Vermont Superior Court
Filed 08/17/23
Orleans Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 161-7-17 Oscv

Snelgrove vs. Leblanc

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 15)
Filer: Christopher D. Roy
Filed Date: May 30, 2023

The motion is GRANTED.

The present matter is the latest installment in a two-decade long dispute that has spanned at least six different dockets in the civil, environmental, and criminal divisions. A good recitation of the history of this dispute may be found in both *LeBlanc v. Snelgrove*, 2015 VT 112, and the Federal District Court Magistrate's Report and Recommendation in *Snelgrove v. LeBlanc*, Case. No. 5:20-v-148 (D.Vt. Nov. 5, 2020) (Conroy, J.), which was accepted and adopted as an order by the Vermont District Court on December 23, 2023.

Plaintiff[1] has filed a motion for summary judgment seeking judgment on its claims and an order that it may apply the $107,000 that Plaintiff currently holds in escrow to the damages.

Factual Background

Since 1976, Plaintiff Robert Snelgrove has owned a lakefront property located at 5706 Lake Road in Newport, Vermont. This land is adjacent to, and sits to the north of, land that in 2006 was owned by the LeBlanc siblings, where their father Herman LeBlanc lived. Snelgrove's property had a boathouse, whose southerly wall ran along the common boundary with the LeBlanc property.

[1] The original plaintiff in this matter, Robert Snelgrove, passed away on June 10, 2021. His Estate has been substituted as a party and stands in his stead as Plaintiff in this matter. *Entry Order*, *Snelgrove v. LeBlanc*, Dockt. No. 161-7-17 Oscv (Jan. 27, 2023) (Richardson, J.) (granting Plaintiff's Rule 25 motion to substitute parties following Mr. Snelgrove's passing).

In 2006, Snelgrove tore down the old boathouse and began building a new boathouse that was larger than the old boathouse but was also located a bit further to the north and east of the old boathouse site. Construction of this boathouse set off substantial litigation with the LeBlanc siblings challenging the zoning permits and filing suits challenging the boundaries between the two parcels in regard to both the boathouse as well as new retaining walls along a stream bed that previously laid under the old boathouse.

Around this same time, Herman LeBlanc began to engage in self-help. The first incident occurred shortly after construction on the boathouse was completed. At that time, Mr. LeBlanc dumped a load of large stones into the lake in front of the boathouse, rendering it unusable. This led to a civil action to seek removal of the rocks and damages for the harm caused. *Snelgrove v. LeBlanc*, Dckt. No. 338-12-07 Oscv.

This followed in succession with several other efforts by Herman LeBlanc to physically tear down portions of the boathouse. Several of these efforts led to criminal charges by the Orleans County State's Attorney's Office. See *State v. LeBlanc*, 64-2-09 Oscr; and 78-2-13 Oscr;.

In 2014, the issue of boundaries in *LeBlanc v. Snelgrove*, Dockt No. 339-12-08 Oscv came for trial. In its *Findings of Fact and Conclusions of Law*, the trial court found that the boathouse was entirely on Snelgrove's property. The Court also found that a portion of the retaining walls along the stream, which were constructed in 2006 simultaneous to the boathouse, encroached onto the LeBlanc property. Both the boathouse and the retaining walls are shown on a survey that the Court appended to its decision. On appeal, neither party challenged these boundary findings and conclusions, and the Vermont Supreme Court finalized the determinations. 2015 VT 112, ¶ 65 ("In sum, [] the trial court's declaration of the boundary between the parties' properties is unappealed and stands . . . .").

During this dispute, Snelgrove had gained a one-quarter-interest in the LeBlanc property. In 2015, Snelgrove filed a partition action against the LeBlanc owners. During the pendency of that case, Snelgrove negotiated for two more shares of the property and ended up with three-quarters of the ownership interest in the LeBlanc parcel. The remaining 25% interest was held by David LeBlanc who transferred it back to his father, Herman LeBlanc.

On June 6, 2017, Herman LeBlanc was arrested for destroying substantial parts of Snelgrove's boathouse. This damage included tearing off large sections of the roof and walls of the boathouse. Herman LeBlanc has never denied his responsibility for these actions, and he has not alleged that Snelgrove gave him permission to tear the boathouse building apart. Instead, Herman LeBlanc has justified his actions as a form of self-help based on two entirely subjective beliefs. First, he has stated that, despite Court rulings to the contrary, portions of the boathouse sit on the LeBlanc property, and that he was authorized under the law to remove these sections. Second, Mr. LeBlanc has stated that because the new boathouse was erected in violation of zoning requirements, that he was entitled to tear it down. Mr. LeBlanc espoused this second idea at the Writ of Attachment Hearing that the Court conducted in this matter on September 15, 2017.

