

**Darrell MARTEL**

v.

**Bruno POWADIUK.**

**No. CV065001190.**

**Superior Court of Connecticut, Judicial  
District of Middlesex.**

**March 8, 2007**

Jezek Scott W. Law Office, Moodus, for  
Darrell Martel.

Gasser & Huget LLC, Avon, for Bruno  
Powadiuk.

ROBERT F. McWEENY, J.

This case concerns the actions of the defendant in trespassing on plaintiff's property and cutting down approximately ten oak trees. The parties are adjacent property owners in East Haddam, Connecticut. The plaintiff owns approximately 2 1/2 acres and the defendant, 13 1/2 acres of property in a rural residential area.

The undisputed facts are that the defendant was in the process of clearing some of his property when he crossed the boundary line onto plaintiff's property and continued cutting trees which turned out to be the property of the plaintiff. The plaintiff notified the defendant that the trees were probably on his property and the defendant ceased the clearing work. The plaintiff subsequently had a survey accomplished and the boundary line marked. The boundary staking revealed that ten of the cut trees were on the plaintiff's property. The defendant had cut down approximately thirty trees on his own property.

The plaintiff brings this complaint on three counts. The first count lies in trespass. The second count alleges a violation of Conn. Gen.Stat. § 52-560, which is a damage statute

relating to the cutting of trees or shrubbery. The third count alleges that the defendant was negligent in entering the property of the plaintiff.

The defendant does not dispute that he entered the property of the plaintiff and cut down the ten trees. The defendant contends that the boundary demarcation between the properties was unclear and he cut down the trees with the belief that they were on his own property. The plaintiff contends the defendant should have ascertained the boundary and acted recklessly. The plaintiff also eludes to some prior disagreement with the defendant.

At the trial before the court, the plaintiff and defendant both testified. The court finds that the defendant acted through a mistake as to the actual boundary line and cut the trees believing that they were on his land. Accordingly, the court will not award the plaintiff treble damages pursuant to Conn. Gen.Stat. § 52-560.

The measure of damages for the cutting of trees is either the market value of the trees or the diminution in the market value of the real property caused by the cutting. *Stanley v. Lincoln*, 75 Conn.App. 781, 787 (2003).

At the trial, a realtor testified as to the diminution of the market value of plaintiff's property through the loss of the trees. The 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. The defendant argues that the replacement of the trees is not a proper element of the damages. However, the diminution in the value of the property may, as in this case, be measured by the cost of replacing the trees to remedy the problem.

The court finds that the diminution in plaintiff's property value caused by defendant's trespass and cutting of ten of the plaintiff's trees is in the amount of \$8, 000. In this case,

the diminution is fairly ascertained by the cost of clearing up the property and in screening the area with new trees.

Judgment enters for the plaintiff against the defendant in the amount of \$8, 000.