UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LL NJ, INC., a Michigan corporation, and LIFESTYLE LIFT HOLDING COMPANY, INC., a Michigan corporation

Plaintiffs,

v

NBC - Subsidiary (WCAU-TV), L.P., a Delaware Limited Partnership, NBC STATIONS MANAGEMENT II, Inc., a Delaware corporation, NBC STATIONS MANAGEMENT, INC., a Delaware Corporation, NBC UNIVERSAL, INC., a Delaware corporation, LU ANN CAHN, JOHN DOE 1 and JOHN DOE 2, AND LOUIS P. BUCKY, M.D., Individuals.

Defendants
_____/

Case No. 2:06-cv-14312
Hon. David M. Lawson
Hon. Mag. Donald A. Scheer

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COME Plaintiffs, LL NJ, INC., and LIFESTYLE LIFT HOLDING COMPANY, INC., by and through counsel, FRIED SAPERSTEIN ABBATT, PC, and for PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, brought pursuant to Fed. R. Civ. P. 56(c), state as follows:

1. Plaintiffs instituted the instant action alleging claims of defamation and trespass relative to a news broadcast aired by NBC station WCAU-TV, L.P., on October 10, 2006, reporting on a trademarked cosmetic surgery procedure known as the Lifestyle Lift™.

2. In the late part of summer 2006, Defendants began an investigation into the Lifestyle Lift™ procedure.

3. To prepare their story, Defendants made unauthorized surreptitious recordings at a Lifestyle Lift™ facility in Little Falls, New Jersey.

4. The aforementioned unauthorized surreptitious recordings constituted a "trespass" under N.J. Stat. § 2C:18-3(b).

5. There are no disputed issues of material fact to be tried with respect to Plaintiffs' trespass claim, and, accordingly, Plaintiffs are entitled to judgment, pursuant to Fed. R. Civ. P. 56(c) on the undisputed facts.

6. In accordance with L.R. 7.1(a)(1), there was a conference between attorneys in which the movant explained the nature of the motion and its legal basis and requested but did not obtain concurrence in the relief sought. Rather, on May 21, 2007, concurrence was denied.

7. The instant Motion is filed by leave of this Court. *See* Docket Entry No. 138, Order Granting Motion For Reconsideration.

WHEREFORE, this Honorable Court should GRANT Plaintiffs' Motion for Partial Summary Judgment, as to Plaintiffs' Trespass To Land claim.

Respectfully submitted,

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DATED: June 8, 2007

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EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LL NJ, INC., a Michigan corporation, and LIFESTYLE LIFT HOLDING COMPANY, INC., a Michigan corporation

Plaintiffs,

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NBC - Subsidiary (WCAU-TV), L.P., a Delaware Limited Partnership, NBC STATIONS MANAGEMENT II, Inc., a Delaware corporation, NBC STATIONS MANAGEMENT, INC., a Delaware Corporation, NBC UNIVERSAL, INC., a Delaware corporation, LU ANN CAHN, JOHN DOE 1 and JOHN DOE 2, AND LOUIS P. BUCKY, M.D., Individuals.

Defendants
_____/

Case No. 2:06-cv-14312
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PLAINTIFFS'BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

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STATEMENT OF QUESTION PRESENTED

Are Plaintiffs entitled to partial summary judgment on their trespass to land claim for the reason that there exists no disputed issues of material fact as to this count?

Plaintiffs answer, “yes.”

Defendants answer, “no.”

I. INTRODUCTION

This matter stems from a purported news segment broadcasted by co-Defendant NBC Universal's Philadelphia-area station, co-Defendant WCAU-TV, L.P.,[1] on October 10, 2006 ("broadcast"), reporting on a trademarked plastic surgery procedure known as the Lifestyle Lift.™ Plaintiffs allege that the broadcast contains numerous false and defamatory statements regarding Plaintiffs, their affiliated doctors, and the Lifestyle Lift™ procedure. Plaintiffs further allege that in obtaining information for this story, Defendants illegally trespassed upon the land of Plaintiff LL NJ, Inc. Plaintiffs' trespass claim is the subject of the instant motion. As will be demonstrated *infra*, there are no disputed issues of material fact to be tried with respect to Plaintiffs' trespass claim, and, accordingly, Plaintiffs are entitled to judgment on the undisputed facts.

II. STATEMENT OF UNDISPUTED FACTS

On October 16, 2006, Plaintiffs filed an amended complaint, which included a claim for trespass to land against Defendants. (Amended Complaint, Count II, Docket no. 13). Defendant WCAU-TV, L.P. (NBC 10) is a television station located in Bala Cynwyd, Pennsylvania. Transc. Depo. Lu Ann Cahn 9:12-23 (March 29, 2007) (Ex. A). Defendant, Lu Ann Cahn is employed as an investigative reporter by WCAU-TV, L.P., (NBC 10). *Id.* WCAU-TV, L.P. (NBC 10) is owned directly by NBC. Transc. Depo. Lu Ann Cahn 24:2-10 (Ex. B).

In the late part of summer 2006, Defendants began an investigation into the Lifestyle Lift™ procedure. Transc. Depo. Lu Ann Cahn 85:2-22 (Ex. C). To prepare their story, Defendants made surreptitious recordings at a Lifestyle Lift™ facility in Little Falls, New Jersey.

[1] For purposes of this Motion, Defendants will be collectively referred to as "NBC" or "NBC Defendants."

Transc. Depo. Lu Ann Cahn 59:5-20; 182:2-184:21 (Ex. D). Specifically, Defendants sent two female undercover reporters into the Lifestyle Lift™ office in Little Falls, New Jersey to make audio and video recordings. Transc. Depo. Lu Ann Cahn 184:23-188:1 (Ex. E). The undercover reporters were advised that the use of recording devices on the premises contravened Plaintiffs' regulations. *Id.* Despite the fact that at least one of the undercover reporters signed a form that she understood the company's policy against allowing recording devices on the property, at least one of the undercover reporters continued to make recordings at the Little Falls, New Jersey facility. *Id.* Defendants were aware that they were sending their undercover agents onto someone else's property despite the fact that the undercover reporters signed documents expressly prohibiting them from recording inside the Little Falls office. Transc. Depo. Lu Ann Cahn 189:23-191:20 (Ex. F).

Defendant Lu Ann Cahn was not aware of any regulation—or any other basis—that would allow a reporter to disregard personal property rights. Transc. Depo. Lu Ann Cahn 193:3-196:20. Defendants aired the Lifestyle Lift™ story on October 10, 2006, and subsequently posted it on their website. Transc. Depo. Lu Ann Cahn 201:10-12; 202:25-203:2 (Ex. G).

At all relevant times, James Simmons was employed by WCAU-TV, L.P. (NBC 10) as a video editor. Transc. Depo. James Simmons 8:15-9:22 (April 4, 2007) (Ex. H). Mr. Simmons also acknowledged reviewing raw footage pertaining to the undercover operation conducted by Defendants in Plaintiffs' New Jersey facility. Transc. Dep. Simmons 49:10-15 (Ex. I).

At all relevant times, David Bentley was employed as a news photographer working for WCAU-TV, L.P. (NBC 10). Transc. Depo. David Bentley 7:11-17 (April 4, 2007) (Ex. J). Mr. Bentley traveled to the Lifestyle Lift™ facility in Little Falls, New Jersey to set up undercover camera equipment to assist the station's undercover reporters—AnnMarie and Valerie—with

surreptitiously recording the consultants' sales pitch at Plaintiffs' facility. Transc. Depo. Bentley 50:16-53:22 (Ex. K). At the time, AnnMarie was employed as a secretary at WCAU-TV, L.P. (NBC 10). *Id.* at 51:22-24. After 15-20 minutes, AnnMarie and Valerie emerged from Plaintiffs' New Jersey facility, and AnnMarie acknowledged that she had signed a form expressly stating that video recording was not allowed on the premises. Transc. Depo. Bentley 56:4-20 (Ex. L). After making phone calls to agents of Defendants, Ms. Cahn then instructed AnnMarie and Valerie to continue filming undercover footage at Plaintiffs' Little Falls, New Jersey facility, at which point AnnMarie and Valerie went back inside the facility, despite reservations Valerie apparently expressed about doing this. Transc. Depo. Bentley 56:21:-59:9 (Ex. M). Mr. Bentley conceded that in all likelihood, AnnMarie and Valerie did not enter Plaintiffs' Little Falls facility with the intention of receiving medical advice or medical treatment for themselves. Transc. Depo. Bentley 64:11-66:18 (Ex. N). A copy of Lifestyle Lift's policy prohibiting recording devices is attached as Ex. O.

III. ARGUMENT

NO DISPUTED ISSUES OF MATERIAL FACT EXISTS RELATIVE TO PLAINTIFFS' TRESPASS TO LAND CLAIM MANDATING SUMMARY JUDGMENT

1. Applicable Standards For Deciding A Motion For Summary Judgment

In the instant motion, Plaintiffs seek partial summary judgment pursuant to Fed. R. Civ. P. 56 (c). A court may grant summary judgment only when the submissions in the record "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "The inquiry performed is the threshold inquiry of determining whether there is the need of a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

242, 250 (1986). The party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 485 U.S. 574, 586 (1986). If the opposing party's "evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50. However, in determining whether summary judgment is appropriate, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. The appropriate inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52. A party can support a summary judgment motion with materials that show that the party who has the burden of proof on an essential fact cannot prove that fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986).

2. Evidence Demonstrates No Disputed Issues of Material Fact Exist That Defendants Trespassed Upon Plaintiffs' Property In Little Falls, New Jersey, In Violation of N.J. Stat. § 2C:18-3(b)

The Lifestyle Lift™ facility at issue in this dispute, located in Little Falls, New Jersey, is private property owned by Plaintiffs—it is not public property. Accordingly, members of the public are not welcome to simply enter the premises at will for any reason. Rather, in order to be lawfully present at Plaintiffs' Little Falls facility, visitors are subject to invitation and Plaintiffs can withdraw their consent—if given in the first instance—at any time. Each person who enters these premises must agree to certain restrictions on their activities while on the property, including compliance with Plaintiffs' anti-recording policy (Ex. O), which, at all relevant times, was also expressly posted on signs at the facility. Moreover, each person who enters the patient area of these premises is required to acknowledge and agree to be bound by Plaintiffs' anti-

recording policy in writing. (Ex. O). Defendants' actions, in choosing to film undercover footage at this facility constitutes unlawful trespassing under New Jersey law.

N.J. Stat. § 2C:18-3(b) provides as follows:

> Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
>
> (1) Actual communication to the actor; or
>
> (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
>
> (3) Fencing or other enclosure manifestly designed to exclude intruders.

Pursuant to N.J. Stat. § 2C:18-3(d), a defendant has the burden of establishing an affirmative defense, to the charge of trespass. In particular, §3(d) provides:

> (2) The structure was at the time open to members of the public **and** the actor **complied with all lawful conditions imposed on access to or remaining in the structure.**[2] **[Emphasis added].**

A New Jersey court has not had occasion to rule a case similar to one at bar. Nevertheless, it is generally recognized that New Jersey property owners have the right (and under some circumstances, the duty) to exclude persons from their premises, even when the property is open to the public generally and may impose reasonable restrictions on access to their property. See, e.g., *Uston v. Resorts International, Inc*., 89 N.J. 163; 445 A.2d. 370 (1982). In *Uston*, the defendants' actions were held to be in violation of the lawful conditions imposed on

[2] In this case, one of the conditions of access to the structure was an agreement not to make audio or video recordings on the premise. New Jersey has also recognized that there is no "constitutional right" to videotape governmental proceedings, let alone matters on private property. See, *Tarus v. Pine Hill*, 381 N.J. Super. 412; 886 A.2d 1056 (2005); cert. granted at 186 N.J. 255, 893 A.2d 722 (2006); See also, *Whiteland Woods, L.P. v. Township of W. Whiteland*, 193 F.3d 177, 183-84 (3d Cir.1999).

the property and, therefore, any implied consent was vitiated by defendants' violation of the plaintiffs' reasonable condition of access. Likewise, in the instant matter, by virtue of the NBC Defendants' admissions that they signed, but ignored Plaintiffs' anti-recording policy (Ex. O), any implied consent that may have existed was terminated when Defendants continued to make unauthorized surreptitious recordings on the Little Falls premises.[3]

a. The Restatement 2d of Torts Supports Plaintiffs' Position That Defendants Unlawfully Trespassed At The New Jersey Facility By Recording Undercover Footage In Contravention of Plaintiffs' Express Anti-Recording Policy

Restat. 2d of Torts, §892B states:

(1) Except as stated in Subsection (2), consent to conduct of another is effective for all consequences of the conduct and for the invasion of any interests resulting from it.

(2) If the person consenting to the conduct of another is induced to consent by a substantial mistake concerning the nature of the invasion of his interest or the extent of the harm to be expected from it and the mistake is known to the other or is **induced by the other's misrepresentation, the consent is not effected** for the unexpected invasion or harm. [Emphasis added.]

The Restat. 2d of Torts' comments provide additional support for Plaintiffs' position: as explained in Comment d, *mistake known to the actor*, "[i]f the actor is aware that the consent is given under a substantial mistake. . .the actor is not entitled to rely on the consent given." Similarly, as explained in comment h, when consent is obtained through misrepresentation, "the other may have a cause of action for the misrepresentation itself. . .but he may also treat the consent as invalid and maintain any tort action open to him in the absence of consent." Accordingly, since any consent Defendants may have initially obtained would have been nullified as a result of Defendants' failure to accept Plaintiffs' conditions upon entry by coming onto Plaintiffs' property by making false representations as to their purpose, Defendants became

[3] See Transc. Depo. Bentley 56:4-20 (Ex. L); Transc. Depo. Bentley 56:21:-59:9 (Ex. M); and Transc. Depo. Bentley 64:11-66:18 (Ex. N).

trespassers. See Transc. Depo. Bentley 56:4-20 (Ex. L); Transc. Depo. Bentley 56:21:-59:9 (Ex. M); and Transc. Depo. Bentley 64:11-66:18 (Ex. N).

b. Applicable Case Law on Trespass Claims from Sister Circuits Provide Additional Support For Plaintiffs' Position

While Defendants are likely to suggest that *Desnick v. ABC*, 44 F.3d 1345 (7th Cir. 1995), is the seminal case regarding reporter trespass and will almost certainly argue that law in this area is well-settled and straightforward,[4] such a position would be incorrect. Rather, other jurisdictions have reached differing conclusions on this issue, and very often their decisions are largely fact-driven.

In *Desnick*, the Seventh Circuit held that defendant ABC and its testers did not trespass when entering plaintiffs' public eye clinic with hidden cameras while posing as potential patients. Here, the defendants were producing a program on Medicare fraud involving the elderly and allegations that plaintiffs were performing unnecessary surgeries on them. The court first ruled that plaintiffs' defamation claim should not have been summarily dismissed, and the plaintiffs may have had a viable claim for breach of contract. The court next proceeded to analyze the trespass claim. The court noted that "the lines [between misrepresentations vitiating consent and those that do not] are not bright – they are not even inevitable (Id. at 1352)." The court reasoned:

> To enter upon another's land without consent is trespass. The force of the rule has, it is true, been diluted somewhat by concepts of privilege and of implied consent. But there is no journalists' privilege to trespass. And there can be no implied consent in any nonfictitious sense of the terms when express consent is procured by misrepresentation or a misleading omission. *Id.* at 1351. (Internal citations omitted).

[4] At least this was the position Defendants adopted in their Motion To Dismiss Plaintiffs' Amended Complaint, Docket No. 33.

