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<p>FIRST ZION HOPE MISSIONARY BAPTIST CHURCH</p> <p>Appellant,</p> <p>v.</p> <p>NEW COMMUNITY CORPORATION</p> <p>Respondent.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION</p> <p>DOCKET NUMBER: A-000189-23</p> <p>Civil Action</p> <p>APPELLANT’S BRIEF</p> <p>SAT BELOW: JODI LEE ALPER, J.S.C. SUPERIOR COURT NEW JERSEY-CHANCERY DIVISION DOCKET NO. ESX-C-000207-21</p>
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BRIEF SUBMISSION DATE: MAY 8, 2024

LURETHA M. STRIBLING, ESQ.

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Transcript of Summary Judgment Proceeding which took place on the date of June 23, 2023 before the Hon. Jodi Lee Alper, J.S.C. **(1T, Order being appealed is located at Da203)**

TABLE OF JUDGMENTS

The Motion for Summary Judgment was decided on August 17, 2023 at the Superior Court of New Jersey, Essex County Courthouse before the Hon. Jodi Lee Alper, J.S.C. The Motion for Summary Judgment was granted for New Community Corporation. **(1T, Summary Judgment Argument, Da203)**

PROCEDURAL HISTORY

The Complaint and Jury Demand was filed by New Community Corporation on the date of November 8, 2021. **(Da1, Complaint and Jury Demand)** The Answer and Counterclaim to the Complaint and Jury Demand was filed on February 5, 2022. **(Da23, Answer and Counterclaim to the Complaint and Jury Demand)** First Zion filed a Counterclaim at the same time the Answer to the Complaint and Jury Demand was filed. **(Da23, Counterclaim)**. New Community Corporation (NCC) filed an Answer to the Counterclaim on March 10, 2022. **(Da41, Answer to Counterclaim)**. Thereafter, the discovery time period ensued. Demands for Answers to Interrogatories from NCC were answered by First Zion. **(Da55, First Zion Answers to Interrogatories)** In addition, NCC served a Request for Admissions which was timely answered by First Zion. **(Da64, First Zion Answers to Admissions)** First Zion served a Request for Answers to Interrogatories on NCC and answers were provided. **(Da81, NCC Answers to Interrogatories)** First Zion served a Request for Admissions on NCC on June 24, 2022 **(Da107, Request for Admissions)** and answers were not provided within the required 30-day time period and as a result the statements made by First Zion in the Request for Admissions are deemed to be admitted. **(Da111, NCC Answers to Request for Admissions)** Court ordered mediation was undertaken with Mediator Kenneth Lehn and was not successful. **(Da50, Notice for Early Settlement Program)** The Mediator

recommended that a Title Survey be performed in his report. **(Da53)**. Allen Meccia of First Bergen Title Agency performed the Title Survey and documented that First Zion Hope Missionary Baptist Church's title history was set out at Parcel B. **(Da118, Parcel B)** The title history for New Community Corporation was set out at Parcel A. **(Da122, Parcel A)**. Meccia recommended that a survey of the land be performed. The Court appointed Pronesti Surveyors to perform a survey of the land which was done and thereafter, Pronesti sat for deposition. **(Da135)**. New Community Corporation filed a Motion for Summary Judgment. **(Da186)**. First Zion Hope Missionary Baptist Church filed a Motion for Summary Judgment. **(Da158)**. The Court heard oral argument on the date of June 23, 2023. **(1T, June 23, 2023)**. The Court entered a decision on the Motions for Summary Judgment on August 17, 2023. **(Da203)** The Notice of Appeal was filed in September 2023 and was amended on October 4, 2023. **(Da258, Amended Notice of Appeal)**. A Motion for Remand was filed by NCC at the Appellate Court because NCC wanted to file a Motion for Counsel Fees Per R. 1:4-8 and the remand was granted. **(Da237, Da238)**. The Trial Court entered a decision on the Motion for Counsel Fees Per R. 1:4-8 which was filed after remand and the motion was denied. **(Da235)** The Appellate Court was notified of the decision of the Trial Court. **(Da235)**

STATEMENT OF FACTS

First Zion (First Zion) Hope Missionary Baptist Church is located at 253 Bergen Street in Newark, New Jersey. **(Da264, Deed from Materna to First Zion)** First Zion occupies Lot 19 and has an additional lot which is 255-257 Bergen Street and it is Lot 20. **(Da262, Newark Tax Assessor Property Identification Document)** The Lot 20 which is misidentified by NCC as Lot 22 is located next to the church and Lot 22 is next to Lot 20 and is 259 Bergen Street. **(Da275, Deed for 259 Bergen Street)** First Zion has occupied the present location since June 30, 1976 when the church purchased this property from Marjorie Materna. **(Da264, Deed for 253 Bergen Street)**. The deed for this purchase is located in Book 4539 at page 109 at the Essex County Recorder of Deeds. **(Da264, Deed for 253 Bergen Street)**. By way of history, Marjorie Materna purchased the property identified as 253 Bergen Street from Julia and Irving Popiel on June 22, 1967. **(Da266, Deed from Popiel to Materna)**. First Zion has maintained the lot next to the church identified at Lot 20 which is 255-257 Bergen Street for the duration of ownership of the church which is 47 years. **(Da264, Deed from Materna to First Zion)** In the winter, snow removal is undertaken on this lot and in the spring and summer the maintenance of the grass is undertaken with the work being performed by parishioners. **(Da55, First Zion Answers to Interrogatories, par. 24; Da125, Affidavit of Rev. Dwight, par. 9).**

First Zion placed a chain link fence around the space which is identified as Lot 20 and Lot 22 many years ago. **(Da125, Affidavit of Rev. Dwight par. 8; Da267, Picture of lots and Fence)**. About 30 years ago, First Zion contracted with Public Service Electric and Gas Company (Public Service) and had a light pole placed on Lot 20 by Public Service and since that time, the monthly light bill for the lighting in Lot 20 have been paid by First Zion with the cost for lot lighting included in their monthly billing from Public Service which is noted as non-metered charges. **(Da268, Public Service Electric Bill for Church and Lot 20)** The lot identified as Lot 20 is being referred to by New Community Corporation as Lot 22 in error. First Zion owned part of Lot 22 too. **(Da262, Deed, Property Identification Record)**

The Reverend of First Zion is Reverend Rahsshard Dwight (Rev. Dwight) . Rev. Dwight was contacted by Reverend Teabout of New Community Corporation (NCC) in 2021 initially by Messenger and again when she came to First Zion for the express purpose to speak with Rev. Dwight regarding Lot 20 which was misidentified by Rev. Teabout as Lot 22. **(Da274, Message from Rev. Teabout, Da55, First Zion Answers to Interrogatories, par. 18; Da125, Rev. Dwight Affidavit, par. 14; Da274, Message from Rev. Teabout on Messenger)** During the communication with Rev. Teabout when she came to First Zion to speak to Rev. Dwight, Rev. Teabout told Rev. Dwight that the lot identified as Lot 20 which belonged to the church **might** be owned by NCC. **(Da55, First Zion Answers to**

Interrogatories, par. 18; Pa125, Rev. Dwight Affidavit, pars. 14-18). This claim that Lot 20 might be owned by NCC was denied by Rev. Dwight. **(Da55, Answers to Interrogatories, par. 18; Da125, Rev. Dwight Affidavit, par. 15; Da64, Rev. Dwight Admissions, par. 18).** Per the deed for the property of First Zion, Lot 20 was included and is 255-257 Bergen Street. **(Da264, First Zion Deed)** In addition, tax records, from the City of Newark, specifically the Property Identification Document makes it clear that First Zion Hope Missionary Baptist Church sits at 253 Bergen Street and is Block 275, Lot 19 and that Lot 20 is an additional lot which is 255-257 Bergen Street. **(Da262, Newark Tax Assessor Property Identification Document).** The Property Identification Document notes that First Zion owns Lot 20 which is right next to the church. **(Da262, Newark Tax Assessor Property Identification Records)** Rev. Dwight has certified to the history of the church and knows that NCC owned part of Lot 22 as noted in the Title Survey. **(Da122, Parcel A and Da118, Parcel B)** The area identified as 259 Bergen Street is Lot 22 and the deed for 259 Bergen Street sets forth the dimensions for that property. **(Da275, Deed for 259 Bergen Street)**

The claim that Lot 20 which is misidentified as Lot 22 is owned by NCC was first claimed in 2021 when Rev. Dwight was contacted by Rev. Teabout. **(Da274, Messenger; Da125, Affidavit of Rev. Dwight, par. 14; Da55, First Zion Answers to Interrogatories, par. 18)** The claim by NCC of ownership of Lot 20

was rejected by Rev. Dwight. **(Da264, Deed for First Zion; Da262, Property Identification Records; Da64, Rev. Dwight Admissions, par. 18)**. What is clear from records of property owned in the area of First Zion is that NCC owns multiple buildings on Bergen Street and buildings on Camden Street which is the street which sits behind First Zion. **(Da278, Deeds for NCC)**. Deed records for Camden street set forth that there is property owned on that street as well as at the corner of Bergen Street and 15th Avenue by NCC. **(Da278, Deeds for NCC)** The properties owned by NCC have been in their possession since 1985 when NCC purchased a number of lots from the City of Newark. **(Da278, NCC Deeds)** After purchasing multiple lots from the City of Newark, there was never any communication from NCC to First Zion until 2021 when Rev. Teabout contacted Rev. Dwight. **(Da274, Message on Messenger; Da125, Rev. Dwight Affidavit, pars. 14-18; Da111, Rev. Teabout Admissions, pars. 1-4)** A review of the title history notes that Parcel A which is Lot 22 was conveyed by the City of Newark to New Community Corporation on October 24, 1985. **(Da122, Parcel A)**. It was error for the City of Newark to convey all of Lot 22 to NCC because as can be seen from the Title Survey, First Zion owned part of Lot 22. **(Da118, Parcel B)** Per the title history, Parcel B was conveyed from Marjorie Materna to First Zion Hope Missionary Baptist Church on June 30, 1976 and per that title document, First Zion owns part of Lot 22 which was never

conveyed to anyone. **(Da118, Parcel B; Da264, Deed from Marjorie Materna to First Zion).**

The property identified as Lot 20 is owned by First Zion. **(Da262, Property Identification Record from Tax Assessor)** There had never been a claim of ownership of Lot 22 nor Lot 20 which NCC misidentified as Lot 22 by NCC despite their strong presence in this area. **(Da262, Property Identification Record from Tax Assessor, Da278 NCC Deeds).** First Zion has openly used and maintained their Lot 20 and Lot 22 and at all times acted as the owner of this land. **(Da264, Deed for First Zion)** As noted, NCC came into ownership of Lot 22 as it was conveyed from the City of Newark and 36 years after coming into possession of this property, First Zion was approached with a discussion about ownership of Lot 22 in 2021. **(Da274, Rev Teabout Message on Messenger).** First Zion came into ownership of 253, 255-257 Bergen Street in 1976. **(Da264, First Zion Deed)** New Community Corporation came into possession of Lot 22 in 1985. **(Da278, Deeds to NCC)** The Statute of Limitations ran based on First Zion's Deed in June of 2006. **(Da264, First Zion Deed)** As a result of this, Adverse Possession applies and via operation of law, all of Lot 22 is owned by First Zion via Adverse Possession. N.J.S.A. 2A:14-30. **(Da264, Deed of First Zion)**

It is requested that the Appellate Court vacate the Summary Judgment Order entered by the trial Court. It is requested that the Appellate Court determine that the

Adverse Possession statute applies and that a decision be entered by the Appellate Court for the Appellant.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT FAILED TO MAKE A DETERMINATION ON THE ISSUE OF STATUTE OF LIMITATIONS AND AS A RESULT THERE WAS A FAILURE TO FIND FOR FIRST ZION HOPE MISSIONARY BAPTIST CHURCH WHICH WAS INCONSISTENT WITH THE DOCUMENTARY EVIDENTIARY RECORD PRESENTED TO THE COURT Da203, 1T, Da255

Adverse Possession is set out at N.J.S.A. 2A:14-30 and 2A:14-31 and provides, a possessor is vested with the title to real estate, unless the property consists of woodlands or uncultivated tracts. N.J.S.A. 2A:14-30 and 2A: 14-31. Per N.J.S.A. 2A:14-30, 30 years' possession of real estate, except woodlands or uncultivated tracts, and 60 years possession of woodlands or uncultivated tracts, however commenced or continued provides: Thirty year's actual possession of any real estate excepting woodlands or uncultivated tracts, and 60 year's actual possession of woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise shall, in whatever way or manner such possession might have commenced or have continued, vest a full and complete right and title in every actual possessor or occupier of such real estate, woodlands or uncultivated tracts, and shall be a good and sufficient bar to all claims that may be made or actions commenced by any person whatsoever for the recovery of any such

real estate, woodlands or uncultivated tracts. N.J.S.A. 2A:14-30. Per N.J.S.A. 2A:14-31. 30 years' actual possession of any real estate under claim or color of title provides: Thirty years actual possession of any real estate, uninterruptedly continued by occupancy, descent, conveyance or otherwise, wherever such possession commenced or is founded upon a proprietary right duly laid thereon, and recorded in the office of the surveyor general of the division in which the location was made, or in the office of the secretary of state, pursuant to law, or wherever such possession was obtained by a fair, bona fide purchase of such real estate from any person in possession thereof and supposed to have a legal right and title thereto, or from the agent of such person, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances, or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor and occupier of all such real estate. N.J.S.A. 2A:14-31. The doctrine of tacking may be employed when there is successive adverse possessions of land where there is privity between the prior owner and present owner of the land. O'Keefe v. Snyder, 83 N.J. 478, 503 (1980). Adverse possession is a process of acquiring title by possessing property in a specified manner for a statutory time period. Devins v. Borough of Bogota, 124 N.J. 570, 574 ((N.J. 1991). The expiration of the set time period for claiming adverse possession bars the owner's right to bring an ejectment action and transfers title from the owner to the possessor. Id. at 574. The title passes to the

adverse possessor when the owner fails to commence an action for recovery of the property within the specified time period. Patton v. North Jersey Dist. Water Supply Comm'n., 93 N.J. 180, 186 (1983). The reading here is that the acquisition of title by adverse possession is based on the expiration of the statute of limitations. O'Keefe v. Snyder, supra at 494. The hallmark of adverse possession is the failure of the true owner to engage in an action for the recovery of the land subject to adverse possession within the designated statute of limitations. Maggio v. Pruzansky, 222 N.J. Super. 567, 575 (App. Div. 2/18/1988). The point of the statute of limitations is that it limits the time for re-entry onto the property by the true owner. Mannilo v. Gorski, 100 N.J. Super. 140, 148-149 (1968). In making a determination regarding the statute of limitations, our courts take an objective approach. Id. at 149. Judge Francis in Predham v. Holfester stated: "The statute of limitations is not a club in the hands of the wrongdoer, whether a willful or an unintentional one; it is a prod in the back of the victim, the prod being powered by the conspicuous nature of the adverse use." Predham v. Holfester, 32 N.J. Super. 419 (App. Div. 1954). The party that claims title via adverse possession has the burden of proof. Patton v. North Jersey supra at 187.

In application of the Statute of Limitations in this matter, what is clear is that First Zion purchased the property 253, 255-257 Bergen Street from Marjorie Materna on June 30, 1976. **(Da264, Deed from Materna to First Zion)** First Zion

used all of the noted property from the beginning of ownership as certified to by Rev. Dwight. (**Da125, Rev. Dwight Affidavit, pars. 8-9; Da55, pars. 23-24; Rev. Dwight Answers to Interrogatories**). In 1985, NCC purchased a number of lots from the City of Newark and included in this purchase was Lot 22. (**Da278. NCC Deeds**) It must be noted that NCC is a sophisticated corporation that is in the business of buying property and building housing. As noted in the NCC Deed, NCC has property to the left and right of First Zion, on the parallel street, which is 15th Avenue and NCC has housing which sits behind First Zion on Camden Street. As a result of this, NCC has a strong presence in this neighborhood. NCC was on notice that the property which is Lot 22 was being used by First Zion and at no time within the noted statutory time period was any objection made to the use of Lot 22. In order to assert an objection, NCC was required to elicit an objection by June 30, 2006 which was the thirty year mark of First Zion using Lot 22. If tacking was employed, the time period would be based on Marjorie Materna's ownership of the property which came into her possession on June 22, 1967. (**Da266, Deed from Julia Popiel to Marjorie Materna**). This would result in NCC having to make an objection by June 22, 1997, two years after the Lot 22 was purchased from the City of Newark. Even counting from the purchase date of Lot 22 in October of 1985, the statute of limitations would run in October of 2015. There was no communication with First

Zion by NCC until June of 2021 which was well beyond the statutory time period of thirty years.

