

CUDA Associates, LLC

v.

Terrence Manning et ux.

CV06-5002427S

Superior Court of Connecticut, Waterbury

January 8, 2008

Caption Date: January 8, 2008

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Roche, Vincent E., J.

Opinion Title: MEMORANDUM OF DECISION

HISTORY

The plaintiff, CUDA Associates, LLC (hereinafter CUDA), is a domestic limited liability company which seeks legal and equitable relief in a hearing in damages against the named defendants, Terrence and Dana Manning, involving certain property in Middlebury, Connecticut off White Avenue. The plaintiff, CUDA acquired the subject property in April of 2003 and transferred it in August of 2007. CUDA has proceeded on an amended complaint consisting of four counts sounding in trespass, unlawful cutting of trees in violation of Connecticut General Statutes §52-560, negligent destruction of trees and unjust enrichment. The plaintiffs were defaulted in September 2006 for failure to disclose a defense and in October 2006 for failure to plead. The matter was then claimed to the hearing in damages list and heard on November 30, 2007 and subsequent dates.

ISSUES

1. Whether the plaintiff has met its burden of proof for damages from trespass to property and damages to trees and/or vegetation caused by the defendants' actions on said property?

2. Whether any equitable principles are applicable in determining the correct measure of damages?

DISCUSSION

The subject property that the plaintiff claims was trespassed upon consisted of an area of approximately 30 feet by 100 feet, i.e. 3,000 square feet. The defendants allegedly cleared trees, removed underbrush and in effect extended the back boundary of their property line by approximately the said 30-foot dimension along the easterly line of their backyard for 100 feet. The Court inspected the subject premises and the general area at the request of counsel and in the company of counsel and observed that the subject area and all of the surrounding

land owned by CUDA or its successor was in an undeveloped state. The defendants' residence was located in a developed residential area with housing on both sides of White Avenue, and abutting the plaintiff's property to the east and south. The subject property, as well as the general area owned by the plaintiff, appear to be moderately treed with undergrowth. There were some indications that a portion of the area had been a dumping area for various types of debris over a long period of time. A partially used pathway ran adjacent to the subject area and along the backyard of the defendants' residence.

The Court finds that the use made by the defendants and their family members of the subject area consisted of a park bench, a baseball practice apparatus and the cutting of certain trees and undergrowth which the Court finds as a non-permanent intrusion into the plaintiff's property that was terminated as soon as the defendants were put on notice by a certain letter dated June 27, 2006 from plaintiff's counsel. (Defendant's Exhibit 2.) The defendants' reaction to the said letter indicated to the Court and the Court so finds that the defendants were operating under a mistaken belief that the property that they had encroached upon was theirs and approximately matched the back property line of their adjoining neighbor. This mistaken belief led them to do certain clearing and cutting of trees and underbrush and to use the property for their personal benefit.

The Court finds under Count Two that the defendants did trespass upon a portion of the plaintiff's property for their own use and benefit, but any loss of use for the plaintiff was not measurable. The Court finds that such trespass was negligent and not intentional and, therefore, only minimal damages can be awarded. *Robert v. Scarlata*, 96 Conn.App. 19, 74 (2006).[1]

As to the Count Three, involving the cutting of trees, timber or shrubbery in violation of Connecticut General Statutes §52-560, the Court finds that the credible and competent evidence indicates that cutting of certain trees and other undergrowth occurred on the plaintiff's property. The Court further finds that under the statutory construct, the plaintiff has failed to establish the quantity or the value of any of the trees, shrubbery or undergrowth that may have been removed. In fact, the cutting may have actually improved the overall site appearance for the benefit of the plaintiff. Therefore, nothing more than reasonable and ascertainable value under the statute can be awarded. *Palmieri v. Cirino*, 90 Conn.App. 841, 849 (2005).

As to the next Count [Count Four], the Court finds that there was negligent cutting and destruction of certain trees by the defendant, but the value of such trees has not been established by any credible or competent evidence and that the measure of damages will be, as in the prior count, the reasonable value and not any diminution in

value of the real estate or the replacement cost of any such non-ascertainable trees and shrubbery or undergrowth. Since Counts Three and Four overlap in their measure of damages, only one award will be made for both Counts.

In the remaining Count [Count Five] sounding in unjust enrichment, the Court finds that the non-permanent intrusion by the defendants into the plaintiff's property was of an unintentional nature and, therefore, any benefit derived therefrom by the defendants was coincidental to the use of their own backyard property, and was of a de minimis nature and, therefore, only minimal damages can be awarded.

The equities in this claim clearly rest with the defendants, and as such must be balanced with the nominal losses that the plaintiff has suffered. There was no credible evidence as to the diminution in the aesthetics and/or the potential value of any shade trees or buffer that may have been part of the plaintiff's general plan of development for this part of their property. Nevertheless, plaintiff is entitled to some measure of damages from the defendants for this non-permissive use of land. *Ramondetta v. Amenta*, 97 Conn.App. 151, 166 (2006).

CONCLUSION

Therefore, on Count Two of the amended complaint, the Court hereby awards the plaintiff CUDA for the common-law trespass, the amount of \$400 for such trespass. On Counts Three and Four for the statutory violation (Connecticut General Statutes §52-560) and the negligent tree cutting respectively, the Court awards the plaintiff the reasonable value of \$600. On Count Five, for unjust enrichment, the Court finds in favor of the plaintiff in the amount of \$500. The net effective judgment for the plaintiff is found to be in the amount of \$1,500 plus costs which are not to exceed \$300.

ROCHE, J.

Footnotes:

[1]. The first count having been withdrawn by way of settlement.