The present lawsuit followed. In his complaint, Plaintiff seeks damages related to the destruction of the boathouse under the theory of trespass and unlawful mischief (12 V.S.A. § 3701(f)). Plaintiff also sought a writ of attachment against Mr. LeBlanc. Following the hearing on this motion, the Court issued an Order of Approval and Writ of Attachment on October 31, 2017 in the amount of $107,000 for the replacement cost of the damage that Mr. LeBlanc caused to the boathouse.

In February 2018, the Court issued a decision in the partition action ordering Mr. LeBlanc to convey his remaining 25% interest in the LeBlanc property to Mr. Snelgrove. The value of this interest was determined to be $107,000, which instead of going to Mr. LeBlanc went into an escrow account held by Mr. Snelgrove's attorney, pursuant to the writ of attachment. The Vermont Supreme Court affirmed this decision in an unpublished entry order. *Snelgrove v. LeBlanc*, No. 2018-104 (Vt. Nov. 21, 2018) (unpub. mem.). Mr. LeBlanc refused to sign over his interest in the property, and the Court issued an order conveying those interests to Mr. Snelgrove on May 13, 2019.

In August 2020, the criminal charges related to this matter were dismissed. In September 2020, shortly before a pre-trial hearing, Mr. LeBlanc filed to remove this matter to federal court. It was remanded back to this Court in December 2020.

In the meantime, Plaintiff has repaired and re-built the boathouse at an actual out-of-pocket cost of $145,885. The $107, 000 remains in escrow held by Plaintiff's attorney.

Legal Analysis

Summary judgment is appropriate if the evidence in the record, found in the statements required by V.R.C.P. 56(c)(2), shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. V.R.C.P. 56(c)(3); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994). The Court derives the undisputed facts from the parties' statements of fact submitted under V.R.C.P. 56(c)(2), and the supporting documents. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 29. A party opposing summary judgment may not simply rely on allegations in the pleadings to establish a genuine issue of material fact, but it must produce evidence or affidavits to support the opposition. *Murray v. White*, 155 Vt. 621, 628 (1991).[2]

The legal analysis in this case is relatively straightforward. The evidence shows that Mr. LeBlanc came onto the Snelgrove property and proceeded to remove large chunks of the boathouse structure, rendering the structure unsafe and completely and functionally unusable. These actions were committed as part of an on-going dispute and an on-going series of self-help efforts by Mr. LeBlanc to thwart Mr. Snelgrove and remove a structure to which Mr. LeBlanc objected. The criminal charges and civil damages involved here are not the first that Mr. LeBlanc has faced for his repeated efforts to erase the boathouse structure.

Under Vermont law, it is well-established that "[a] person who intentionally enters or remains upon land in the possession of another without a privilege to do so is subject to liability for trespass." *Harris v. Carbonneau*, 165 Vt. 433, 437 (1996). "The remedy for trespass may include either nominal damages, compensatory damages, or a permanent injunction if 'damages are inadequate to address the wrong.'" *Jones v. Hart*, 2021 VT 61, ¶ 59, 215 Vt. 258 (quoting *Evans v. Cote*, 2014 VT 104, ¶ 8, 197 Vt. 523).

Based on the evidence, the Court concludes that Mr. LeBlanc entered the lands of Snelgrove and caused substantial damage. The evidence shows that this damage exceeded $107,000 as the actual out-of-pocket replacement and repair costs exceeded this amount by $39,000, but Plaintiff has also notified the Court and parties that it does not seek these additional damages but is not pursuing them in this motion, which if granted, would effectively waive them.

[2] Defendant LeBlance has not filed an opposition or reply to the present motion for summary judgment.

While Mr. LeBlanc does not offer any denial of his actions, he has offered the defense of self-help.[3] In Vermont, the right to self-help concerning encroachments is strictly limited to one's own property. "The right to self-help" where it exists "extends only to the property line." *Alvarez v. Katz*, 2015 VT 86, ¶ 15. The landowner subject to a particular encroachment "may not cross the property line" in the process of performing self-help. Id. While *Alvearez* does not address this issue, courts that have reviewed this common law right of self-help have also imposed the condition that an individual engaged in self-help act with "reasonable care." *Brewer v. Dick Lavy Farms, LLC*, 67 N.E.3d 196, 201 (Ohio App. 2016) (quoting *Newport Harbor Ass'n v. DiCello*, 2006 WL 2507565, at *5 (Ohio App. 2006)).

