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Trees Falling onto Neighbor's Land

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Issue

Summarize existing law and recent legislation on maintenance of trees on private property that may pose a danger to a neighbor's property and related liability issues. This report updates OLR Report 2015-R-0278. This report has been updated by OLR Report 2020-R-0279.

The Office of Legislative Research is not authorized to give legal opinions and this report should not be considered one.

Summary

Existing law on this issue is largely a matter of common law (case law) rather than statute. While not binding on other courts, two recent state Superior Court cases have concluded that, based on the Restatement (Second) of Torts, there is generally no liability between private landowners for damage caused by natural conditions on the land, including damage caused by a falling tree.

We were unable to find any Connecticut Appellate or Supreme Court cases directly addressing a private landowner's liability for a tree falling onto neighboring private property.

Under Connecticut case law, if a tree is growing on one person's land but its branches or roots encroach on a neighbor's land, the neighbor, within certain limitations, can cut off the branches or roots up to the line of his or her land (see *McCrann v. Town Planning & Zoning Commission*, 161 Conn. 65 (1971)).

A statute imposes liability for cutting a tree on another person's land without permission. Generally, a person who does so must pay the tree's owner three times the tree's reasonable value or five times the reasonable value if the tree is intended for sale or use as a Christmas tree. But if the person cut the tree by mistake while believing that the tree was on his or her own land, the person must pay only the tree's reasonable value (CGS § 52-560).

In 2014, the governor vetoed a bill (HB 5220, PA 14-125) that would have made the owner of private real property from which a tree or branch falls onto adjoining private property liable for the expense of removing the tree or branch, if the tree owner failed to act within 30 days of receiving the neighbor's notice of the tree's poor condition.

In subsequent years, the Judiciary Committee has voted out generally similar bills that addressed certain issues raised about the vetoed bill. None of these bills have become law. The most recent version of the bill (HB 5655 in 2017) would have (1) established conditions under which a private landowner is presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land and (2) specified how the presumption may be rebutted.

Recent Case Law

2016 Case

In an unpublished 2016 Superior Court case, private landowners sued the owners of neighboring property after a tree from the neighboring property fell onto the plaintiffs' shed, damaging the shed and its contents (*Corbin v. HSBC Bank USA, N.A.*, 2016 WL 3536424, 62 Conn. L. Rptr. 451 (June 3, 2016)).

Before the tree fell, the plaintiffs had notified the defendant's real estate agent that the tree was decayed and in an unsafe condition. Among other things, the plaintiffs alleged that the defendant knew, or should have known, of the dangerous condition of the tree and failed to exercise reasonable care by not removing it.

The defendant moved to strike the plaintiffs' complaint on the ground that Connecticut has not recognized a cause of action between private landowners for damage caused by a falling tree where the tree fell onto private property (as opposed to a public highway). The defendant cited to the Restatement (Second) of Torts, § 363 (1965), which provides that, other than in certain situations involving public highways, "neither a possessor of land, nor a vendor, lessor, or other transferor, is liable for physical harm caused to others outside of the land by a natural condition of the land." The Restatement specifies that the "natural condition of the land" includes the natural growth of trees.

In response, the plaintiffs argued that the Restatement was outdated and that the proper rule under the common law is that landowners are liable for damage caused by a decayed tree if the landowner had actual or constructive knowledge of the tree's dangerous condition (citing to 1 Am. Jur. 2d Adjoining Landowners § 21).

The court ruled in favor of the defendant, rejecting the plaintiffs' arguments that the Restatement is outdated. It referenced other Connecticut cases which cited to the Restatement in other contexts. The court noted that the tree on the defendant's property clearly fit within the Restatement's definition of "natural condition of land."

In a footnote, the court noted that it was "also persuaded by the defendant's argument that the Connecticut Legislature has attempted (and failed) to enact legislation that would require private landowners to pay for the removal of tree branches and limbs. The unsuccessful attempts provide support for the argument that no cause of action exists at common law for the present situation . . ."

2017 Case

In another recent unpublished Superior Court case, an insurance company (as subrogee of the insured) sued a condominium association after a tree from the defendant's property fell onto adjacent property and damaged the insured's vehicle. The insurance company alleged that the

defendant negligently failed to (1) properly inspect the tree and (2) remedy a dangerous and defective condition (*New London County Mutual Ins. Co. v. Playhouse Condominium Ass'n, Inc.*, 2017 WL 1334280, 64 Conn. L. Rptr. 204 (March 24, 2017)).

The defendant moved for summary judgment on the ground that it owed no duty of care to the insured because the tree was a naturally occurring feature of the land. The defendant cited to the Restatement (Second) of Torts, § 363. Among other things, the plaintiff argued that the court should apply the ordinary rules of negligence and find a duty of care in this situation.

The court granted the defendant's motion for summary judgment. The court cited favorably to the *Corbin* case (described above). It concluded that there was nothing in the pleadings to suggest that the tree was "anything more than a natural condition upon the defendant's land" and thus, the Restatement applied.

Vetoed 2014 Legislation

PA 14-125 would have made the owner of private real property from which a tree or branch fell onto adjoining private property (tree owner) liable for the expense of removing the tree or branch if the (1) adjoining property owner had previously notified the tree owner, in writing, that the tree or branch was diseased or likely to fall and (2) tree owner failed to remove or prune the tree or branch within 30 days after receiving this notice.

The act would not limit anyone's right to pursue other civil remedies as allowed by law. It also would not affect any rights a policyholder may have under a liability insurance policy, except an insurer could deduct from any amount it owed the insured the amount the policyholder recovered from the tree owner, to the extent the policy would have covered the loss.

Governor Malloy vetoed the legislation. In his veto message, he expressed his view that the bill "attempts to address a legitimate issue" but "could lead to the unnecessary removal of healthy trees." Among other things, the governor stated his concern that the bill "is weighted too heavily in favor of neighbors who want branches and trees taken down and provides no avenue for a tree owner to contest a neighbor's assertion that their tree or branch is 'likely to fall.'"

Subsequent Legislation

In each of the last three years, the Judiciary Committee has favorably reported bills on liability for fallen trees: HB 5602 (2015), HB 5258 (2016), and HB 5655 (2017).

Unlike the vetoed bill, the 2015 bill (HB 5602) required an arborist's inspection as a prerequisite to imposing liability. Specifically, it required a licensed arborist to have inspected the tree and documented that the tree or limb was diseased or likely to fall. If the arborist needed access to the property for this inspection and the owner did not consent, the arborist could limit the inspection to the tree or limb portions that were visible from the adjoining land.

The 2015 bill excluded from its provisions trees on land owned by nonprofit organizations. It also made clear that its provisions did not apply to trees on land owned by political subdivisions of the state (e.g., municipalities).

Rather than setting conditions to impose liability as in earlier bills, the 2016 bill (HB 5258) created a rebuttable presumption, under certain conditions, of a landowner's liability for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land. In general, the landowner must have failed to act within 90 days after the adjoining owner notified
him or her that, based on an arborist's inspection, a tree or limb on the property was likely to fall within five years. The bill also specified how the presumption could be rebutted. Compared to the earlier bills, the 2016 bill also exempted additional property from its provisions (e.g., property owned by a water company).

The 2017 bill (HB 5655) was substantially similar to the 2016 bill. The complete bill analysis for the 2017 bill is available here.

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