Although the *Desnick* court ultimately determined that under the facts given the defendants did not trespass in this instance when they went into the clinic, the court did so only after noting several key facts, including that no embarrassingly intimate details of anybody's life were publicized; that there was no violation of physician/patient privilege; that there was no eavesdropping on a private conversation; and that the only conversations that were recorded were conversations with defendants themselves. *Id.* at 1352-3.

Desnick has been both criticized and distinguished in subsequent cases. For example, in *Medical Laboratory Management Consultants v. ABC*, 30 F. Supp 2d 1182 (D. Ariz. 1998), the court held that defendant undercover news reporter and her cameraman trespassed on plaintiffs' property when the reporter posed as an entrepreneur eager to learn about the industry and as someone capable of referring new business to the plaintiffs. In this instance, the reporter was investigating error rates in pap smear testing. Plaintiff physician led defendants to a conference room and proceeded to give them a tour of his facilities. Notably, he never discussed confidentiality matters with defendants. *Id*. at 1186. When plaintiffs discovered the secret recordings, they filed a multi-claim complaint. In ruling on whether plaintiffs' trespass claim survived summary judgment, the court, citing Restat. 2d of Torts, §892B, held:

> If the plaintiff is induced to consent [to defendant's presence of plaintiff's private property] by a substantial mistake concerning the nature of the invasion of his interests or the extent of harm to be expected from it and the mistake is known to the other or is induced by the other's misrepresentation, the consent is not effective. It is undisputed that [plaintiff] invited [defendants] to meet with him at the Medical Lab offices. However, it is also undeniable that [plaintiff] would not have given his consent if he had known that Defendants intended to film the interview for broadcast on national television. Thus, the question is whether Defendants' failure to inform [plaintiff] of the real purpose of their presence at Medical Lab vitiates the consent given by [plaintiff]. *Id*. at 1201-1202, (internal citations omitted.)

After noting defendants' reliance on *Desnick*, the court stated, "the Seventh Circuit's formula for determining whether a plaintiff's interest in ownership or possession of land cannot easily be embraced. . .[t]he Seventh Circuit's analysis does not withstand close scrutiny." *Id*. at 1202. After noting the other shortcomings of the *Desnick* holding, the court noted, "[i]t is unclear whether the outcome in *Desnick* would have been the same if the videotaping had taken place in a semi-private office, as in the instant case, rather than a public eye clinic." *Id*. at 1203, n. 22. Finally, citing several cases throughout the country, the court held:

> In the instant case, [individual plaintiff], on behalf of Medical Lab, consented to the reporters' presence in the laboratory because, based on their representations to him, he believed they merely wanted to discuss the profession and possible future collaborations. [Plaintiff] did not consent to any videotaping of his property, and act which is hardly 'substantially similar' to a business meeting with supposed colleagues. . .In the instant case, Medical Lab, through [individual plaintiff], may have consented to the presence of [defendant cameraman], but he did not consent to the use of the camera concealed in [defendant cameraman's] wig used to take pictures of the Medical Lab property. [*Id*. at 1204, internal citations omitted].

After finding a trespass, however, the court noted that plaintiffs did not *prove* any damages stemming from the trespass and therefore dismissed the claim. *Id*.

Next, in *Shiffman v. Empire Blue Cross and Blue Shield & CBS*, 256 A.D.2d 131 (NY Supreme Court, 1st Department, 1998), the court found that defendants trespassed on plaintiff's private medical office when the reporter posed as a potential patient. In so doing, the court noted that "defendants' affirmative defenses based on consent and implied consent to enter the premises were legally insufficient since consent obtained by misrepresentation or fraud is invalid." *Id*. at 131. (Internal citations omitted.)

Several other cases discuss trespass by undercover reporters and the effect of misrepresentation on consent, although none pertain to medical offices, specifically. For

instance, the court in *Food Lion Inc v. Capital Cities/ABC, Inc*, 194 F.3d 505 (4th Cir. 1999), held that defendant reporters who obtained jobs with a Food Lion grocery store and therefore had legal permission to be in nonpublic areas of the store nonetheless exceeded the scope of that permission by using hidden cameras on the job. The court held that because Food Lion had not consented to defendants' presence for the purpose of recording footage that would be televised, their presence in the nonpublic areas constituted trespass.

In the case at bar, Defendants' presence in Plaintiffs' offices constituted a trespass and is easily distinguishable from *Desnick.* First, the office defendants ambushed in *Medical Laboratory Management*, *supra* at 1203, n. 22, were public clinics. By contrast, Plaintiffs' offices in the instant case constitute private property. Individuals desirous of Plaintiffs' services are invited to the facility, interviewed, evaluated, and assured of the strictest confidence regarding their medical treatment. It is only after undergoing consultations, evaluations, and signing consent forms that patients receive treatment. In other words, Plaintiffs' Little Falls facility is hardly a "public-eye clinic." For these reasons, the facts presented in the instant case more closely resemble those of *Medical Laboratory Management Consultants*, and *Shiffman, supra*, in which the courts found that defendant undercover reporters trespassed when entering plaintiffs' private property by misrepresenting their purposes for which they entered the property. As in *Food Lion, supra*, because the Defendants' surreptitious tapings took place in non-public areas of Plaintiffs' property and without Plaintiffs consent, and violated its policies regarding entry onto the property, the Defendants conduct constitutes trespass. Furthermore, in the case at bar, Defendants' undercover recording violates both the patients' and the Plaintiffs' rights to privacy, as well as Plaintiffs' right to control access to their property. Finally, it is beyond dispute that Defendants eavesdropped on private conversations without consent and

recorded conversations to which they were not parties and Defendants actions were in violation of clear policies prohibiting recordings on the premises that were acknowledged by Defendants. For these reasons, Plaintiffs state a valid trespass claim against Defendants. See Transc. Depo. Cahn 184:23-188:1 (Ex. E); Transc. Depo. Bentley 56:4-20 (Ex. L); Transc. Depo. Bentley 56:21:-59:9 (Ex. M); and Transc. Depo. Bentley 64:11-66:18 (Ex. N).

c. Defendants' Trespass Caused Damage

While the court in *Medical Laboratory* held that plaintiffs' claim should be dismissed because they failed to show any damage resulting from defendants' trespass, the same is not true in the case at bar. In *Nappe v. Anschelewitz,* 97 N.J.Super. 37, 477 A.2d 1224 (1984), the court held that a plaintiff must only prove *nominal damages* for a trespass claim to survive. See also *Food Lion, supra*. As the court in *Nappe* explained, "the general rule is that whenever there is. . .an invasion of a legal right, the law ordinarily infers that damage ensued and, in the absence of actual damages, the law vindicates the right by awarding nominal damages." *Id*. at 45-6, citing *Spiegel v. Evergreen Cemetary Co*., 117 N.J.L. 90, 93-4 (Sup.Ct. 1926). The court further explained that dating back to England, proving damages in a trespass case, "was not required because invasion of the plaintiff's rights was regarded as the tort in itself." *Id.* at 46. For these reasons, the court held that, "compensatory damages are not an essential element of an intentional tort committed willfully and without justification when there is some loss, detriment, or injury, and that nominal damages may be awarded in such cases in the absence of compensatory damages." *Id.* at 48.

Similarly, in the instant case, Plaintiffs are entitled to receive, at the very least, nominal damages and injunctive relief against the use of footage obtained by Defendants' intentional

trespass onto their property. Since Defendants trespassed on Plaintiffs' private property and because Plaintiffs suffered damages, summary disposition on this claim is appropriate.

WHEREFORE, this Honorable Court should GRANT Plaintiffs' Motion for Partial Summary Judgment, as to Plaintiffs' Trespass To Land claim.

Respectfully submitted,

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DATED: June 8, 2007

CERTIFICATE OF SERVICE

I, Allan Rubin, hereby certify that on June 8, 2007, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel of record.

FRIED SAPERSTEIN ABBATT, PC

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