**SUPREME COURT - STATE OF NEW YORK**
**TRIAL/IAS TERM, PART 8 NASSAU COUNTY**

**PRESENT:**

***Honorable James P. McCormack***
**Justice of the Supreme Court**

**X**

**CHARLES G. PAPALCURE, individually and as trustee of the Trust for the Benefit of Charles T. Papalcure, Melissa A. Papalcure and Thomas R. Papalcure, and AUDREY SCHEIN,**

**Index No. 612791/17**

**Plaintiff(s),**

**DECISION AFTER TRIAL**

**-against-**

**PAUL CANARICK**

**Defendant(s).**

**X**

The parties to this action appeared for a nonjury trial on July 10, 11, 12, 13, 14, 2023 and August 23, 24, and 25, 2023. The court granted the parties leave to file post-trial memoranda. For various reasons, counsel for Defendant, Paul Canarick (Canarick), sought extensions of time, some of which were consented to by Plaintiffs and some of which were granted over the objection of Plaintiffs. Eventually, the post-trial memoranda would be filed on February 13, 2024.

The parties are neighbors. Plaintiffs, Charles T. Paplcure, individually and as trustee of the Trust for the Benefit of Charles T. Papalcure, Melissa A. Papalcure and Thomas R. Papalcure (Papalcure) and Audrey Schein (Schein), allege they have an

easement over Canarick's property, specifically over plots 300, 523 and 524. Canarick denies there is an easement, or if there was one it has been extinguished by adverse possession.

In support of their case, Papalcure called Joseph Petito, a land surveyor, Lance Pomerantz, an attorney, whose practice focuses entirely on real estate titles (on Plaintiffs' direct case and in rebuttal), Charles T. Papalcure, son of Charles G. Papalcure, Jerry Hahn, a neighbor of all parties, Charles G. Papalcure, Plaintiff (on Plaintiffs' direct case and in rebuttal), Melissa Papalcure, daughter of Charles G. Papalcure, Thomas Papalcure, son of Charles G. Papalcure, Matthew J. Guzowski, real estate appraiser, and Audrey Schein, Plaintiff. Defendants called Paul Canarick, Defendant, Albert A. D'Agostino, a lawyer who specialized in "unique and difficult real property issues", and Donald Franklin, real estate appraiser.

The outcome of this case is clear from the evidence presented. Plaintiffs presented clear proof of the existence of the easement, and their use of it until Canarick began putting up impediments. These impediments would not end with attempting to prevent Plaintiffs from physically using the easement. Canarick also installed plantings that would completely block the water views from the the Papalcure and Schein properties, while at the same time ensuring his own unimpeded view.

Canarick would also install security cameras, purportedly for safety reasons, but that were pointed at the Papalcure and Schein yards. Despite claiming the cameras did not impede upon the Schein or Papalcure properties, a picture entered into evidence from

one of Canarick's security cameras clearly shows Schein's backyard.

Regarding the easement, the court and the parties had the unusual benefit of having a Court of Appeals decision directly related to these properties finding the easement existed. In *Loening v. Red Spring Land Co*., 198 Misc. 151 (Sup. Ct. Nass. Cty. 1949), the court found that the subject easement existed. These findings were reduced to a judgment, and the judgment was appealed to, and affirmed by the Appellate Division, Second Department, in *Loening v. Red Spring Land Co.*, 277 AD 1050 (2d Dept 1950) and the Court of Appeals in *Leoning v. Red Spring Land Co.*, 302 NY 934 (1951). To challenge these cases, Canarick argues that the judgment that two appeals courts affirmed does not correctly state the terms of the Supreme Court decision, and therefore this court should ignore precedent which directly speaks to the issues raised in this case. While Canarick offers a different Supreme Court decision (that appears was not appealed) where the court decided it did not have to abide by Court of Appeals precedent, this court respectfully declines to disagree with that logic. By virtue of *Loening*, Plaintiffs have an easement over the entirety of lots 300, 523 and 524.

Canarick also argues the easement, if it existed, was extinguished by adverse possession. To prove adverse possession, a party must establish actions adverse to the owner(s) of the easement, under a claim of right, that was open and notorious, and was exclusive and continuous for at least 10 years. (*Spiegel v Ferraro*, 73 NY2d 622 [1989]). Assuming he met all other elements, and that is not clear, Canarick failed to establish he adversely possessed the easements for 10 years or more. It is clear that the property over

which the easements are claimed was accessible, even if Canarick made it more inconvenient for Plaintiffs to do so. During his testimony, Canarick acknowledged that anyone could walk around a gate to access lot 300, and from there they could access lots 523 and 524, the only impediment being "no trespassing" signs. Therefore, Canarick did not exclude Plaintiffs, or anyone else, for a period of 10 years. (*McGinley v. Postel*, 37 AD3d 783, 784 [2d Dept 2007])("Although the defendant Joan Lana Postel tendered evidence showing that she placed boulders and other obstructions on the plaintiffs' right of way, the Supreme Court properly credited the testimony of the plaintiffs' witnesses, who averred that they either removed the obstructions or maneuvered around them...").

In light of the foregoing, the court finds that Plaintiffs have established entitlement to a declaratory judgment that the easement exists over Lots 300, 523 and 524, and that Canarick's plantings, fencing and surveillance cameras have interfered with, and continue to interfere with, Plaintiffs rights to access the easement. Further, Plaintiffs are entitled to an injunction directing Canarick to remove the fencing and plantings that impede Plaintiffs access to Lots 300, 523 and 524, and a permanent injunction preventing Canarick from impeding their access in the future, once the current impediments are removed. As for the security cameras, the court cannot prevent a homeowner from using security measures to protect their property, but the court can prevent a party from using such measures as a form of harassment. Now that it has been established that Plaintiffs are entitled to access to the easement over lots 300, 523 and 524, Canarick is directed to ensure his security cameras are situated in such a way as to not capture the Papalcure and

Schein properties.

A cause of action for private nuisance requires a showing of interference that is substantial in nature, intentional, unreasonable in character, that impact a person's use and enjoyment of their land that is caused by another person's actions or failure to act. (*Behar v. Quaker Ridge Golf Club, Inc*., 118 AD3d 833 [2d Dept 2014]). Plaintiffs easily meet each and every element. Canarick's interference was substantial in that he cut off Plaintiffs' access to their easement. Canarick even threatened to have Plaintiffs arrested if they accessed their easement. Canarick admits to putting up the fencing and the plantings for this very purpose, thus it is clearly intentional. Because Plaintiffs had a right to the easement, preventing them using it was unreasonable in character. Further, installing plantings that served only to block Plaintiffs' view of the water was both unreasonable and borne of malice. Clearly, Plaintiffs were adversely impacted by these actions in that they were not able to access their easement, and their view of the water was blocked. All of the above impacted Plaintiffs' ability to use and enjoy their property. Through their experts, Plaintiffs proved they suffered damages from their blocked easement and water views. Based upon the expert testimony, the court finds Papalcure is entitled to $159,000.00 in damages as of July, 2023, and this amount shall increase by $2,461.00 per month from July, 2023 until the plantings and any other impediment are removed or modified to such an extent that Paplacure has access to the same water view he had prior to the plantings being installed.

Based upon the expert testimony, the court finds Schein is entitled to $125,000.00

in damages as of July, 2023, and this amount shall increase by $1,939.00 per month from July, 2023 until the plantings and any other impediments are removed or modified to such an extent that Schein has access to the same water view she had prior to the plantings being installed.

Accordingly, it is hereby

**ORDERED**, that after trial, the court finds for Plaintiffs, consistent with the terms of this decision and order; and it is further

**ORDERED**, that Canarick has 60 days from being served with notice of entry of this order to remove any fencing that impedes the easement. Further, Canarick has 180 days from being served with notice of entry of this order to remove or modify the plantings in such a manner that ensures the Papalcures and Schein enjoy the same water view from their properties that they enjoyed prior to the plantings being installed.

This constitutes the order of the court.

Settle judgment on notice.

Dated: June 24, 2024
Mineola, New York