

Young v Outside Space NYC, LLC
2020 NY Slip Op 34383(U)
December 22, 2020
Supreme Court, Kings County
Docket Number: 3726/2016
Judge: Lara J. Genovesi
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 22nd day of December 2020.

PRESENT:

HON. LARA J. GENOVESI,
J.S.C.

-----X
TERRY L. YOUNG,

Plaintiff,

-against-

Index No.: 3726/2016

AMENDED¹
DECISION & ORDER

OUTSIDE SPACE NYC, LLC, ARNOLDO'S GARDENING, INC., A/K/A ARNOLDO'S TREE SERVICE & LANDSCAPING, RORY O'FLAHERTY, ELIZABETH O'FLAHERTY and FREDRIK WIDE,

Defendants.
-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

NYSCEF Doc. No.:

23-38

43-46

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¹ Pursuant to a separate short form order deciding motion sequence five, amendments were made, on consent of defendant Arnoldo's Tree Service & Landscaping.

004

Defendant, Fredrik Wide, moves by notice of motion, sequence number four for summary judgment, dismissing the complaint and all cross claims against him. Plaintiff, Terry L. Young, opposes this application. 004

Plaintiff commenced the instant action for property damage and trespass as against Wide based on (1) a tree branch from the adjacent property, owned by Wide, falling onto the rear portion of the roof of plaintiff's property; (2) the unpermitted removal of an apple and a fig tree from plaintiff's property; and (3) the erection of a fence which purportedly encroaches on plaintiff's property. Plaintiff owns the premises located at 43 Chauncy Street, Brooklyn, New York. The neighboring property, 45 Chauncy Street, was purchased and "flipped" by defendant Wide and was subsequently sold to defendants Rory and Elizabeth O'Flaherty.

Here, defendant Wide established entitlement to summary judgment as a matter of law. Defendants provided copies of the deeds filed with the Office of the New York Register of the City of New York which establish that Wide purchased the property on April 10, 2014 and sold the property to co-defendants Rory and Elizabeth O'Flaherty on May 13, 2015 (*see* Motion, Exhibits 6 and 7). Defendant further provided Google Street View photographs which demonstrate that there was no branch on the rear portion of plaintiff's roof in May 2012, however a branch is visible in the October 2013 photograph and the September 2014 photograph (*see id.* at Exhibit 9). These photographs also show a large branch, still on the tree, is visible in the May 2012 image, but is no longer visible in the October 2013 image (*see* Affidavit of Fredrik Wide at ¶ 16). There is a rebuttable

presumption that Google Map photographs are a fair and accurate depiction of locations (*see* CPLR 4511; *see also* Chapter 516 of the Laws of 2018).

In his affidavit, Wide stated that the branch had already fallen onto plaintiff's roof at the time he purchased the property in April 2014 (*see id.* at ¶ 14). Wide further established that the O'Flahertys, the subsequent owners, hired Arnoldo to remove trees. The O'Flahertys also hired Outside Space who erected the fence (*see id.*, Exhibit 10, Discovery Response, Outside Space work order; *see also* Exhibit 11, Notice to Admit).

In opposition, plaintiff failed to raise a triable issue of fact. Plaintiff failed to rebut the presumption that the Google photographs are fair and accurate depictions of the location. Plaintiff identified his property in each of these Google photographs during his deposition (*see* Motion, Exhibit 4 at p 7). Although plaintiff contends that the google photographs do not accurately depict that one particular branch fell onto his roof because they were taken from differing angles, plaintiff fails to provide evidence to support his position. The branch in the Google photographs appears to have a "Y" shape, much like the photograph that plaintiff presents. Furthermore, plaintiff testified that although branches and leaves often fell into the back yard of his property, a branch only fell on his roof one time (*see id.*, Exhibit 3 at p 231). Plaintiff further failed to address defendants' showing that he did not own the property until April 2014. These google photographs show the branch on plaintiff's roof as early as October 2013, approximately six months before defendant Wide purchased the neighboring property.

Plaintiff's opposition is also silent as to Wide's proof that the O'Flahertys hired Arnoldo, who cut trees down and Outside Space, who installed the fence. Plaintiff's contention that discovery is incomplete, as Wide has not been deposed is insufficient. Wide provided an affidavit, sworn to on June 11, 2019. Plaintiff did not establish that the motion is premature since he failed to offer an evidentiary basis to suggest that the deposition may lead to relevant evidence (*see Rodriguez-Garcia v. Bobby's Bus Co., Inc.*, 104 N.Y.S.3d 904 [2 Dept., 2019]).

Accordingly, defendant Wide's motion for summary judgment is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



Hon. Lara J. Genovesi
J.S.C.

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