Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-229

APRIL TERM, 2003

Paul and James Tumel v. Richardson Associates, Inc., Marthanne Carver and Dana Stockman	}	APPEALED FROM: Orange Superior Court DOCKET No. 154-8-99 Oecv Trial Judge: John P. Meaker

In the above-entitled cause, the Clerk will enter:

Plaintiffs Paul and James Tumel appeal pro se from the judgment in this trespass action. Plaintiffs contend that the trial court erred in refusing to allow the jury to consider an award of treble damages under 13 V.S.A. § 3606 against defendants Richardson Associates, Inc. and Marthanne Carver. We affirm.

The following facts were presented at trial. Plaintiffs lived in Connecticut and owned real property in Vermont. Defendant Marthanne Carver, the owner and principal broker of Richardson Associates, mistakenly placed a " for sale" sign on plaintiffs' Vermont property (Lot J) after agreeing to market an adjacent lot (Lot I). Defendant Dana Stockman, a logger, saw the sign and expressed interest in purchasing Lot J given its large quantity of standing timber. Stockman purchased Lot I and then heavily logged Lot J. Plaintiffs learned that their property had been logged and litigation ensued. A jury awarded plaintiffs $27,817 in damages from defendant Stockman for trespass and $19,742 in damages from defendants " Richardson Associates, Inc./Marthanne Carver" for " trespassing by acting in a manner that induced and was a substantial factor in causing Dana Stockman' s liability for trespass." The jury did not find defendant Stockman liable for treble damages under 13 V.S.A. § 3606.

Over plaintiffs' objection, the court refused to allow the jury to consider whether defendants Richardson Associates and Carver should be subject to treble damages under 13 V.S.A. § 3606. Plaintiffs' proposed instruction would have allowed the jury to conclude that, if Carver' s trespass (the placing of a " for sale" sign on plaintiffs' property) set in motion circumstances through which she provided substantial assistance in furthering Stockman' s trespass, they could find both parties individually and severally liable for all damages resulting to plaintiffs. Under this theory, plaintiffs proposed another instruction that would have allowed the jury to consider whether defendants Carver and Richardson Associates should be held liable for treble damages. Plaintiffs argued that this instruction was appropriate because Carver' s encouragement and assistance was a substantial factor in causing Stockman' s trespass, wrongful purchase, and wrongful cutting. The trial court concluded that such an instruction was unwarranted. The court explained that, under Masters v. Stone, 134 Vt. 529 (1976), liability for treble damages under 13 V.S.A. § 3606 does not extend to those who might be secondarily or vicariously responsible for the cutting.

Plaintiffs now argue that the court' s refusal to allow the jury to consider an award of treble damages against defendants Carver/Richardson is reversible error. In support of this assertion, plaintiffs first argue that Carver/Richardson should be liable in trespass for the tortious conduct of defendant Stockman. Without Carver' s initial trespass, plaintiffs maintain, Stockman would not have logged their property. In light of the evidence, plaintiffs argue that the court erred in requiring them to prove that Carver was " holding the chainsaw" to submit the issue of treble damages to the jury.

Although the facts in this case are egregious, we find no error in the court' s refusal to instruct the jury that it could hold

Carver/Richardson liable for treble damages under 13 V.S.A. § 3606. Defendant Carver may have precipitated the events that gave rise to this litigation, but she cannot be held liable for treble damages under the clear language of 13 V.S.A. § 3606 and relevant case law. Section 3606 provides that " [i]f a person cuts down . . . trees . . . belonging to another person, without leave from the owner of such trees, . . . the party injured may recover of such person treble damages in an action on this statute." We have interpreted this statute to extend to one who engages in logging activity as a principal, even though he may not have personally felled a tree, but not to those " only secondarily or vicariously involved." Stone, 134 Vt. at 531. In Stone, we concluded that a homeowner who had authorized logging on her property without ensuring that the loggers knew the boundaries of her property could not be held liable under this statute when the loggers cut over her property line. Id. Like the defendant in Stone, defendants Carver and Richardson Associates' involvement is too removed to make them " principal trespassers" under the statute. See id. Therefore, we find no error in the court' s decision to refuse to submit this question to the jury.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned