

NO. X03-CV08-4042635 : **SUPERIOR COURT**
NO. X03-CV08-4041481S :
PASQUALE DINATALE : **COMPLEX LITIGATION**
: **DOCKET**
VS. : **AT HARTFORD**
BLUE TRAIL RANGE CORP, ET AL : **JULY 15, 2011**

MEMORANDUM OF DECISION

These consolidated actions were tried to the court on December 7, 8, 9, 14, 16 and 18, 2010. The parties filed briefs on April 8, 2011 and the defendants, with permission from the court, filed a reply brief on May 16, 2011.

The plaintiff, Pasquale DiNatale, has brought this action against the Blue Trail Range Corporation (“Blue Trail”) and David Lyman, Blue Trail’s owner, because of his claim that bullets fired on the shooting range have struck his home as well as other locations on his property. Mr. DiNatale further alleges that lead contained in bullets which have been fired on the Blue Trail Range have caused noise, soil and water pollution on his property and other nearby properties, including a reservoir system. His complaint now contains five counts: 1.) private nuisance, 2.) intentional infliction of emotional distress, 3.) negligent infliction of emotional distress, 4.) trespass, and 5.) violation of the Connecticut Environmental Protection Act ¹(“CEPA).

The critical issue in this case is whether or not the lead found on the plaintiff’s property and the other areas in question came from bullets fired from the Blue Trail Range. The plaintiff has failed to meet his burden of proof on this issue.

¹ Conn. Gen. Stat. §22a-14, et. seq..

This is an issue on which plaintiff could not prevail without expert testimony. There was more than one possible source for the lead in question. Determining the possible paths of bullets fired from the defendants' range is certainly beyond the ordinary knowledge of judges. The plaintiff needed expert testimony on both causation and damages in order to meet his burden of proof. Franchey v Hannes, 155 Conn. 663, 666 (1967).


Plaintiff called four expert witnesses. Not one of them testified that it was more probable than not that the bullets which struck Mr. DiNatale's home and which allegedly contaminated the soil and water in the areas in question came from the Blue Trail range. Dr. Collins, a soil scientist, testified that some of the pollution he found on property near the range "definitively [was] the result of anthropogenic lead, most likely from the bullets." (Transcript, 12/9/10, p. 457). This witness was neither offered nor qualified as an expert on ballistics, and the court finds that Dr. Collins was not qualified to give such an opinion. Mr. Weise was not offered by the plaintiff as an expert on the issue of where the bullets in question came from. (Tr., 12/8/10, pp. 399-400). Neither Trooper DiGioia nor Lt. McLean was qualified as a ballistics expert with sufficient training to conduct a ballistics investigation as complex as those which were necessary in this case, and in any event, neither testified with sufficient certainty to meet plaintiff's burden of proof.

During Mr. Weise's testimony, plaintiff's counsel stated that he would not have this witness testify on "the likely source of the bullets that struck the homes." (Id.) When asked by the court to identify the witness through whom he expected to elicit such testimony, counsel responded that "there is a large weight of evidence from which that inference can be made, the ultimate question." (Id.) Causation, in a case which is

complex enough to require expert testimony on that issue, cannot be proved through inferences. Palmieri v. Macero, 146 Conn. 705, 708 (1959)

Plaintiff cannot prevail on his noise pollution claim because the defendants are immune from civil liability under Conn. Gen. Stat. §22a-74a.

For the foregoing reasons, judgment shall enter in favor of the defendants. It is so ordered.



Miller, J.