Filed 6/19/13 Nassir v. Lunkewitz CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

FARZIN NASSIR, Plaintiff and Appellant, v. DANIELA LUNKEWITZ, Defendant and Respondent.	B237434 (Los Angeles County Super. Ct. No. BC403205)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sousann G. Bruguera, Judge. Reversed.

Ecoff Blut, Lawrence C. Ecoff, and Philip H.R. Nevinny for Plaintiff and Appellant.

Krakowsky Michel, Shinaan S. Krakowsky, and Hayes F. Michel for Defendant and Respondent.

Plaintiff Farzin Nassir appeals the grant of summary judgment in favor of his former neighbor, defendant Daniela Lunkewitz. We conclude that summary judgment was improperly granted, and thus we reverse.

BACKGROUND

Nassir filed the present action against Lunkewitz on December 4, 2008. The operative complaint alleges that Lunkewitz entered Nassir's property without permission in October 2008, trimmed Nassir's trees, and damaged his bushes and landscaping, resulting in damages in excess of $45,000. The complaint asserted four causes of action—(1) trespass, (2) negligence, (3) negligence per se, and (4) violation of California Code of Civil Procedure section 733[1]—and sought treble damages.

Lunkewitz moved for summary judgment on April 9, 2010.[2] She asserted that she formerly resided in the Mt. Olympus planned community in the Hollywood Hills. Nassir's property was located immediately uphill from Lunkewitz's. The Mt. Olympus covenants, conditions, and restrictions (CC&R's) prohibit any homeowner from growing trees or other landscaping more than 10 feet above grade if the landscaping obstructs a neighbor's view. Over the course of about a year, Lunkewitz asked Nassir many times to trim the trees on his property in accordance with the CC&R's. In July 2008, the Mt. Olympus Property Owners Association (MOPOA) sent Nassir a letter informing him that his trees were taller than permitted by the CC&R's, and asking him to "[t]rim and

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[1] Code of Civil Procedure section 733 provides: "Any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any court having jurisdiction."

[2] We discuss in greater detail below the evidence in support of and in opposition to the motion for summary judgment.

thin the offending trees" within 15 days. In September 2008, Lunkewitz's attorney sent Nassir a letter again asking Nassir to trim his trees and attaching photographs documenting Lunkewitz's obscured view. Eventually, Nassir agreed to allow his trees to be trimmed at Lunkewitz's expense and stated a "preference" that his "handyman" do the work. When Lunkewitz was unable to reach Nassir's handyman, she hired her own gardener to top the trees. Lunkewitz's gardener trimmed Nassir's trees over two days, during which time no one from Nassir's property objected. To the contrary, the homeowner, whom Lunkewitz believed to be one of Nassir's parents, asked the gardener to trim an additional tree. Lunkewitz asserted that she was entitled to summary judgment because (1) the CC&R's gave her the right to enter Nassir's property to cure his violation, (2) her entry onto Nassir's property was privileged because his trees constituted a nuisance under the CC&R's, and (3) there was no evidence Nassir suffered any damages.[3]

Nassir opposed Lunkewitz's motion for summary judgment. He asserted that Lunkewitz's entry onto his land was neither privileged nor done with his consent. Specifically, he asserted that (1) neither he nor his parents agreed to allow Lunkewitz's gardener to trim his trees, (2) the terms of the CC&R's are enforceable by the MOPOA, not by individual homeowners, and (3) he suffered significant damages.

The trial court granted Lunkewitz's motion for summary judgment on October 6, 2010, on two alternative grounds: (1) the CC&R's authorized Lunkewitz to trim Nassir's trees because they exceeded the maximum height permitted and obscured her view; and (2) Nassir had not established, and could not establish, his alleged damages. The court ordered Lunkewitz to submit a detailed proposed order pursuant to Code of Civil Procedure section 437c, subdivision (g), which it signed and filed on December 23, 2010. The order stated in relevant part as follows:

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[3] Lunkewitz also asserted that she had Nassir's express permission to trim the trees, but she appears not to have relied on that alleged consent as a ground for summary judgment.

