DOCKET NO: LLI-CV-23-6034198-S : SUPERIOR COURT

MIROSLAWA GREBLA : JUDICIAL DISTRICT OF LITCHFIELD AT TORRINGTON

V.

BRITT PENDERGAST et al. : APRIL 18, 2024

MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO DISCHARGE LIS PENDENS

INTRODUCTION

The plaintiff, Miroslawa Grebla, commenced this action against the defendants, Stephen and Britt Pendergast, with a return date of September 19, 2023.[1] The plaintiff's four count complaint sets forth claims for trespass, nuisance, intentional infliction of emotional distress, and negligent infliction of emotional distress.

The plaintiff alleges that the defendants have caused "an unnatural diversion of the flow of water onto the Grebla Property." Compl. In addition, the plaintiff alleges that the defendants breached and/or dismantled "parts of the stone wall that forms the mutual north/south boundary between the properties." Id. In her prayer for relief, the plaintiff seeks damages, other relief and "temporary, permanent and/or mandatory injunctive relief." Id.

[1] In addition to this action, three other matters have been filed pertaining to the plaintiff's property and surface water flow. *Grebla* v. *Inland Wetlands and Watercourses Commission*, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-23-6033248-S (December 22, 2023, *Lynch, J.*), an appeal by the plaintiff from two cease and desist orders issued by the Town of Roxbury Inland Wetlands and Watercourses Commission, a judgment of dismissal entered in said matter on December 22, 2023. *Roxbury* v. *Grebla*, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-23-5015224-S, an action brought by the Town of Roxbury against the plaintiff for injunctive relief; said action is still pending. *Roxbury* v. *Grebla*, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-24-6036028-S (March 20, 2024), an enforcement action brought by the Town of Roxbury against the plaintiff, judgment entered in favor of the town on March 20, 2024.

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After filing suit in this matter, the plaintiff filed a lis pendens on the defendants' property at 49 Garnet Road in Roxbury. Pursuant to General Statutes §§ 52-325a (c), 52-325 (d), and 52-325 (b), the defendants filed this motion to discharge the lis pendens.

A hearing was held on March 27, 2024, at which the plaintiff testified and presented exhibits. No other witnesses were called.[2]

In reaching its conclusions, the court has carefully weighed and fully considered all the evidence received at trial, evaluated the credibility of the witness, assessed the weight to be given to specific evidence, measured the probative force of conflicting evidence, reviewed all exhibits and relevant law, and has drawn such inferences from the evidence, or facts established by the evidence, that it deems reasonable and logical. Based upon the evidence, the court makes the following findings.

FACTS

The plaintiff has lived at 55 Garnet Road in Roxbury for almost twenty-four years. The defendants bought adjoining property at 49 Garnet Road on April 4, 2020. A stone wall that forms a mutual boundary between the adjoining properties has existed for many years. These rocks are stacked on top of each other. The plaintiff offered photos showing rocks on both the plaintiff's and the defendants' sides near the stone wall. The plaintiff claimed this evidenced that that the defendants were removing rocks from the stone wall. The court does not find that these

[2] In the *Roxbury* v. *Grebla* injunction matter, Ms. Grebla called an expert, Robert Doane, Jr., who "conducted an exhaustive review of the area's topography" and testified about water flow and flooding. *Roxbury* v. *Grebla*, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-23-5015224-S, 2023 WL 8432853, *19 (December 1, 2023, *Moore, J.*)., Doane was not called as a witness in this matter.

photos showing rocks on both the plaintiff's and the defendants' property near the stone wall evidence that the defendants were removing rocks from the stone wall.

According to the plaintiff, there was a hurricane in 2020 or 2021 and twenty to twenty-five trees on the plaintiff's property were knocked down, including one tree that toppled into the defendants' yard, falling, in the process, onto the stone wall between the plaintiff's and the defendants' property. This caused the stone wall to become damaged. Although the damaged stone wall runs on the boundary line of the property, abutting both the plaintiff's and the defendants' property, the plaintiff repaired the wall, hiring someone to fix it.

