

VERMONT SUPERIOR COURT  
Orleans Unit  
247 Main Street  
Newport VT 05855  
802-334-3305  
www.vermontjudiciary.org



CIVIL DIVISION  
Case No. 25-CV-00465

**5862 Lake Rd. LLC v. Kenneth Mallory et al**

**ENTRY REGARDING MOTION**

Title: Motion to Dismiss Counts I and II of Complaint (Motion: 2)  
Filer: Susan J. Flynn  
Filed Date: August 06, 2025

In this case, plaintiff 5862 Lake Rd. LLC owns property in Newport that abuts the property of defendant Kenneth Mallory. Plaintiff alleges that on or about July 3, 2023, Kenneth directed defendant Chad Dupuis to cut down trees on plaintiff's property, and that Chad, acting as Kenneth's agent and pursuant to Kenneth's direction, cut down at least 65 trees on plaintiff's property. Plaintiff also alleges that defendants, either in concert or at Kenneth's direction, damaged or removed monuments designating the boundary line between plaintiff's and Kenneth's properties. Plaintiff has pled claims against both defendants for timber trespass in violation of 13 V.S.A. § 3606, removing or destroying monuments in violation of 13 V.S.A. § 3834, conversion, and damage to property. Kenneth now moves to dismiss the timber trespass and destroying monument claims on the grounds that plaintiff has not alleged that Kenneth personally removed any trees or destroyed any monuments. For the reasons that follow, the motion is granted with respect to the timber trespass claim and denied with respect to the boundary monument claim.

**Analysis**

A claim should be dismissed under Rule 12(b)(6) "only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Birchwood Land Co. v. Krizan*, 2015 VT 37, ¶ 6, 198 Vt. 420 (quotation omitted). In considering a motion to dismiss, the court construes alleged facts and draws all reasonable inferences from those alleged facts in favor of the non-moving party. *Id.* Ultimately, the court must determine "whether the bare allegations of the complaint are sufficient to state a claim." *Id.*

**1. Timber Trespass**

Vermont's timber trespass statute, in relevant part, provides that "if a person cuts down" another's timber without permission, the injured party "may recover of such person" treble damages by filing an action under the statute. 13 V.S.A. § 3606(a), (b).

As currently enacted, the statute does not provide for liability against a landowner who did not personally perform the logging activities that resulted in the timber trespass.

Before 2010, “an injured party could not recover damages for timber trespass from a landowner at all unless the landowner was the person who cut the trees.” *Epsom v. Crandall*, 2019 VT 74, ¶ 30, 211 Vt. 94. *Compare Lavalette v. Noyes*, 124 Vt. 353, 355-56 (extending liability to defendant as participant in “joint logging operation” as a “principal” trespasser where evidence showed that, although he did not personally fell plaintiff’s trees, he “was present when the plaintiffs’ boundary was pointed out on the ground,” “assisted with cutting when there was a shortage of logs,” and “was compensated from the logs that were cut, including the timber that was harvested on the lands of the plaintiffs”) *with Masters v. Stone*, 134 Vt. 529, 531 (1976) (“The sale of cutting rights only to timber on [landowner’s] property does not operate to make her a principal trespasser on another’s land because the ‘independent contractor’ operator cut over the line.”).

The statute was amended in 2010, however, to provide a “cause of action for damages” against a landowner based on “the failure of the landowner or the landowner’s agent to mark the harvest unit properly” if that failure resulted in a timber trespass. *See* 2009, No. 147 § 5 (Adj. Sess.). Following this amendment, an injured party could maintain a cause of action against a landowner who failed to properly mark the timber harvest, but only for single damages (not treble damages). *Epsom*, 2019 VT 74, ¶¶ 30-33. But the Legislature removed this cause of action from the statute in 2016. *See* 2015, No. 106 § 1 (Adj. Sess.). Accordingly, as was the case before 2010, “a homeowner who ha[s] authorized logging on her property without ensuring that the loggers knew the boundaries of the property [can] not be held liable under this statute when the loggers cut over her property line.” *See Tumel v. Richardson Assocs., Inc.*, No. 2002-229, 2003 WL 25745979, at \*2 (Vt. Apr. 2003) (unpub. three-justice entry order) (citing *Masters*, 134 Vt. 529).

Because plaintiff has not alleged that Kenneth personally cut down plaintiff’s trees, the timber trespass claim against Kenneth fails as a matter of law.

## **2. Destroying or Removing Monuments**

Section 3834 of Title 13 creates civil liability for “[a] person who knowingly removes or alters monuments marking the boundary of lands or knowingly defaces, alters, or removes marks upon any tree, post, or stake that is a monument designating a point, course, or line in the boundary of a parcel of land.” 13 V.S.A. § 3834.

Kenneth argues that this claim should be dismissed because there is no allegation that he removed or altered any monument or boundary marker. But the amended complaint alleges that “Defendants, *either in concert*, or on direction of [Kenneth]” damaged or destroyed the boundary markers. Am. Compl. ¶6 (emphasis added). Liberally construed, the complaint thus alleges that Kenneth himself participated in the removal or destruction of boundary markers and therefore states a claim for relief under 13 V.S.A. § 3834.

## Order

The motion to dismiss is GRANTED IN PART AND DENIED IN PART. The motion is granted with respect to plaintiff's claim for timber trespass against defendant Kenneth Mallory. The motion is denied with respect to plaintiff's claim for unlawful removal of boundary markers against defendant Kenneth Mallory.

Electronically signed on: 1/30/2026 pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "B. D. Battles", written over a horizontal line.

Benjamin D. Battles  
Superior Court Judge