

and could not have been any broader. The agreement provided for arbitration of, "[a]ny controversy or claim arising out of or relating to this Agreement, or the alleged breach thereof." The court affirmed the decree of the lower court in deciding that the matter was properly before a panel of arbitrators.

In the case at bar, the language of the arbitration clause in the agreement, as quoted above, is also broad. Furthermore, the agreement specifically states that it will be binding on the heirs or executors of the parties; therefore, the arbitration clause of the agreement is binding on the plaintiff.

Based on the above, the court finds that it does not have jurisdiction in this matter and orders that the case be submitted for arbitration. Accordingly, the defendant's preliminary objection is sustained.

ORDER OF COURT

October 13, 1989, the court sustains defendant's preliminary objection. This dispute should be submitted to arbitration pursuant to the written partnership agreement.

WOLFINGER V. MOATS, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 550

Equity - Boundary line - Trees - Injunction

1. The owners of adjacent tracts of real estate own all trees growing on their common boundary line as tenants in common.
2. Tenants in common are prohibited from unilaterally cutting down commonly owned live trees.
3. The fact that the bark of a tree touches the line is insufficient to create a tenancy in common.

Eileen F. Schoenhofen, Esq., Attorney for Plaintiffs
Michael B. Finucane, Esq., Counsel for Plaintiffs
John W. Frey, Esq., Counsel for Defendants

OPINION AND DECREE

KELLER, P.J., January 30, 1990:

This action in equity seeking to permanently enjoin the defendants from removing certain trees on the boundary line between the real estate of the plaintiffs and the defendants was commenced by the filing of a complaint on January 19, 1990. The complaint *inter alia* alleged that despite plaintiffs' requests the defendants began cutting the trees on January 18, 1990 and continued that activity on January 19, 1990. The plaintiffs on the same date presented their petition for a temporary injunction alleging their fear that four trees have been removed; that the damages to the plaintiffs is immediate and irreparable; that granting the injunction will maintain the status quo and will cause less harm to the defendants than not granting it will cause the plaintiffs. The Honorable John R. Walker issued a decree granting the temporary injunction prayed for on the condition a bond in the amount of \$1,000 be posted by the plaintiffs. The decree also ordered the defendants to show cause on January 23, 1990 at 10:30 a.m. why a preliminary injunction should not issue during the pendency of the action.

The hearing was held as scheduled. The matter is ripe for disposition.

FINDINGS OF FACT

1. The plaintiffs' real estate is located on the north side of U.S. Route 30 in Guilford Township, Franklin County, Pennsylvania.
2. The real estate of the defendants is also located on the north side of U.S. Route 30 and is immediately to the east of plaintiffs' real estate.
3. The two tracts of real estate share a common boundary line.
4. After the defendants purchased their real estate, they advised the plaintiffs they desired to remove the thirteen trees located near or on the common boundary line.

5. The defendants desired to remove the trees because they had received complaints from patrons of their restaurant that the tree branches had scratched their vehicles, the trees are very dirty, their roots are raising the macadam driveway and/or parking area, and the fallen pine cones have caused damage to their riding lawn mower.

6. The plaintiffs objected to defendants expressed intention to remove the trees because trees are aesthetically desirable, the patrons of their car wash park under them to dry their vehicles, the trees prevent vehicles from crossing over the properties of plaintiffs and defendants to get to one or the other place of business, and because they are on the boundary line between the two tracts of real estate. They do not feel monetary damages would adequately compensate them for the loss of the trees.

7. The trees in question are an unspecified type of evergreen pine tree with diameters of 12 to 15 inches and 20 to 25 feet high.

8. The first of the 13 trees is located approximately 85 feet north of U.S. Route 30. The line of trees extends in a northerly direction for approximately one hundred thirty-five feet.

9. William A. Brindle, a registered land surveyor, hired and called by the plaintiffs, testified that he had examined the real estate here in question on the afternoon of January 19, 1990, had located the common boundary line of the parties, and the location of the trees with reference to the said line.

10. For convenience in identification of the trees, the court has numbered them from 1 to 13 on the survey. (Plaintiffs' Ex. 1)

11. The five trees, numbers 1 through 5, had been cut down at the time of his survey of the premises. The stumps of those trees were near the common line but were entirely located on the defendants' real estate.

12. Proceeding north on the tree line the surveyor found and the survey discloses trees 6, 7 and 8 encroach on the line and thus constitute line trees.

13. The trunk of tree 9 is entirely on the property of defendants, but the bark of the trunk on the west side of the tree may touch the edge of the boundary line.

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

**TRUST SERVICES
COMPETENT AND COMPLETE**



Member F. D. I. C.



Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191
(717) 762-3121
(717) 263-8788

Located in

Greencastle - Waynesboro - State Line - Chambersburg
Member FDIC

LEGAL NOTICES, cont.

You are notified that the plaintiff has commenced an Action to Quiet Title against you by a Complaint filed on July 20, 1990, in the Office of the Prothonotary in Franklin County, Pennsylvania, to the above number and term.

If you wish to defend against claims set forth in the above mentioned Complaint you must take action within twenty (20) days after service of the Complaint and notice has been completed by publication by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claims or relief requested by the plaintiff. You may lose money or other rights important to you.

