights for the requisite ten-year period." Tavares, 814 A.2d at 351. The law in Rhode Island requires that a claimant satisfy the elements articulated in § 34-7-1; it does not require that a claimant believe that he or she is legally justified in possessing the land. "This remains true even in a situation in which the claimants know that they do not hold record title to the property in question but still engage in a calculated attempt to deprive the record owner of the title through actions and uses that, if continued for the requisite period, will ripen into adverse possession." Id. at 352.

In Cahill, our Supreme Court revisited the black-hearted trespasser language in Tavares when it held that a claimant's offers to purchase a property—not within the context of settling an ongoing dispute—prior to claiming title via adverse possession negated an argument that the property was held under a claim of right superior to all others. See generally 11 A.3d 82. The plaintiffs in Cahill were attempting to quiet title to lot 19, a lot that had otherwise been abandoned by the record title holders—the Morrows. The Cahill family, who owned lot 20—directly adjacent to lot 19—spent years mowing lot 19's grass, hanging clothes to dry on the lot, placing furniture on the lot, and allowing guests to use the lot when they were entertaining. Additionally, when a nearby marina sought permission from the local zoning board to elevate its property, the Cahills, out of fear that the elevation may cause lot 19 to flood, attended the zoning board meetings and succeeded in having the marina developer grade lot 19 to prevent the possibility of flooding. During this period, however, the Cahills made several inquiries with the Morrows as to their willingness to sell lot 19—all of which the Morrows ignored.

After receiving no response from the Morrows to their most recent inquiry, the Cahills brought suit to quiet title pursuant to § 34-7-1. After hearing the evidence at trial, the trial justice concluded that the Cahills had obtained fee simple via adverse possession. The Morrows filed a timely notice of appeal and argued, inter alia, that the trial justice did not appropriately weigh the Cahills' offers to purchase the property. The Supreme Court analyzed the impact of the Cahills' offers and concluded that such objective recognition and acknowledgment of another's superior claim negated the claim-of-right element that was essential to succeeding in an adverse possession case.

With "an eyebrow raised at the ancient roots and arcane rationale of adverse possession,"[12] the Supreme Court remanded the case back to the Superior Court to reevaluate the record prior to the Cahills' first offer to purchase—which took place after having possessed the property for nearly twenty-six years. Id. at 88. The Court believed that the Cahills' objective manifestations of the Morrows' superior claim were relevant to determining whether the twenty-six year occupation that preceded the offer was under a claim of right. See id. at 94.

The Court reached its conclusion after revisiting the standard articulated in Tavares; that is, that '"a claim of right may be proven through evidence of open, visible acts or declarations, accompanied by use of the property in an objectively observable manner that is inconsistent with the rights of the record owner."' Id. at 89 (quoting Tavares, 814 A.2d at 351 (citing Picerne v. Sylvestre, 122 R.I. 85, 91-92, 404 A.2d 476, 479-80 (1979))). The Court reasoned that the Cahills' offer to purchase the property objectively communicated their recognition of the Morrows' superior title. See id. at 91. The Court distinguished the case from Tavares and explained that the Cahills' actions went beyond mere subjective knowledge that they were not the record title holders, and instead, amounted to objective acknowledgements that the true owners, the Morrows, held title superior to their own. See id. at 90-91.

The Court saw Cahill as an opportunity to clarify some of the points made in Tavares; namely, its statement that even the '"black-hearted trespasser[ ]"' who occupies a property with knowledge that another holds superior legal title can adversely possess a property '"under a claim of right to do so if they use it openly, notoriously, and in a manner that is adverse to the true owner's rights for the requisite ten-year period."' Id. at 91 (quoting Tavares, 814 A.2d at 351). The Cahill Court confirmed that its articulation of the rule governing adverse possession in

[12] This Court shares the raised eyebrow sentiment; however, is duty-bound to apply the statute as written by the legislature and interpreted by the R.I. Supreme Court.

Tavares "[was] legally correct considering that adverse possession does not require the claimant to make 'a good faith mistake that he or she had legal title to the land.'" Id. (citation omitted). However, the Court explained that to the extent its earlier reference to the black-hearted trespassers suggested that it "endorses an invade-and-conquer mentality in modern property law, [the Court] dutifully excise[d] that sentiment from [its] jurisprudence."[13] Id.