In this case, the facts establish that Defendant LeBlanc had no reasonable claim to any right of self-help. Prior to his June 6, 2017 actions, Mr. LeBlanc had acknowledged that the boathouse sat entirely on Mr. Snelgrove's property. There was no encroachment with this structure, and therefore, no right to do anything. Even if there was, the evidence shows that the actions were not reasonable but irrational and designed to render the structure unusable. This is a part of a larger pattern of behavior where Mr. LeBlanc has chosen large and outrageous actions as vehicles for his objections to Mr. Snelgrove and to the structure. Based on this, the Court concludes there is no factual or legal foundation for a defense of self-help in this case, and the defense lacks any basis to qualify or limit or overcome a judgment for Plaintiff.

In the alternative, Mr. LeBlanc has sought to justify his actions as part of a process to rectify an allegedly illegal or unpermitted structure. This position is also without support. Factually, the structure was not an illegal structure or unpermitted. There is some evidence that portions of the structure exceeded certain height limitations, but these violations do not render the structure illegal or fatally flawed. The record indicates that Mr. Snelgrove and the Town had agreed to wait on making a remediation plan or acting on such, until the various civil cases involving boundaries and ownership were resolved.

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[3] At the September 2017 writ of attachment hearing, Mr. LeBlanc did not deny his efforts to deconstruct the boathouse, but he took issue with the semantics of calling the structure a boathouse. This is a distinction without a difference as it does not alter the fact that Mr. LeBlanc went onto another's property and did significant damage to the Snelgrove's property.

Turning to the legal analysis for this position, the law governing municipal zoning enforcement actions has no self-help provisions. The sole right an interested party has in a zoning disputed is to petition for enforcement when such a violation comes to light. Even this right is limited. While private parties who qualify as interested persons may petition for enforcement of "all decisions" concerning municipal land use under 24 V.S.A. § 4470(b), such parties have no enforcement standing under 24 V.S.A. § 4448(a) for actions involving alleged zoning bylaw violations or actions that do not violate the express term of a permit. *Sullivan v. Lakeview Inn Enterprises, LLC*, Dckt. No. 125-7-09 Vtec (Aug. 2, 2010) (Durkin, J.).

In this case, Mr. LeBlanc's issue is that the use of the boathouse was not as a boathouse, which in his mind rendered it illegal, but Mr. LeBlanc had no standing to enforce the Town's bylaws, and any activity to that extent would not have been allowed in court through petition, let alone as a basis for self-help. But again, the law of zoning does not have a self-help provision, which means he cannot use any zoning issue as a justification for his actions.

The Court understand the reasons for these limitations in zoning law to be entirely confirmed by this case. If a party violates a zoning permit condition or a zoning bylaw, it is ultimately the role of the municipality to interpret and enforce its bylaws. The municipality is the position to seek the proper and proportionate solution to an enforcement issue. Self-help in this area invites disproportionate responses, takes the role of regulator out of the municipality's hands, and introduces an element of physical danger and conflict into what should be a safe, predictable, and non-adversarial process. While parties have a limited private right to seek relief and enforcement of specific conditions, this statutory process, again, still has to go through the Environmental Division and obtain approval and authority from the Court.

Nothing of the sort occurred here, and Mr. LeBlanc's actions were not justified by any legal authority or factual basis.[4]

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[4] Some of Mr. LeBlanc's frustration appears to have arisen over the Town's decision not to seek immediate enforcement to have Mr. Snelgrove modify his non-conforming new boathouse that the Town and the Environmental Court had determined was too tall. But the Town's choice was rooted in a precise balancing of rights, resources, and common sense that might be difficult for a partisan to appreciate. While this can make zoning enforcement a frustrating process, it is also an important protection against impetuous decisions and ill-conceived action.

For these reasons, the Court finds no legal or factual basis to Mr. LeBlanc's defenses, which have been raised in this matter.

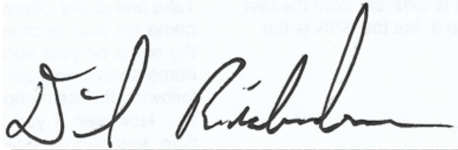
Without a valid defense or basis for his actions, Defendant LeBlanc is liable for the damages to the structure that he did on June 6, 2017. Plaintiff is entitled to judgment on these claims and to receive its requested damages as a matter of law.

ORDER

Based on the foregoing, it is ORDERED and ADJUDGED that Plaintiffs Estate of Robert Snelgrove shall have judgment for its claims of trespass and unlawful mischief claims against Defendant Herman LeBlanc. The Court further, and in consequence of this judgment, awards the $107,000 held in escrow under the writ of attachment to Plaintiff. Counsel may distribute these funds upon entry of final judgment. This decision also resolves all outstanding issues remaining in this case. Plaintiff shall prepare a final judgment, which the Court shall review and adopt.

So Ordered.

Electronically signed on 8/11/2023 3:16 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge