DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CIVIL PART 1

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JAY LEISER and GLORIA LEISER,

Plaintiffs,

Index No. SC - 1370/11

-against-

PRESENT:
Hon. Terence P. Murphy

JEFFREY A. LANKA and MARIA PIA LANKA,

Decision and Order

Defendants.

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DECISION AFTER TRIAL

This is a small claims case brought by Plaintiffs, next door neighbors to the Defendants, for damages resulting from the Defendants "overgrown and unmaintained" trees blowing leaves and twigs onto their property requiring them to powerwash their driveway and have a handyman clean out the house gutters. Plaintiffs also sue on an alleged verbal agreement between the parties requiring the Defendants to pay for the trimming of trees and shrubs overhanging their property.

At trial, each of the parties had the opportunity to testify and tell their version of what transpired between the parties.

As to the alleged verbal agreement, the parties unequivocally assert different positions regarding whether any verbal agreement was made. Plaintiffs offer no extrinsic evidence of such an agreement and could not testify as to the when and where of the agreement being made. Inasmuch as the Court merely has two divergent claims, and nothing else, the Court finds that the Plaintiffs did not prove their case regarding such an agreement. Therefore, the Plaintiff's claim for $500.00 for "cutback to property line southwest tree" is DISMISSED.

Turning to the Plaintiffs' claims for damages, the Court references a case from over a quarter century ago dealing with the same issues as this Court now deals with. In *Turner v. Coppola, et.al.*, 102 Misc.2d 1043 (Sup Ct. Nassau Cty, 1980), where Justice Pantano noted that "a 'private nuisance' is interference with the use and enjoyment of land amounting to an injury in relation to a right of ownership in the land." Further the fact that branches overhung a neighbor's property and twigs, branches, and buds fell on such property, did not create a "nuisance per se" when there was no proof that the trees in question were poisonous or noxious (Id.). Where the Plaintiff cannot show real, sensible damage there is no right to recovery (Id.). Trees that are not decayed or somehow

dangerously unsound are not nuisances (Id.) Justice Pantano stated that any "right to recovery from overhanging branches depends on presence of actual injury to the . . . plaintiff's property." In measuring damage as to whether it is real and substantial, the Court looks to the "offensiveness, inconvenience or annoyance to the normal person in the community where the customs of the community are to be taken into account (citations omitted)" (Id.).

In the case at bar, there was no proof submitted that the Defendant's trees were in anyway decayed or unsound. The one instance of a tree on Defendant's property losing a branch was easily explained as the result of the hurricane winds of Irene a few weeks earlier. It appears that the falling leaves and twigs were the result of the natural cycle of a tree's life wherein some branches die off and leaves sprout in the spring and drop in the fall.

Therefore, the Plaintiffs' cannot recover for the "damage" to their property of falling twigs and leaves from the Defendant's trees. This follows the ruling in *Bruce v. Dasque*, 2002 NY Slip Op. 50585(U) (App. Term, 2nd and 11th Dt, 2002), where the Court in affirming the small claims court's decision dismissing the complaint, held, "[i]nasmuch as plaintiff failed to proffer evidence that the tree was defective and that defendant had actual or constructive notice of its condition, defendant cannot be held liable for any damages [from falling leaves and tree branches] allegedly caused by same (citations omitted)."

Accordingly, the Plaintiffs' complaint is dismissed. Judgment for the Defendant.

The foregoing constitutes the decision and judgment of the Court.

Terence P. Murphy
District Court Judge

Dated: October 25, 2011

cc: Jay and Gloria Leiser, pro se Plaintiffs
Jeffrey and Maria Pia Lanka, pro se Defendants