

Tree-cutting can cost millions, developer discovers

By Peter Blais

Superintendents should make sure a tree rests on their course's property before sending out an employee to cut it down, unless the maintenance budget includes an extra \$1 million or more to give away to an abutting landowner.

That's the advice of a California arborist who served as an expert witness in a recent Los Angeles Superior Court jury trial that could cost a Santa Monica man accused of damaging 17 of his neighbor's trees \$1.4 million.

"To my knowledge, it's the largest award ever for destroying someone's trees," said Alden Kelley, a consulting arborist from Fullerton.

According to Kelley, to improve his view a Beverly Hills developer building a hilltop house had a crew remove all or part of what turned out to be his neighbor's pine trees.

"The view was essentially smog-laden Santa Monica. But the idea of a view lot is a peculiar kind of insanity you encounter in coastal regions. And he took the approach, I think, that it's easier to get forgiveness than permission. It works with developers a lot, but it didn't work in this case," he said.

Working with local nursery stock, Kelley arrived at a total replacement value of \$310,000 — \$200,000 for the trees, which ranged from five to 32 inches in diameter, and \$110,000 for restoration to the steep slope he said was denuded by logging the trees off site. The figure was based on replacement-in-kind, meaning same species, same size, same condition in the same location.

"It's based on the same theory that holds 'If you destroy my car, I want it replaced with the exact same car,'" Kelley explained.

Gerald Sauer, the attorney for the plaintiff, called in a realty specialist who placed the value of trees as a privacy screen at 15 to 24 percent of total property value. His low-end figure on a \$2.5-million property was \$400,000 for the 17 trees.

"One jurist went for my figure. The other 11 went for the realtor's figure. The jury found for the plaintiff for \$400,000. Then, instead of going to California statutes and giving treble damages for unauthorized damage of wood and underwood, they simply awarded

him another \$1 million punitive damages, which was even higher. So the total figure was \$1.4 million."

The defendant is appealing the judgment.

Kelley has been involved in many tree damage cases. Most are settled before going to trial, he said. When cases have reached the court, judgments have varied from exactly what the plaintiff wanted to exactly what the defendant wanted, he added.

"Usually it's a compromise that leaves both parties unsatisfied," Kelley said. "Having an extremely competent

attorney, who does his homework, was a key factor in this case. Persuading a dozen people that a wrong has been committed that deserves significant redress takes more than just saying, 'This is a bad thing.' Sauer did his homework."

Kelley's advice to superintendents is to be extremely cautious before cutting down trees bordering private property since, according to California law at least, unknowingly felling someone else's trees can result in double damages.

Kelley is a firm believer in re-

placement-in-kind when it comes to restoring trees. On occasion, estimated replacement value has exceeded total property value.

"There is precedent that it depends on the intent of the plaintiff. If it is the plaintiff's intent to restore, then the defendant can be stuck with the higher cost. But if the intent to restore isn't there, it is usually adjusted downward (to property value)," he said.

Asked if the amount of this judgment was an isolated case that isn't likely to be repeated, Kelley

responded: "It's volatile, variable and to a large degree, unpredictable, in each case. Judges and juries are supposed to be objective, but they are not. Their biases will carry the day more often than not."

"If you are in an area where the people selected for juries cherish trees, the chances of a large settlement for the plaintiff are much greater than in an area where people feel 'Those trees are such a mess, I wish we could get rid of all of them.' People are not rational about landscape trees. They are often emotional about them."



Palmer, Benz in China first

While the story was correct, a headline in the July issue misstated that China's first modern course had opened in Shanghai. In fact, Shanghai International Golf and Country Club, a Robert Trent Jones Jr. design, is the first modern course in Shanghai itself.

Arnold Palmer designed China's first modern course, Chung Shan Hot Springs Golf Course, in Sanxiang Commune Zhengshan City in Quang Dong Province. It opened in late 1985.

Brad Benz then designed Beijing Golf Club, which opened in 1987.