"Lunkewitz is entitled to summary judgment on Nassir's claims as a matter of law as there are no triable issues of material fact since the CC&Rs expressly gave Lunkewitz 'the right' to enter Nassir's property and cure the Violation, and further, protect[ed] her from any liability from these actions. Specifically, the Hercules Property is subject to the CC&Rs which are enforceable both by [the] MOPOA and Mt. Olympus property owners who are subject to the CC&Rs. Among other restrictions, the CC&Rs require that property owners and Mt. Olympus community residents ensure maturing trees do not obstruct a neighbor's right to a reasonable view. The failure to do so constitutes a nuisance, and where such a nuisance exists, the CC&Rs legally authorize property owners, like Lunkewitz, to abate or remove the nuisance. Most importantly, the property owner will 'not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal.' Because Lunkewitz has successfully demonstrated that Nassir's causes of action present no triable issue of fact, the Court grants summary judgment in Lunkewitz's favor.

". . . . . .

"Nassir cannot prove actionable trespass or negligence based on Lunkewitz's alleged unauthorized entry onto the Hercules Property because the CC&Rs expressly gave Lunkewitz the legal authority to enter the Hercules Property to cure the Violation. 'The essence of the cause of action for trespass is an "unauthorized entry" onto the land of another.' Civic Western Com. v. Zila Indus., Inc., 66 Cal.App.3d 1, 16 (1977). 'Where there is a consensual entry, there is no tort, because lack of consent is an element of the wrong.' Id. at 16-17. Consensual entry exists where a legal instrument provides for entry onto the land of another under specified circumstances. See Id. at 17. For example, '[a]n entry to repossess property, as provided in the contract for the sale of that property, is such a consensual entry, and is not a trespass.' Id. . . .

"Here, since the Hercules Property is bound by the CC&Rs and Lunkewitz is entitled to enforce the CC&Rs against Nassir, Nassir cannot prove Lunkewitz acted without Nassir's consent. Accordingly, Nassir cannot prove Lunkewitz unlawfully entered the Hercules Property.

"[. . . . . .]

"Similarly, Nassir cannot prove actionable trespass or negligence because Lunkewitz's entry onto the property to cure the Violation was privileged. 'Necessity [is a privileged entry which] often justifies an action which would otherwise constitute a trespass . . . .' People v. Roberts, 47 Cal.2d 374, 377 (1956) . . . 'Entry on land by [the] possessor of neighboring land to abate a private nuisance' is also a privileged entry and constitutes a defense to an unlawful entry claim. Witkin, 5 Summ. of Cal. L., Torts § 697 (10th ed.)

"Here, the CC&Rs declare Nassir's Violation to be a nuisance. The privileged nature of Lunkewitz's entry to cure the nuisance negates Nassir's claim that Lunkewitz did not have consent to enter the Hercules Property. As such, Lunkewitz is not liable to Nassir for trespass. Further, [Lunkewitz] is not liable for negligence since the privileged nature of Lunkewitz's entry negates both any duty Lunkewitz allegedly possessed to obtain consent from Nassir and the breach of such a duty.

"[. . . . . .]

"Nassir cannot prove a violation of CCP § 733 and negligence per se arising from § 733 based on Lunkewitz's alleged failure to obtain lawful authority before she topped Nassir's trees. To succeed on a claim arising from CCP § 733, Nassir must show that Lunkewitz cut down, or otherwise injured, a tree on the land of another without lawful authority. CCP § 733. Here, the CC&Rs expressly gave Lunkewitz the lawful authority to enter the Hercules Property and top Nassir's trees to cure the nuisance he created. Since Lunkewitz was lawfully authorized to cut Nassir's trees, Lunkewitz is not liable either for violating § 733 or negligence per se as the lack of lawful authority is an essential element[] of these claims. Moreover, the CC&Rs expressly preclude Lunkewitz from having any liability for entering the property and curing the nuisance." (Internal record citations omitted.)