Our Supreme Court set forth several principles in Tavares and Cahill that will guide this Court's analysis. First, it is the claimant's objective manifestations that determine whether the possession was hostile and under a claim of right. Subjective knowledge that another may hold superior title does not preclude one's ability to quiet title via § 34-7-1. Second, our Supreme Court made clear that it does not endorse the business of adverse possession; that is, none of its prior decisions ought to be read as encouraging parties to invade and conquer land with the hope that their occupation will go undiscovered for the statutory period, thereby yielding free land. Finally, the Court made clear that while it will not endorse the black-hearted trespasser's effort to bootstrap his or herself into ownership, the black-hearted trespasser can nevertheless '"still adversely possess the property in question under a claim of right . . . if they use it openly, notoriously, and in a manner that is adverse to the true owner's rights for the requisite ten-year period."' Id. (quoting Tavares, 814 A.2d at 351).

[13] This Court notes, however, that the Supreme Court in Cahill, while not endorsing the invade-and-conquer mentality, did not forbid it. In other words, in a civilized society that ascribes to the rule of law, the Court cannot, and will not, endorse the taking of another's property; however, the Court will, and does, enforce the law as the legislature drafts it—so long as the law is not facially unconstitutional. That being said, as presently drafted, § 34-7-1 does not prevent someone from intentionally adversely possessing another's property. The onus to modify this standard lies with the legislature if it sees fit.

B. The Carrolls' Possession

To succeed in a claim of adverse possession, the possessor must prove "actual, open, notorious, hostile, continuous, and exclusive use of property under a claim of right for at least a period of ten years." Id. at 88. The Court will analyze these elements in turn.

1. Actual, Open, and Notorious Possession

"For adverse possession to occur, the use to which the land is put must be similar to that which would ordinarily be made by owners of similarly situated real estate." Tavares, 814 A.2d at 352 (citing Sherman v. Goloskie, 95 R.I. 457, 466, 188 A.2d 79, 84 (1963)). "This requirement ensures that a claimant's use of the land was 'sufficiently open and notorious to put a reasonable property owner on notice of their hostile claim.'" McGarry v. Coletti, 33 A.3d 140, 145 (R.I. 2011) (quoting Acampora v. Pearson, 899 A.2d 459, 467 (R.I. 2006) (quoting Tavares, 814 A.2d at 352)). When determining whether the occupant's use was sufficiently open and notorious, the Court must consider the nature of the land and its historical use. See Tavares, 814 A.2d at 352. "When the property under consideration is 'wild land or remote, unimproved rural land,' [our Supreme Court] has said that 'actual occupation or intensified use thereof' may not be necessary to establish adverse possession of the subject property." Id. Instead, "'[i]t is sufficient for the claimant to go upon the disputed land and use it adversely to the true owner.'" Id. (quoting Lee v. Raymond, 456 A.2d 1179, 1183 (R.I. 1983)).

Defendants argue that Mr. Carroll's self-deed negates the claim that possession was open and notorious. Defendants contend that the Carrolls' efforts amounted to fraudulent misrepresentations intended to conceal their adverse claim, which precludes this Court from finding that they openly and notoriously occupied the Lots. Additionally, Defendants assert that when Mr. Carroll told Ms. Rodriques that he owned the land located to the north of her

property—that is, lots 103-1 and 103-2—he concealed facts that would place a reasonable property owner on notice of his adverse claim.

Plaintiff's position is inapposite. Plaintiff argues that via oral and written declarations, the Carrolls proclaimed to the world that they owned the Lots. Plaintiff argues that the objective actions taken over the years not only placed Defendants on constructive notice of their claim to the Lots, but, because of their direct communications, Defendants had actual notice of the Carrolls' claim. Plaintiff avers that the "open and notorious" determination must focus on whether the true owners had notice of the Carrolls' claim and that based upon the facts of this case there can be no doubt that notice was sufficient.

As a threshold matter, the Court would like to address Defendants' claim that Mr. Carroll intentionally deceived Ms. Rodriques when he told her that he owned the lot directly north of her property. Plaintiff has maintained throughout these proceedings that Mr. Carroll could not locate the record owners of the Lots. Plaintiff candidly, and credibly, testified that Mr. Carroll's hobby was finding properties that were otherwise abandoned. Plaintiff testified that after searching the Little Compton town records, Mr. Carroll could not locate the record owners of the Lots. Defendants presented no evidence to the contrary; that is, at no point did Defendants present evidence that Mr. Carroll actually located the record owners of the Lots, knew that Ms. Rodriques was one such owner, and intentionally misrepresented the facts in an effort to conceal his actions. Defendants' allegations are just that, allegations. As such, they do not sway this Court's decision.

From November of 1986 to present day, the Carrolls, either jointly or Mrs. Carroll subsequent to her husband's passing, laid claim to lots 103-1, 103-2, 105-1, and 105-2. The Carrolls communicated their claim to the Lots by taking certain actions: property lines were

cleared; granite boundary markers were placed; the access road that ran between the properties was widened and improved significantly; utilities were brought in—to wit, utility poles were installed and cables run—a backhoe was hired and perc tests were conducted; drainage pipes were installed; written permission was provided to Ms. Rodriques and several other individuals to run dogs on the Lots in question;[14] lot 105-2 was partially cleared and prepared for construction; a driveway was cleared and installed on lot 105-2; and at least one "no trespassing" sign was posted. Additionally, the Carrolls made known their claim to the Lots by taking certain legal actions: a lawsuit was successfully brought to permanently enjoin individuals from denying Plaintiff access to the Lots via Amy Hart Path and to declare Amy Hart Path a public road for purposes of bringing in utilities; Plaintiff paid property taxes;[15] and received approval from the Town of Little Compton to subdivide lots 103 and 105 and recorded the appropriate deeds. The Lots were also marketed for sale and third parties entered into Purchase and Sales Agreements for the Lots. As stated above, Plaintiff was a credible witness and the facts as outlined above were not disputed.

The Court finds that Plaintiff proved actual, open and notorious possession by clear and convincing evidence. See Cahill, 11 A.3d at 88. The Carrolls' actions were sufficiently open and notorious to place a reasonable owner of wooded lots in Little Compton, Rhode Island on notice of their claim. See McGarry, 33 A.3d at 145; Acampora, 899 A.2d at 467; Tavares, 814 A.2d at 352. Though some of Plaintiff's actions may not have been visible from Amy Hart Path,

[14] In a letter dated October 30, 1989, Plaintiff provided, as "the owner of lots 69-1; 69-2; 69-3; 74; 86; 87; 106; 105; and 103 on the Amy Hart Path," written permission to "Earl P. Wordell, Mike and Lisa Rodriques, Frank Gracia and any friends under their supervision" to "use [her] property to run their dogs." Pl.'s Trial Ex. P. This essentially allowed them to hunt on the property.

[15] It is clear that at least until 2007 the taxes were paid; however, presently there is a lien on the properties for unpaid taxes. Plaintiff testified that she has an arrangement with the Town of Little Compton to make monthly payments toward the delinquent amount.

"it is not essential for an adverse claimant to show that the uses in question were observable from the nearest improved road or lot line to establish these elements of adverse possession. Rather, the proper inquiry is whether [the Carrolls] used the property in a manner consistent with how other owners of rural, undeveloped woodlands typically would use such land, and whether these uses took place in a manner 'calculated to attract attention,' thus placing the world on constructive notice of [their] adverse claim." Tavares, 814 A.2d at 354 (quoting Sherman, 95 R.I. at 466, 188 A.2d at 84).

There can be no doubt that Defendants were not only placed on constructive notice of the Carrolls' claim, but were, in the instance of the Rodriques Defendants, provided actual notice of their claim. To say that the Carrolls took action that was not "sufficiently open and notorious to put a reasonable property owner on notice of their hostile claim" would be to ignore the realities of land use in that area of Rhode Island. Tavares, 814 A.2d at 352 (citation omitted). This is especially true considering that Defendants owned and resided at the abutting property. In fact, Ms. Rodriques testified that she lived on Amy Hart Path since 1981.

2. Hostile Possession under a Claim of Right

"In Tavares, [our Supreme Court] explained that 'requir[ing] adverse possession under a claim of right is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner.'" Cahill, 11 A.3d at 89 (quoting Tavares, 814 A.2d at 351 (quoting 16 Powell on Real Property, § 91.05[1] at 91-28 (2000))). Possession under a claim of right means "'the entry by the claimant must be in accordance with a claim to the property as the claimant's own with the intent to hold it for the entire statutory period without interruption.'" Tavares, 814 A.2d at 351 (quoting 16 Powell on Real Property, § 91.05[4] at 91-28, 91-29 (2000)). "[T]o constitute a

hostile use, the adverse possessor need only establish a use 'inconsistent with the right of the owner, without permission asked or given, . . . such as would entitle the owner to a cause of action against the intruder [for trespass].'" Id. (citation omitted).

Plaintiff testified that she and her husband entered onto the Lots with the intent to subdivide and develop the properties so that they could be sold at a later date. The actions taken over the years, outlined supra, were in furtherance of that objective. There is no evidence to suggest that the Carrolls ever considered their interest to be subservient to another's. In fact, Mr. Carroll expressly stated to the title owner of lots 103-1 and 103-2—Ms. Rodriques—that he owned lots 103-1 and 103-2. The Carrolls' entry onto the Lots, and the actions taken subsequently, are consistent with a claim that is adverse, hostile, and superior to all others. Since their entry onto the Lots in November of 1986, the Carrolls' claim has not wavered. Contra Cahill, 11 A.3d at 91 (where the Court considered the occupants' offers to purchase the lots as objective manifestations of another's superior title in the land).

The Court finds that Plaintiff has proved by clear and convincing evidence that she—alone, and together with her husband, possessed the Lots under a claim of right that was hostile to the true owners. See Tavares, 814 A.2d at 351. The Carrolls entered onto the properties under a claim of right and sought to act upon that right; namely, by subdividing the land, developing the Lots, and marketing them for sale. The actions taken by Plaintiff and her husband, and the communications made to Ms. Rodriques, both orally and in writing, were objective manifestations of their adverse claim; that is, a claim and use that was hostile to the Defendants' interest in the land.

3. Continuous, Uninterrupted Possession for the Statutory Period

Plaintiff's use and possession must also be continuous for ten years pursuant to § 34-7-1. Here, the Carrolls' use and possession commenced once they filed the November 1986 deed in the Little Compton Land Evidence Records. The Carrolls' occupation has continued, uninterrupted, since November 1986.[16] At trial, Defendants argued that the Carrolls' use of the property was sporadic and that the activities conducted thereon were finite. Defendants contend that Plaintiff's fleeting use did not satisfy § 34-7-1's requirement that the adverse possession be continuous. Plaintiff argued that their use and occupation were sufficiently continuous in light of the land's physical nature; that is, its wooded and undeveloped condition. Plaintiff avers that any gaps in activity were not inconsistent with the land's historical use and, therefore, did not break the continuity of possession.

The Court has already found that the Carrolls' use was sufficiently notorious and hostile to place a reasonable owner on notice of their adverse claim. In particular, it found that because the Lots were located in a rural area that had otherwise remained undeveloped, the Carrolls' activities were sufficiently inconsistent with the true owners' claim, and that they served to give adequate notice to a reasonable landowner of their adverse claim. Viewed objectively, there was

[16] Our case law "has recognized three methods by which a record owner can interrupt a claimant's adverse possession: (1) filing of an action to quiet title, Cumberland Farms, Inc. v. Mayo Corp., 694 A.2d 752, 753 (R.I. 1997) (mem.); (2) filing of 'notice of intent to dispute' adverse possession under § 34-7-6; and (3) physical ouster of the claimant or a 'substantial interruption' of the claimant's possession by the record owner." Carnevale v. Dupee, 783 A.2d 404, 409-10 (R.I. 2001) (quoting LaFreniere v. Sprague, 108 R.I. 43, 52, 271 A.2d 819, 824 (1970); 3 Am. Jur. 2d Adverse Possession §§ 98, 124-26 (supp. 2001)). No evidence has been submitted to support a finding that the record owners interrupted the Carrolls' possession; nor has any evidence been submitted to show that some third party interrupted the Carrolls' possession.

no doubt that the Carrolls used the land under a claim of right superior to all others. The Court also finds that the Carrolls' use was sufficiently continuous to satisfy § 34-7-1.

In LaFreniere, 108 R.I. at 52, 271 A.2d at 823, our Supreme Court considered whether a true owner's notice to an adverse possessor that the possessor had overstepped his bounds, and that "trees, bushes and cesspool were on the [true owner's] land," negated the claimant's adverse possession claim. Our Supreme Court stated:

> "[i]t is true that the continuous and uninterrupted possession required to constitute adverse possession by the statute does not require a constant use of the occupied area. It is necessary that it be continuous only in the sense that the claimant exercised a claim of right without interference at such times as it was reasonable to make a proper use of the land. Lewes Trust Co. v. Grindle, 53 Del. 396, 170 A.2d 280. . . . [T]emporary breaks in the use to which the occupier was putting the disputed area do not necessarily destroy the requisite continuity." Id. at 52-53, 271 A.2d at 824.

The Court ultimately concluded that conducting a survey and advising the adverse possessor of the results of that survey, without further action, did not "actually interfere with and interrupt substantially the claimant's use of the land." Id. at 53, 271 A.2d at 824.

Over the course of a nearly twenty-three year period, the Carrolls made efforts to acquire, subdivide, develop, and market for sale land that was undeveloped and wooded. The steps taken were numerous and blatant. During that nearly twenty-three year period, however, there were gaps in activity for which no explanation was provided—gaps that sometimes spanned years. Defendants posit that these periods of inactivity negate Plaintiff's claim that possession and use were continuous. Defendants failed to provide any evidence to show that such inactivity was inconsistent with land ownership in this area or a result of interference from the true owners. See Tavares, 814 A.2d at 352 (explaining that when the property under consideration is wild land or unimproved rural land, the inquiry focuses on whether the '"use to which the land has been put is

similar to that which would be made ordinarily of like land by the owners thereof'") (quoting Sherman, 95 R.I. at 466, 188 A.2d at 84)); LaFreniere, 108 R.I. at 52-53, 271 A.2d at 824 (explaining that the continuous use is not necessary, the inquiry instead must focus on whether there was a substantial interference, at any point, with the claimant's use and occupation). These Lots were historically used as woodlots that, until very recently, had seen little to no activity. Plaintiff's inactivity was not inconsistent with that historical use, and at no point was the possession interrupted.

On November 19, 1986, the Carrolls initiated their claim to the Lots. Up to and until the inception of this lawsuit—March 16, 2009—the Carrolls continuously used and possessed the Lots without interruption and at no point yielded their claim to another. The Court finds that Plaintiff has proven continuous, uninterrupted possession by clear and convincing evidence.

V

Conclusion

Plaintiff proved the elements of § 34-7-1 by clear and convincing evidence. From November 19, 1986, until present day, Plaintiff exercised actual, open, notorious, hostile, continuous, and exclusive use of Lots 103-1, 103-2, 105-1, and 105-2 under a claim of right for at least the statutory period of ten years. Plaintiff made objective manifestations of her intent to adversely possess the property under a claim of right that was hostile to the true owners' interests. Plaintiff's actions were sufficiently open and notorious to place a reasonable owner of woodlots in Little Compton, Rhode Island on notice of her adverse claim. Plaintiff's claim continued, uninterrupted and unabandoned, for the statutory period. Additionally, Defendants presented no evidence that Mr. Carroll was aware of the true owners' identities and thus acted to intentionally conceal his efforts and deceive Ms. Rodriques. Therefore, Plaintiff is awarded fee

simple ownership in the Lots at issue pursuant to § 34-7-1. For all the reasons stated above, Plaintiff's motion for judgment as a matter of law pursuant to Super. R. Civ. P. 52(b) is denied.

Counsel shall confer and present the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Karen F. Carroll v. Lisa Rodriques, et al.**
CASE NO:	**NC-2009-0142**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**September 22, 2017**
JUSTICE/MAGISTRATE:	**Van Couyghen, J.**
ATTORNEYS:	
For Plaintiff:	**Christopher A. Anderson, Esq.**
For Defendant:	**Evan S. Leviss, Esq.**