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NO. 71022-2-1

(King County Superior Court No. 12-2-03756-6 SEA)

COURT OF APPEALS FOR DIVISION I

STATE OF WASHINGTON

MIGUEL GAONA

Appellant,

v.

GLEN ACRES GOLF & COUNTRY

CLUB and GLEN ACRES

HOMEOWNER'S ASSOCIATION, INC.

Respondent.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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REPLY OF APPELLANT MIGUEL GAONA

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A. Argument

The basic premise of the respondent's argument is that a casual inspection by a lay person of a willow tree stand saturated with water and with an overgrowth of ivy at its base located in a 225 condominium complex with an adjacent golf course satisfies its affirmative duty to inspect for possibly dangerous conditions of which it does not know and thus constitutes reasonable precaution to protect its invitee from dangers that are foreseeable from the use of the property.

As previously pointed out, a business's constructive notice of a dangerous condition can be based on the owner's failure to conduct adequate and periodic inspections required in the exercise of reasonable and prudent care given the foreseeability of the risk.

The respondent maintains that a casual inspection by a lay person is adequate under the law of the State of Washington. No case in this state, however, has established such a bright line. Rather, as evidenced by the specific cases cited by the respondent, the adequacy of inspections, in general, depends upon the particular circumstances of the case – a jury question. For instance, the respondent cites the opinion in **Lewis v. Krussell**, 101 Wn.App. 178, 188, 2 P.3d 486 (2000) for the proposition that a leaning tree would not put a landowner on constructive notice that it was a hazardous tree (Mr. Scott's testimony indicates that the two most apparent indications of the tree's defective condition were its lean and die-back in the crown). However, the court actually cites *Gibson v. Hunsberger*, 109 N.C. App. 671, 428

S.E.2d 489, 492 (1993) for the proposition that evidence that a healthy tree was leaning would not have put landowner on constructive notice that a dangerous condition existed in a region where it was common for healthy trees to lean and further cites *Ford v. South Carolina Dep't of Transp.*, 328 S.C. 481, 492 S.E.2d 811, 815 (1997) for the proposition that evidence that saturated ground contributed to fall of healthy tree was sufficient to raise material issue of fact as to whether the landowner failed to protect and prevent the hazard.

The respondent maintains that it had no actual notice of the tree's defective condition, but this only begs the question as to what constitutes an adequate inspection. The appellant had no knowledge of trees and Mr. Placek of Bill's Maintenance did not possess much more. Is a lay person competent to ascertain defects in trees that make them prone to fall – certainly not in every case. In the case of the particular tree that struck the appellant, the owners for aesthetic reasons allowed ivy to overgrow the base of the tree and others in the stand, an area that was also known to be wet. Would a layperson have bothered to remove the ivy to visualize the trees base? If someone had removed the ivy, there to be openly seen was a hole leading to a central hollow of decay – would this condition put a lay person on notice (see declaration of Scott Baker – CP 21).

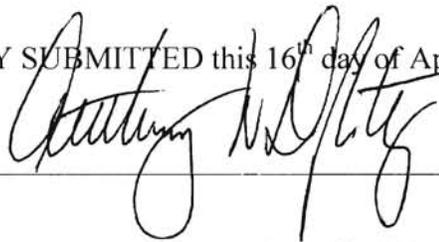
By allowing the ivy to overgrow around the base of the trees, the respondent effectively prevented an adequate inspection by a lay person. Only an arborist would have known to remove the ivy.

The respondent also makes the argument that the testimony of the arborist, Scott Baker, is insufficient to establish a question of fact. Mr. Scott's opinions are based on his education, and experience as an arborist. Respondent does not challenge his credentials or his status as an expert. His opinions regarding the status of the tree prior to its striking the appellant are not speculative, as alleged. Rather, they are based on his inspection of the stump and his expert knowledge about trees, their development and other salient factors pertaining to their failure. Thus, he is competent to provide opinions regarding signs of decay and failure at a specific point in time. The weight of such evidence is to be decided by the trier of fact.

In conclusion, there are several material questions of fact in this case that preclude dismissal whether or not a lay person's knowledge is used as the standard for inspections. What one particular lay person knows could very well differ from that of another lay person depending on education and experience. Hence, it would appear to be no standard at all. On the other hand, an arborist's opinions would be more comprehensive and standardized. Certainly, the factual circumstances are also relevant in any determination involving what and what is not an adequate inspection. These are questions for the fact finder.

On the basis of the evidence before the court, it is appropriate to reverse and remand this case to the lower court.

RESPECTFULLY SUBMITTED this 16th day of April, 2014.

A handwritten signature in black ink, appearing to read 'Anthony W. Dougherty', is written over a horizontal line.

Anthony W. Dougherty, WSBA # 7334

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STATE OF WASHINGTON

MIGUEL GAONA,

Appellant,

v.

GLEN ACRES GOLF & COUNTRY CLUB,
a Washington business, for unknown; and,
GLEN ACRES HOMEOWNER'S
ASSOCIATION, INC., a Washington
corporation,

Respondents.

DECLARATION OF SERVICE

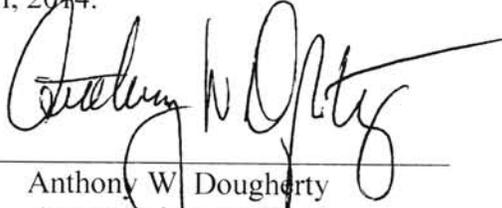
TO: ALL PARTIES AND COUNSEL OF RECORD

I, Anthony W. Dougherty, being first duly sworn on oath, depose and say: That at all times mentioned herein I was over 18 years of age, and certify that I served a copy of the Reply of Appellant Miguel Gaona on April 16, 2014 to all parties or their counsel of record via ABC Legal Services messenger as follows:

William E. Gibbs
Attorney at Law
14205 SE 36th Street
Suite 100
Bellevue, WA 98004

1 I declare under penalty of perjury, under the laws of the State of Washington, that the
2 foregoing is true and correct.

3 Dated this 17th day of April, 2014.

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6 Anthony W. Dougherty
7 Attorney for Appellant
8 WSBA# 7334
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