There is a drainage trench that runs north to south on the defendants' property to the stone wall boundary. This trench has been in place since 2015 or 2016. The plaintiff claims that the defendants put rocks into the trench, a few feet before the stone wall, on the defendants' property. The plaintiff testified that this has caused water to pool on her property. The court does not find this testimony credible. The plaintiff provided no pictures of the water that now she claims pools on her property. To the contrary, the plaintiff only provided numerous pictures of water pooling on the defendants' property, which she took as late as the fall of 2022.

Likewise, the court does not find credible the plaintiff's testimony that the defendants regraded their property causing water to flow onto her property. The plaintiff testified that she could see the work that was being done, including the use of excavators and other machinery to make a hill and took pictures to show the work being done. However, not one of the many pictures offered by the plaintiff in the hearing showed such equipment. Moreover, none of the pictures offered by the plaintiff showed a hill on the defendants' side of the stone wall. To the contrary, the photographs provided by the plaintiff as Exhibit 8 show that the plaintiff's property

is at a higher elevation than the defendants' property. The plaintiff conceded such in her testimony. Water does not flow uphill.

In addition, the plaintiff testified that she never had water flowing onto her property until the regrading was done by the defendants. However, the court finds this testimony is not credible and contradicted by her court filings in other matters. Specifically, in *Roxbury* v. *Grebla*, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-23-5015224-S, the plaintiff set forth a counterclaim alleging in part that the town, and/or employees, agents or assigns "have constructed and/or maintained an unlawful and unreasonable drainage system and discharge of surface storm water into, upon, through and under the Grebla Property, including the yard of her dwelling house . . . . [*S*]*aid drainage system has increased collection, accumulation and flow of water and sediment onto the Grebla Property, including her dwelling front yard.*" (Emphasis added.) *Roxbury* v. *Grebla*, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-23-5015224-S (August 18, 2018, Ans. and Special Defense and Counterclaim). In that case, the plaintiff alleges specifically that the town engaged in "conduct including but not limited to . . . alterations to Garnet Road . . . installation of culverts in and around Garnet Road . . . creation of artificial trenches into the Grebla Property . . . changes to the catch basin (Catch Basin) located adjacent to the south-east corner of the Pendergast Property, some of which favor the Pendergasts to the detriment of Grebla . . . raising the grade of the Pendergast Property immediately adjacent to the Catch Basin . . . diverting the natural flow of water . . . failing to properly maintain and clear the Catch Basin and associated culverts; and . . . allowing sediment to accumulate in the Catch Basin." Id. Additionally, the plaintiff alleges that the town, its agents, employees or assigns "have unlawfully collected water flowing from the land of contiguous, adjacent and/or nearby private properties and unnaturally directed the same

into the Grebla Property. . . . [This] *aforementioned conduct has unreasonably increased the volume and velocity of water onto the Grebla Property in excess of that which would naturally flow and drain over the same . . . [and] has unlawfully deposited significant volumes of sediment into the Grebla Property.*" (Emphasis added.) Id.

LAW

A. The Plaintiff's Complaint Does Not Support Maintaining a Lis Pendens on the Defendants' Property

"A lis pendens is a creature of statute and a person invoking its provisions must comply with the statutory requirements." (Internal quotation marks omitted.) *Peterson* v. *Connecticut Attorneys Title Ins. Co.*, 142 Conn. App. 34, 43, 64 A.3d 122, cert. denied, 309 Conn. 913, 69 A.3d 309 (2013). General Statutes § 52-325 (a) permits the recording of a notice of lis pendens in the office of the town clerk in which real property is located if the plaintiff has commenced an action "intended to affect [the] real property." Id.

Actions that are "intended to affect real property" are those "(1) actions whose object and purpose is to determine the title or rights of the parties in, to, under or over some particular real property; (2) actions whose object and purpose is to establish or enforce previously acquired interests in real property; (3) actions which may affect in any manner the title to or interest in real property, notwithstanding the main purpose of the action may be other than to affect the title of such real property." General Statutes § 52-325 (b).

Here, the plaintiff claims that the filing of the lis pendens on the defendants' property is proper under § 52-325 (b)(3) as this action may affect the defendants' interest in their real property. The court disagrees.

"Generally, a notice of lis pendens is simply a notice that, when properly recorded, warns third parties, such as prospective purchasers, that the title to the property is in litigation; [t]he doctrine underlying lis pendens is that a person who deals with property while it is in litigation does so at his peril. An encumbrance is a burden on the title and, as such, impedes its transfer." (Citation omitted; internal quotation marks omitted). *Ghent* v. *Meadowhaven Condominium, Inc.*, 77 Conn. App. 276, 284, 823 A.2d 355, 361 (2003).

"[T]he placing of a notice of lis pendens on the land records does not deprive the property owner of his right to occupy and use the land in question. Just as clearly, however, a notice of lis pendens does interfere with an owner's right to sell or mortgage his real estate." *Kukanskis* v. *Griffith*, 180 Conn. 501, 509, 430 A.2d 21, 25 (1980). Thus, a defendant may move to discharge a lis pendens.

"[A] property owner burdened by a notice of lis pendens may rightfully challenge its validity on two independent grounds: (1) the absence of probable cause to sustain the lis pendens claim; or (2) noncompliance with the procedural requirement of an effective lis pendens notice," (Internal quotation marks omitted.) *Sanstrom* v. *Strickland*, 11 Conn. App. 211, 212, 525 A.2d 989 (1987). Moreover, a lis pendens may be discharged if the court finds the action upon which it is based will not affect the title of or interest in the real estate owned by an adverse party "as it no longer serves its purpose, which is to put potential buyers of the real estate and creditors of its owners on notice that the real estate may be subject to pending adverse interests that may affect the title or right to the property." *Garcia* v. *Brooks Street Associates*, 209 Conn. 15, 22, 546 A.2d 275, 278 (1988).

In a case similar to the one at bar, Judge Lavine discharged a lis pendens finding that the plaintiffs did not have a cause of action directly or indirectly affecting the title to, or interest in,

the property of the defendants or any future owners. *Bielonko* v. *Blanchette Builders, Inc.*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV-98-05-81188-S, 1999 WL 68650 (February 2, 1999, *Lavine, J.*). There, the plaintiffs alleged that the actions of the defendant changed the natural contour and topography of the land substantially increasing the amount and flow of surface water onto the plaintiff's property. Judge Lavine cited *Garcia* v. *Brooks Street Associates*, supra, 209 Conn. 22 ("From the face of the statute it is clear that a notice of lis pendens is appropriate only where the pending action will in some way, either directly or indirectly, affect the title to or an interest in the real property itself.").

Another court also discharged a lis pendens filed in a case where the plaintiff sought an injunction for water drainage and flooding from construction on the defendant's property. *Eppoliti Realty Co.* v. *Piacentini*, Superior Court, judicial district of Danbury, Docket No. CV-92-0311135-S (January 28, 1993, *Fuller, J.*). Judge Fuller stated "[i]f the plaintiff recovers under either a nuisance or trespass theory, it may obtain an injunction against further discharges, recover damages, or both depending upon the evidence at trial. . . . If an injunction is issued to stop or alter the drainage, it will be issued against the defendants, not their land. The plaintiff will not receive any interest in the defendants' property, and the injunction will not affect the title to it. Where the remedy requested in the action does *not* affect the *title* of the real estate owned by the adverse party, a notice of lis pendens is properly discharged as it no longer serves its purpose, which is to put potential buyers of the real estate and creditors of its owners on notice that the real estate may be subject to pending adverse interests that *may affect the title or right to the property*. . . . The exact issue in this case was decided by the New York Court of Appeals in *Braunston* v. *Anchorage Woods, Inc.*, 10 N.Y. 2d 302, 222 N.Y.S. 2d 316, 178 N.E. 2d 717 (1961), where there was a claim that collecting and dumping surface water from land of

the defendants on to land of the plaintiffs was a nuisance. Since an action to abate a nuisance, for a mandatory injunction, and for damages for discharge of surface water did not affect the title or possession of real property, the lis pendens was discharged. A similar result was reached in *Doar* v. *Kozick*, 448 N.Y.S. 2d 56, 87 A.D. 2d 603 (1982) where a lis pendens filed by a downstream property owner against land of an upstream developer was discharged since the action sought only to prevent the developer from using the land in what was claimed was a wrongful manner, and the downstream property owner claimed no right, title or interest in the developer's property." (Emphasis added.) *Eppoliti Realty Co.* v. *Piacentini*, supra.

Similarly, an application to discharge a lis pendens was granted in a matter where both monetary damages and injunctive relief was sought. *Founders C.D., LLC* v. *Bray*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV-03-0830337-S (January 9, 2004, *Berger, J.*). In *Founders* the Brays sought "to require Founders to repair and maintain a retention pond in a proper fashion and take appropriate measures to prevent the accumulation of soil, mud and salt from defendant's lots from running into plaintiff's property. . . . Mr. Bray testified that the defendant should be enjoined and prevented from allowing any further drainage into the pond until it works properly." Id. The court discharged the lis pendens relying in part upon the *Bielonko* v. *Blanchette Builders* decision.

In opposing the motion to discharge the plaintiff relies upon other Superior Court decisions. *Coveland Farms, Inc.* v. *Perrotta*, Superior Court, judicial district of Middlesex, Docket No. CV-02-0099452-S (October 25, 2002, *Robinson, J.*). In *Coveland Farms*, then-Judge Robinson wrote, "a notice of lis pendens is appropriate only where the pending action will in some way, either directly, or indirectly affect the title to or an interest in the real property itself. . . . [The plaintiffs'] prayer for relief consists of among other otherings: As to the First

Count, . . . [a] mandatory injunction requiring the Defendant to repair, replace and/or add such a driveway material in the private driveway area for the Coveland property so as to prevent the accumulation of large areas of rain water (and in the winter months, large areas of ice) . . . . As to the Second Count . . . [a] temporary and permanent injunction restraining the Defendant and/or his agents, *successors and assigns*, from maintaining any above improvements of any kind within 50' of the boundary line of the Defendant's (Perrotta) property and the Plaintiff's (Coveland) property. . . .

"A mandatory injunction requiring the Defendant and his and/or his agents, *successors and assigns* to plant and maintain such evergreen trees within the area prescribed by the Amended Easement Agreement dated November 23, 2001, so that any above ground structural improvements on the Defendant's property (excluding the chimney and the northerly portion of the garage as presently constructed) shall not be visible from the designated areas of the Coveland property. . . . As to the Third Count . . . [a] mandatory injunction requiring the defendant and his agents *successors and assigns* to restore certain areas of the protected meadow on Defendant's property and areas immediately adjacent to the shared driveway which the defendant damaged during the process of construction on his property to as nearly equal as possible to its original condition as a meadow area." (Citation omitted; emphasis in original.) Id.

In denying the motion to discharge the lis pendens, critically, Judge Robinson noted that much of the relief sought, "would bind not only the defendant but also any subsequent owners of the property that is the subject of the lis pendens." Id. Moreover, the plaintiff in *Coveland Farms* sought specific action(s) be taken on the defendant's property.

