COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-625

MARK RANSOM & another[1]

vs.

GTL FOREST CORPORATION & others;[2] ROBERT HAKALA & another,[3] third-party defendants.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiffs engaged defendants Robert Hakala (Hakala) and his company (together, Hakala defendants) to build a barn on the plaintiffs' property. Because the portion of the plaintiffs' property where they proposed to build the barn was densely wooded, Hakala subcontracted with defendant GTL Forest Corporation (GTL) to clear the trees from that area.[4] After GTL finished clearing the trees, the plaintiffs noticed that GTL had overcut onto portions of the property that the plaintiffs did not want cleared and brought various claims against the

[1] Katherine Ransom.
[2] Robert Hakala and Hakala Bros. Corp.
[3] Hakala Bros. Corp.
[4] GTL subsequently hired S & K Logging and Tree Cutting and C.L. Timber Processing to perform certain services on the project, but neither company is a party in this case.

defendants, including for willful trespass against trees under G. L. c. 242, § 7. A default judgment entered against the Hakala defendants, and after a jury-waived trial, a Superior Court judge found in favor of GTL. This appeal followed. We affirm.

In pertinent part, G. L. c. 242, § 7 provides as follows:

> "A person who without license willfully cuts down . . . or otherwise destroys trees . . . on the land of another shall be liable to the owner in tort for three times the amount of the damages assessed therefor; but if it is found that the defendant had good reason to believe . . . that he was otherwise lawfully authorized to do the acts complained of, he shall be liable for single damages only."

Accordingly, "[a] tree cutter faces no liability under the statute only where he had actual 'license' to cut the trees, which the statute equates to being 'lawfully authorized' to do so." Evans v. Mayer Tree Serv., Inc., 89 Mass. App. Ct. 137, 147 (2016).

Hakala, as the plaintiffs' general contractor, was the plaintiffs' authorized agent and retained "ultimate control over the scope of . . . work." Glavin v. Eckman, 71 Mass. App. Ct. 313, 316 (2008). See Fergus v. Ross, 477 Mass. 563, 566-567 (2017) (describing agency relationships and ability of agent to bind principal). GTL received instructions about what trees to cut down from Hakala and followed those instructions as directed. As a result, GTL had license to cut down the trees,

and there was no error in the conclusion that the Hakala defendants were liable under G. L. c. 242, § 7, and GTL was not.[5]

There likewise was no error in awarding the plaintiffs damages based on the value of the timber wrongfully cut rather than the cost of restoration of the property. While G. L. c. 242, § 7, does not prescribe how damages should be measured, the most common measures of damages are the value of the timber cut and the resulting diminution in value of the property. See Larabee v. Potvin Lumber Co., 390 Mass. 636, 643 (1983). A restoration cost measure of damages may be available to a plaintiff, but typically only where the value of the timber or the diminution in value of the property "is unavailable or unsatisfactory as a measure of damages" or would "produce a miscarriage of justice." Glavin, 71 Mass. App. Ct. at 318, quoting Trinity Church v. John Hancock Mut. Life Ins. Co., 399 Mass. 43, 49 (1987). We discern no error in the judge's determination that the value of the timber wrongfully cut was an appropriate measure of damages, especially in light of the broad deference afforded to the finder of fact in making an assessment

[5] Even if we were to conclude that GTL was liable under G. L. c. 242, § 7, any violation was unknowing and based on the good faith belief that Hakala was authorized by the plaintiffs and that the instructions GTL received were correct. Therefore, the plaintiffs would only be entitled to single damages under the statute, which they were already awarded and, as discussed below, were correctly determined.

of damages. See Spinosa v. Tufts, 98 Mass. App. Ct. 1, 10 (2020). Among other evidence, the judge heard testimony regarding the quality of the trees, the value of such timber, the plaintiffs' claimed privacy harms, and the cost of restoring the properties to their original condition, and the judge concluded that the value of the timber wrongfully cut fairly compensated the plaintiffs for their damages.[6] The award represents a "reasoned weighing of the evidence," especially considering that the cost of restoration was not "reasonably necessary in light of the damage inflicted," Glavin, supra at 319-320, and would have represented a "very large and disproportionate expense to relieve from the consequences of a slight injury," Trinity Church, supra at 50.

Judgment affirmed.

By the Court (Green, C.J., Blake & Kinder, JJ.[7]),

Joseph F. Stanton

Clerk

Entered: June 9, 2021.

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[6] Contrary to the plaintiffs' contention, the judge's decision reveals that she did consider the plaintiffs' expert's testimony. The judge did not err by failing to make explicit findings regarding the expert's testimony where the judge concluded that the cost of restoration was not an appropriate measure of damages and the expert testified only regarding the cost of restoration.

[7] The panelists are listed in order of seniority.