The evidentiary record before the trial court set forth the dates on which First Zion came into possession of 253, 255-257 Bergen Street. The evidentiary record also set forth the date on which NCC came into possession of Lot 22. The record is clear based on the message sent to Rev. Dwight by Rev. Teabout and subsequent communication from Rev. Teabout in the summer of 2021 regarding Lot 22, that the statute of limitations had run. As noted in the statute, N.J.S.A. 2A:14-30, the failure to object within the thirty year time period results in the property in question becoming that of First Zion. By operation of law, First Zion became the rightful owner of Lot 22 in its entirety by adverse possession on June 30, 2006 and this barred NCC from laying any claim to Lot 22 after that date. The trial court failed to apply the statute of limitations and as a result, the decision reached which dismissed First Zion's Motion for Summary Judgment and found for NCC determining that Lot 22 belonged to NCC was in error.

It is requested that the Appellate Court vacate the decision of the trial court which granted Summary Judgment to NCC and determined that NCC owned Lot 22. It is requested that the Appellate Court vacate the decision of the trial court which denied Summary Judgment to First Zion. It is requested that the Appellate Court find that per Adverse Possession that First Zion is the owner of Lot 22.

POINT II

THE TRIAL COURT DETERMINATION ON THE ISSUE OF ADVERSE POSSESSION FAILED TO APPLY THE FACTORS TO BE EMPLOYED IN DECIDING ADVERSE POSSESSION TO THE EVIDENCE AND OUR STATUTES, N.J.S.A.2A:14-30 AND N.J.S.A. 2A:14-31 AND BECAUSE OF THIS THE TRIAL COURT ERRED IN DENYING SUMMARY JUDGMENT TO FIRST ZION HOPE MISSIONARY BAPTIST CHURCH Da203, 1T

The criteria which must be met to satisfy the statute of Adverse Possession follows: The action of the land possessor must be hostile which means that the land is held against the right of the true owner and without permission; there is actual exercising of control over the property; the property is in the exclusive possession of the person trespassing on the land; the use of the land is open and notorious which means using the property as the real owner would, without hiding his or her occupancy; and continuous use for the statutory time period which is 30 years in New Jersey for most types of property per N.J.S.A. 2A:14-6.

In order to acquire title via adverse possession the acquisition must be adverse or hostile, exclusive, continuous, uninterrupted, visible and notorious. Leach v. Anderl, 218 N.J. Super. 18, 28 (App. Div. 5/28/1987). See also Foulke v. Bond, 41 N.J.L. 527, 545 (E.A. 1879). Possession of property is considered to be adverse if “an ordinarily prudent person would be put on notice that the land is in actual possession of another... so that the claimant’s use is “under a claim of right pursued with intent to claim as against the true owner in such circumstances of notoriety that

the owner will be aware of the fact and thus alerted to resist the acquisition of the right by the claimant before the period of adverse possession has elapsed.” Patton *supra* at 186-187 quoting *Predham v. Holfester*, supra at 424.

The issue of adverse possession was addressed in *Plaza v. Flak*, 7 N.J. 215 (Decided May 28, 1951). In *Plaza v. Flak*, the parties Plaza and Flak were in disagreement regarding land adjacent to their homes in the City of Passaic. *Id.* at 215. At issue was ownership of an area of 4.75 feet which was between the two homes. *Id.* at 218. The area which was an alleyway had been used by both homeowners until 1948 when Flak, the Defendants erected a fence on the boundary line which was in the center of this common area. *Id.* at 218. Plaza, the Plaintiffs filed suit seeking to have the Defendants ordered to take the fence down; the Defendants filed a counterclaim seeking to have the Plaintiffs remove a fence at the rear of the property which encroached on Defendants’ property. *Id.* at 218. The trial court granted the relief sought by the Plaintiffs which required that the Defendants take down the fence which Defendants had placed in the common area to both properties. *Id.* at 218. The Court denied the relief sought by the Defendants who sought to have the Plaintiffs’ fence at the rear of the property which encroached on Defendants’ property removed. *Id.* at 218. The Defendants appealed the decision of the trial court and while awaiting consideration at the Appellate Division, the issue was certified to the Supreme Court on motion of the Court. *Id.* at 218. The seminal

concerns on certification were: the plaintiff's alleged prescriptive right to an easement over that portion of defendants' premises contained within the areaway between the houses, the second concerned plaintiff's right by adverse possession to retain that portion of defendants' premises contained within the 10 feet of fence on the rear of the boundary line between the premises and the third question was whether the defendants were deprived of due process of law in that they were denied a jury trial by the pre-trial waiver signed by their counsel. Id. at 219. As to the first issue, the issue of easement was based on the doctrine of prescription which referenced the statute of limitations which addressed adverse possession of lands. Id. at 219. This issue of the doctrine of prescription follows the same principles as adverse possession. Id. at 219 citing Cobb v. Davenport, 32 N.J.L. 369, 385-387 (Sup. Ct. 1867). This general view was noted in a number of texts of the time including 17 Am.Jur.Easements, section 55; See also Thompson on Real Property, Perm.Ed. (1939) sec. 415 pp. 677-680. There must exist a user that is adverse, hostile, continuous, uninterrupted, visible and notorious. Cobb v. Davenport, supra at 385. See also DeLuca v. Melin, supra at 144. "This action must be continuing, open, visible and exclusive user, hostile, showing intent to claim as against the true owner, and must be under a claim of right with such circumstances of notoriety as that the person against whom it is exercised may be so aware of the fact as to enable him to resist the acquisition of the right before the period of prescription has

elapsed.” Poulos v. Dover Boiler & Plate Fabricators, 5 N.J. 580, 588 (1950). See also Carlisle v. Cooper, 21 N.J. Eq. 576, 596 (E. & A. 1870). Thus, the general rule is that where adjoining proprietors have an alleyway between the properties which is used by both homeowners, neither can obstruct or close that portion of the area which is within the boundary of his own land. Id. at 220. There cannot be an exclusive use to the joint alleyway. Id. at 220. Plaintiff had a prescriptive right to use the alleyway and the Defendants had to take the fence down. Id. at 223. With regard to the fence at the rear of the properties which encroached on Defendants’ property, the Court noted that the fence had been there for 25 years prior to the time the plaintiff acquired the property; it had been open, continuous, hostile, and a notorious holding under claim of right and with intent to assert such claim as against the true owner. Id. at 224. The Court found that the plaintiff had adequately proven adverse possession. Id. at 224.

In Patton v. North Jersey Dist. Water Supply Comm’n., a dispute arose regarding adverse possession between the Plaintiff who were the Trustees of the Erie Lackawanna Railroad Company which was in bankruptcy and undergoing debtor reorganization. Patton supra at 183. The Trustee was intent on selling acres of land owned by the debtor and as a result of a title survey discovered that 6.89 acres that was going to be sold was questionable as to ownership. Id. at 183. As a result of the findings which suggested that North Jersey District Water Supply Comm’n. might

have an interest in the property, the Trustees filed court action to quiet title. Id. at 183. Litigation ensued and resulted in a trial wherein the court entered judgment in favor of the Plaintiffs ruling that title had vested by adverse possession per the applicable statute of limitations. Id. at 184. The court found that title was obtained at the end of 20 years when the Plaintiff's predecessor in title had open, notorious and adverse possession. Id. at 184. When an appeal was taken, the Appellate Court reversed because it was found that there could be no adverse possession against the defendant or its predecessor because both were governmental agencies. Id. at 184. The court also found that adverse possession did not apply because until 1927 which was the year that the defendant acquired title, the State had an interest in the property and the state's interest in realty could not be subjected to adverse possession. Id. at 184. A Petition for Certification was sought and was granted and the Supreme Court affirmed the findings of the lower courts. Id. at 184. Plaintiff was unable to show that the defendant was put on notice and the actions of occasional clearing of brush by railroad employees and payment of taxes did not satisfy the notice requirement. Id. at 189. The Supreme Court found that entering uncultivated land which was not enclosed and occasional trespasses over a 20 year period and payment of taxes was not sufficient to support the notice required to establish adverse possession. Id. at 189.

In Maggio v. Pruzansky, the court addressed adverse possession involving a strip of land on the property of Pruzansky that had been used by the Maggio family and for which the Maggio family filed litigation to claim the strip via adverse possession. Maggio v. Pruzansky, supra at 569. The litigation resulted in a bench trial with a finding for the Maggio family with respect to the strip of land that had been used for years by the Maggio family which was on the Pruzansky's property. Id. at 569. The Maggios had purchased their property on Witherspoon Road in Clifton in 1972. Id. at 569. The Pruzansky family purchased their home on Witherspoon Road in 1983. Id. at 569. The relief sought by the Maggio family was a claim of title by deed and also via adverse possession. Id. at 570. The Maggio family had installed a pool which encroached upon the strip of land belonging to the Pruzansky family. Id. at 571. The Pruzansky family filed a counterclaim claiming that they were entitled to the strip of land and alleged that the Maggio family was trespassing on their property. Id. at 571. The court awarded adverse possession to the Maggio family for the strip of land. Id. at 570. The court engaged in tacking and the period of residence at the Maggio property by their predecessors, the Gilmans was tacked onto their time on the property and the court calculated the use of the strip to be greater than 20 years. Id. at 574. The Appellate Court reversed finding that when the Maggio family had a pool erected that they wrongfully placed a chain link fence on the strip of land that belonged to the Pruzansky family and the

Pruzansky family acted quickly and objected to the fence on their property. Id. at 582. The Appellate Court reversed the decision of the trial court and returned the matter to the trial court to enter judgment for the Pruzansky family on their counterclaim ruling that they were entitled to the strip of land. Id. at 582. The prior ruling for the Maggio family was vacated. Id. at 582.

In PPG Indus. v. J. Goldenberg, the Court was called upon to make a determination regarding adverse possession involving lots in Jersey City. PPG Indus. V. J. Goldenberg, 2017 N.J. Super. Unpub. LEXIS 1143, Docket No. A-0077-15T3. (App. Div. 5/8/2017). The Plaintiffs, PPG Industries, Narula Real Estate Associates, LLC and Alfred Smith each owned one of three lots in Jersey City which their predecessors had purchased from J. Goldenberg. Id. at 1. Historically, Goldenberg had purchased the three lots and entered into a railroad siding agreement with Conrail to operate a railroad siding which had space of twenty-eight feet of land. Id. at 1. Goldenberg maintained ownership of the alley but he sold the lots on either side of him and gave railway access easements to the purchasers to service their commercial buildings. Id. at 1. In 1962 Goldenberg stopped conducting the siding business and by 1965 the railroad siding in the alley stopped. Id. at 2. Smith acquired the first lot in 1984, Narula acquired the second lot in 2013 and Halladay acquired the third lot in 2007 and in 2013, Halladay sold his lot to PPG. Id. at 2. When Halladay conducted a search in the process of selling his lot to PPG he discovered

that the lot was still titled in Goldenberg's name. Id. at 2. The lot owner PPG filed an action to quiet title in 2014. Id. at 2. In 2014, the contract that Goldenberg had entered into with Conrail was terminated. Id. at 2. During the bench trial, Judge Velasquez learned that the lot owners since 1981 had maintained the alley that had been owned by Goldenberg, had paved the alley with cement, gravel and asphalt, had erected fences at both ends to limit access to the lots, had stored dumpsters, pallets and equipment in the alley and parked their vehicles in the alley. Id. at 2. The lot owners upon purchase believed that the title included the alley and at no time did Goldenberg assert title or control over the access to the alley. Id. at 2. The judge ruled that the lot owners, Smith, Narula and PPG had acquired title of the alley via adverse possession. Id. at 2. Goldenberg's title to the alley was extinguished. Id. at 2. Goldenberg appealed the decision of Judge Velasquez and claimed that the standard used by the judge which was preponderance of the evidence was wrong and also that he owned the alley. Id. at 2. The Appellate Court found that Goldenberg failed to assert his rights and object to the actions of the lot owners for 51 years. Id. at 5. Goldenberg argued that the lot owners had failed to satisfy the factors to acquire the alley in question via adverse possession and the Appellate Court disagreed. Id. at 8, 9. The decision of the trial court was affirmed. Id. at 10.

The history of First Zion and the property in question dates back to 1976 when the property was sold to First Zion Hope Missionary Baptist Church by Marjorie

Materna. **(Da264, Deed from Materna to First Zion)** The lots that NCC bought on Bergen Street and Camden Street were purchased in 1985 from the City of Newark. **(Da278, Deeds to NCC from Newark)** NCC owns an apartment building on the corner of Bergen Street and 15th Avenue. NCC owns a number of buildings on Bergen Street to the right and left of First Zion. In addition, NCC owns property on Camden Street which is behind First Zion Hope Missionary Baptist Church. **(Da278, Deeds to NCC from Newark)** First Zion has held this lot which is Lot 20 which is the disputed property which has been identified by NCC as Lot 22 for the duration of owning the church. That portion of the lot in question which is Lot 22 was held against the rights of the owner, NCC. First Zion for the duration of the ownership of the church dating back to 1976 has exercised control over the church's Lot 20 and Lot 22 which has been in the exclusive possession of First Zion. The use of the disputed property, Lot 22 has been open, obvious and notorious. First Zion engaged in maintenance of the disputed land and performed landscaping chores on a routine basis throughout the year and at times had outside companies perform this work. **(Da55, First Zion Answers to Interrogatories, pars. 23, 24; Da358, Receipt from snow removal company)** In addition, First Zion parishioners engaged in snow removal from this land in the winter and at times had outside companies perform this work. **(Da358, First Zion Answers to Interrogatories, par. 24)** For the history of ownership of the church, parishioners have parked their vehicles in the disputed

lot for church service and other events at the church. First Zion entered into a contract with Public Service Electric and Gas (Public Service) and had a light pole erected in this lot and on a monthly basis, First Zion pays the electric bill for the light in the disputed lot. **(Da268, Public Service Electric & Gas Billing; Da55, First Zion Answers to Interrogatories, pars. 23,26,27,28)**. First Zion had a chain link fence installed around this disputed lot which is Lot 20 as well as Lot 22 and when the enclosed lot is not being used for church events, the fence is padlocked by First Zion. **(Da267, Fence enclosing lot 20 and lot 22)** First Zion placed a sign on the chain link fence in an area above where the padlock is located. The sign reads private property, keep out with notice that there is camera monitoring of the lot. **(Da267)** First Zion's use of the disputed lot has been open, notorious, continuous and exclusive and the church has satisfied the factor of hostility as First Zion has engaged in use of the lot in an open manner and acted just as the owner of the land would act. First Zion believed that they owned the disputed lot identified as Lot 22 and acted as an owner would act in use of the land. This possession of the land has been since 1976. Of note, NCC made the purchase of Lot 22 and the property at the corner of Bergen Street and 15th Avenue as well as the property on Camden Street in 1985. This means that the thirty-year time period of continuous use by First Zion required for acquiring the land via Adverse Possession was arrived at in 2006 based on First Zion's usage of the disputed lot. This means that on June 30, 2006, the

statute of limitations for claiming the disputed lot passed and therefore, there was no ability to commence an action for this land as title had now passed to First Zion of the disputed land which is to the left of the church when facing the church. By operation of law, with the passage of thirty years, there was a bar to NCC making any claim to Lot 22. It was not until the summer of 2021 that there was a tepid claim of owning this land when Reverend Teabout from NCC said to Rev. Dwight that she believed that NCC owned this land but at the same time asked if NCC could buy the land. **(Da107, NCC Answers to Request for Admissions, par. 3; Da55, First Zion Answers to Interrogatories, par. 18).** Because of the failure to object to Lot 22 being used by First Zion with actual and obvious notice of this usage for a period of thirty years, the tenets of adverse possession have been satisfied. First Zion owns Lot 20 which is 255-257 Bergen Street and the entirety of Lot 22.

The trial court erred in granting summary judgment for New Community Corporation. The trial court in error did not find that the statute of limitations had passed which cut off any rights of New Community Corporation to Lot 22. As noted, First Zion purchased the church which sits at 253 Bergen Street and is Lot 19. The additional lot which is identified as 255-257 Bergen Street is Lot 20. This is documented in the Property Identification Record and the personnel at the Tax Assessor's office in speaking to Rev. Dwight and Rev Teabout explained that the lot in dispute which is actually Lot 20 and part of Lot 22 belongs to First Zion. Further,

the elements to satisfy adverse possession were present. The use of the lots was open, notorious, hostile, exclusive and continuous for a period of 46 years when Rev. Teabout approached Rev. Dwight about Lot 22 in the summer of 2021. With tacking of the time of ownership of this land by Marjorie Materna from 1967, the thirty year period ended in 1997. First Zion has had exclusive use of the Lot 20 and Lot 22 from the point that New Community Corporation acquired the Lot 22 from the City of Newark in 1985 and the failure to object to the use of Lot 22 within the required statutory time period resulted in adverse possession becoming a reality. As a result, NCC was barred from making any claim to Lot 22. The record presented provided sufficient information to support the required factors. The use of Lot 22 was open and obvious to all persons in the area. The use of Lot 22 was exclusive because First Zion erected a fence around Lot 20 and Lot 22. The lots were used for parking for the parishioners. When there was no activity taking place at the church, the fence was closed and padlocked. Prominent on the fence was a warning to keep out and no parking and that there was monitoring of the lot. The use of the Lots was ongoing and continuous. The use of the land illustrated ownership as the Lots were used as an owner would use them. The use of the land was hostile. The City of Newark Tax Assessor's Office recognized that the lots were owned by First Zion. Public Service Electric and Gas recognized that the lots were owned by First Zion. Public Service at the request of the church placed a light pole in the Lots 20 and 22 in 1989. The

lighting consists of a tall black pole that stands prominently in the lots and provides lighting at night. First Zion pays the light bill. In about 1997 when the church wanted to lower the sidewalk in front of the lots for ease of vehicle entry into the lots, the City of Newark granted a permit to make the changes in the sidewalk. **(Da283, Permit from City of Newark in 1997)** As a result of the documentary evidentiary material set forth in the record which supports the factors to satisfy adverse possession, it was error for the trial court to grant summary judgment to New Community Corporation and reject First Zion's Summary Judgment motion which sought a court decision that adverse possession was satisfied and where First Zion sought rulings on ejection, trespass and for quieting title. The requirements to establish adverse possession were satisfied by First Zion.

It is requested that the Appellate Court find that First Zion has satisfied the factors to establish ownership via the Doctrine of Adverse Possession. It is requested that the Court find that First Zion owns the disputed land which is Lot 22 by operation of law. As a result of this, it is requested that the Appellate Court vacate the Summary Judgment decision granted to New Community Corporation and vacate the decision which denied First Zion Summary Judgment. It is requested that the Appellate Court find that per Adverse Possession that First Zion is the owner of Lot 22.

POINT III

THE TRIAL COURT ERRED IN FAILING TO GRANT TO FIRST ZION SUMMARY JUDGMENT BASED ON HAVING SATISFIED THE REQUIREMENTS FOR ADVERSE POSSESSION. AS A RESULT OF THIS ERROR, THERE WAS A FAILURE TO GRANT FIRST ZION'S REQUEST TO QUIET TITLE WHICH THE APPELLATE COURT IS BEING ASKED TO RECTIFY. Da203, 1T

Quiet Title law is set forth in N.J.S.A. 2A:62.1 and provides: Any person in the peaceable possession of lands in this state and claiming ownership thereof, may, when his title thereto, or any part therefor, is denied or disputed, or any other person claims or is claimed to own the same, or any part thereof or interest therein, or to hold a lien encumbrance thereon, and when no such action is pending to enforce or test the validity of such title, claim or encumbrance, maintain such an action in the Superior Court to settle the title to such lands and to clear up all doubts and disputed concerning the same. N.J.S.A. 2A:62.1.

First Zion Hope Missionary Baptist Church purchased the property at 253 Bergen Street which is the church proper. **(Pa264, Deed from Marjorie Materna to First Zion Hope Missionary Baptist Church dated June 30th, 1976)**. Per the Property Identification Document from the Newark Tax Assessor's Office, the church sits on Lot 19. The church owns the lot next to the church which is 255-257 and it is Lot 20. **(Da262, Property Identification Document from Newark Tax Assessor)**. The church has maintained their Lot 20 and Lot 22 for the duration of

their presence at the noted address. First Zion had been in peaceable possession of Lot 20 and Lot 22 for a period of 36 years when the interest in this property was challenged by New Community Corporation. New Community Corporation interrupted the peaceable possession of Lot 20 and Lot 22 in the summer of 2021 and claimed that NCC might own the Lot 22 and where they misidentified Lot 20 as Lot 22. Because the period for objecting to the use of Lot 22 passed in 2006 which was thirty years after First Zion had possession of Lot 20 and Lot 22, adverse possession served to cut off any interest in Lot 22.

New Community Corporation is a sophisticated entity that purchases a lot of real estate and also purchases lots and builds housing on the lots. New Community Corporation has ownership of a great deal of realty in Newark. New Community Corporation in fact owns property on Bergen Street including 261 Bergen Street. In addition, New Community Corporation owns property behind First Zion on Camden Street. New Community Corporation never acted like there was ownership in Lot 22, never maintained this space and in contrast, First Zion has maintained Lot 22 in addition to the church's lot which is Lot 20. Newark City Surveyor Joseph Fox in an email pointed out that New Community Corporation developed a lot of the land in the community of Bergen Street and surrounding streets but never developed Lot 22 instead leaving it open and vacant. **(Da255, Email from Joseph Fox)** First Zion has maintained the disputed space and the actions of First Zion have been open,

notorious and continuous for over thirty years. There was no objection until 2021 which was well after the period to object and by operation of law Adverse Possession had set in with Lot 22 now owned by First Zion. By 2021, the disputed space belonged to First Zion via the Doctrine of Adverse Possession.

The trial court erred in failing to find that the period for objection by NCC per Adverse Possession had passed in 2006. It was years later that there was an objection. The court erred in failing to find that the doctrine of Adverse Possession passed and that New Community Corporation was divested of Lot 22. The Court as a result failed to grant First Zion's request to Quiet Title.

It is requested that the Appellate Court vacate the Summary Judgment decision by the trial court which granted Summary Judgment to New Community Corporation. It is requested that the Appellate Court vacate the trial court denial of First Zion's Summary Judgment motion for Adverse Possession and Quiet Title. It is requested that the Appellate Court find that First Zion is the rightful owner of Lot 22 as the result of Adverse Possession and that the Appellate Court grant First Zion's request to Quiet Title in First Zion.

POINT IV

THE TRIAL COURT ERRED IN FAILING TO GRANT TO FIRST ZION SUMMARY JUDGMENT BASED ON HAVING SATISFIED THE REQUIREMENTS FOR ADVERSE POSSESSION. AS A RESULT OF THIS ERROR, THERE WAS A FAILURE TO GRANT FIRST ZION'S REQUEST TO ENJOIN NEW COMMUNITY CORPORATION FROM TRESPASS Da203, 1T

A Trespass to Real Property is the situation where there is disturbance in the possession of the property which belongs to someone else. New Jersey Elements of An Action, James H. Walzer, Chapter 47, p. 513 (2008-2009). The trespass is any unlawful entry regardless of the means used to enter, the amount of force used or the extent of the damage. Id. at 513. The trespass can be accomplished by physical entry onto the land, throwing an object or material onto the land of another person or placing in motion an agency which extends its energy onto another's premises. Id. at 513. Furthermore, the failure to remove one's person or another object from another's premises after a demand is made to remove person or object from the land of another is a trespass. Id. at 513. A remedy for a trespass is the grant of an injunction wherein the trespasser is prohibited from entering the land of another. Id. at 513.

The elements to be satisfied to prove Trespass to Land are noted as follows:

(1) Anyone entering onto another's real property without authorization, (2) such as a tenant who wrongfully remains in possession of the premises, (3) or any person

carrying a gun on the land, except fresh meadow lands over which the tide has ebbed and flowed continuously for 20 years or more, after the other has given public notice forbidding trespass or has forbidden the person from trespassing, is liable for at least \$10 in the case of the person carrying a gun, (4) nominal damages vindicating the legal right to possession, (5) compensatory damages for either injury to the land or lost marketable rent of the land used to carry on profit-making activities during the period of trespass, (6) including the cost of removal of a trespassing structure which is legally abatable, if such cost is not in excess of the diminution in value of the land resulting from the wrong, and (7) punitive damages for especially egregious misconduct. New Jersey Cause of Action, John J. Brannan, p. 482 (2014).

In this matter, NCC has trespassed onto the land which belongs to First Zion. The property in dispute is church property where lot 22 has been misidentified as Lot 22 and Lot 22. This is because, First Zion has owned Lot 19 which is 253 Bergen Street which is the church since June 30, 1976. The lot designated as Lot 20 is 255-257 Bergen Street which is church property as noted in the Property Identification Document from the Newark Tax Assessor's Office. **(Da262, Property Identification Document from Newark Tax Assessor)** The area of the lot which is Lot 22 which is next to Lot 20 is the church's property via Adverse Possession. New Community Corporation owns a number of lots in the area which are set out in Property Records of NCC **(Da278, Deeds from Newark to NCC)**. The other lots

and property owned in this area by NCC have been maintained by NCC with the exception of Lot 22. **(Da255, Joseph Fox Email)** The lot identified as Lot 22 has been openly maintained by First Zion. The maintenance of that small portion of land which is next to Lot 20 and is actually Lot 22 has been undertaken and managed by First Zion for the period of time since First Zion purchased the church which was in June of 1976. Because there has never been any action taken to maintain what is Lot 22 for a period of greater than 30 years, this property is now owned by First Zion as a result of Adverse Possession.

The trial court failed to find that NCC had failed to object within the thirty year time period and as a result, NCC no longer had an interest in Lot 22. The loss of ownership of Lot 22 happened as a result of Adverse Possession. NCC has no right to come onto the property identified as Lot 22 and should be enjoined from entry to this land.

It is requested that the Appellate Court vacate the Summary Judgment decision entered at the trial court in favor of New Community Corporation. It is requested that the Appellate Court vacate the decision of the trial court which denied First Zion relief per the doctrine of Adverse Possession. It is requested that the Appellate Court find that First Zion has satisfied the requirements per Adverse Possession which has vested Lot 22 in First Zion and that New Community Corporation is enjoined from engaging in trespass of Lot 22.

POINT V

THE TRIAL COURT ERRED IN FAILING TO GRANT TO FIRST ZION SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS AND HAVING SATISFIED THE REQUIREMENTS FOR ADVERSE POSSESSION. AS A RESULT OF THIS ERROR, THERE WAS A FAILURE TO GRANT FIRST ZION'S REQUEST TO PROHIBIT CONVERSION OF LOT 22. Da203, Da264, Da266, Da278, Da255, Da55, par. 18

Conversion is defined as Property Taken Without Authorization and requires a showing of the following elements: (1) Anyone (a) willfully or (b) negligently depriving (2) another, of his or her right to possession of property, (3) such as through some act repudiating the right of possession, or some exercise of dominion over the property inconsistent with the right of possession, or some act done which has the effect of destroying or changing the quality of the property, (4) including the conversion of a negotiable instrument, (5) or an illegal conversion or an exercise of dominion over the pledger's property by the pledgee contrary to the terms of the pledge, (6) or anyone aiding, instigating, or assisting the same, without authorization, (7) is liable to the person entitled to possession of the property, (8) for return of the property with any enhancement in value or change in condition, even from an innocent purchaser, (9) for the value of the property, and (10) for damages including punitive damages, proximately caused by the wrongful conduct, (11) unless the recipient of the property in the form of money received the money in exchange for something of equivalent or comparable value without participation in or knowledge of a fraud or theft involving the money against the victim, (12) but

whether the wrongdoer lawfully possessed the property, a reasonable demand for the surrender of the property must be refused without reasonable conditions by a person obligated to surrender the property or by an agent or employee with the power to surrender the property. N.J.S.A. 12A:3-420[(4)].

The act of attempting to take the land of another person and claim it is conversion. In the instant matter, this act is in violation to First Zion's property ownership rights and is prohibited. In light of the failure to respect the property that is owned by First Zion by purchase as well as the property owned via Adverse Possession, NCC must be admonished from efforts to convert the property known as Lot 22. It is requested that the Court prohibit NCC from engagement in conversion.

In this matter, NCC personnel, specifically Rev. Teabout approached Rev. Rahsshard Dwight of First Zion Hope Missionary Baptist Church in 2021 and inquired about the church lot which is designated as Lot 20 which she referred to as Lot 22. There was an initial statement made by Rev. Teabout that she believed that NCC owned the lot and then she made an inquiry regarding whether the church would sell the lot to NCC. This inquiry about purchasing the lot was clearly rejected by Rev. Dwight. **(Da55, First Zion Answers to Interrogatories, par. 18)**. Thereafter, further communication with personnel at the Newark Tax Assessor's office made it clear that the lot next to the church was owned by First Zion. **(Da55,**

First Zion Answers to Interrogatories, par. 18; Da111, NCC Answers to Request for Admissions, par. 5). Despite this information being provided, NCC filed a Complaint and Jury Demand seeking to convert First Zion's property and make this property that of NCC. **(Da1, Complaint by NCC)** NCC has no ownership interest in Lot 20 which is church property and is 255-257 Bergen Street. Per the Property Identification Document from the Newark Tax Assessor as well as the deed for 253 Bergen Street and which also covers 255-257 Bergen Street, it is evident that NCC has no ownership interest. NCC has no ownership interest now in Lot 22 either. By the very admissions from Rev. Teabout both in speaking with Rev. Dwight and in the Admissions, which statements are accepted as admitted due to the submission of Admissions beyond the 30 day time period, it was confirmed that the property in question being Lot 22 is owned by First Zion. Furthermore, NCC never acted as if Lot 22 was owned by NCC. This land, Lot 22 has been openly managed by First Zion since 1976 and is owned by First Zion via the Doctrine of Adverse Possession and on Statute of Limitations grounds. **(Da255, Email from Joe Fox)**

It is requested that the Appellate Court vacate the Summary Judgment decision entered at the trial court in favor of New Community Corporation. It is requested that the Appellate Court vacate the decision of the trial court which denied First Zion relief per the doctrine of Adverse Possession. It is requested that the Appellate Court find that First Zion has satisfied the requirements per Adverse

Possession which has vested Lot 22 in First Zion and that New Community Corporation is prohibited from engaging in conversion of Lot 22.

CONCLUSION

For all of the reasons set forth in Appellant's Brief, the Appendices, case law, statutes and court rules, it is requested that the Appellate Court vacate the decision of the trial court which granted Summary Judgment to New Community Corporation. It is requested that the Appellate Court vacate the decision of the trial court which denied to First Zion Hope Missionary Baptist Church Summary Judgment. It is requested that the Appellate Court find that First Zion Hope Missionary Baptist Church has acquired ownership of Lot 22 via Adverse Possession. It is requested that the Appellate Court quiet title to Lot 22 in First Zion Hope Missionary Baptist Church. Finally, it is requested that New Community Corporation be enjoined from entry onto Lot 22 and that New Community Corporation be prohibited from engagement in conversion with regard to Lot 22.

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Attorney for the Appellant

DATED: May 8, 2024

NEW COMMUNITY
CORPORATION

Plaintiff-Respondent,

vs.

