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1. Pedro ("P") v. Diana ("D")

Public Nuisance

A public nuisance exists when there is a substantial interference with use and enjoyment of one's property. The substantial interference must be one that is annoying to an objectively reasonable person in the community.

Substantial Interference

Here, the interference is substantial because P can hear the noise from the rock concerts, feel the vibration and could not have a normal conversation because of the loud noise. Furthermore, P's neighbors have also tried, but been unsuccessful, in obtaining relief, meaning that all this activity is annoying to others.

Thus, P could assert a public nuisance claim against D.

Defenses - Coming to the nuisance

D will argue that P moved into the home knowing that the theater was adjacent to his subdivision and that the theater has been there for over thirty years, and thus P is not entitled to a public nuisance claim.

Thus, P may not succeed in his public nuisance claim against D if it is deemed that he came to the nuisance.

Trespass to Land

A trespass to land occurs when there is an intentional invasion/entry into the property of another.

Here, D let herself into P's land without P's permission. The fact that D did not disturb anything while she let herself in does not absolve her from any liability.

Thus, P could bring a trespass to land claim against D.

2. P's Remedies

Money Damages - Public Nuisance

Money damages are meant to put the aggrieved party in the status quo ante. Under tort, these

remedies are general damages which include compensatory and special damages.

Here, P may argue that he is owed compensatory damages for the public nuisance because he would like to be put in the position he was in before he entered purchased the house or in the alternative for money to sound proof his home.

Limitations to Damages

Limitations are limited to the extent that they are caused by that tort, certain, foreseeable and unavoidable.

Here, the even though the damages are the but for and proximate cause of nuisance, the damages are not certain because you cannot quantify the amount of discomfort P is going through. P may argue that it's a priceless thing to be able to live without the noise and vibration on the weekends. Further, P did move into the new house knowing that there was a theater adjacent to the house subdivision in which he was purchasing, so in that regard this was not unavoidable.

Thus, money damages may not be awarded.

Money Damages - Trespass to Land

See rule above.

Here, P will argue that he is owed damages for D's trespass to land. With respect to the trespass to land, it is possible that the court may also determine that because D did not disturb anything there may be a case for only nominal damages.

Limitations to Damages

See rule above.

Here, P did not suffer any real damage by D's trespass and damages are limited to but for and proximate causes.

Thus, money damages may not be awarded.

Temporary Restraining Order - TRO

A TRO is an in personam order to preserve the status quo until the case is heard on the merits. A TRO requires that there be irreparable harm, likelihood of success on the merits, inadequate remedy at law, and a balance of hardships. A TRO is usually issued for 14 days.

Irreparable Harm

For a TRO there must be irreparable harm. When land is involved it is presumed unique and unable to be replaced.

Here, P is can demonstrate irreparable harm because money damages are not calculable, see above, and thus his only real option for a remedy is to obtain an injunction. Further, this involves P's house, land, and P bought this house specifically because he thought that it was a perfect place to raise a family.

Thus, P can demonstrate irreparable harm.

Likelihood of Success on the Merits

As discussed above, the likelihood that P will win on his claim against D for public nuisance is very likely.

Thus, P will likely satisfy this requirement.

Inadequate Remedy at Law

An inadequate remedy at law means that money damages are not calculable or sufficient to remedy the claim.

As discussed above, money damages are uncertain because it is hard to quantify in dollars how much P's use and enjoyment of his house on the weekends would be worth.

Thus, there is an inadequate remedy at law.

Balance of Hardships

The balance of the hardship on the party against whom enforcement is sought is balanced on the hardship without the TRO.

Here, the hardship to D will be that she will be unable to host rock concerts on the weekend until the case is heard on the merits which means that she will have to either postpone current scheduled concerts and will also need to forego all that revenue that comes with not having concerts for the time that the TRO is effective for. On the other hand, the TRO is only good for 14 days, which means that at most D will forego, at most, two weekends of concerts. D will argue that two weekends is a lot of money and a huge hardship and cancelling two weekends may not really make a big difference for P if she happens to defend against P's claim.

Thus, on balance D may have a stronger argument against the TRO.

Permanent Injunction

A permanent injunction is a court order telling someone to refrain from or to do something.

Here, P may request a permanent injunction to prevent D from holding these rock concerts that affect him and his neighbors.

Irreparable Harm

For a permanent injunction there must be irreparable harm. When land is involved it is presumed unique and unable to be replaced.

Here, P is can demonstrate irreparable harm because money damages are not calculable, see above, and thus his only real option for a remedy is to obtain an injunction. Further, this involves P's house, land, and P bought this house specifically because he thought that it was a perfect place to raise a family.

Thus, P can demonstrate irreparable harm.

Public Interest

Here, D will argue that the public has an interest in keeping the theater as it employs about 200 people and it also has been a focus of the city's cultural scene, which presumable means money for the city as well. On the other hand, P will argue that him and his neighbors also have a public interest in living in peace without noise and vibration.

Thus, it may be deemed that the public in keeping the rock concerts outweighs P's interests.

Feasibility of Enforcement

A court prefers one time actions when issuing permanent injunctions, it does not want to have to monitor an injunction.

Here, the court can completely ban all rock concerts on the weekends and that would be an order that would be feasibly for the court to enforce and would not have a problem issuing. On the other hand, other kinds of permanent injunctions that would limit the times and noise levels of the concerts would be harder to enforce and require the court more resources and time as well as cause P to have to keep coming to court if he feels the injunction orders have been violated.

Thus, it depends on the injunction issued whether there is feasibility of enforcement.

Balance of Hardships

The hardships of both parties will be balanced.

Here, as discussed above, D and the city's interest in keeping the theater open will be balanced against P's hardships of being unable to enjoy his home. D will argue that even though the theater is used for other activities during the week, it is the revenue of the rock concerts that fund most of the operating costs of the venue, so stopping the rock concerts may cause the theater to have to shut down. On the other hand, P is unable to enjoy his home on the weekends.

Thus, the court may deem that D's hardships outweigh P's.

Defenses - Unclean Hands

Unclean hands is a defense when the plaintiff acts in bad faith.

Here, facts are silent as to whether P acted in bad faith. However, P did know that the theater was there when he moved in and if he is from the area he knew that the theater has been there for a long time which indicates that he is not necessarily acting in good faith. In the end, however, this is not the kind of bath faith required in an unclean hands analysis.

Thus, P did not act with unclean hands.

Defenses - Laches

Laches is a defense when the plaintiff delays to bring in action.

Here, there are no facts to suggest that P delayed in bringing his action.

Thus, there was no laches defense available to D.

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