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Is Your Close Corporation's Real Estate Safe from Shareholder Claims of Ownership by Adverse Possession?

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In a case of first impression, the Land Court decided that shareholders of Massachusetts close corporations may acquire corporate real estate by adverse possession. In *Szawłowski v. Szawłowski Realty, Inc.*,^[1] the Court concluded that a sibling/shareholder's use of and control over a home and a portion of corporation owned land were sufficient to support a claim of adverse possession.

To establish ownership by adverse possession, a claimant must demonstrate actual, open, exclusive, and nonpermissive use of realty continuously for a period of 20 years.^[2] The court looks to the facts and circumstances of each case when deciding whether all four elements of the claim are satisfied.

Recognizing that shareholders of a close corporation owe each other a heightened duty of utmost good faith and fair dealing^[3], the *Szawłowski* Court wrote that a close corporation shareholder pursuing an adverse possession claim must provide express notice to the corporation that said shareholder is acting adversely to the interests of the corporation.^[4] If the corporation fails to challenge the notice, the shareholder may be successful in acquiring title. An unchallenged shareholder notice is evidence of nonpermissive use. A close corporation seeking to protect its real estate from shareholder claims of adverse possession must challenge such notices and demonstrate that the use is permissive.^[5]

^[1] 2024 WL 1675351 (Mass. Land Ct. Apr. 17, 2024)

^[2] *Id.* at *6 citing *Totman v. Malloy*, 431 Mass. 143, 145 (2000)

^[3] *Szawłowski* at *8 citing *Tocci v. Tocci*, 490 Mass. 1, 15 (2022)

^[4] *Id.* at *9

[5] *Id.*