

CABLE SERVICES CO., INC., : IN THE COURT OF COMMON PLEAS OF
 : LYCOMING COUNTY, PENNSYLVANIA
 Plaintiff :
 :
 vs. : NO. 02-01,735
 :
 JUDITH and EVERETT RANSTEAD, :
 :
 Defendants : MOTION FOR PARTIAL
 : SUMMARY JUDGMENT

Date: April 10, 2003

OPINION and ORDER

Before the Court for determination are the cross summary judgment motions filed by each of the parties. Plaintiff Cable Services' motion was filed February 18, 2003. Defendants Judith and Everett Ranstead's (the Ransteads) answer to that summary judgment motion and cross summary judgment motion was filed on February 25, 2003. This action involves Cable Services' claim for damages, which occurred on June 5/6, 2002. Cable Services alleges that a portion of a tree growing on the Ranstead's property fell on Cable Services' pole barn and caused damages asserted to be in the approximate amount of \$7,000.00. Cable Services asserts it is entitled to a liability judgment as a matter of law on the basis that the damage to its property was caused by tree branches from a tree located on the Ranstead's property, which over hung onto the Cable Services' property. Cable Services seeks a judgment against the Ransteads for this technical trespass.

In their summary judgment motion, the Ransteads assert that the actions based on negligence and strict liability cannot be supported against them as a matter of law based upon the facts of record.

The first matter is easy to dispose of and relates to the Ranstead's argument that they are entitled to summary judgment on the strict liability claim. Cable Services acknowledges that they cannot assert an action based upon strict liability. Therefore, the Ranstead's motion for summary judgment regarding the strict liability claim is granted.

It is also easy to dispose of the Ranstead's motion concerning the negligence claim. The material submitted in support of the motion does not suggest that there are any undisputed facts that would relate to the negligence claim. Specifically, Cable Services has not cited evidence to this Court, which would support a finding the Ransteads, had notice of a defective condition in the tree prior to the branch damaging Cable Services' pole barn. Also, there has been no evidence presented that would demonstrate the Ransteads knew or should have known that the tree was subject to breaking and/or failed to take reasonable action to protect Cable Services' property from that danger. Accordingly, Cable Services does not have a claim against the Ransteads based upon negligence.

The only real issue is whether Cable Services is entitled to summary judgment in that the Ransteads are liable to it in trespass because portions of a tree located on the Ransteads' property overhung Cable Services' property, fell, and damaged Cable Services' pole barn. If this question is answered in the affirmative, then the only matter in this case to be determined by the fact finder is the actual amount of damages sustained by Cable Services when the pole barn was damaged.

The central fact and dispute in this case is whether the Cable Services' building was damaged by the limbs, which overhung Cable Services' property. Thus, the matter in this case to be

determined by the fact finder is whether the building was damaged by portions of that tree falling onto the building or being blown thereon and the actual amount of damages.

This Court believes that while it is clear that overhanging tree limbs constitute a technical trespass, *Jones v. Wagner*, 624 A.2d 166 (Pa. Super. 1993), *app. denied*, 637 A.2d 286 (Pa 1993), there are facts in dispute in this case which do not allow summary judgment to be entered. There is no question that Cable Services is entitled to damages that are legally caused by the trespass of Ransteads' trees on it's land. To be liable for such damages, the trespass must be intentional. Allowing tree limbs to grow and overhang the property line demonstrates sufficient intent. However, the pleadings in this case and the deposition testimony references supplied to the Court do not support Cable Services' contention that the Ransteads have admitted that the portions of the tree which broke off and damaged Cable Services' pole barn were the same tree limbs that overhung the property. Also at issue is whether or not the branch which broke off and damaged Cable Services' pole barn was overhanging onto the Cable Services' property prior to it breaking and falling.

Accordingly, the summary judgment motion of Cable Services will have to be denied.

ORDER

It is hereby ***ORDERED AND DIRECTED*** that the Summary Judgment Motion of Plaintiff filed February 18, 2003 is denied. The summary judgment Motion of Defendant filed February 25, 2003 is granted as would relate to the claims of Plaintiff asserting a strict liability and negligence cause of action. Both causes of action are dismissed The Defendants' summary judgment Motion is denied as it would relate to the assertion that Plaintiff has failed to support a cause of action in trespass.

BY THE COURT:

William S. Kieser, Judge

cc: Darryl R. Wishard, Esquire
Marc F. Lovecchio, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)