FIRST ZION HOPE
MISSIONARY BAPTIST
CHURCH

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-189-23

Civil Action

ON APPEAL FROM
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX
COUNTY
DOCKET NO. ESX-C-207-21

Sat Below:
Hon. Jodi Lee Alper, P.J. Ch.

**PLAINTIFF NEW COMMUNITY CORPORATION'S OPPOSITION TO
DEFENDANT FIRST ZION HOPE MISSIONARY BAPTIST CHURCH'S
APPEAL**

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PRELIMINARY STATEMENT

The trial court's Order partially granting summary judgment to NCC and dismissing all of First Zion's Counterclaims must, respectfully, be affirmed because the evidentiary record confirms both that NCC is the deeded record owner of the subject property and that First Zion falls woefully short of satisfying the stringent standards of adverse possession of NCC's property. Despite unassailable evidence that NCC owns the property, First Zion attempts to obfuscate the facts to sow confusion. With only a whisper of scrutiny, however, First Zion's strategy is easily uprooted.

First and foremost, First Zion fails to include in its submission a copy of the survey from the court-appointed surveyor, Michael Pronesti, who dispositively concluded that the debris piles in question are located on NCC's Property on Lot 22 and First Zion's physical church is located on Lot 20, a position the deeds and relevant tax maps all confirm. This omission is even more shocking considering how much weight the trial court ascribed to the Pronesti Survey in its Statement of Reasons in support of granting NCC's motion for summary judgment, which First Zion also fails to include in its submission. Despite attacking Pronesti at his deposition because he did not agree with its specious narrative, First Zion does not even attempt to distinguish Pronesti's conclusions in its papers. First Zion simply chooses to ignore them.

In the same way, First Zion's papers also do not distinguish the main conclusion of the Meccia Report, another report produced by a third-party neutral, that NCC owns the Property at Lot 22.

In fact, First Zion also does not even rely upon its own ill-gotten source, an expert First Zion retained to support its position, but who ended up undermining it. First Zion obtained a survey from Allstate Mapping & Layout on October 24, 2022 in secret, which it failed to disclose at the pre-trial conference with the trial court on November 1, 2022, and did not produce until February 12, 2023, several months after discovery ended. Notwithstanding its improper tactics, First Zion does not include a copy of that survey with its submission either as that survey agrees with Pronesti's conclusions that NCC owns Lot 22 and that First Zion's physical church is located on Lot 20. The jilted First Zion, however, now simply ignores its own expert, refusing to even mention Allstate's name in its papers.

Undaunted, First Zion continues to ignore this compelling evidence and charts its own confusing and unfounded course. Without a scintilla of availing evidence, First Zion argues (i) its physical church is located on Lot 19, and not Lot 20 as the evidence concludes, and (ii) that NCC's Property at Lot 22 is really First Zion's Lot 20 – a position none of the evidentiary materials support, including Pronesti himself, who expressly rejected that argument at his deposition. Worse, First Zion simultaneously argues in the next breath that it owns the Property via adverse

possession. First Zion, ironically, ensnares itself in a conundrum: how can First Zion adversely possess property it argues it already owns?

First Zion's claims fail as a matter of law, fact and common sense. As the record dispositively indicates, NCC owns the Property and First Zion does not. First Zion also cannot maintain its claim for adverse possession because it cannot satisfy any of the stringent requirements of continuous, exclusive, open and notorious, and hostile possession of the Property for the entire 30-year statutory period under New Jersey law.

For all of these reasons, and the reasons that follow, the trial court's Order must, respectfully, be upheld.

PROCEDURAL HISTORY

NCC filed its Complaint against First Zion on November 8, 2021 related to First Zion's improper entry onto NCC's real property located at 264-270 Camden St., Newark, NJ, Block 275, Lot 22 (the "Property"). Pa01.^{1, 2}

After the trial court denied First Zion's pre-answer motion to dismiss on January 21, 2022 (Da21-22), First Zion filed its Answer and Counterclaim on or about February 7, 2022. Da23-40. First Zion alleged on one hand that First Zion was the deeded owner of the Property and alleged on the other hand that First Zion was the owner of NCC's Property via adverse possession. Ibid.

On March 10, 2022, NCC filed its Answer to the Counterclaim generally denying First Zion's Counterclaim. Da41-49.

On or about March 30, 2022, the trial court referred the matter to the Essex County Chancery Division Early Settlement Program, assigning Kenneth Lehn, Esq. of Winne Banta to be the mediator. Da50-52.

At the mediation, the parties jointly agreed to retain a neutral title expert to analyze title issues. Da53. Thereafter, the parties jointly retained Allen Meccia, Jr.

¹ "Pa__" refers to NCC's Appendix and the page number.

² NCC includes a complete copy of its Complaint in its Appendix as the version included in Defendant's Appendix omits the Complaint's internal exhibits.

of First Bergen Title Agency, LLC, who produced a report on or about October 17, 2022. Pa16-88.

Discovery ended on September 29, 2022.

By Order dated March 13, 2023, the trial court appointed Pronesti Surveying, Inc. to serve as the neutral surveyor to perform a survey of NCC's Property at Lot 22 and First Zion's Lot 20. Pa89. Mr. Pronesti produced his survey on April 19, 2023. Pa92.

On August 17, 2023, the Chancery Division granted NCC's motion for summary judgment. Pa163-76. The trial court determined as a matter of law that NCC was the record owner of the Property, including the area of the Property where the debris piles referenced in the Complaint resided. Pa172-73.³ The trial court therefore granted NCC summary judgment on the First Count of its Complaint for Ejectment. Ibid. While denying NCC's Second Count for Trespass and Third Count for Conversion, the trial court granted NCC summary judgment on its Fourth Count for Quiet Title and Fifth Count for Nuisance. Pa163-64.

The trial court also granted NCC's motion for summary judgment dismissing First Zion's Counterclaims for Trespass, Conversion, Quiet Title and Adverse Possession with prejudice. Pa164. First Zion attempted to argue it was both the

³ First Zion failed to include a copy of the trial court's Order and Statement of Reasons in its Appendix, but NCC encloses a copy of same in its Appendix.

record owner of the Property and owned it via the doctrine of adverse possession, a contradictory position the trial court rejected. Ibid.

On August 21, 2023, the Appellate Division denied First Zion's Application for Permission to File an Emergent Motion. Pa177.

On or about September 20, 2023, First Zion filed its Notice of Appeal (which was subsequently amended due to a deficiency). Da258.

On October 2, 2023, the trial court denied First Zion's motion to stay enforcement of the SJ Order. Da214-16.

The Appellate Division denied First Zion's subsequent motion for a stay on October 30, 2023. Pa179.

On December 1, 2023, the trial court denied NCC's motion for sanctions pursuant to R. 1:4-8 without prejudice on "jurisdictional grounds." Da235-36.

On January 16, 2024, the Appellate Division denied NCC's motion to dismiss First Zion's appeal as interlocutory but granted NCC's motion for a limited remand to resolve the R. 1:4-8 sanctions matter. Da238.

On March 1, 2024, the trial court denied NCC's motion for sanctions pursuant to R. 1:4-8. Da256-57.

STATEMENT OF FACTS

A. NCC is the deeded owner of Lot 22, which is the Property at issue.

NCC, a New Jersey non-profit corporation and one of the largest and most comprehensive community development corporations in the United States, filed this lawsuit against its neighbor, First Zion, because of First Zion's trespass onto NCC's Property located at 264-270 Camden St., Newark, NJ, Block 275, Lot 22. [Complaint] Pa1. The Deed identifies Block 275, Lot 22 with the address of 259 Bergen St. for reference purposes; however, the Deed conveyed the entire Property, which consists of several conglomerated parcels, to NCC. Da278-82. The Deed conveyed 264-270 Camden St., Block 275, Lots 36 to 33 respectively on the Camden St. side to NCC and 259-261 Bergen St., Block 275, Lots 22 and 23 on the Bergen St. side to NCC. Ibid. The Property spans Block 275 from Camden St. to Bergen St., which is why sometimes the Property is listed as 264-270 Camden St. or 259 Bergen St. Pa11 (street map); Pa180 (Google Maps screenshot). Over time, the parcels merged together into Block 275, Lot 22 and NCC is the record owner of the entire parcel stretching between both streets. Pa92 (Pronesti Survey).

The property tax records indicate NCC owns Block 275, Lot 22, which has an address of 264-270 Camden St. Pa181. A photo of the undeveloped portion of Lot 22 from the Bergen St. side is included in the Appendix as Pa182.

B. First Zion is NCC's neighbor and owns Lots 19 and 20.

First Zion is the record owner of 253 Bergen St., Block 275, Lots 19 and 20, which is the neighboring parcel to NCC's portion of the Property on the Bergen St. side. Da264-65 and Pa11. The street map in conjunction with First Zion's Deed indicates where NCC's Property is located in relation to First Zion's neighboring parcels on Lots 20 and 19. Ibid. First Zion's church is located on Lot 20. Pa183. Lot 19 is currently undeveloped. Pa184.

The metes and bounds of First Zion's Deed indicate First Zion's property starts at 184.31ft from the corner of Bergen and Fifteenth Avenue. (FZ's Deed] Da264-65. This is precisely represented on the street map, e.g., 100ft (Lot 25) + 27ft (Lot 24) + 57.32ft (Lot 22) = 184.31 ft. See Pa11 and Pronesti Survey at Pa92. The Deed then indicates that the metes and bounds of First Zion's Property creates a square around both Lots 20 and 19. Da264-65.

Of particular note is that the street map indicates that Lot 19 has an address of 253 Bergen St., whereas Lot 20 has an address of 255-257 Bergen St. Pa11. First Zion, however, labeled the church on Lot 20 with an address of 253 Bergen St. instead of 255-257 Bergen St. Pa183. Assuming the labeling was done mistakenly, this mislabeling has the effect of implying to onlookers that the church is located on Lot 19 and not Lot 20.

C. NCC notified First Zion about its improper trespass onto NCC's Property.

During the Spring of 2021, NCC learned First Zion entered onto its Property (Lot 22) without authorization and placed a large pile of stone, dirt and gravel, as if in preparation for performing site work on NCC's Property. Pa2 at ¶ 5; see picture of Lot 22 with the rock piles, Pa185. As a result, NCC sent a letter to First Zion on or about May 25, 2021, regarding First Zion's unauthorized entry onto the Property and its representation to NCC that First Zion was preparing to pave a portion of the Property to use for spillover parking. Pa6 at ¶ 6. NCC demanded that First Zion cease with its trespass on the Property. Ibid.

On June 3, 2021, NCC sent another letter to Pastor Dwight to advise First Zion of the metes and bounds of the Property in an effort to further demonstrate that its placement of the debris piles was on NCC's Property. Pa6, at ¶ 7. As NCC articulated in that letter, the edge of the NCC's Property comes within "one to two feet from the side of [First Zion's] church building." Pa15.

That letter also represented that NCC was in the process of retaining a surveyor to survey the Property in order to clearly delineate the property lines. Ibid. Unfortunately, First Zion's placement of the debris piles on NCC's Property impeded the surveyor's ability to survey the Property. Pa2 at ¶ 9. By letter dated July 19, 2021, NCC advised Pastor Dwight of the surveyor's inability to perform its survey due to the debris piles First Zion placed on NCC's Property and demanded

First Zion remove the piles. Pa10. NCC included with that letter an excerpt from the tax map which indicates NCC's Property at Lot 22 and First Zion's property at Lots 20 and 19. Pa11. NCC reiterated to Pastor Dwight that the front of NCC's Property spans 57.31 feet across Lot 22 along Bergen St., which is clearly represented on the map, and that it comes within one to two feet of First Zion's Property at Lot 20. Ibid.

That letter also asked Pastor Dwight to contact NCC's attorneys to dispute NCC's assessment that the debris piles were placed by First Zion on NCC's Property. Pa10. Before filing its lawsuit, and as a final effort to avoid litigation, on August 17, 2021 NCC sent a draft of the Complaint to Pastor Dwight via e-mail and Certified Mail. Pa186. Neither Pastor Dwight nor any other representative of First Zion ever responded to that communication.

D. Discovery confirmed NCC owns the Property.

1. First Zion fails to produce sufficient evidence of ownership of the Property.

NCC filed this action to protect its property rights. Pa1-7. After losing its bid for pre-answer dismissal (Da21-22), First Zion filed an Answer with a Counterclaim. Da23. On or about August 29, 2022, in response to NCC's Request for Admissions (Da64-66 [First Zion's Answers] and Pa196 [NCC's RFAs for reference]), First Zion produced a purported Statement of Electric and/or Gas Consumption from PSE&G for its property located at 253 Bergen St., which is Lot 19. Pa212-15. The

“Statement” contained pages 2-5 of that alleged Statement, which appeared to include a date range of April 17, 2020 to April 20, 2022. Ibid.

First Zion also produced a truncated copy of what appears to be a “PSE&G bill” for 253 Bergen St., which was to be paid by February 3, 2012. Pa216. First Zion produced another truncated copy of a PSE&G bill for 253 Bergen St. – this one payable by May 3, 2012. Pa217. First Zion represented that it offered these documents as proof that it paid for so-called unmetered charges for utility bills on the Property, although the bills state they are for costs incurred at 253 Bergen St., which is First Zion’s vacant Lot 19, and not NCC’s Lot 22, which is the subject Property in this litigation. Da64 [First Zion’s RFA Responses 11 and 12].

First Zion also produced copies of (i) check number 3597 dated December 10, 2013 to an unknown individual in the amount of \$40 with the words “snow removal” written in the memo line, (ii) receipt number 3593 dated December 30, 2012 for a \$40 dollar payment for “snow plow,” (iii) receipt number 3406 dated December 27, 2009 for a \$40 dollar payment for “plowing snow,” and (iv) receipt number 3485 dated December 6, 2011 for a \$115 dollar payment to J.C. Jones for “snow removal.” Pa218-21. First Zion represented it offered these documents as proof that it paid for snow removal on the Property. Da64 [First Zion’s RFA Response 13]. The checks and receipts do not indicate to what properties the snow removal applies. Pa218-21.

First Zion admits that NCC is the record owner of the Property (Lot 22). Compare Pa198 [NCC's RFA 1] with Da64 [First Zion's RFA Response 1]. However, First Zion represents that it owns the Property, despite its admission that NCC owns the Property. Compare Pa201 [NCC's RFA 17] with Da64 at Response 17.

Discovery ended on September 29, 2022, and First Zion did not produce several documents prior to the end of discovery that it now attempts to rely upon in its appeal:⁴ Da125-32 [Affidavit of Reverend Rahsshard Dwight dated May 24, 2023]; Da 133-34 [Affidavit of Jamar Piercy dated May 23, 2023]; Da255 [E-mail string dated January 9, 2023]; Da274 [Facebook message]; and, Da283 [purported work permit dated June 10, 1997].

2. *The Meccia Report confirms NCC owns the Property.*

On or about October 17, 2022, Allen Meccia, Jr. of First Bergen Title Agency, LLC produced a report regarding deed searches it performed on the subject properties (the "Meccia Report"). Pa16-88. The title report was necessary because NCC's Deed for the Property was for multiple parcels NCC purchased from the City of Newark and did not list the individual metes and bounds for the Property. Da278-

⁴ NCC objected to First Zion's reliance upon these documents (among several other objections) in its Response to First Zion's Statement of Undisputed Material Facts, which First Zion did not include in its Appendix. NCC includes a copy of the document for the Appellate Division's reference. Pa222-42.

82. The Meccia Report concludes that NCC owns the Property (a portion of which is identified as the yellow-shaded parcel in the Meccia Report at Pa19).⁵ The Meccia Report also opines that “[Meccia] tend[s] to believe that [the stone, gravel and dirt piles] may be located upon the record title lands of New Community Corporation.” Pa18.

3. *First Zion’s secret Allstate Survey confirms NCC owns the Property, a fact First Zion now ignores.*

First Zion itself conducted a survey which confirms NCC owns the Property. First Zion secretly retained Allstate Mapping & Layout to perform a survey of the Property on October 24, 2022 (the “Allstate Survey”), which it failed to disclose to NCC or the trial court at the November 1, 2022 pre-trial conference. Pa91. First Zion did not produce the Allstate Survey to NCC until February 12, 2023 (on the eve of the February 13, 2023 settlement conference with the trial court). The Allstate Survey confirms NCC’s ownership of the Property. The Allstate Survey confirms the dimensions of the respective parcels and the location of the church (e.g., NCC’s Lot 22 and First Zion’s Lot 20) as depicted on the tax map. Ibid. The Allstate Survey states First Zion’s church is located on Lot 20, and not Lot 19 as First Zion continues to represent. Ibid.

⁵ The black-and-white version First Zion included in its Appendix does not reveal the color-coding. Compare Da288 with Pa19. The Meccia Report highlights NCC’s Lot 22 to illustrate NCC’s ownership of that Lot and highlights Lots 19 and 20 in orange to illustrate First Zion owns those lots.

Also, the Allstate Survey indicates that Lot 20 is 184.31 feet from the corner of 15th street, which is identical to the tax map. Ibid. From the corner of 15th Street and Bergen Street, the tax map indicates that Lot 25 (100 feet), Lot 24 (27 feet) and NCC's Lot 22 (57.31 feet) add up to 184.31 feet, which is the same number the surveyor from Allstate included on the Allstate Survey. Ibid. The Allstate Survey also indicates First Zion's Lot 20 is 41.69 feet across on Bergen St., which again is identical to the tax map. Ibid. Therefore, while there is a narrow delineation between NCC's Lot 22 and First Zion's church on Lot 20 in the front half of the building (which the Allstate Survey indicates is approximately 2.5 feet wide), it is clear that the debris piles at issue are located on NCC's Lot 22 because the debris piles depicted in the Allstate video allegedly taken at the time Allstate performed its survey are to the rear of the building beyond where that narrow corridor ends. Ibid.

4. *The neutral, court-appointed surveyor, Pronesti, confirms NCC owns the Property.*

Most importantly, on March 13, 2023, the trial court appointed Pronesti Surveying, Inc. ("Pronesti") to serve as the court-appointed surveyor and ordered Pronesti to perform a survey of both NCC's Lot 22 and First Zion's Lot 20. Pa89. On April 19, 2023, Pronesti served the survey dated April 10, 2023 on both NCC and First Zion. Pa92. The Pronesti Survey confirms NCC owns Lot 22, including the area of Lot 22 where the debris piles are located (notated as "dirt pile" on the Pronesti Survey). Ibid. The Pronesti Survey also confirms the accuracy of the

measurements depicted on the tax map, namely that the property line of First Zion's Lot 20 begins 184.31 feet from the corner of Fifteenth Avenue and Bergen Street. Ibid.

On May 23, 2023, the parties deposed Mr. Pronesti and his testimony confirmed the findings of his Survey. Pronesti repeatedly disputed First Zion's attempts to claim that the Property, or any portion of it, was Lot 20. See, e.g., Da152, 67:8-11. As Pronesti unequivocally testified, the Property is NCC's Lot 22. Da152, 67:25-68:4 (Pronesti testifying that he is "**a hundred percent sure** that Lot 19 and 20 sit as I show it on my survey" (emphasis added)); Da154, 76:23-77:4 (testifying that the debris piles at issue rest entirely on NCC's Lot 22 other than perhaps 0.1 feet, which is approximately 1.5 inches); Da154, 77:5-7 ("Q. And Lot 22 is owned by [NCC] based upon your research? A. Based upon my research, yes.").

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ORDER [Pa163] PARTIALLY GRANTING SUMMARY JUDGMENT IN FAVOR OF NCC MUST BE UPHeld BECAUSE IT IS UNDISPUTED THAT NCC IS THE RECORD OWNER OF THE PROPERTY IN QUESTION.

A. The trial court correctly determined that NCC is entitled to summary judgment for ejectment, quiet title and nuisance.

The trial court properly granted summary judgment in NCC's favor on 3 of its 5 counts because there are no material facts in dispute as to NCC's record ownership of the Property. The Appellate Division reviews the trial court's grant or denial of summary judgment de novo, and applies the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 72 (2022). Under New Jersey law, summary judgment is warranted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 527 (1995) (citing R. 4:46-2(c)).

In determining whether a genuine issue of material fact exists, the trial court must determine whether the evidence presented is "sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party."

Brill, 142 N.J. at 523. “When the evidence is so one sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment.” Id. at 540 (internal citation omitted). Accordingly, where there is no evidence in the record in support of the non-moving party’s claims, summary judgment is warranted. See Mandel v. UBS/PaineWebber, Inc., 373 N.J. Super. 55, 76 (App. Div. 2004) (affirming summary judgment for defendants as there was no evidence on the record in support of plaintiff’s claims); accord Townsend v. Pierre, 221 N.J. 36, 61 (2015).

NCC is the record owner of its Property at Lot 22 and its deeded rights is dispositive of its ownership of the parcel. Furthermore, both the secret Allstate Survey and the Pronesti Survey confirm that NCC is the record owner of the Property. The Pronesti Survey also clearly indicates that the debris piles in question are located on NCC’s Property, which is perhaps why First Zion unfathomably failed to include a copy of the Pronesti Survey in its Appendix in its submission to the Appellate Division.⁶

All five counts of NCC’s Complaint sought to avail NCC’s property rights and the trial court properly granted judgment in NCC’s favor with respect to all five.

⁶ NCC includes a copy of the Pronesti Survey in its Appendix. See Pa92. That First Zion fails to include a copy of this survey is inexcusable considering the trial court’s appointment of Pronesti and the trial court’s reliance on the Pronesti Survey in its Statement of Reasons, which First Zion *also* fails to include in its Appendix. NCC includes a copy of the Statement of Reasons in its Appendix. See Pa165-76.

1. *The trial court correctly determined NCC is entitled to summary judgment on its First Count for ejectment because it is the record owner of the Property and First Zion's misconduct interferes with its property rights.*

The Order must, respectfully, be upheld because NCC is entitled to judgment for its First Count for ejectment under N.J.S.A. 2A:35-1, as NCC was the record owner and is entitled to enjoy its ownership of the Property free and clear from First Zion's impingement. "Common law ejectment in New Jersey has been replaced by a statutory remedy under N.J.S.A. 2A:35-1, entitling '[a]ny person claiming the right of possession of real property in the possession of another . . . to have his rights determined in an action in the Superior Court.'" Phoenix Pinelands Corp. v. Davidoff, 467 N.J. Super. 532, 615 (2021) (quoting N.J.S.A. 2A:35-1). Ejectment "is addressed to matters involving both claims to possession by a [landowner] as well as claims by him – real or constructive – to title to the realty." J&M Land Co. v. First Union Nat'l Bank ex rel. Meyer, 166 N.J. 493, 520 (2001). To succeed in an ejectment action, the party seeking ejectment has the burden of establishing title. Phoenix Pinelands Corp., 467 N.J. Super. at 615. The party seeking ejectment "must recover upon the strength of [its] own title, and . . . cannot rely upon the weakness of that of [its] adversary." Ibid.

Here, NCC can demonstrate its ownership of the subject Property is "free from all reasonable doubt." Id. at 619. There is no reasonable dispute that NCC is the deeded owner of the lot in question. Additionally, both the secret Allstate Survey

and the Pronesti Survey confirm NCC's ownership of the Property. Therefore, First Zion's interference with that ownership, even if First Zion's interference amounts to sporadic trespasses onto NCC's Property for purposes of spillover parking, is wrongful and contrary to NCC's property rights.

Accordingly, NCC is the clear record owner of the Property and the Order granting summary judgment must, respectfully, be upheld on these grounds.

2. *The trial court correctly determined NCC is entitled to summary judgment on its Fourth Count for quiet title because there is no question of fact that NCC is the clear record owner of the subject Property.*

The Order must, respectfully, also be upheld because NCC is entitled to summary judgment on its quiet title claim. NCC is in peaceable possession of the Property as the undisputed record owner. A claim to quiet title is governed by N.J.S.A. 2A:62-1:

Any person in the peaceable possession of lands in this state and claiming ownership thereof, may, when his title thereto, or any part thereof, is denied or disputed, or any other person claims or is claimed to own the same, or any part thereof or interest therein, or to hold a lien or encumbrance thereon, and when no action is pending to enforce or test the validity of such title, claim or encumbrance, maintain an action in the superior court to settle the title to such lands and to clear up all doubts and disputes concerning the same.

[N.J.S.A. 2A:62-1.]

In order to quiet title under the statute, a plaintiff must first be in “peaceable possession” of the subject property. *Ibid.* “Peaceable possession” is a jurisdictional prerequisite to a quiet title action. *Cf. Persons v. Bregman*, 182 N.J. Super. 476, 479 (App. Div. 1982). NCC has been the record owner of the Property since 1985 in furtherance of its laudable community development goals. In fact, NCC has already developed the portion of the parcel on the Camden St. side. Furthermore, the Pronesti Survey conclusively establishes NCC’s record ownership of the Property. Therefore, NCC was entitled to file this action in the Superior Court to avail its rights as the record owner. The trial court correctly granted NCC’s request for a judgment to quiet title to First Zion’s claims of ownership, whether by virtue of its allegation of direct ownership of the Property or through adverse possession.

Accordingly, the trial court’s Order granting NCC summary judgment on its Fourth Count for quiet title must, respectfully, be affirmed.

3. *The trial court correctly determined NCC is entitled to summary judgment on its Fifth Count for private nuisance due to First Zion’s unreasonable interference with NCC’s property rights.*

The trial court also correctly granted summary judgment to NCC on its private nuisance claim. “A cause of action for private nuisance derives from the defendant’s unreasonable interference with the use and enjoyment of the plaintiff’s property.” *Ross v. Lowitz*, 222 N.J. 494, 505 (2015) (citations omitted):

One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either

(a) intentional and unreasonable, or

(b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

[Ibid. (citing the *Restatement (Second) of Torts* §822).]

Private nuisance liability may be imposed for intentional or unintentional conduct. Id. at 506. “Intentional but reasonable” or “entirely accidental” invasion does not trigger liability under a private nuisance theory.” Id. (citing *Restatement* § 822 comment a.). Thus, an actor is liable for such interferences as are intentional and unreasonable or result from negligent, reckless or abnormally dangerous conduct. Id. at 506-7 (citing *Restatement* § 822 comment b.).

It cannot be reasonably argued that First Zion’s unauthorized, sporadic use of the Property for parking and the placement of debris piles on NCC’s Property (in what appears to be construction staging in conformance with their purported plan to convert a portion of the Property into a parking lot) was unintentional and unreasonable. Indeed, the planned development of another’s property without authorization underscores the concept of unreasonableness. First Zion purposefully entered onto NCC’s Property and unreasonably interfered with NCC’s private use

and enjoyment of its Property. Upon discovering First Zion's unauthorized placement of the debris piles, NCC notified First Zion about its transgression, but First Zion refused to remove the piles.

For this reason, the trial court appropriately determined that NCC is entitled to summary judgment for its Fifth Count for private nuisance due to First Zion's intentional and unreasonable use of NCC's Property without permission, and that determination must, respectfully, be affirmed.

POINT II

THE TRIAL COURT ORDER [Pa163] DISMISSING FIRST ZION'S COUNTERCLAIMS MUST BE UPHELD BECAUSE IT IS UNDISPUTED THAT FIRST ZION IS NOT THE RECORD OWNER OF THE PROPERTY AND FIRST ZION CANNOT SATISFY THE STRINGENT REQUIREMENTS FOR ADVERSE POSSESSION.

A. First Zion's first three Counterclaims related to its purported record ownership of the Property must be dismissed as a matter of law because First Zion is not the record owner of the Property.

The Appellate Division must also, respectfully, uphold the trial court's holding dismissing First Zion's Counterclaims. Despite clear, dispositive evidence to the contrary, First Zion incredulously continues to claim ownership to the Property, or a portion of it, as asserted in its Counterclaim.

For example, First Zion relies upon evidence not in the record rather than relying upon the Pronesti Survey, which is dispositive of this issue. In fact, First

Zion fails to even include a copy of the Pronesti Survey in its Appendix or even mention the Pronesti Survey at all in its papers (except for one sentence in its Procedural History that Pronesti performed a survey and was deposed thereafter). First Zion has not come forward with any expert testimony to dispute Pronesti's conclusions (and the only expert it retained, Allstate, agreed with Pronesti and First Zion now ignores Allstate). Factfinders should not speculate without the aid of expert testimony in any area where laypersons could not be expected to have sufficient knowledge or expertise. Cf. Kelly v. Berlin, 300 N.J. Super. 256, 268 (App. Div. 1997). Surveyors like Pronesti are licensed in New Jersey for a reason and are required to satisfy certain requirements and regulations in order to obtain one. See generally N.J.S.A. 45:8-27 (requiring surveyors to be licensed in this State). Expert opinions like Pronesti's are invaluable, especially when called upon by the trial court to provide guidance on a critical issue.

First Zion, however, disregards experts like Pronesti and performs its own self-serving "survey" of the Property to support its conclusions. According to First Zion's misguided "survey," the physical church is located on Lot 19 and NCC's Property on Lot 22 is actually First Zion's Lot 20. Upon information and belief, First Zion is not a licensed surveyor, nor has it ever represented that it holds a surveyor license in New Jersey. Of course, First Zion has never produced any expert report to support its conclusions either. For that matter, First Zion appears to have

hired Allstate to fill the dispositive lack of a surveying expert to support its position, but First Zion ultimately disregarded Allstate when the Allstate Survey arrived at the opposite conclusion (e.g., that NCC's owns the Property at Lot 22 and First Zion's physical church resides on Lot 20).

Instead, First Zion points to evidence outside of the evidentiary record, including an email obtained from the Newark Tax Assessor's Office to support its convoluted theory that NCC's Property at Lot 22 is actually First Zion's Lot 20. Setting aside for a moment that First Zion's Da255 is a purported email exchange from the City Surveyor from January 2023, which First Zion itself received four months after discovery ended and which First Zion did not produce until it filed its summary judgment motion several months later, First Zion fails to articulate how such information overcomes the dispositive conclusion of the Court-appointed surveyor, Pronesti, whom First Zion confronted at his deposition as if he was somehow biased towards First Zion in favor of NCC,⁷ or its own secret survey from

⁷ In fact, the undersigned felt compelled to rehabilitate the third-party Pronesti due to First Zion's attacks at his deposition: "Q. You were appointed by the Court in this matter to perform a survey; correct? A. Yes. Q. So, in other words, you don't have any dog in the fight between these two parties; correct? A. Correct." Da153, 72:15-21.

Allstate.⁸ First Zion's odyssey against NCC's Property is misguided, unsupported and must be rejected.

1. The trial court Order dismissing First Zion's First Count of its Counterclaim for Trespass must be upheld because First Zion is not the record owner of the Property.

The first three counts of First Zion's Counterclaim fail for the simple reason that NCC is the deeded owner – and not First Zion. First Zion's First Count for trespass fails because First Zion does not own the Property. As stated above, “[a] defendant is liable in trespass for an intentional entry onto another's land, regardless of harm.” Ross, supra, 222 N.J. at 510. First Zion cannot possibly sustain this claim because it does not own the Property.

Worse, First Zion's claims fly in the face of the evidentiary record, including the relevant deeds, the Meccia Report and the Pronesti Survey. It is again extremely telling that First Zion does not even discuss any of these evidentiary materials, nor does First Zion even mention its own Allstate Survey, which it commissioned in secret, but now intentionally ignores.

⁸ First Zion also resorts to improper discovery tactics in an attempt to avail the Request for Admissions Rule against NCC. App. Brf. at p. 8. The undersigned responded to First Zion's unfortunate tactics in its counsel certification [Pa93-162] but, suffice it to say, First Zion's failure to reciprocate the good faith showed to it for its own discovery failures was disappointing, and the undersigned is confident the Appellate Division will deny First Zion's bad faith maneuver here, which the trial court already rejected.

It cannot be questioned that NCC is the record owner of its Property at Lot 22 and its deeded rights are dispositive of its ownership of the parcel. The Meccia Report concludes NCC's record ownership of Lot 22 through its extensive research. On or about October 17, 2022, Allen Meccia Jr. of First Bergen Title Agency, LLC produced a report regarding deed searches it performed on the subject properties. Pa16-88. The parties jointly retained Mr. Meccia at the recommendation of the court-appointed mediator, Kenneth K. Lehn, Esq., of Winne Banta. The title report was necessary because NCC's Deed for the Property was for multiple parcels NCC purchased from the City of Newark and did not list the individual metes and bounds for the Property.

First Zion, however, curiously pulls the Parcel A (Da122) and Parcel B (Da118) descriptions from the Meccia Report, but fails to distinguish, let alone discuss, Mr. Meccia's conclusion that NCC owns the Property at Lot 22 (a portion of which is identified as the yellow-shaded parcel in the Meccia Report at Pa19): "[b]ased upon the documents of record as of August 15, 2022, [NCC] is the record owner of Parcel A and [First Zion] is the record owner of Parcel B." Pa17. Meccia also opines that he believes the debris piles in question are located upon NCC's record title lands. Pa18 at ¶ 2.⁹

⁹ It must also be noted that First Zion refers to the Meccia Report as a "Title Survey," but Mr. Meccia never performed a survey of the parcels – he performed a title report. In fact, the Meccia Report recommended the parties obtain a survey. It

The Pronesti Survey clearly indicates NCC's ownership of Lot 22 and that the debris piles in question are located on NCC's Property. Pa92. For that matter, even the secret Allstate Survey concludes NCC's ownership of Lot 22. Pa91.

Based upon this availing and indisputable evidence, NCC owns Lot 22 and First Zion's claims for trespass onto NCC's own property or its conversion of same fail as a matter of law. Without actually owning the property in question, First Zion cannot maintain an action for trespass or conversion because ownership is a required element of each such claim. See Ross v. Lowitz, 222 N.J. 494, 510 (2015) (citing *Restatement* § 158. and § 165, respectively) (observing that a defendant is liable in trespass for an intentional entry onto another's land, regardless of harm).

For this reason, this Court must, respectfully, uphold the trial court Order dismissing First Zion's First Count of its Counterclaim for trespass.

2. The trial court Order dismissing First Zion's Second Count of its Counterclaim for Conversion must be upheld because First Zion is not the record owner of the Property.

The Order dismissing First Zion's Second Count for conversion must be upheld for the same reason. Conversion requires proof that a defendant wrongfully exercised dominion and control over property owned by another. Commercial Ins. Co. v. Apgar, 111 N.J. Super. 108, 114-15 (Law Div. 1970). "The crux of

is ironic First Zion chooses to call this a Title Survey, but refuses to even reference either the Pronesti Survey or its own Allstate Survey.

conversion is wrongful exercise of dominion or control over property of another without authorization and to the exclusion of the owner's rights in that property.” Chicago Title Ins. Co. v. Ellis, 409 N.J. Super. 444, 456 (App. Div.), certif. denied, 200 N.J. 506 (2009) (citations omitted). As discussed in Point II.A.1, supra, First Zion does not own the Property – NCC does – and First Zion’s Second Count of its Counterclaim fails.

For this reason, this Court must, respectfully, uphold the trial court Order dismissing First Zion’s Second Count of its Counterclaim for trespass.

3. The trial court Order dismissing First Zion’s Third Count of its Counterclaim for Quiet Title must be upheld because First Zion is not the record owner of the Property.

For the same reasons the trial court’s Order dismissing First Zion’s First and Second Counts must be upheld, this Court must also uphold the Order dismissing First Zion’s Third Count for quiet title. First Zion is not the record owner of the Property and its quiet title claim fails.

First Zion, however, also requests this Court to “quiet title” to land it alleges it already owns or that it obtained via the doctrine of adverse possession. Although First Zion’s continuing attempts to construe NCC’s Property at Lot 22 as First Zion’s Lot 20 confuses what is otherwise a straightforward issue based upon the Meccia Report and the Pronesti Survey, First Zion’s requests must be denied. In order to quiet title, First Zion must be in “peaceable possession” of the subject property.

N.J.S.A. 2A:62-1. “Peaceable possession” is a jurisdictional prerequisite to a quiet title action. Cf. Persons v. Bregman, 182 N.J. Super. 476, 479 (App. Div. 1982). NCC has been the record owner of the Property since 1985 in furtherance of its laudable community development goals and has already developed the portion of the Property on the Camden St. side.

Furthermore, the neutral Pronesti Survey alone conclusively establishes NCC’s record ownership of the Property – an inescapable conclusion that First Zion refuses to either acknowledge or attempt to refute in its appellate papers. The Meccia Report and the other evidence in the record, including the respective deeds, confirm Pronesti’s conclusion. First Zion cannot satisfy the jurisdictional requirement of peaceable possession. First Zion is not entitled to quiet title to NCC’s Property at Lot 22 as a matter of law, regardless of what First Zion calls it or how it improperly defines it.

For this reason, this Court must, respectfully, uphold the trial court Order dismissing First Zion’s Third Count of its Counterclaim for quiet title.

B. The Order dismissing First Zion’s claim for adverse possession must be upheld as a matter of law as First Zion cannot satisfy the required elements to sustain its claim.

Perhaps recognizing the infirmity of its claims of record ownership of the Property, First Zion argues (or at least attempts to argue) in the alternative that it owns the subject parcel according to the ancient doctrine of adverse possession, but

that argument also fails with merely a whisper of scrutiny. Ironically, First Zion's argument in support of its first three Counterclaim counts emphasizes the impropriety of its adverse possession Counterclaim. First Zion argues in its first three counts that it is the deeded record owner of the Property, but reverses course in its Fourth Count and concedes that it is **not** the record owner of the Property, but that it obtained possession of the Property by operation of the adverse possession doctrine. First Zion's adverse possession claim collapses under its one weight not only as a matter of common sense, but also as a matter of fact and law.

Under New Jersey law, adverse possession requires entry and possession of the property for the entire statutory period of thirty years, and must be actual, exclusive, continuous, open, notorious and hostile. E.g., Mannillo v. Gorski, 54 N.J. 378, 386-87 (1969) (discussing the elements of the doctrine of adverse possession). The burden of proving all required elements rests on the party claiming adverse possession. Patton v. N. Jersey Dist. Water Supply Comm'n, 93 N.J. 180, 187 (1983). As the trial court correctly held, First Zion cannot satisfy any of these required elements based upon the scant evidence properly in the record:

Here, First Zion has raised no genuine issue of material fact as to whether the Property has been adversely possessed. First Zion relies on the following documents and/or information to support its claim of ownership of Lot 22 through adverse possession: (1) a check dated December 10, 2013 to an unknown individual in the amount of \$40 with the words "snow removal" written in the memo line, and (2) three receipts numbered 3597 and

dated December 30, 2012 for a \$40 dollar payment for “snow plow,” numbered 3406 and dated December 27, 2009 for a \$40 dollar payment for “plowing snow,” numbered 3485 and dated December 6, 2011 for a \$115 dollar payment to J.C. Jones for “snow removal.”

Even accepting that all of the purported evidence is true for purposes of summary judgment, there is nothing that meets the standards required for adverse possession. There is no evidence that the maintenance and utility payments were for Lot 22. The utility bills state that they are for 253 Bergen St., which is First Zion’s Lot 19. The oldest of the payments was made on December 27, 2009 (\$40 for snow plowing) which is less than thirteen years ago and at an undesignated address.

. . . .

Defendant has produced insufficient evidence of exclusive, continuous, open and notorious, hostile use of the property for thirty years. The fact that the property has never been developed by NCC is not relevant to ownership. The court appointed surveyor, Pronesti, and defendant’s own surveyor, Allstate, conclusively find that Lot 22 is owned by plaintiff and there is no reliable evidence to indicate otherwise. The undisputed deposition testimony of the court-appointed surveyor, Mr. Pronesti, is that the property at issue is NCC’s Lot 22 and not Lot 20 of First Zion. His testimony was that he is “a hundred percent sure that Lot 19 and 20 sit as I show it on my survey.”; that the subject debris piles rest entirely on NCC’s Lot 22 other than perhaps 0.1 feet (approximated 1.5 inches); that Lot 22 is owned by NCC; and that 253 Bergen St. encompasses both of First Zion’s Lots 19 and 20. First Zion has produced no evidence to contradict this. To the contrary, its surveyor Allstate, the [Meccia Report], and the deed into NCC confirm it.

[Pa175-76 (citations omitted).]

The trial court's Order dismissing its adverse possession claim must, respectfully, be affirmed.

1. *First Zion cannot satisfy the actual possession prong because it has not presented sufficient proof of frequent acts of ownership over the Property.*

Claimants intending to avail adverse possession like First Zion must show that its use and possession was actual, meaning that it had a physical presence on the property and establish facts showing “actual acts of ownership over the property . . . but also a certain frequency in the performance of those acts, sufficient to amount, in the eyes of the law, to a continuity of possession during the statutory period.” Ibid. These actual acts must amount to more than the payment of taxes and maintenance of the property. Id. at 189; see also Caruso v. Hunt, 69 N.J. Super. 447, 451 (Ch. Div.1961) (holding payment of taxes “would hardly satisfy the elements necessary to qualify one as an adverse possessor.”).

First Zion cannot prove that its use and possession of the Property was actual under the prevailing legal standard based upon the scant evidence in the record. First Zion produced alleged check copies from 2013, and three purported receipts for payment for snow removal from 2009, 2011 and 2012. First Zion represented it offered these documents as proof that it paid for snow removal on the Property, but there is nothing on the checks or receipts to indicate what properties the snow removal was for. Even assuming for the sake of argument First Zion could prove these records pertained to snow removal on the Property (which it cannot), these

would not amount to any proofs beyond property maintenance. As the Patton and Caruso Courts articulated, New Jersey requires more than a mere showing of property maintenance to satisfy the actual use and possession prong for adverse possession. First Zion's claim for adverse possession plainly fails on these grounds.

- a. The highly objectionable Dwight Aff. is littered with critical procedural and substantial deficiencies, and, even it could be properly relied upon (which it cannot), it cannot overcome the dispositive documentary evidence in the record.

As the documentary evidence First Zion produced during the course of discovery failed to provide sufficient support for its adverse possession claim as the trial court astutely noted (Pa175-76), perhaps that is why First Zion relied upon evidence not in the record to try and save its adverse possession claim, a maneuver the trial court clearly rejected as it cited **none** of these improper materials in the "Analysis" section of its Statement of Reasons. (Pa172-76). Respectfully, the Appellate Division should do the same.

Just as it did before the trial court, First Zion again offers the Affidavit of Reverend Rahsshard Dwight dated May 24, 2023 (the "Dwight Aff.") as purported support for its adverse possession claim. The Dwight Aff. must be rejected for at least three reasons. First, the Affidavit is overflowing with (i) improper legal arguments and opinions on the doctrine of adverse possession (e.g., Da125-131 at ¶¶ 25, 26, 27, 28, 29, 30 and 31); (ii) meritless opinions about surveying topics only a qualified expert may proffer and Mr. Dwight has not been qualified as an expert

surveyor (e.g., id. at ¶¶ 4, 5, 8, 11, 21 and 31); and, (iii) factual inaccuracies refuted by the record, including the Pronesti Survey, the Pronesti deposition, NCC's certified Interrogatory responses and NCC's responses to RFAs (e.g., id. at ¶¶ 5, 8, 11, 14, 15, 16, 17 and 18).

Second, First Zion did not produce the Dwight Aff. during discovery, which ended on September 29, 2022, as it is itself dated May 24, 2023 – nearly 8 months after discovery ended. Unlike NCC's Answers to Interrogatories and responses to RFAs, First Zion offered this uncorroborated Affidavit with contrary facts after discovery ended, leaving NCC with no means of investigating its outrageous claims.

Third, and turning to its substance, even if the Dwight Aff. passed muster under the procedural rules (which it does not), the Dwight Aff. fails to set forth sufficient proof of ownership to satisfy the actual possession prong. As a threshold matter, due to First Zion's confusing attempts to re-label the lot numbers of both NCC's Property at Lot 22 and First Zion's own property at Lots 19 and 20, it is uncertain which property First Zion is seeking to adversely possess. The Pronesti Survey and the Allstate Survey both clearly identify the lots, but First Zion is intent on contradicting those surveys to argue that NCC's Property on Lot 22 is actually First Zion's Lot 20. Compare Da126, ¶¶ 7, 8 with Pronesti Survey Pa92 and Allstate Survey, Pa91. That contradicts the Pronesti Survey, which clearly indicates NCC owns the Property on Lot 22 where the debris piles are located. See Pa243 (with

arrows added to Pa92 for illustration). That also contradicts First Zion's own Allstate Survey, which also clearly indicates the lot at issue here is NCC's Property at Lot 22. The Allstate Survey even delineates the boundaries of the physical church, which First Zion has argued is actually located on Lot 19 instead of Lot 20 as the Surveys correctly indicate. See Pa244 (with arrows added to Pa91 for illustration). Arguably, First Zion is advocating for the adverse possession of property it already claims it owns. Regardless, its claims are betrayed by the two available Surveys.

Furthermore, and assuming First Zion intends to adversely possess NCC's Lot 22 as depicted correctly by the surveyors, the Dwight Aff. still fails. The most the affidavit musters is: (i) a vague, uncorroborated statement that First Zion's parishioners have mowed the lawn and removed snow; and (ii) an equally vague statement that First Zion pays for lighting costs. As articulated above, Pastor Dwight presents no evidence to support First Zion's claim of maintenance and, even if it could, as the Patton and Caruso Courts find, more than mere property maintenance is required as a matter of law to satisfy this prong for adverse possession.

Pastor Dwight's allegation that First Zion pays for lighting costs on the Property is equally unsupported. Pastor Dwight presents no documentary proof of this other than an incomplete purported utility bill for 2012 and another incomplete purported utility bill from April 17, 2020 to April 20, 2022. Unfortunately for First Zion, the incomplete bills themselves indicate that the bills are for First Zion's

property at 253 Bergen St. (i.e., Lot 19), and not NCC's Property at Lot 22 – a fact that was not lost on the trial court: “There is no evidence that the maintenance and utility payments were for Lot 22. The utility bills state that they are for 253 Bergen Street, which is First Zion's Lot 19.” Pa175. First Zion has not produced any other documentary evidence to support its claim of actual use and possession of the Property.

- b. First Zion's continued improper reliance upon documents not in the evidentiary record must be rejected.

First Zion's reliance on documents not properly in the record does not stop with the Dwight Aff., and First Zion's reliance upon them must be disregarded under the court rules. See R. 4:46-2. First Zion may not rely on unsupported assertions to defeat a motion for summary judgment. See, e.g., Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999); Shelcusky v. Garjulio, 172 N.J. 185, 194 (2002) (holding “sham affidavits” will not impede a parties' right to summary judgment). Conclusory and self-serving assertions in certifications without explanatory or supporting facts will not defeat a meritorious motion for summary judgment. Puder v. Buechel, 183 N.J. 428 (2005) (citation omitted). Competent opposition requires competent evidential material beyond “mere speculation” and “fanciful arguments.” Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J. Super. 556, 563 (App. Div. 2005), appeal dismissed, 183 N.J. 692 (2006). First Zion's attempt to whip up alternative facts not supported or corroborated in the

record, just like it tried to do in opposition to NCC's motion for summary judgment, must be rejected.

In addition to the Dwight Aff., First Zion also improperly relies upon an email from purported City of Newark surveyor, Joe Fox, Jr. Da255. First Zion never produced this email in discovery (in fact the email string itself is from January 2023 – several months after discovery ended) and it was not produced until First Zion included it as an exhibit to its summary judgment motion. It is interesting to note that the email exchange appears to be related to First Zion's secret Allstate Survey (whose conclusions First Zion now opposes). Regardless, First Zion's reliance upon this document for any of its conclusions must be disregarded.