The plaintiff also relies upon *Firstlight CT Hydro, LLC* v. *Ponemah Riverbank, LLC*, Superior Court, judicial district of New London at New London, Docket No. KNLCV-19-6042685 (March 2, 2020, *Knox, J.*) where the court denied a motion to discharge a lis pendens, stating "[m]uch of the relief being sought in this action is equitable in nature and allegedly affecting the defendants' real property in Way B. . . . [A] lis pendens applies . . . to litigation that . . . involve[s] a determination of certain rights and liabilities incident to ownership." (Citation omitted; internal quotation marks omitted.) Id. Critically, a review of the verified complaint from the docket in *FirstLight* reveals that there, the plaintiff sought the following: "A temporary and permanent injunction ordering the defendants to . . . remove the block wall on the western side of the canal that generally longitudinally bisects Way B, including all portions on FirstLight property, and all portions on defendants' property; . . . remove all fill materials added in any portion of Way B and restore the grade of Way B to its original grade; . . . repair the roadway, fencing and curbing on FirstLight's property that was destructed to construct the block wall and new concrete curbing; . . . restore FirstLight's property to substantially the same condition it was in prior to the unauthorized construction; . . . cease from using FirstLight property in any manner not expressly authorized by FirstLight in writing; . . . cease from using or altering any portion of Way B on the defendants' property that will interfere with FirstLight's express deeded easement rights to pass and repass over Way B on foot and by vehicle; . . . retain an engineering firm to survey and evaluate the integrity of the western canal wall, and conduct any repairs to damage caused by defendants unauthorized activities; and . . . replace the surveyor's marker destroyed or removed during the destruction and construction on FirstLight's property and during the construction of the block wall in Way B." *Firstlight CT Hydro, LLC* v. *Ponemah Riverbank, LLC*, Superior Court, judicial district of New London at New London, Docket No. KNLCV-19-

6042685 (September 5, 2019, Compl.) Thus, unlike the plaintiff in the present case, the plaintiff in *FirstLight* sought orders specifying certain conditions apply to or certain work be done on the defendants' property.

The plaintiff also relies upon the decision *Kelly* v. *Rainbow Development, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-07-5013231-S (November 24, 2008, *Licari, J.*). There, the court stated "[i]t has been held that a notice of lis pendens is inappropriate when a complaint only alleges nuisance or trespass. . . . Connecticut courts have consistently granted motions to discharge a notice of lis pendens in cases where the notice of lis pendens is filed in association with a nuisance and/or trespass action. *Perri* v. *Constantine*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 06 4007854S (April 21, 2008, *Downey, J.*). Additionally, several Superior Court opinions have noted that the torts of diversion of surface water and trespass are analogous, leading to the inference that lis pendens is inappropriate in these cases as well. See id.; see also *Day* v. *Gabriele*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-03-0196802-S (August 10, 2005, *Tobin, J.*)." (Citation omitted; internal quotation marks omitted.) *Kelly* v. *Rainbow Development, Inc.*, supra. The *Kelly* court denied the motion to discharge the lis pendens, however, relying specifically on the request set forth in the plaintiff's prayer for relief. "In her prayer for relief, the plaintiff claimed specific performance to compel the Defendant *or any subsequent purchaser* of 11 Priscilla Road from wrongfully discharging water and silt onto the Plaintiff's property. . . . The relief that the plaintiff in this case seeks would affect the defendant's, *or a future owner's* use of the property itself." (Citation omitted; emphasis added; internal quotation marks omitted.) Id.

In the present case, there is nothing in the plaintiff's complaint or prayer for relief to suggest that the plaintiff is seeking an order against the defendants' assigns, agents, subsequent or future owners or otherwise seeking that a specific condition be imposed upon or specific work be performed upon the defendants' property. While "[t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically. . . . *[E]ssential allegations may not be supplied by conjecture or remote implication.* . . ." (Emphasis added.) *J.D.C. Enterprises, Inc.* v. *Sarjac Partners, LLC.*, 164 Conn. App. 508, 512, 137 A.3d 894, 897 (2016) (citing *Bailey* v. *West Hartford*, 100 Conn. App. 805, 809, 921 A.2d 611 [2007]).

Moreover, the plaintiff did not allege in the complaint any facts showing that she will be irreparably harmed if an injunction does not issue. "[I]t is incumbent upon the party seeking relief to allege facts showing irreparable damage. . . ." *Stocker* v. *Waterbury*, 154 Conn. 446, 449, 226 A.2d 514, 516 (1967). Similarly, the plaintiff did not present any testimony or evidence as to what specific work needed to be done on the defendants' property.

Having not advanced any facts in her complaint showing irreparable harm, and having not enumerated what specifically she is seeking by way of injunctive relief, and/or that she is seeking to bind the defendants' successors or assigns, the plaintiff should not be allowed to impede the defendants from selling or encumbering the property until the end of the litigation between the parties. To hold otherwise would be to allow any party to encumber another's real property through the filing of a complaint for nuisance or trespass by merely inserting (1) the conclusory allegation that he or she will be irreparably harmed, and (2) including in the prayer for relief a generic claim for injunctive relief. This court does not interpret the law as allowing such a result. Accordingly, the court concludes that the lis pendens should be discharged.

