

Supreme Court of the State of New York

Appellate Division, First Judicial Department

Webber, J.P., Friedman, González, Mendez, JJ.

16894 CHILDREN’S MAGICAL GARDEN, INC.,  
Plaintiff-Respondent,

Index No. 654960/19  
Case No. 2022-00396

-against-

DAVID MAROM etc., et al.,  
Defendants-Appellants.

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Goldenberg Law, P.C., New York (Andrew R. Goldenberg of counsel), for appellants.

Bleichmar Fonti & Auld LLP, New York (Benjamin F. Burry of counsel), for respondent.

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Order, Supreme Court, New York County (Andrea Masley, J.), entered December 27, 2021, which granted plaintiff’s motion for summary judgment as to liability on its cause of action for trespass, unanimously affirmed, with costs.

Since 1997, plaintiff, a not-for-profit group, has continuously operated a garden on lots 16 and 18 of property located at 157 Norfolk Street in Manhattan. In July 2013, plaintiff signed an agreement with New York City allowing it to continue operating the garden under the Department of Parks and Recreation’s GreenThumb program, and it has remained the exclusive occupant of lots 16 and 18. In 2018, defendants entered the premises, disturbed plaintiff’s equipment, and built more barricades, interfering with plaintiff’s activities and preventing it from using the property.

Plaintiff established its prima facie entitlement to summary judgment by submitting evidence showing that the City had transferred exclusive possession and use of the property to plaintiff, and that defendants intruded on the property without

plaintiff's permission (*see Schwartz v Hotel Carlyle Owners Corp.*, 132 AD3d 541, 542 [1st Dept 2015]). In opposition, defendants failed to offer facts controverting these showings, nor did they justify their encroachment on lots 16 and 18.

We reject defendant's argument that because plaintiff was a licensee and not a lessee, it did not have standing to maintain a trespass action.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 15, 2022

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas  
Clerk of the Court