The trial court also found that Nassir failed to establish damages and cited such failure of proof as an alternative basis for granting summary judgment:

". . . Nassir pleads compensatory and treble damages. However, Nassir has failed to establish a genuine issue of material fact[] as to his alleged damages. Since Nassir cannot establish his alleged damages with any sufficient reliability or definitiveness, the Court concludes Nassir's claims for damages are without merit.

". . . . . .

"To support his claim for compensatory damages, Nassir's only potentially admissible evidence offered is a November $44,600.00 draft upgrade estimate ('Draft Upgrade Estimate') provided by Oscar Robles of the Robles Landscape Service ('Robles') for 'the installation of [a] landscape upgrade.' The Draft Upgrade Estimate expressly states it is a 'draft' for the 'installation of landscape upgrade.' Likewise, Robles' deposition testimony revealed that the Draft Upgrade Estimate was . . . just that — an estimate — a speculative draft meant to be revised before any contract was finalized. In fact, the purported purpose of the Draft Upgrade Estimate was to allow Nassir to get other estimates and negotiate the price down with Robles.

"In addition, the Draft Upgrade Estimate was an estimate for a landscape upgrade. Robles himself described the project as one to bring the landscape 'up to par.' To that end, the Draft Upgrade Estimate cannot account for the actual alleged damage Lunkewitz purportedly caused, that is, the difference to Nassir's landscape before and after Lunkewitz's alleged unlawful entry. Thus, the Court finds that the Draft Upgrade Estimate is not a reasonable approximation or a reliable estimate which supports Nassir's claim for compensatory damages.

". . . . . .

"Neither can Nassir use Robles as an expert in the 'installation of landscape upgrade' to support his claim for damages. A person is qualified to testify as an expert only if he or she has sufficient knowledge, skill, experience, training or education to qualify as an expert on the subject matter of his or her testimony. Cal. Evid. Code § 720(a). The determinative issue is whether a witness has sufficient knowledge, skill or experience in a field so that his or her testimony would likely . . . assist the jury in the search for truth. [Citation.] Here, Robles does not hold the required subcontractor's

licenses to perform the work contemplated by the Draft Upgrade Estimate, e.g., landscaping and tree trimming. As a result, Robles is unqualified as a landscaping [or] tree trimming expert. [Citations.]

"Significantly, Robles lacks the necessary expertise and special knowledge to testify as an expert. Robles has not worked on a job costing more than $500 since 2006, and certainly nothing over $1,000 since 2003. As for tree trimming and irrigation repairs, Robles last commercially trimmed a tree in 2002 or 2003, and he has hardly done any irrigation repairs since 2003. The Draft Upgrade Estimate also contemplates use of a crane to install five (5) palm trees. However, Robles cannot recall the last time he worked on a job using a crane. Certainly, he has not used a crane since at least 2003. As a result, this Court cannot consider Robles' testimony or the Draft Upgrade Estimate as evidence supportive of Nassir's compensatory claims.

". . . . . .

"[Further], Nassir cannot rely on the pictures he produced to support a claim for damages. They lack a reliable foundation as Nassir testified he thinks Robles may have taken the pictures, while Robles testified he did not take any pictures. As a result, there is no evidentiary basis to conclude Nassir's pictures are an accurate representation of Nassir's landscaping after Lunkewitz's gardener topped the trees, nor is there any other reliable evidence that an expert can rely on to formulate an opinion of Nassir's alleged damages. In other words, any estimate of Nassir's alleged damages arising from the pictures is speculative at best. And, since Nassir cannot establish any amount of damages, the treble of zero dollars is still zero dollars." (Internal record citations and fns. omitted.)

The court entered judgment on June 24, 2011.[4] On November 17, 2011, the court dismissed a related action. Nassir timely appealed from the judgment.

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[4] Notice of entry of that judgment apparently was never served.

STANDARD OF REVIEW

"A court may grant a summary judgment only if there is no triable issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense. (*Id*., subd. (p)(2).) The defendant can satisfy its burden by presenting evidence that negates an element of the cause of action or evidence that the plaintiff does not possess and cannot reasonably expect to obtain evidence needed to establish an essential element. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460 (*Miller*).) If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2).)

"We review the trial court's ruling on a summary judgment motion de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opponent. (*Miller*, *supra*, 36 Cal.4th at p. 460.) A different standard of review applies to the court's evidentiary rulings in connection with the motion, which we review for abuse of discretion. (*Miranda v. Bomel Construction Co., Inc*. (2010) 187 Cal.App.4th 1326, 1335.)" (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 180-181 (*Garrett*).)

DISCUSSION

I. Lunkewitz's Authority Pursuant to the CC&R's to Enter Nassir's Property to Trim His Trees

A. Relevant Facts

Lunkewitz's motion for summary judgment asserted that the CC&R's permitted her, through her gardener, to trim Nassir's trees if they were more than 10 feet above grade and obstructed her view. The CC&R's on which Lunkewitz rely state, in relevant

part, that the "Declarant" (initially, Financial Federation, Inc.; later, the MOPOA (*Mount Olympus Property Owners Assn. v. Shpirt* (1997) 59 Cal.App.4th 885, 887-888)) "desires to subject [the Mt. Olympus property] to . . . covenants, conditions, restrictions and reservations for the mutual benefit of said property and its present and subsequent owners," including the following:

"5.03 No obstructions or trees having a height greater than ten (10) feet above the finished graded surface of the ground upon which it is located which would deprive any owner within a five hundred (500) foot radius of such obstruction or trees of a view shall be erected or maintained without the written approval of Declarant."

"10.05 If the owner of any lot or building site in said property fails or neglects to perform such duties of maintenance or upkeep as he is required to perform hereunder, Declarant may but shall not be required to perform the same and present to the owner its charges therefor, and said owner shall thereupon be and become liable for the prompt payment of such charges."

"12.01 The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant and the owners of any portion of said property, or their respective legal representatives, heirs, successors and assigns. Failure by Declarant or by any other property owner to enforce any of the conditions, restrictions or charges contained herein shall in no event be deemed a waiver of the right to do so thereafter."

"12.02 Any and all of the rights and powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights and powers and reservations assigned; and such person, corporation or association shall, upon its consent in writing to accept such assignment and assume such duties, have the same rights and powers to the extent of such assignment and be subject to the same obligations and duties as are give[n] to and assumed by Declarant hereunder."

"12.03 Violation of any of the conditions or restrictions herein contained shall give to Declarant, its officers, agents, or representatives, the right to enter upon the property upon or as to which such violation exists, and to summarily abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions thereof; and they shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal."

"12.04 The result of every act or omission[] whereby any condition or restriction herein contained is violated, in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by Declarant. . . ."

B. Analysis

Paragraphs 10.05 and 12.03 of the CC&R's are explicit that if a homeowner fails to keep his or her trees properly trimmed—i.e., to no more than 10 feet above finished grade—the homeowners' association may enter the homeowner's property and trim his or her trees at the homeowner's expense. By doing so, the homeowner's association "shall not thereby be deemed guilty of any manner of trespass." (¶ 12.03.) It thus appears that the MOPOA could have entered Nassir's property and trimmed his trees if they exceeded the height limitations specified in the CC&R's. At issue here, however, is not whether the homeowners' association had such a right, but whether Lunkewitz did as well.

Lunkewitz contends that because paragraph 12.01 provides that the CC&R's provisions "shall . . . be enforceable by Declarant *and the owners of any portion of said property* . . . ," it "places the 'Declarant' on an equal footing with individual property owners **for purposes of enforcement** of the conditions contained in the CC&Rs." Thus, Lunkewitz says, the remedies available to the declarant pursuant to paragraphs 12.03 and 12.04—to enter another's property to "summarily abate and remove" a nuisance and to

exercise "every remedy allowed by law or equity against a nuisance"—are equally available to the Mt. Olympus homeowners.