B. The Plaintiff Failed to Establish Probable Cause for the Lis Pendens.

In addition, the court finds that the plaintiff failed to establish probable cause exists to sustain the validity of the lis pendens.

"Our rules regarding the standard of proof for establishing probable cause are well settled. It is important to remember that the plaintiff does not have to establish that he will prevail, only that there is probable cause to sustain the validity of the claim. . . . The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it. . . . Probable cause is a flexible common sense standard. It does not demand that a belief be correct or more likely true than false." *Cadle Co.* v. *Gabel*, 69 Conn. App. 279, 286–87, 794 A.2d 1029, 1036 (2002) (citing *Corsino* v. *Telesca*, 32 Conn. App. 627, 631, 630 A.2d 154, cert. denied, 227 Conn. 931, 632 A.2d 703 [1993]).

In determining if probable cause exists, "[t]he court, while not making a final decision on the merits, weighs the testimony given and the documentary proof presented. The trial court's duty is to weigh the probabilities based on the facts and to exercise its broad discretion in determining whether there is probable cause to sustain the lis pendens." *Sanstrom* v. *Strickland*, supra, 11 Conn. App. 212. In *Sanstrom*, the Appellate Court affirmed the trial court's discharge of a lis pendens for lack of probable cause, finding that the plaintiff's testimony was self-serving declarations entitled to little weight.

"Probable cause has been defined as the knowledge of facts sufficient to justify a reasonable [person] in the belief that he [or she] has reasonable grounds for prosecuting an action. . . . *Mere conjecture or suspicion is insufficient.*" (Emphasis added.) *Silano* v. *Cooney*,

223 Conn. App. 692, 703–4, 309 A.3d 333, 341 (2024) (citing *Mulligan* v. *Rioux*, 229 Conn. 716, 739, 643 A.2d 1226 [1994]).

Here, the plaintiff has not furnished sufficient evidence to justify a finding of probable cause by this court that injunctive relief will issue in her favor. First, the court does not find the plaintiff's testimony that the defendants removed stones from the stone wall to be credible. The blurry photograph offered as the plaintiff's Exhibit 12 shows some unidentified person near the stone wall. It does not show the defendants removing rocks from the wall and does not support a finding of probable cause that the defendants were removing rocks. Indeed, the plaintiff admitted she could not identify who the person was in the picture.

Similarly, rocks are shown on both sides of the barbed wire boundary line in Exhibit 12. It does not show a substantially lesser number of rocks on the defendants' side of the property line. Likewise, the plaintiff's Exhibits 9 and 10 are pictures of a stone wall, with some areas showing stones buried in leaves or dirt and covered in moss. It does not evidence the removal of rocks by the defendants.

Even if the court could somehow find probable cause for the claim that the defendants were removing stones from the stone wall, the court cannot find probable cause that an injunction will issue against the defendants in connection with the plaintiff's claims about the stone wall. The plaintiff's counsel argues that an injunction is necessary for the repair of the plaintiff's side of the stone wall because work must be done on the defendants' side of the wall. However, "[u]nsupported conclusory allegations of counsel are not evidence. . . ." *Perkins* v. *Freedom of Information Commission*, 228 Conn. 158, 176, 635 A.2d 783, 791 (1993) (citing *New Haven* v. *Freedom of Information Commission*, 205 Conn. 767, 776, 535 A.2d 1297 [1988]). Moreover, no probable cause supports this conclusory allegation. Specifically,

according to the plaintiff there was a hurricane in 2020 or 2021 and twenty to twenty-five trees on the plaintiff's property were knocked down, including one tree that fell on the stone wall, toppling one of the plaintiff's trees into the defendants' yard. This caused the stone wall to become damaged. The plaintiff hired someone who fixed the stone wall where it was damaged. As the plaintiff was previously able to repair the stone wall, the court finds that the plaintiff did not establish probable cause as to a need for injunctive relief against the defendants for the plaintiff to make any repairs she deems necessary to the stone wall. To the extent the plaintiff believes that the defendants should be responsible for the cost of said repairs, the plaintiff has an adequate remedy at law.

