

**Grazia v Syracuse Ctr. for Peace & Social Justice**

2019 NY Slip Op 34503(U)

September 23, 2019

Supreme Court, Onondaga County

Docket Number: Index No. 9221/2018

Judge: Gregory R. Gilbert

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SUPREME COURT  
STATE OF NEW YORK COUNTY OF ONONDAGA

RAYMOND GRAZIA,

Plaintiff,

v.

SYRACUSE CENTER FOR PEACE AND SOCIAL  
JUSTICE,

Defendant.

DECISION & ORDER

Index #: 9221/2018

RJI #: 33-18-3711

HON. G. GILBERT, JSC

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**BACKGROUND**

Plaintiff, Raymond Grazia (Grazia) proceeds in this nuisance and trespass action by summons and complaint filed 9/26/18 and amended on 2/15/19 in accordance with this Court’s Order for a more definite statement. A trial note of issue was filed 8/19/19.

**MOTION**

Defendant, Syracuse Center for Peace and Social Justice (Center) has made a motion for summary judgment or in the alternative to strike the trial note of issue claiming that disclosure has not been completed. The basis for the summary judgment motion is statute of limitations.

**DISCUSSION**

The first cause of action of the amended complaint of 2/15/19 is a claim for nuisance. The second cause of action alleges a trespass claim. Both claims have a three year limitations period under CPLR §214. At issue is the Center’s parking lot

renovation.

The renovation is said to have started sometime in March 2013 and was completed in December 2014. The parties agree on the late 2014 or early 2015 completion date. [Compare Caroline Sheffield Affidavit at paragraph 4 and Beardsley Affirmation at paragraph 5.] Sheffield notes that the lot has not been changed since December 2014, a point not rebutted by Grazia on this motion. No facts are presented by Grazia to substantiate that Center did anything after December 2014 either to the parking lot or to further trespass on his property. Both claims are barred unless Grazia can show how they are extended.

Grazia argues that neither cause of action is barred by the statute of limitations because they constitute a continuing wrong. Center addressed the continuing wrong doctrine in anticipation of Grazia's argument on the basis that the damage is "exclusively traceable" to an "original objectionable act" under the case, EPK Properties, LLC v. Pfohl Brothers Landfill Site Steering Committee, 159 AD3d 1567 (4<sup>th</sup> Dept 2018). The EPK case is directly on point.

Grazia attaches to his papers in opposition various letters talking about the issues between the parties. One of those letters is from his counsel dated 3/18/18 which identifies the issue as follows:

"It is quite obvious that the parking lot was either intentionally or negligently graded so that there is now substantial damages being sustained by my client's property because of faulty drainage. In addition there has been a substantial change in the elevation of the parking area resulting in a substantial change in the configuration of the land."

This mirrors the concerns identified by Grazia in letters of 12/31/15 and 3/29/16 attached as Exhibits B and C to the Affidavit of Caroline Sheffield stating as follows:

"A hill created (for project) which was not property line zig, zagged. End result up to 3 foot encroachment."

"On property line, grade level raised 4 or 5 feet with a slope encroachment by 3 ft. at spots. It's a man made hill."

The first cause of action of the amended complaint dated 2/15/19 for nuisance identifies the issue at paragraph 6 as follows:

“Commencing in 2015, Defendant reconstructed and changed the contour of the land at 2013 E. Genesee Street so as to substantially change the drainage of the area between the two properties resulting in water flowing on the Plaintiff’s property causing erosion and water damage to Plaintiff’s basement and walls.”

Aside from the error as to the date involved, the first cause of action also identifies the contour and drainage issues in keeping with the various letters. That this is alleged to be related to the parking lot renovation is made clear by reference to paragraph 9 of the amended complaint.

Center has demonstrated that the claim of damage in this matter as stated by the amended complaint is “exclusively traceable” to an “original objectionable act” under EPK. This passes the burden on the motion to Grazia who fails to submit evidence to show to that the EPK case does not apply.

The Center’s parking lot renovation was completed in December 2014. Grazia’s complaints about the renovation started as early as July 18, 2014 as stated in his letter to the county dated 3/29/16. See Affidavit of Caroline Sheffield, Exhibit C. Under the EPK case, the statute begins to run from the date that a plaintiff is aware of the nuisance and trespass regardless of a claim of continuing wrong.

Grazia’s opposition does not address the EPK case. The early awareness of the issue is also not addressed. The date renovation was completed is stated by Center as December 2014 and is not rebutted by a fact affidavit by Grazia. The lack of change to the parking lot is not addressed. The complaint was not timely filed, even allowing for a December 2014 start date, and it must be dismissed based on EPK Properties, LLC v. Pfohl Brothers Landfill Site Steering Committee, 159 AD3d 1567 (4<sup>th</sup> Dept 2018); Bratge v. Simons, 167 AD3d 1458 (4<sup>th</sup> Dept 2018).

As a consequence of the foregoing, the issue raised concerning the trial note is considered to be moot and is denied on that basis.

Accordingly, it is


**ORDERED**, that the motion of defendant, Syracuse Center for Peace and Social Justice, for summary judgment dismissing the amended complaint dated February 15, 2019 of the plaintiff, Raymond Grazia, shall be and the same is hereby **GRANTED** in all respects and the same is **DISMISSED** on the merits and with prejudice, and it is

**ORDERED**, that the motion of defendant, Syracuse Center for Peace and Social Justice, to strike the trial note of issue shall be and the same is hereby **DENIED** as moot.

**IT IS SO ORDERED.**

**ENTER**

Dated: September 23, 2019  
Syracuse, NY

  
HON. GREGORY R. GILBERT  
SUPREME COURT JUSTICE