You should take this notice to your lawyer at once. If you do not have a lawyer contact:
Legal Reference Services
Franklin/Fulton Counties
Court House
Chambersburg, PA 17201
Telephone No.: 264-4125, Ext. 213

The Action concerns the following described land in Montgomery Township, Franklin County, Pennsylvania:

BEGINNING at a point in the public road leading from Mercersburg to Little Africa, known as Township Route No. 317; thence by lands now or formerly of Glenn G. Hissong and Mae McCulloh Hissong, his wife, South 10- $\frac{1}{4}$ degrees West, 117 perches to a point; thence by lands now or formerly of Floyd D. Brant, North 78 degrees West, 17.8 perches to a fence post; thence by same North 79- $\frac{1}{4}$ degrees West, 278 perches to a point; thence by lands now or formerly of Lewis N. Pine and Anna M. Pine, his wife, and Chester D. Grove and Sylvia L. Grove, his wife, North 15- $\frac{1}{2}$ degrees East, 136.4 perches to a point in the aforesaid public road; thence in said road by lands now or formerly of Leonard A. Weller and Mary L. Weller, his wife, and George O. Steiger's

LEGAL NOTICES, cont.

Heirs, South 64 degrees East, 239.3 perches to a point in said road; thence in said road by land now or formerly of the said George O. Steiger's Heirs, North 61- $\frac{1}{4}$ degrees East, 68 perches to the place of Beginning; and CONTAINING 187 acres and 53 perches, more or less, as surveyed April 12, 1910, by John R. McElroy, Surveyor.

By: Janice M. Hawbaker
Attorney for Plaintiff
35 S. Main St.
Mercersburg, PA 17236

8/17/90

Alcohol or Other Drugs
a Problem?

Help is Only a
Phone Call Away

LAWYERS
CONFIDENTIAL
HELP-LINE

1-800-472-1177

24 Hours
Confidential

A Service Provided by
Lawyers Concerned for
Lawyers of Pennsylvania, Inc.

14. Tree 9 does not encroach on the line and is therefore not a line tree.

15. Trees 10 through 13 are entirely on the property of the defendants.

DISCUSSION

Act No. 1232, P.L. 1869, 68 P.S. 115 provides:

From and after this date it shall be unlawful for any owner or owners of any undivided interest in timber land within this commonwealth to cut or to remove, or to cause to be cut or removed, from the said land, any timber trees, without first obtaining the written consent of all co-tenants in said premises.

Under the terms of this rather ancient statute the owners of adjacent tracts of real estate own all trees growing on their common boundary line as tenants in common. Tenants in common are prohibited from unilaterally cutting down or removing such commonly owned line trees.

There is a surprising paucity of cases on the subject of line trees in this Commonwealth. In *Miller v. Mutzabaugh*, 3 Pa. Dist. 449 (1983) the Court of Common Pleas of Perry County relied upon Act No. 1232 of 1869 in concluding the plaintiff could recover damages from the defendant who had cut down a line tree.

Applying the general rules of law governing tenancy in common, we conclude neither adjoining real estate owner may remove a tree growing on a common boundary line. Consequently, in the case at bar, notwithstanding the fact that only inches of the trunks of trees 6, 7 and 8 are on the boundary line between the properties of the plaintiffs and defendants, those trees are jointly owned by the plaintiffs and the defendants. Therefore, the defendants may not remove them.

Plaintiffs contend we should reach a similar conclusion as to tree 9 because the bark of the trunk of that tree touches the boundary line. We do not agree. As noted in *Ridges vs. Blaba*, 520 N.E. 2d 980 (Ill. App. 2 Dist. 1988),

"The critical question in this case, then, is whether any portion of the

trunk of the elm tree grows on plaintiff's property . . . The law, according to the latest holdings, is determined by the exact location of the trunk of the tree at the point it emerges from the ground."

The fact that the bark of tree 9 touches the line is insufficient to create a tenancy in common as to that tree. Trees 1 through 5 and 9 through 13 are the sole property of the defendants. They may therefore do with them as they see fit.

DECREE

NOW, this 30th day of January, 1990, the preliminary injunction entered January 19, 1990 is continued in effect as to trees 6, 7 and 8, and the defendants shall refrain from cutting down and removing them or from cutting any branches of said trees overhanging the real estate of the plaintiffs.

The preliminary injunction of January 19, 1990 is dissolved as to trees 1 through 5 and 9 through 13. This dissolution of the injunction as to these trees shall not be construed to grant, lease or license to the defendants to enter upon the real estate of the plaintiffs.

BARNETT AND WIFE VS. APPLEBY AND HUSBAND, C.P.
Fulton County Branch, Equity No. 240 of 1985 - C

Prescriptive Easement - Continuous Use - Abandonment - Parol Agreement - Laches

1. Continuous use of a right of way is proved by a settled course of conduct indicating plaintiff viewed his use as an exercise of a property right.
2. A parol agreement to abandon an easement is unenforceable as contrary to the Statute of Frauds.
3. A parol agreement to abandon an easement is enforceable when the agreement has been so for executed that it is inequitable to rescind the agreement.

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

**TRUST SERVICES
COMPETENT AND COMPLETE**



Member F. D. I. C.



Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191
(717) 762-3121
(717) 263-8788

Located in
Greencastle - Waynesboro - State Line - Chambersburg
Member FDIC