By way of yet another example, First Zion also offers the Affidavit of Jamar Piercy dated May 23, 2023 (the "Pierce Aff."), which is several months after discovery ended. Da133-134. The inclusion of this Affidavit with its inflammatory hearsay statements is highly improper. First Zion never identified Mr. Piercy during discovery and did not produce his Affidavit until several months after discovery ended. NCC had no means of investigating Mr. Piercy's incendiary claims after discovery concluded. The Appellate Division must, respectfully, ignore the Piercy Aff. just as the trial court did.¹⁰

¹⁰ First Zion also offers the equally problematic Certification of Counsel dated May 17, 2023. Da160-162. In that certification, defense counsel offers not only alleged facts as a putative fact witness (see, e.g., Da160 at ¶ 4), but also offers expert

By way of yet another example, First Zion also improperly relies upon Exhibits Da262 and Da263, which are purported screenshots from the City of Newark’s property tax system. First Zion produced no certification or affidavit from anyone with the City of Newark to corroborate the screenshots as authentic or depicting what First Zion alleges the screenshots depict. First Zion also did not produce Da263 during discovery. Accordingly, First Zion must not be permitted to rely upon these documents either.

Equally as improper is First Zion’s reliance upon new “facts” offered up for the first time in opposition to NCC’s motion for summary judgment and repeated on appeal. Those “facts” and First Zion’s reliance upon them must be rejected.

For example, in support for its argument that it pays for utility charges on NCC’s Property, First Zion proffers that First Zion contracted with Public Service Electric and Gas Company to erect a light pole (App. Brf. at p. 11) and that Public Service “recognized that the lots were owned by First Zion” (App. Brf. at p. 31); however, First Zion offers no evidentiary support for those assertions, just like it

opinions that are contrary to the reports of the expert surveyors even though defense counsel has not been qualified as an expert surveyor. For example, defense counsel testifies that there is no claim of ownership to Lot 22 and no ownership of Lot 20 at all (Da161 at ¶ 6) despite the fact that the deeds clearly indicate ownership of both parcels, as do the Meccia Report, the Pronesti Survey and the Allstate Survey (*i.e.*, Lot 22 to NCC and Lot 20 to First Zion). This Certification must be rejected just as the trial court did, unless it is defense counsel’s intent to testify as a witness, in which case defense counsel may be subject to disqualification pursuant to R.P.C. 3.7.

failed to do before the trial court. First Zion produced no sworn statements from Public Service, or any other evidence, to support these statements, yet First Zion relies upon the assertions as facts. First Zion cannot rely upon facts that do not exist for a legal conclusion that is contrary to the record evidence.

By way of another example and representing a document that First Zion offers for the first time on appeal more than 18 months after discovery ended, First Zion alleges the City of Newark granted it a permit in 1997 to perform sidewalk work in front of the lots. App. Brf. at p. 32; Da283. While clearly out-of-time, the document itself states the permit is for 253 Bergen St., which, as the trial court observed with respect to the utility bills “they are for 253 Bergen Street, which is First Zion’s Lot 19.” Pa175.

First Zion must not be permitted to rely upon documents not properly in the record.

2. *First Zion cannot satisfy the open and notorious prong because its purported proofs cannot support any reasonable inference that it acted towards the land as would an average owner.*

The second element First Zion must show is that the possession was open and notorious such that the “ordinarily prudent person would be put on notice that the land is in actual possession of another.” Predham v. Holfester, 32 N.J. Super. 419, 424 (App. Div. 1954). To prevail on this element, First Zion must show that it has

“acted towards the land in question as would an average owner . . .”. Stump v. Whibco, 314 N.J. Super. 560, 569 (App. Div. 1998).

First Zion cannot satisfy this element for the substantially same reason it cannot satisfy the actual use and possession prong. First Zion’s production of the snow removal documents fail for the same reasons discussed above – there is nothing on the checks or receipts to indicate what properties the snow removal was for. In addition to these deficient documents, First Zion produced an incomplete purported utility bill for 2012 and another incomplete purported utility bill from April 17, 2020 to April 20, 2022. Unfortunately for First Zion, the incomplete bills themselves indicate that the bills are for First Zion’s property at 253 Bergen St. (i.e., Lot 19), and not NCC’s Property at Lot 22. See Pa175. First Zion has not produced any other documentary evidence to support a claim that an “ordinarily prudent person” passing by would be put on notice that it owned the subject Property. In fact, outside of First Zion’s occasional use of the Property for parking, First Zion’s perhaps first overt act of placing the debris piles on the Property resulted in NCC’s reproach and, ultimately, the institution of this lawsuit.

First Zion also cannot rely upon the Dwight Aff. for the reasons set forth above. Even if it could, First Zion’s claim would still fail because the Dwight Aff.’s claims lack a modicum of support in the record. There is no evidence to corroborate the Dwight Aff.’s claims about parishioners maintaining the Property. Da126 at ¶

9. First Zion did not produce one document or sworn statement from any parishioner in discovery testifying to these facts. First Zion's claims about paying for lighting (Da126 at ¶ 10; App. Brf. at p. 11) also fail because there is no evidence in the record other than the illusory utility bills, which do not indicate whether they include lighting costs for the light pole on NCC's Property. First Zion's claims are threadbare.

First Zion cannot satisfy the open and notorious prong, and the trial court's Order must, respectfully, be upheld.

3. First Zion cannot satisfy the exclusivity prong because not only has NCC developed a large section of the Property, but also First Zion's purported documentary evidence does not support any reasonable inference of exclusive ownership.

The third element First Zion must establish is that its use of the land was exclusive and not shared with anyone else, including the rightful owner, but First Zion also cannot satisfy this prong. Stump, *supra*, 314 N.J. Super. at 570. As a threshold matter, First Zion cannot assert that it has used Lot 22 exclusively because NCC has developed the portion of Lot 22 adjacent to Camden Street. NCC constructed housing there that exists to this day and NCC respectfully requests this Court to take judicial notice of same.

Furthermore, First Zion also cannot satisfy this prong because its purported documentary evidence, the incomplete utility bills and the alleged snow removal

documents, do not articulate what property the documents pertain to as the trial court plainly noted. After explicitly referencing this evidence in the record, the trial court appropriately dismissed the evidence as insufficient to support a claim for adverse possession. Pa11 (“Defendant has produced insufficient evidence of exclusive, continuous, open and notorious, hostile use of the property for thirty years.”). Without clearly articulating that the documents pertain to NCC’s Property at Lot 22 and First Zion’s exclusive use and possession of same, First Zion cannot meet its burden of satisfying the exclusivity prong.

First Zion also cannot rely upon the Dwight Aff. as that affidavit should be stricken for all the reasons set forth above. Furthermore, the Dwight Aff. conclusively opines that First Zion satisfied the adverse possession statute. Da130-131 at ¶¶ 25-30. The Dwight Aff.’s legal conclusions are inapposite.

For all of the reasons articulated above, First Zion cannot satisfy the exclusivity prong, and the Order must be upheld.

4. *First Zion cannot satisfy the continuity prong because its paltry documentary evidence, even if credited as legally sufficient (which it is not), would fall more than 20 years short of the required 30-year statutory time period.*

To satisfy the fourth factor for continuity, First Zion must show it possessed the land for the entire statutory period without interruption, which is perhaps the prong First Zion fails to satisfy the most. Stump, supra, 314 N.J. Super. at 566.

Pursuant to N.J.S.A. 2A:14-30, First Zion must prove the satisfaction of all of the required elements for the entire statutory period, which ranges from 30 years for all real estate to 60 years for uncultivated tracts:

Thirty years' actual possession of any real estate excepting woodlands or uncultivated tracts, and 60 years' actual possession of woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise, shall, in whatever way or manner such possession might have commenced or have been continued, vest a full and complete right and title in every actual possessor or occupier of such real estate, woodlands or uncultivated tracts, and shall be a good and sufficient bar to all claims that may be made or actions commenced by any person whatsoever for the recovery of any such real estate, woodlands or uncultivated tracts.

[N.J.S.A. 2A:14-30.]

While New Jersey law permits tacking, whereby the adverse possessor may add the prior possessor's period of occupancy onto their own in order to meet the statutory time period, the party seeking to avail tacking must demonstrate that both possessors satisfied the required elements. Stump, supra, 314 N.J. Super. at 563 (holding tacking is only available when the party seeking to avail tacking demonstrates that both possessors satisfied the required elements). First Zion also has the burden of showing clear and positive proof that establishes "not only actual acts of ownership over the property in dispute but also a certain frequency in the performance of those acts, sufficient to amount, in the eyes of the law, to a continuity

of [30 or 60 years.]” Wilomay Holding Co. v. Peninsula Land Co., 36 N.J. Super. 440, 443 (App. Div. 1955).

First Zion’s claim for adverse possession falls woefully short of this prong as the documents First Zion relies upon do not come close to satisfying the 30-year requirement. First Zion produced a purported Statement of Electric and/or Gas Consumption from PSE&G for its property located at 253 Bergen St., which is Lot 19. While the document First Zion produced is incomplete, it appears to be for a time period of April 17, 2020 to April 20, 2022. First Zion also produces a utility bill from 2012, which again indicates the bill was for First Zion’s property at Lot 19 rather than NCC’s Lot 22. First Zion also produces the aforementioned snow removal documents for 2009, 2011, 2012 and 2013.

Even assuming First Zion could prove these documents pertained to NCC’s Property at Lot 22 and not First Zion’s own property at Lot 19 (which it cannot do), and even assuming these documents would be sufficient proof to support a claim that First Zion continuously used and possessed the Property for the entire referenced year (which it also cannot do), First Zion would only have proof of possession for 6 years (at most) of the 30-year statutory time period (i.e., 2009, 2011, 2012, 2013, 2020 and 2021). Assuming First Zion’s Counterclaim relates back to NCC’s institution of this lawsuit in 2021, the clock for the statutory 30-year period began running in 1991. First Zion’s “proofs” are at least 24 years short of the required

continuity period to support a claim for adverse possession. First Zion has not produced any documents to support its claim of continuous possession for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2014, 2015, 2016, 2017, 2018 or 2019. First Zion also has not provided any proof that its possession of the Property continued uninterrupted for the entire 30-year statutory period.

First Zion also cannot avail the tacking argument because it has not produced any evidence in discovery that the tacking rule would even apply to this case.

Furthermore, as the New Jersey Supreme Court noted in J&M Land Co., the 60-year statutory period may apply because the portion of the Property which First Zion uses periodically for parking is uncultivated. See J&M Land Co. v. First Union Nat'l Bank ex rel. Meyer, 166 N.J. 493, 518-520 (2001). As the pictures demonstrate (Pa182 and Pa185), the Bergen St. side of Lot 22 is undeveloped and enclosed from the Bergen St. side. First Zion has attempted to claim that portion of NCC's Property for its own (sometimes with thinly-veiled tactics¹¹), but has failed to provide documentary proof sufficient to support a claim for adverse possession.

¹¹ For example, First Zion affixed the number "253" to its church on Lot 20 in what appears to be an attempt to claim ownership of the property "to the left of the church when one is standing and facing the church," as First Zion expressly states in its Counterclaim. Da31 at ¶ 3. As stated above, Lot 19 (i.e., the lot to the right of the church when one is facing the church from Bergen St.) has an address of 253 Bergen St. See Pa11. Lot 20 where the church is located has a street address of 255-

Additionally, First Zion cannot rely upon the Dwight Aff. for the reasons set forth above, including its inapposite legal opinions about First Zion's satisfaction of the adverse possession statute. E.g., Da130-131 at ¶¶ 25-30. The Dwight Aff.'s legal conclusion that First Zion satisfied the statutory time period is meritless.

First Zion's adverse possession claim fails on these grounds as well and the trial court Order must be upheld.

5. *First Zion also cannot satisfy the hostility prong because its presence on the Property, even if mistaken, was neither continuous nor exclusive.*

Finally, First Zion also fails to satisfy the hostility requirement. In order to satisfy this fifth element, First Zion must show its use was adverse and hostile, meaning that the rightful owner did not consent or give the claimant a license to use the property. Mannillo v. Gorski, 54 N.J. 378 (1969).

Setting aside that First Zion's appeal, trial court submissions, pleading and written discovery responses articulate its belief that it owned the Property (and its confusing claim that NCC's Property at Lot 22 is masquerading as First Zion's Lot 20 despite the dispositive conclusions of the Surveys), the Mannillo Court clarified

257 Bergen St.; however, First Zion advertises the church as "253" Bergen St. In so doing, First Zion's goal appears to be intentionally misleading the public into thinking that the church is located on Lot 19 rather than 20; thus, opening the door for First Zion to argue that it owns the property "to the left of the church when one is standing and facing the church."

that First Zion must still demonstrate its “entry and continuance of possession under the mistaken belief that the possessor has title to the lands involved” in order to satisfy the hostility requirement. Id. at 382. “[I]t is generally agreed that the term ‘hostile’ does not mean that there has to be ill will or malevolence, but the term means only that one in possession of land claims the exclusive right thereto.” Stump, supra, 314 N.J. Super. at 576.

Even if First Zion’s claim of ownership could charitably be described as a claim of mistaken ownership, First Zion cannot satisfy the hostility requirement because its sporadic trespasses onto the Property do not pass muster under either the “continuance of possession” rubric articulated in Mannillo or the “exclusive right” rubric articulated in Stump. Stated slightly differently, First Zion fails to satisfy the hostility requirement for the same reasons it fails to satisfy the continuity and exclusivity requirements. First Zion cannot rely upon the Dwight Aff. for all of the reasons set forth above.

First Zion also cannot rely on its claims that it erected a fence on a portion of NCC’s Property to prove the hostility prong either. In fact, NCC previously stated in its responses to First Zion’s RFAs that the fence in question was erected, upon information and belief, by the City. See Da114-15 at Response to RFA 11. NCC provided this sworn response because of Pastor Dwight’s previous representation that he did not know who erected the fence. First Zion’s position has apparently

changed as it now claims responsibility for the erection of the fence in order to support its claim for adverse possession, emblematic of the impropriety of First Zion's tactics. As Judge Alper astutely noted: "Furthermore, the fact that Lot 22 is enclosed by a chain link fence does not support a claim of adverse possession as there is no evidence that First Zion placed the fence there. Thus, it is irrelevant to its assertion that it has engaged in hostile possession of the property." Pa175.

In sum, First Zion cannot prove any of the five elements of its claim for adverse possession and its claim for adverse possession fails.

As a final note, First Zion's argument that NCC needs to satisfy the 30-year time period for adverse possession (e.g., App. Brf. at pp. 18-19) is nonsense and constitutes a disturbing misreading of the law. NCC is the record owner of the Property. At the risk of stating the obvious, NCC does not need to obtain title via adverse possession because it already holds record title. It is First Zion that must prove it satisfied the stringent requirements of the doctrine for the entire statutory time period. For all of the reasons stated above, First Zion cannot satisfy those requirements and the trial court's Order must be upheld.

CONCLUSION

Based upon the facts and law discussed above, the Order dated August 17, 2023 of the trial court partially granting summary judgment in NCC's favor and dismissing First Zion's Counterclaims must, respectfully, be upheld.

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Dated: June 24, 2024

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NEW COMMUNITY CORPORATION Respondent, v. FIRST ZION HOPE MISSIONARY BAPTIST CHURCH Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NUMBER: A-000189-23 Civil Action AMENDED APPELLANT'S REPLY BRIEF SAT BELOW: JODI LEE ALPER, J.S.C. SUPERIOR COURT NEW JERSEY-CHANCERY DIVISION DOCKET NO. ESX-C-000207-21
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BRIEF SUBMISSION DATE: JULY 16, 2024

LURETHA M. STRIBLING, ESQ.

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**FIRST ZION HOPE MISSIONARY BAPTIST CHURCH'S RESPONSE TO
PRELIMINARY STATEMENT OF NEW COMMUNITY CORPORATION**

The Trial Court Order granting summary judgment to New Community Corporation (NCC) should not be affirmed because the standard established for summary judgment was not adhered to. Court Rule 4:46-2(c) was not complied with. From the evidentiary record, there were no material issues in dispute because the evidentiary record was favorable to First Zion Hope Missionary Baptist Church (First Zion) on the issue of Adverse Possession. This is because the record showed that Adverse Possession had already set in as of June 26, 2006. At that time First Zion had been in possession of the property identified as Lot 22 for thirty years with no objection by NCC. By operation of law, the property which is Lot 22 was now fully owned by First Zion. First Zion per the Meccia Title Survey owned part of Lot 22 since the early 1909. **(Da118)** The Doctrine of Adverse Possession was not properly applied to this case by the Trial Court. Had the standard been followed which is set out in Plaza v. Flak, the decision reached on Summary Judgment would have been favorable for First Zion. Plaza v. Flak, 7 N.J. 21 (Decided May 28, 1951). The standard to satisfy the prongs for Adverse Possession are also located at our statute, N.J.S.A. 2A:14-30.

