

Rosbaugh v Town of Lodi

2021 NY Slip Op 34254(U)

December 13, 2021

Supreme Court, Seneca County

Docket Number: Index No. 45715

Judge: Barry L. Porsch

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This opinion is uncorrected and not selected for official publication.

**SENECA COUNTY SUPREME COURT
STATE OF NEW YORK**

LEWIS B. ROSBAUGH & LYNNE T. ROSBAUGH,
Plaintiffs,**DECISION AND
ORDER**

v.

Index No.: 45715

TOWN OF LODI
and CRANEBROOK TREE SERVICE & TREE FARM
OF AUBURN, INC.Defendant(s).

The Petitioners, Lewis B. and Lynne T. Rosbaugh, filed a Motion with this Court on July 29, 2021, seeking to confirm the Arbitration Award dated and acknowledged May 3, 2021. Defendant Town of Lodi filed a Petition on July 30, 2021, seeking to vacate/modify said Arbitration Award, and Defendant Cranebrook Tree Service & Tree Farm of Auburn, Inc. having taken no position on the Motion, and the matters having been consolidated and heard on October 14, 2021.

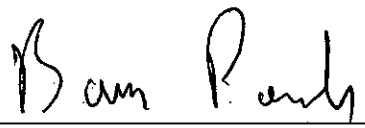
It is well settled that, notwithstanding the final and binding nature of an arbitration agreement, an award pursuant thereto may be vacated if it is "irrational, violates a strong public policy, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (Matter of Svenson (Swegan), 133 A.D.3d 1279, [4th Dept 2015]). Inasmuch as Defendants contend that the award was made in excess of the arbitrator's authority, this issue is subject to review.

Defendants specifically sought to vacate the award of treble damages, alleging that such damages are punitive in nature. Section 861(1) of the RPAPL permits a property owner to maintain an action "for treble the stumpage value of the tree . . . or two hundred fifty dollars per tree, or both" against "any person" who, "without the consent of the owner thereof, cuts, removes, injures or destroys, or causes to be cut, removed, injured or destroyed, any . . . tree." Such person may

avoid the imposition of treble damages if he or she "establishes by clear and convincing evidence, that when the person committed the violation, he or she had cause to believe that the land was his or her own" (RPAPL 861[2]). If such person satisfies that burden, he or she remains "liable for the stumpage value or two hundred fifty dollars per tree, or both"(id.). Thus, contrary to Defendant Town of Lodi's contention, inasmuch as no showing of actual malice or a wanton, willful or reckless disregard of plaintiffs' rights is necessary to justify an award of treble damages under RPAPL 861(1), that portion of the arbitrator's award is not punitive in nature (Matter of Swenson, at 1281).

Based upon the foregoing, it is hereby ORDERED that the Arbitration Award is confirmed in its entirety.

DATED: ^{DECEMBER} ~~November~~ 13, 2021.



HON. BARRY L. PORSCH
Acting Supreme Court Justice