

## Part 1b

I have been approached by a few people who have questioned the ability to use adverse possession as a defense against Soscia Holdings' threat to require registration of docks in light of the Lease Agreement with the Town. Two reasons are being advanced as to why an adverse possession action would be doomed due to existence of the Lease. First, that the Lease essentially makes the land Town property and you cannot obtain adverse possession against the Town and; Second, that the Lease made use of the pond by the public permissive and permissive use can never ripen into a claim for adverse possession. In my opinion neither of these reasons are valid..

### **Argument 1: The Lease essentially makes the land Town property and due to sovereign immunity you cannot obtain adverse possession against the Town.**

The key here is that the leasehold interest held by the Town and the fee simple ownership interest held by Soscia Holdings are different interests. EXAMPLE: Let's assume Person A owns 50 acres of land that they lease to the State for 100 years upon which the State builds an airport. At first the State only uses 25 acres for the airport but has exclusive right to use the entire 50 acres. Neighbor B comes along and starts occupying 5 unused acres of the land for more than 10 years. The State decides it is going to expand a runway. Neighbor B says to the State "No way are you using this 5 acres, I own it by adverse possession." This claim would be wholly ineffective against the State since the State is immune from having its interest (lease or otherwise) disturbed by a claim for adverse possession. However, this would not stop Neighbor B from suing Person A and getting a judgment saying they now owned the 5 acres. Even if Neighbor B were awarded the land, he would get it subject to the preexisting lease. Thus, Neighbor B wins against the owner, but the State's interests are completely protected.

This would also be true if there was a mortgage on the parcel being claimed. Let's say I have 20 acres that has a mortgage on it. You come along and adversely possess 2 acres. You sue me and get title to the 2 acres. That 2 acres will come subject to the

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preexisting mortgage. While you will get my interest, that doesn't mean you will get the land free and clear of any preexisting obligations. An adverse possessor cannot get more than what the titled owner had. Notice that you will not be required to pay any portion of the loan secured by the mortgage since you are not on the promissory note. But you could lose the 2 acres if I default on the note/mortgage. Adverse possession requires owners of land to know what they own and what is happening on their land. This is true regardless of the existence of any tenant on the land.

There is a second reason why this argument against adverse possession would fail. Let's assume everything I just laid out above is wrong and a claim for adverse possession could be blocked due to the sovereign immunity enjoyed by the Town. You would still (almost certainly) be able to claim adverse possession in this situation. Why? Because the immunity enjoyed by the government (State, Town, etc.) from a claim of adverse possession is enjoyed *by the government only... and can be waived*. Socia Holdings cannot assert immunity on behalf of the Town. Only the Town can raise this defense and it can waive it. It would be in the Town's best interest to waive the defense for two reasons: One, to screw Socia; but more importantly because the Town would want the abutters to have titled access to the pond to maintain and increase property values.

### **Argument 2: The Lease made use of the pond by the public permissive and permissive use can never ripen into a claim for adverse possession.**

A key component of adverse possession is that the use claimed must be "hostile". Hostility in this case means "without permission". If the titled owner of the property gives the person occupying their land permission to use the land then no claim for adverse possession can arise. Thus, those on the pond who "did the right thing" and asked permission from Quidnick Reservoir Co. to build their dock, wall or other encroaching structure have no claim for adverse possession. However, a review of D.E.M. records suggests that very few of the hundreds of structures on the pond were built "following the rules". For those of you who just did what you wanted or purchased your dock along with your house from someone else who just did what they wanted, your claim remains intact.

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The adverse possession argument requires that you can prove that you have been occupying some portion of the lake bed for more than 10 years (without permission). There is simply nothing in the Lease that addresses such a possessory use of land. The Lease specifies what uses Quidnick Reservoir Co. was allowing the Town of Coventry to obtain. The relevant portion of the Lease states as follows:

### **3. Use of the Premises.**

The Lessee shall be responsible to monitor, regulate, supervise, establish rules and regulations, police and generally control and oversee the access to and the use of the Ponds and the Open Space for the year round recreational purposes, including, without limiting the generality of the foregoing, the Lessee shall have the right to monitor and determine which recreational activities will be allowed and which recreational activities will not be allowed, provided, however, no permitted recreational use of the Ponds shall include, jeopardize or interfere with the use or operation of the Control Gates, or the Dam at Johnson's Pond; nor will any such use impede, block or interfere in any manner with the flow of water through the Control Gates.

Access to the Dam and the spillway bridge over the Dam shall be limited to the authorized personnel or agents of either Lessor or Lessee, and any other access or use shall be prohibited. Further, access to or use of the Gate Keeper's residence and surrounding yard is restricted to the Gate Keeper and the Lessor.

Lessee shall have the right to establish full uninhibited public access to the Open Space and the Ponds, provided, however, the location of any boat paths and ramps and manners of ingress and egress for the public access to the Ponds are subject to the approval of Lessor, which approval shall not be unreasonably withheld.

Lessee acknowledges and agrees that it is intended that the Open Space shall remain open and unimproved, and shall be used primarily for walking paths, hiking and nature trails.

Notice the third paragraph:

Lessee (Town) shall have the right to establish full uninhibited public access to the Open Space and the Ponds, *provided, however, the location of any boat paths and ramps and manners of ingress and egress (docks, etc.) for the public access to the Ponds are subject to the approval of Lessor . . .*

The Lease specifically does not give the Town the right to allow ramps or docks to be built, and any such structure had to be approved by Quidnick Reservoir Co. Thus, any "ramps and manners of ingress and egress" that were built without permission were hostile *per the*

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*terms of the Lease.* Just in case there is any doubt, Soscia Holdings confirms this in their lawsuit against D.E.M. in paragraph 40 of R.I. Superior Court case PC 2021-07254 (dismissed and refiled in Federal Court) and paragraph 58 of R.I. Federal Dist. Ct. case 1:22-cv-00266.

58. DEM, in 2021, departed from its past practice and failed to cite a property owner who was illegally constructing a dock on Johnson's Pond without permission from DEM, the Town of Coventry or Soscia Holdings, LLC, despite the fact that DEM does not have jurisdiction over the same.

Soscia Holdings confirms that it must give permission for the construction of any dock and that the Lease did not grant the Town any such authority under the Lease. Therefore, any dock constructed prior to, or during, the pendency of the Lease without permission, was "hostile" under the law of adverse possession.

Conclusion, I don't see the Lease with the Town of Coventry to be an impediment to a claim for adverse possession. Feel free to share this with your own lawyer.

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