The deposition transcript of Michael Pronesti provided the needed information for the Appeal. There is nothing shocking about not including the survey

and NCC counsel was free to include that document and any other documents that he viewed as important. During the deposition of Michael Pronesti, he had an opinion about the Property Identification Form which differed from the interpretation of this information by the drafters at the Newark Tax Collector's Office who told Rev. Teabout and Rev. Dwight when they went to the Newark Tax Assessor's Office that the property that Rev. Teabout thought was owned by NCC was actually owned by First Zion. Further, Mr. Pronesti did not perform the survey as was expected and admitted at his deposition that he looked at documents in his office from the persons that actually performed the survey. The surveyors were not deposed as it was believed that Mr. Pronesti had performed the survey.

Mr. Meccia did not say that NCC owned the property in dispute. His role was to conduct a Title Survey which required that he research and document the history of ownership of the property. Within the Title Survey are documents titled Parcel A and Parcel B which note the history of Lot 22. It is in that document that it is made clear that Lot 22 was a part of Parcel A and a part of Parcel B. That Title Survey does not show any conveyance of First Zion's ownership and interest in Lot 22 to anyone. Mr. Meccia stated that an actual survey was needed and he was not a surveyor so he did not say that Lot 22 was owned by New Community Corporation. He thought that it might be when he used Google Maps to look at the property. The use of Google Maps is not a survey.

The claim that First Zion engaged in improper tactics by communicating with a company by the name of Allstate Surveyors is an affront to First Zion as there were no restrictions in either party communicating with surveyors. In fact, NCC contacted two survey companies about the land in question and First Zion was not aware of this nor was Counsel for First Zion invited to participate in the communications that took place with those survey companies that NCC spoke to. Use of words such as confusing and secret appear as an attempt to discredit First Zion. Those tactics do not change the fact that NCC, a sophisticated company who has engaged in numerous real estate transactions since their inception failed to object to the use of land that they belatedly claimed was theirs. The Statute of Limitations on objecting ran in June of 2006. The purchase date of this Lot 22 from the City of Newark happened in October of 1985. This means that there was never an objection for a period of 36 years after the property was purchased and by the time there was a claim of ownership of Lot 22, Adverse Possession had resulted in the property being fully owned by First Zion. First Zion per the Title Survey owned part of Lot 22 as noted in Parcel B. After the passage of thirty years, First Zion then owned the total of Lot 22. There is nothing confusing about that statement.

New Community Corporation slept on the right to Lot 22 and by 2021 Adverse Possession had already resulted in the total of Lot 22 being owned by First Zion via operation of law.

PROCEDURAL HISTORY

The Procedural History by New Community Corporation is incorrect. The issue in this matter is about Lot 22 at 279 Bergen Street. **(Da278, Da279. Da286)**

After receipt of the Complaint and Jury Demand, First Zion filed a Motion to Dismiss the Complaint which was denied by the Court on January 21, 2022. Thereafter, First Zion filed an Answer and a Counterclaim on August 21, 2023. **(Da9-Da17,Da23)**

First Zion filed an Application for Permission to File an Emergent Motion at the Appellate Court which was denied by the Appellate Court. **(Pa177) (This filing not included in my Appendix)**

After filing the Notice of Appeal, First Zion filed a Motion to Stay the Summary Judgment decision with the Trial Court which was denied. **(Da214)(Filing not in Appendix, Order in Appendix)**

RESPONSE TO NEW COMMUNITY CORPORATIONS STATEMENT OF

FACTS

First Zion finds it necessary to respond to the inaccuracies in the Statement of Facts provided by NCC. New Community Corporation is a corporation which has two divisions. The for-profit division of New Community Corporation represents

two thirds of this company. The one third component is said to be non-profit. New Community Corporation had revenue of greater than \$313 million in year 2022)

The claim that the property on Camden Street was merged with the property on Bergen Street is an argument made late in the case at the Trial Court. The issue is that there was no objection to the church use of Lot 22 at 259 Bergen Street until 2021. At that time, there was no longer ownership of this property by NCC as by operation of law, Adverse Possession became a reality. **(Da55, Rev. par. 18)**

The Tax Assessor's Office is well versed in the history of the property owned by First Zion and this information was conveyed to Rev. Teabout when she and Rev. Dwight went to the Newark Tax Assessor's Office. **(Da55, par. 18; DA125, par.18)**

The labelling on street maps is easily altered. The street map referred to is inaccurate. The Deed for First Zion is accurate as well as the Property Identification Document which notes that First Zion sits on Lot 19 which is 253 Bergen Street and Lot 20 is 255-257 Bergen Street which is owned by First Zion. **(Da262, Da264)**

New Community Corporation has a strong presence in the area of Bergen Street, 15th Avenue and Camden Street as this corporation owns multiple properties in this location.**(Da278)** The claim that there was gravel in the church's lot that alerted NCC that there was now a basis to claim trespass is puzzling given that First Zion placed a tall fence around Lot 20 and Lot 22 years ago with a sign on the fence

which notified people that this lot was private property which belonged to First Zion. (Da267) The sign notified everyone to keep out and here was no objection to Lot 22 being fenced in. (Da267) It is further puzzling that First Zion contracted with Public Service Electric and Gas over thirty years ago and there was a huge light pole placed in this lot which was operational every day and per a schedule the light came on at a particular time of the day. (Da268, Da125) New Community Corporation makes an untenable argument because they claim that gravel in this fenced in lot concerned them, however, the obvious light post did not concern them and place them on notice that the lot was being used by First Zion. (Da268, Da125)

The standard to be followed for Adverse Possession does not require the presentment of documents as has been stated. The standard for Adverse Possession requires open, obvious, adverse, hostile, exclusive use as the owner would use the property and continuous use of the property for a period of 30 years. First Zion has used the noted lots since purchase of the church property and lots in 1976. **To contest this use of the property per the statute, what is required is that the owner of the property must object to the use of this property within the 30 year time period.** A failure to object within the set time period of thirty years results in loss of the property by Adverse Possession. N.J.S.A. 2A:14-30. The production of documents by First Zion further supported the fact that the land was being used and First Zion acted as an owner of the land would. By their own admission, the first time an

objection was made by NCC was in the summer of 2021. (Da55, Da125, Da267, Da283, Da358)268, Da358)

First Zion did state that New Community Corporation was the record owner of Lot 22 as in error, the City of Newark sold Lot 22, 259 Bergen Street to NCC per the Deed which was in error because Lot 22, 259 Bergen Street was owned in part by First Zion. (Da117, Da118, Da278)

Mr. Pronesti at deposition testified that years ago he had performed a survey for First Zion and he was asked to provide that survey. The survey was never provided, however, other documents that were requested at the time of his deposition were provided. (Da136, T85:6-13)

RESPONSE TO POINT I

THE GRANT OF SUMMARY JUDGMENT TO NEW COMMUNITY CORPORATION SHOULD NOT BE UPHOLD BECAUSE THERE WAS A FAILURE TO ADHERE TO THE ADVERSE POSSESSION STANDARD WHICH HAD IT BEEN ADHERED TO WOULD HAVE OBVIATED A GRANT OF SUMMARY JUDGEMENT TO NEW COMMUNITY CORPORATION

According to Court Rule 4:46-2(c), Proceedings and Standards on Motions, the judgment or order sought shall be rendered forthwith if the pleadings,

depositions, answers to interrogatories and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. The court shall find the facts and state its conclusions in accordance with R. 1:7-4. R. 4:46-2(c)

A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law. Brill v. Guardian Life Insurance Company of America, 142 NJ 520, 529 (1995). Summary judgment will not be appropriate if the dispute is about a material fact and is genuine and could result in a jury after hearing the evidence returning with a verdict for the nonmoving party. Anderson et al v. Liberty Lobby, Inc., et al, 477 US 242 (1986). The question is whether the evidence presents a sufficient disagreement that would then require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Id. at 247-252. The movant has the burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact. Moore's Federal

Practice, par. 56-15(3), cited in Judson v. Peoples Bank & Trust Co. , 17 NJ 67, 74(1954). The standard in viewing a motion for summary judgment is expressed by the term making a prima facie case or defense and the movant is entitled to judgment if based on the full record, the adverse party, who is entitled to have the facts and inferences viewed most favorably has failed to demonstrate the existence of a dispute which would result in a decision favoring the non-movant. Rules Governing the Courts of the State of New Jersey, p. 1485 (2022).

In this case, the elephant in the room was the belated objection in 2021 by NCC to First Zion using Lot 22. This objection was made 46 years after First Zion purchased the property which is 253-257 Bergen Street. **The objection was made 36 years after NCC purchased Lot 22.** The deed from Marjorie Materna to First Zion Hope Missionary Baptist Church which showed that First Zion came into ownership of the church and the lot next to it on June 30, 1976 and that Marjorie Materna owned the property from June 22, 1967 gives First Zion a longer period of claims to the property via tacking. The deed for NCC showed that they purchased a number of lots from the City of Newark which included Lot 22 on October 27, 1985. There was no objection to First Zion using the lot next to the church as well as the smaller lot next to the church's lot 20 until the summer of 2021 when Rev. Teabout sent Rev. Dwight a message on Messenger that she needed to speak with him. Rev. Teabout followed up the email by coming to First Zion and stating that NCC **might**

own the land and then asking if First Zion would sell Lot 22 to NCC. Furthermore, the history of use of Lot 22 showed that the church tended the land since inception caring for the land in all seasons, that the church asked the City of Newark by Permit if they could lower the sidewalk in front of Lot 20 and Lot 22 to make it easier for parishioners to park in the lot and the Permit was granted July 10, 1997. **(Da283)**. First Zion contracted with Public Service Electric and Gas and had a light pole placed in this lot and has since placement of the light pole in Lot 22 been paying the light bill for this lighting. **(Da268)** First Zion also placed a tall metal link fence around the lots, placed a sign on the lots that the property was private property and that there was camera surveillance of the lot. **(Da267)** When the lots were not in use, the fence was padlocked. First Zion satisfied all of the requirements that supported the use of the land adversely and met the requirements for Adverse Possession. The first contact was in the summer of 2021, thus, Adverse Possession had already become a reality. As a result, that part of Lot 22 which had previously been owned by NCC per the Title Survey came under the ownership of First Zion as a result of the passage of the requisite time period.

Because Adverse Possession gave First Zion ownership of that part of Lot 22 that was owned by NCC per the Title Survey as per the Title Survey First Zion owned part of Lot 22, it was improper for the Trial Court to grant Summary Judgment to New Community Corporation on their claim of ownership, for

ejectment, to quiet title in First Zion's property, for private nuisance and all of the other claims made for relief at the Trial Court.

First Zion used the property throughout the week and on the weekends because church services were held a few days during the week and other activities took place at the church. The claim of sporadic use of the land in question is inaccurate as it is not based on reality. NCC slept on their rights and showed up 36 years after coming into possession of this land and tepidly made claim to this land. Any ownership of the part of Lot 22 that had been owned by NCC dissipated after the passage of thirty years of the church's use of this land which had a start date of June 30, 1976 when First Zion purchased this property.

It is requested that the arguments made by NCC about ownership of the Lot 22 be disregarded as it was NCC's responsibility to object to the use of this land that they believed was theirs after being on notice of the usage of this land and they failed to timely object.

RESPONSE TO POINT II

**IT WAS IMPROPER FOR THE TRIAL COURT TO DISMISS FIRST ZION
HOPE MISSIONARY BAPTIST CHURCH'S REQUEST FOR
EJECTMENT, TO QUIET TITLE IN THE PROPERTY TO FIRST ZION
AND TO FIND THAT THE ENTRY ON THIS LAND BY NEW
COMMUNITY CORPORATION WAS TRESPASS**

The circumstance in this case is that New Community Corporation failed to make a timely objection to use of Lot 22 and with the passage of time required to claim Adverse Possession, the issue of ownership is over. Leaping over the fact that there was no objection which by law resulted in loss of this Lot 22 means that procedurally the owner of the property is First Zion. Mr. Pronesti's testimony was flawed because he never surveyed the land but looked at documents that were prepared by other persons in his office that did the survey. The Allstate surveyor stated that this was a case of Adverse Possession because there had been no objection to use of the land in question for the statutory time period. The surveyor for the City of Newark noted in an email that NCC never developed Lot 22 on Bergen Street but left it open and abandoned which supports Adverse Possession by First Zion.

(Da255)

The claim of Trespass in the Counterclaim by First Zion was proper again because NCC had no right to enter the land which is Lot 20 and Lot 22 because there was no longer an ownership of Lot 22 because of Adverse Possession. As a result of the reality of Adverse Possession, the effort by NCC to belatedly claim ownership of land that had passed to First Zion by operation of law and actions taken to co-opt this property is Conversion which should have been found by the Court because there was no longer an ownership interest by NCC. Because of the ownership of Lot 22 by First Zion in its entirety as a result of Adverse Possession, the request that the Trial Court quiet title in First Zion was correct and should have been granted.

First Zion will rely upon the Appellant's Brief which has set out an abundance of information on Adverse Possession and why the conclusion reached by the Trial Court on Adverse Possession is inaccurate and for which relief is sought from the Appellate Court. The use of Lot 22 was open, notorious, hostile, continuous and exclusive, where First Zion acted as the owner of the Lot for the required statutory time period. With the use of tacking, First Zion's claim to use of Lot 22 is greater than 50 years. New Community Corporation failed in the singular requirement that they had to fulfill which was to object to the use of this land within a thirty-year time period and their failure to do so was fatal to the belated claim made of ownership of Lot 22.

The arguments made by NCC are flawed and repetition of such arguments do not make the arguments accurate. The argument is that NCC was responsible for objecting to the use of Lot 22 and clearly per N.J.S.A. 2A:14-30, NCC was required to object to the use of the land within a thirty year time period. The blatant failure to timely object to the use of land claimed to be owned by NCC resulted in loss of that land. The claim that First Zion has it wrong is a bold misreading of the Adverse Possession law. If it is believed that someone is trespassing on property that you own and you fail to object, you lose ownership of that property after the passage of thirty years. The statute, N.J.S.A. 2A:14-30 provides: Per N.J.S.A. 2A:14-30, 30 years' possession of real estate, except woodlands or uncultivated tracts, and 60 years possession of woodlands or uncultivated tracts, however commenced or continued provides: Thirty year's actual possession of any real estate excepting woodlands or uncultivated tracts, and 60 year's actual possession of woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise shall, in whatever way or manner such possession might have commenced or have continued, vest a full and complete right and title in every actual possessor or occupier of such real estate, woodlands or uncultivated tracts, and shall be a good and sufficient bar to all claims that may be made or actions commenced by any person whatsoever for the recovery of any such real estate, woodlands or uncultivated tracts. N.J.S.A. 2A:14-30. New Community Corporations statement

that the lot 22 was uncultivated land is inaccurate as uncultivated land is deemed to be wilderness or woods. The open, cleared flat land that is Lot 22 could never be deemed to be a wilderness or the woods.

It is requested that the Appellate Court vacate the decision made by the Trial Court at Summary Judgment and enter a decision finding that First Zion Hope Missionary Baptist Church is the owner of Lot 22 via Adverse Possession.

CONCLUSION

For all of reasons set forth in the Appellant's Brief, this Reply Brief, case law, court rules and the Exhibits submitted in this appeal that the Appellate Court vacate the decision made by the Trial Court at Summary Judgment and enter a decision for First Zion Hope Missionary Baptist Church finding that First Zion Hope Missionary Baptist Church is the owner of Lot 22 as a result of Adverse Possession.

Luretha M. Stribling

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Attorney for First Zion Hope

Missionary Baptist Church

DATED: JULY 16, 2024