On the present record, we cannot agree with Lunkewitz that, as a matter of law, the CC&R's authorized her to enter Nassir's property and trim his trees. Under well established principles of contract interpretation, "'[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.' (Civ. Code, § 1641.) '[E]ven if one provision of a contract is clear and explicit, it does not follow that that portion alone must govern its interpretation; the whole of the contract must be taken together so as to give effect to every part.' (*Alperson v. Mirisch Co*. (1967) 250 Cal.App.2d 84, 90.) 'An interpretation which renders part of the instrument to be surplusage should be avoided.' (*Ticor Title Ins. Co. v. Rancho Santa Fe Assn*. (1986) 177 Cal.App.3d 726, 730.)" (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 799.)[5]

Although paragraph 12.01, considered by itself, arguably is susceptible of the interpretation Lunkewitz urges, under the principles cited above we do not consider it alone. Rather, we read it in connection with the other relevant provisions. One such provision, paragraph 10.05, provides that if a homeowner does not maintain his or her property as the CC&R's require, "*Declarant* may . . . perform [required maintenance] and present to the owner its charges therefor . . . ." (Italics added.) Similarly, paragraph 12.03 provides that a violation of any condition or restriction shall give "*to Declarant*, its officers, agents or representatives, the right to enter upon the property upon or as to which such violation exists, and to summarily abate and remove [it]." (Italics added.) And, paragraph 12.04 provides that a violation of the CC&R's shall constitute a nuisance

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[5] "Extrinsic evidence is admissible to explain the meaning of a contract if 'the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.' (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co*. (1968) 69 Cal.2d 33, 37 . . . .)" (*DVD Copy Control Assn., Inc. v. Kaleidescape, Inc*. (2009) 176 Cal.App.4th 697, 712.) Here, no extrinsic evidence was offered in connection with the summary judgment motion, and thus we interpret the CC&Rs based solely on their plain language.

and "every remedy allowed by law or equity against a nuisance . . . shall be applicable . . . and may be exercised *by Declarant.*" (Italics added.)

In each of the three paragraphs quoted, the italicized language grants the rights to enter a homeowner's property to abate a nuisance or to seek other legal remedies exclusively to *the declarant* (now, the MOPOA), not to individual homeowners. Had the CC&R's intended to grant these rights to homeowners, it would have been a simple matter to have said so; because the CC&R's do not explicitly grant these rights to homeowners, on the record now before us, it appears no such rights were intended. Further, paragraph 12.02 provides a mechanism for the declarant to assign its rights to others, which "shall, upon [their] consent in writing . . . have the same rights and powers." The MOPOA, thus, could have assigned to Lunkewitz the right to trim Nassir's trees, but on the present record there is no evidence that it did so. Thus, we cannot conclude that Lunkewitz's actions were authorized by the CC&R's.

II. Nassir's Parents' Alleged Consent to the Tree Trimming

Lunkewitz asserts that even if the CC&R's did not authorize her to enter Nassir's property to trim his trees, Nassir's parents, who apparently lived on the property, gave their express consent. In support, she points to the testimony of her gardener, Ricardo Juarez, who testified at his deposition that when he arrived at the Nassir property in October 2008, he knocked on the front door and was greeted by a man and woman in their 50's, subsequently identified as Nassir's parents. He told the couple he was there to "[c]lean the slope and trim the trees" and he asked them to open the garage side door. They did so. The woman subsequently asked him to "cut a dry tree [in the back of the] property," but Juarez said he would have to charge her for that. Juarez and the woman could not agree on a price, and so he did not do the work.

Lunkewitz asserts that Juarez's testimony is substantial evidence that Nassir's parents consented to Juarez's tree trimming, but we do not agree. Juarez did not testify that Nassir's parents *consented* to Juarez's actions—he merely said that they allowed him on to the property and, subsequently, asked him to cut a tree in the back of the property.

While Juarez's testimony establishes Nassir's parents' knowledge that Juarez was trimming trees on the property, it does not establish their consent. Further, there is no evidence that Nassir's parents, who apparently did not own the property, had the authority to authorize Juarez to trim the trees. Thus, Juarez's deposition testimony does not constitute substantial evidence that Lunkewitz or Juarez had Nassir's permission to trim Nassir's trees.

