

WHO HAS LIABILITY WHEN A TREE FALLS?

Who has liability when a tree falls? The answer depends upon certain facts. Although this newsletter is devoted to commercial transactions, it is always important for individuals to realize when they may have personal liability. A key part of business transactions has always been asset protection planning.

In the case of Russell v. Claridy, Russell sued Claridy when Claridy's tree fell on Russell's property and damaged her automobile. The facts in the case were that the tree was a healthy fully leafy green tree prior to a thunderstorm, and the appearance of the tree had been memorialized by recent pictures. A thunderstorm caused the tree to fall on Claridy's property and damage her automobile.

The Court ruled that the tree fell as a result of an Act of God, and therefore Russell was not liable for the damage to Claridy's automobile. The Court discussed nuisance law as it applies to encroaching vegetation, which it described as the "Hawaii Rule." The Hawaii Rule provides that living trees and plants are ordinarily not nuisances, but can become so when they cause actual harm or pose an imminent danger of actual harm to adjoining property. In the Russell case, the Court found there was no evidence that the live tree that fell on Russell's property was encroaching on her property or presented an imminent danger of harm prior to the storm that caused the tree to fall. Therefore, the Court ruled that the tree did not constitute a nuisance. The Court ruled that the defendant was not liable because the tree was felled by an Act of God.

MY RECOMMENDATION: Be sure you have adequate liability insurance. Also check the provisions for what the insurance company will pay for a fallen tree.