

**Yvon Dumas et al.**

**v.**

**Emery W. Harper**

**LLI CV 05 5000111S**

**Superior Court of Connecticut, Litchfield**

**February 6, 2008**

Caption Date: February 6, 2008

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Gallagher, Elizabeth A., J.

Opinion Title: MEMORANDUM OF DECISION

This is an action in trespass to recover damages for the injury to the plaintiffs' realty resulting from the cutting of approximately seventy trees. The plaintiff claims that the defendant and his agents entered on plaintiffs' land without permission and cut down approximately 70 trees. The plaintiffs claim damages and treble damages pursuant to Connecticut General statutes §52-560,[1] and other equitable relief. The matter was tried to the court.

Based on the evidence, including a site inspection, the court finds that the defendant caused approximately seventy trees on the plaintiffs' property to be cut down. The result is that the area is now quite unsightly with tree stumps and branches and debris strewn about. The court is satisfied that the action taken was the result of a mistake on the part of the defendant. The issue is the measure of damages.

The plaintiffs introduced evidence of the value of the "view" to the defendant with the trees on the plaintiffs' property cut down. The value of any view to the defendant is not the measure of damages. "[T]he proper measure of damages is either the market value of the tree, once it is severed from the soil, or the diminution in the market value of the [plaintiffs'] real property caused by the cutting." *Canton Village Construction, Inc. v. Huntington*, 8 Conn.App. 144, 147, 510 A.2d 1377 (1986); *Palmeri v. Cirino*, 90 Conn.App. 841, 850, 880 A.2d 172 (2005). Our Supreme Court stated: "If the purpose of the action is only to recover the value of the trees as chattels, after severance from the soil, the rule of damages is the market value of the trees for timber or fuel. For the injury resulting to the land from the destruction of trees which, as a part of the land, have a peculiar value as shade or ornamental trees, a different rule of damages obtains, namely, the reduction in the pecuniary value of the land occasioned by the act complained of . . ." *Ventres v. Goodspeed Airport*, 275 Conn. 105, 159, 881 A.2d 937 (2005); *Stanley v. Lincoln*,

75 Conn.App. 781, 785, 818 A.2d 783 (2003).

The defendant argues that the only measure of damages the court can award pursuant to §52-560 is the market value of seventy trees as severed from the soil because the trees in question were not ornamental or shade trees. The court disagrees with this argument. Although the trees that were cut were not ornamental trees per se, the evidence is that they did have ornamental value insofar as their removal renders that portion of the plaintiffs' property extremely unsightly. The plaintiffs' property was injured as a result of the defendant's action. It would make absolutely no sense for the damages to be limited to the value of the trees as severed from the realty. The damages to be awarded to the plaintiffs are thus based on the reduction in the pecuniary value of the land occasioned by the defendant's action. In *Martel v. Powadiuk*, No. CV06-5001190 (Mar. 8, 2007), 2007 Ct.Sup. 9712 No. CV06-5001190 Connecticut Superior Court Judicial District of Middlesex at Middletown, Judge McWeeny found that "[t]he diminution in value of plaintiff's property was based on the costs of removing the severed trees, grinding and removing the stumps, and replacing the trees[, and that] the diminution is fairly ascertained by the cost of clearing up the property and in screening the area with new trees." The court finds that this case, like *Martel*, involves a diminution in value to the plaintiffs' property which may be measured by the cost of clean-up and screening the area with new trees.

Both experts testified to the costs of clean-up. Frederick R. Micha, a professional tree and landscape consultant, testified that he counted 69 stumps. He stated that the clean-up costs would involve cutting the stumps as low as possible to the ground. He opined that the work would take a week to a week and a half. He estimated the cost to be \$9,180. Mel Harter, a licensed forester, estimated the clean-up costs at \$1,000.00. His costs would not include doing anything with the stumps. He stated that he looked at the clean-up as a logging job. Based on the court's site inspection, the court finds that the more credible evidence supports Mr. Micha's estimate. Mr. Micha also testified that the area could be screened with twenty trees at the cost of \$300 each for a total of \$6,000.

The court finds that the diminution in plaintiffs' property value caused by defendant's trespass and cutting of sixty-nine or seventy of the plaintiffs' trees is fairly ascertained by the cost of clearing up the property and in screening the area with twenty new trees. Accordingly, judgment enters for the plaintiffs against the defendant in the amount of \$16,180.00.

BY THE COURT,

Gallagher, J.

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Footnotes:

[1]. Sec. 52-560. Damages for cutting trees, timber or shrubbery. Exclusion.

Any person who cuts, destroys or carries away any trees, timber or shrubbery, standing or lying on the land of another or on public land, except on land subject to the provisions of section 52-560a, without license of the owner, and any person who aids therein, shall pay to the party injured five times the reasonable value of any tree intended for sale or use as a Christmas tree and three times the reasonable value of any other tree, timber or shrubbery; but, when the court is satisfied that the defendant was guilty through mistake and believed that the tree, timber or shrubbery was growing on his land, or on the land of the person for whom he cut the tree, timber or shrubbery, it shall render judgment for no more than its reasonable value.