Similarly, the court does not find that the plaintiff established probable cause to believe that she will obtain injunctive relief against the defendants in connection with water flow onto her property. There was a trench in existence that ran north to south on the defendants' property to the stone wall since 2015 to 2016. The plaintiff claims that the defendants put rocks into the trench, a few feet away from the stone wall, on the defendants' property. The plaintiff testified that this has caused water to pool on her property. Again, the court does not find this testimony credible. The plaintiff provided no pictures of the water that now she claims pools on her property. To the contrary, the plaintiff provided only numerous pictures of water pooling on the defendants' property as late as the fall of 2022. See Exhibit 8.

Likewise, the court does not find credible the plaintiff's testimony that the defendants regraded their property causing water to flow onto her property. The plaintiff testified that she could see the work that was being done, including the use of excavators and other machinery to make a hill. The plaintiff also testified that she took pictures to show work the defendants were doing on their property. However, not one of the many pictures offered by the plaintiff in the

hearing showed any excavators, mounds of dirt, or hill which would cause water to draw towards the plaintiff's property. To the contrary, the photographs provided by the plaintiff as Exhibit 8, where she claims the defendants built a hill, show that the plaintiff's property is at a higher elevation than the defendants' property. The plaintiff admitted this fact.

In addition, at the hearing before the undersigned, the plaintiff testified that she never had water flowing onto her property until the regrading was done by the defendants. However, in the matter *Roxbury* v. *Grebla*, supra, Docket No. LLI-CV-23-5015224-S, Ms. Grebla set forth a counterclaim alleging in part that the town, and/or employees, agents or assigns: "have constructed and/or maintained an unlawful and unreasonable drainage system and discharge of surface storm water into, upon, through and under the Grebla Property, including the yard of her dwelling house. . . . [S]aid drainage system has increased collection, accumulation and flow of water and sediment onto the Grebla Property, including her dwelling front yard. . . ." *Roxbury* v. *Grebla*, supra, Ans. and Special Defense and Counterclaim. Ms. Grebla alleges specifically that the town engaged in "conduct including but not limited to . . . alterations to Garnet Road . . . installation of culverts in and around Garnet Road . . . creation of artificial trenches into the Grebla Property . . . changes to the catch basin (Catch Basin) located adjacent to the south-east corner of the Pendergast Property, some of which favor the Pendergasts to the detriment of Grebla . . . raising the grade of the Pendergast Property immediately adjacent to the Catch Basin . . . diverting the natural flow of water . . . failing to properly maintain and clear the Catch Basin and associated culverts; and . . . allowing sediment to accumulate in the Catch Basin." Id. Ms. Grebla alleges additionally that the town, its agents, employees or assigns "have unlawfully collected water flowing from the land of contiguous, adjacent and/or nearby private properties and unnaturally directed the same into the Grebla Property. . . . [This] aforementioned conduct

has unreasonably increased the volume and velocity of water onto the Grebla Property in excess of that which would naturally flow and drain over the same . . . [and] has unlawfully deposited significant volumes of sediment into the Grebla Property." Id. In addition to damages, and other relief, Ms. Grebla requests specifically, "temporary, permanent and/or mandatory injunctive relief including but not limited to . . . Enjoining the town from entering Ms. Grebla's property without express consent from Ms. Grebla; and compelling the town to take actions necessary to abate the nuisance." Id. These statements made by the plaintiff in her counterclaim against the Town of Roxbury contradict her testimony before this court.

Quite simply, the plaintiff failed to establish that probable cause exists for her claims for injunctive relief against the defendants. Because the court does not find probable cause, the court discharges the lis pendens.

CONCLUSION

Wherefore for all the foregoing reasons, the court grants the defendants' motion to discharge the lis pendens.

The Court 4/18/24