

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**344**

**CA 09-01551**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

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SHANE CHARGO AND WENDY M. CHARGO,  
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

BENJAMIN SIMONS, DEFENDANT-RESPONDENT.

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FRANCIS A. DISCENZA, ROME, FOR PLAINTIFFS-APPELLANTS.

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Appeal from an order of the Supreme Court, Oneida County (Bernadette T. Romano, J.), entered July 21, 2009 in an action pursuant to RPAPL 861. The order, inter alia, granted defendant's motion to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action pursuant to RPAPL 861 in June 2007 seeking damages for defendant's trespass upon their property in March 2004. According to plaintiffs, defendant cut and removed trees therefrom without their permission. We conclude that Supreme Court properly granted defendant's motion to dismiss the complaint as time-barred inasmuch as the statute of limitations for "action[s] to recover damages for an injury to property" is three years (CPLR 214 [4]), and it applies to actions seeking treble damages for the removal or destruction of trees and any resulting damage to property pursuant to RPAPL 861 (see *Mandel v Estate of Frank L. Tiffany*, 263 AD2d 827, 829; see also *Wild v Hayes*, 68 AD3d 1412, 1414-1415; *Weichert v O'Neill*, 245 AD2d 1121). Contrary to the contention of plaintiffs, we conclude that the court did not abuse its discretion in granting that part of their cross motion to dismiss defendant's counterclaims for defamation and abuse of process without prejudice (see CPLR 5013).

Entered: March 19, 2010

Patricia L. Morgan  
Clerk of the Court