III. Nassir's Damages

A. Background

As an alternative basis for summary judgment, Lunkewitz contended that Nassir could not prove "with any reliability or definitiveness the extent to which he was allegedly damaged." She asserted that Nassir's verified discovery responses stated that Nassir's only damages evidence was (1) a landscaping estimate provided by Oscar Robles, an unlicensed landscaper, and (2) photographs of Nassir's yard. Robles's estimate was not reliable evidence of Nassir's damages, Lunkewitz asserted, because Robles was not a licensed contractor, the estimate was to *upgrade* Nassir's landscaping, not to repair the damages Lunkewitz allegedly caused, and Robles expected to revise his estimate downward before any contract was finalized. The photographs also were not reliable evidence of Nassir's alleged damages because Nassir was not sure who took the pictures or when they were taken. Thus, Nassir could not establish that he suffered any harm as a result of Lunkewitz's actions.

Nassir opposed the motion for summary judgment. In support, he submitted his declaration, which stated in part as follows: "Shortly after Ms. Lunkewitz's gardeners entered onto my property and destroyed my trees, groundcover and sprinkler system, the damage to my property was photographed in detail. Either my landscaper, Oscar Robles, or I took the photographs of the extensive destruction at my property. True and correct copies of these photographs [are] attached hereto collectively as Exhibit 'A.'" Attached to Nassir's declaration were black and white copies of photographs showing severely trimmed trees and bushes.

Nassir also submitted in opposition to summary judgment the declaration of Kenneth Kammeyer, a registered landscape architect. The declaration stated that Kammeyer inspected the property on June 7, 2010, and reviewed numerous color photographs of the condition of the property, trees, and foliage, which he was informed were taken November 2008. He further declared as follows:

"5. The trees and plants located at the subject property, which I am informed and believe were cut or otherwise damaged by the Defendant in this case, consist of the following:

"a.	Schinus molle – California Pepper Tree	3 multi-stemmed trees – pruned
"b.	Washingtonia filifera – California Fan Palm	5 trees – removed
"c.	Erthrina caffra – Coral Tree	1 tree – pruned
"d.	Ligustrum japonicum – Japanese Privet	4 shrubs – dead
"e.	Hedera canariensis – Algerian Ivy	8,000 sq. ft. – dead

"6. In addition, I am informed and believe that the irrigation system at the subject property was damaged by the Defendant, and that due to her conduct, the property requires substantial landscaping and repair.

"7. With respect to the previous value of the aforementioned Pepper Trees, before 'pruning' in or about November, 2008, I estimate their value at $40,000.00, $7,800.00, and $17,800.00, respectively. After the cutting of the trees by the Defendant, I estimate the value of the Pepper Trees at $28,400.00, $5,600.00 and $12,600.00, respectively. This represents a total diminution in value of the Pepper Trees cut by the Defendant of $19,000.00.

"8. With respect to the previous value of the aforementioned Palm Trees, as can be seen from the photographs of the property and from my inspection of the property, those trees were completely cut down to their stumps. Therefore, it is difficult for me to assess their size, condition and height, and thus their value, prior to their destruction by the Defendant. Nevertheless, the replacement value of five immature California Palm Trees is $11,139.00.

"9. With respect to the previous value of the damaged irrigation system and landscaped 8,000 square foot slope, I estimate the following expenses:

"a. Irrigation System

Remove damaged irrigation pipe (lump sum)		$ 500.00
Irrigation Repair 1.00 x 8,000		$8,000.00

"b. Slope Repair

Weed	.05 x 8,000	$ 400.00
Re-grade	.05 x 8,000	$ 400.00
Mulch 4"	.47 x 8,000	$3,760.00
Maintenance 60/days	.06 x 8,000	$ 480.00

"c. Slope Planting

Ligustrum Japonicum (4 15 gallon)	$ 194.00
Hedera Canariensis (8,000 rooted cuttings)	$2,960.00
Irrigation & planting design/observation	$3,338.00

"The foregoing costs associated with repairing the subject irrigation system and landscaped slope to its pre-October, 2008 condition, total $20,032.00.

"10. My expert opinion of the reasonable value of the trees, foliage and irrigation system at the subject property, and of the damages caused to the Plaintiff in this case, is . . . $50,171.00."

Lunkewitz objected to Nassir's photographs for lack of foundation, and to Kammeyer's declaration on a variety of grounds, including that it lacked foundation, was speculative, relied on hearsay, assumed facts not in evidence, and constituted inadmissible expert opinion. The trial court sustained the objections in their entirety.

B. Analysis

Lunkewitz's motion for summary judgment assumed that damages were a necessary element of each of Nassir's four causes of action. ("Damages are a necessary element of each of Nassir's four causes of action. [Citations.] Therefore, Lunkewitz's motion seeking summary judgment based upon Nassir's inability to establish damages is

appropriate.") In fact, Nassir need not establish damages to establish actionable trespass: "Trespass is an unlawful interference with possession of property. (*Girard v. Ball* (1981) 125 Cal.App.3d 772, 788.) . . . [¶] *[A]n action for trespass will support an award of nominal damages where actual damages are not shown*. (*Allen v. McMillion* (1978) 82 Cal.App.3d 211, 219.)" (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406, italics added; see also *Costerisan v. Melendy* (1967) 255 Cal.App.2d 57, 60 ["Damages, even though nominal, are considered necessary to support a judgment in a trespass tort action since it is essentially an action for damages. This requirement presents no obstacle where a jury is properly instructed, since every trespass is an invasion of a legal right of another and carries with it the right to nominal damages."].) Thus, the absence of actual damages is not a defense to a cause of action for trespass and will not support the trial court's grant of summary judgment.

In any event, we do not believe Lunkewitz has met her summary judgment burden of presenting evidence that "the plaintiff does not possess and cannot reasonably expect to obtain evidence needed to establish an essential element" of his causes of action. (*Garrett*, *supra*, 214 Cal.App.4th at p. 181.) In support of her motion for summary judgment, Lunkewitz submitted Nassir's verified amended interrogatory responses, which stated in relevant part as follows:

"In or about October, 2008, . . . Defendant or her agent . . . intentionally and unlawfully cut, removed, damaged and destroyed various trees, roots, timber, foliage, bushes, landscaping, and sustenance on Plaintiff's property."

"[F]ive palm trees . . . were growing on Plaintiff's property from the time he purchased it. They were mature and healthy, until Defendant destroyed them."

"[G]round cover . . . [was] growing on Plaintiff's property from the time he purchased it. It was mature and healthy until Defendant destroyed it."

"[F]orty (40) shrubs . . . were growing on Plaintiff's property from the time he purchased it. They were mature and healthy, until Defendant destroyed them."

A plaintiff is competent to testify about his or her own injuries and, in appropriate cases, a plaintiff's testimony alone is sufficient to support a damages award. (*Leasman v.*

Beech Aircraft Corp. (1975) 48 Cal.App.3d 376, 381; *Loth v. Truck-A-Way Corp*. (1998) 60 Cal.App.4th 757, 769 ["Plaintiff's testimony alone was sufficient to support a general damages award."].) In the present case, Nassir was competent to testify about the condition of the trees and shrubs on his property before Lunkewitz's gardener trimmed them, as well as to their condition after they were trimmed. His testimony also was a proper basis on which an expert could base his or her opinion about the value of the damage or the cost of repairing it.[6] Finally, Nassir was competent to testify that the photographs attached to his declaration accurately represented the condition of his property after Lunkewitz's gardener trimmed his trees, even if he did not himself take the photographs. In view of Nassir's testimony, therefore, we do not conclude that Nassir cannot reasonably expect to obtain the evidence needed to establish his alleged damages.

DISPOSITION

The judgment and order granting summary judgment are reversed. Nassir is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J. MANELLA, J.

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[6] Because the issue has not been briefed by the parties, we express no opinion about the proper measure of damages in this case.