

Litigation Summary: Adverse Possession Claims

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Our [litigation](#) group regularly monitors cases happening throughout the country for precedential matters or trending topics. When a case is of particular note to our client base, we summarize the important facts of the case for them to consider when making decisions. Below is a summary of two recent adverse possession cases as detailed by our [Real Estate Litigation](#) group.

In two recent cases, the same 3-judge panel of the Massachusetts Appeals Court provided the latest words on the law of adverse possession.

The first case, *Miller, et al. v. Abramson, et al.*, involved the classic adverse possession fact pattern -- two abutting residential neighbors, fighting over a small disputed area along their common boundary line. The trial court held that Miller's acts of basic suburban landscaping (lawn mowing, tree trimming, fertilizing) over a 20-year period were sufficient to give Miller title to a slice of Abramson's land. Abramson appealed, arguing that under Massachusetts law, "this sort of yard work is simply not enough" to establish title by adverse possession. The Appeals Court disagreed and upheld.

In the second case, *Mancini v. Spagtaular, LLC*, the same 3-judge panel considered the law of adverse possession in the context of Mancini's claim that she had established title to a slice of abutting undeveloped and wooded land owned by Spagtaular. In this case, the court again considered whether establishing title by adverse possession required more than mere maintenance of a disputed area, but rather the actual active use of it for the required 20-year period. In determining that maintenance was sufficient, the court held that when it comes to claims of adverse possession, the question is not use but control, and the requisite level of control is "context-driven" and fact specific. The question is not whether the use is equally intense throughout the 20-year period, but whether the possessor has "maintained dominion and control" over the disputed area for the requisite time. While the use can vary over the period, the court must be convinced by the facts that dominion has remained constant.

The two cases together provide an excellent summary of the law of adverse possession and are a reminder that adverse possession claims are intensely fact driven and context specific.

See *Miller et al., v. Abramson, et al.*, Appeals Court No. 18-P-514 (decision dated August 29, 2019) and *Mancini v. Spagtaular, LLC*, Appeals Court No. 18-P-593 (decision dated August 29, 2019).