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1. What claims may Pedro reasonably assert against Diana?



Private Nuisance

Nuisance is the unreasonable interference with use and enjoyment of one's property.

Here, Pedro moved into a house in a subdivision located adjacent to the open-theater that Diana built thirty years ago. The open-air theatre provides an outdoor multi-use entertainment venue and has been a focus of the city's cultural scene. Diana rents the venue to the local dance companies on weekdays, on weekend evenings Diana hosts rock concerts at the theatre.

When Pedro purchased his house he knew about the theatre and thought that the new house would be a perfect place to raise a family. As soon as Pedro moved into his new house, he was horrified by the noise and vibration coming from the theatre during rock concerts. He could feel floor shake and could not have a normal conversation because of the loud noise. Pedro later learned that his neighbors complained to Diana about the noise and vibration and that they were unsuccessful in obtaining relief, and that they decided to live with it in the end.

Pedro could make a claim for private nuisance on his own against Diana. However, he would have to prove that the noise and vibration are so excessive that he would be entitled to damages because he has suffered physical or emotional damage. In short, the claim would likely not be successful because Pedro was aware of the theatre when he moved into his house.

Pedro could also ask the neighbors to join him in his claim of private nuisance to demonstrate a larger group of people losing the enjoyment of their homes due to the vibration and noise. If as a group the claim strengthens because there is excessive damage in some manner, the claim made as a group may prevail.



Negligence



In order to raise a claim of negligence, there must be a duty, breach, causation and damages.

Duty

One is said to have a duty of care to those they have a special relationship with or foreseeable plaintiffs or anyone exposed to the negligence in the surrounding area.

Here, Diana owning a theatre for thirty years that is regularly used by the community in a myriad

of ways owes a duty to be a respectful neighbor while running her theatre especially as development has grown to include housing in the vicinity of the theatre.

Thus, Diana owed a duty of care to Pedro and her neighbors.

Breach

A breach occurs when the duty of care falls below the standard.

Here, Pedro and his neighbors were all impacted by the noise during rock concerts on weekend evenings.

Thus, Diana was breaching her duty by disturbing her neighbors with the loud noise and vibration they felt during the concerts while at home. Enough that Pedro could not have a conversation.

Causation

Actual cause is the "but for" action by a defendant the plaintiff would not have been harmed.

Proximate is the foreseeability that one would be impacted by the negligence. (zone of danger vs. all those in surrounding area of the negligence)

Here, Pedro would establish that but for Diana hosting loud rock concerts on the weekend evenings, he could enjoy his home without noise and vibration and hold a conversation.

Pedro and his neighbors were foreseeable plaintiffs when it came to being disturbed by the loud noise and vibration of the theatre. Diana could also have foreseen that as the community development expanded to include housing in the vicinity, the noise level would have to be reevaluated to adjust for the growth and increase of disturbance.

Therefore, Diana could be held negligent for causing the disturbance to her neighbors.

Damages


From the facts, the damages that incurred were not physical e.g. no diagnosed hearing loss, cracks in the walls to Pedro's house. Thus, there is not a need for a large claim of monetary damages. If any damages that may be claimed, perhaps would be nominal.

Trespass




The unlawful entry to the land of another.

Here, in an effort to find out if she might be able to relieve Pedro of some of his discomfort, Dian

 went to his house to determine whether sound-deadening materials might be added. She forgot to tell Pedro that she was coming. Diana let herself into Pedro's backyard, took some measurements and left without disturbing anything.

Regardless of Diana having good intentions when she entered Pedro's property by letting herself into his backyard to determine if sound-deadening materials might be added, she entered without Pedro's permission and without his knowledge because she forgot to let him know she was coming.


Thus, even though she did not damage anything Diana is still liable for trespass of Pedro's property because she lacked permission.

 2. What remedies may Pedro reasonably seek?

Injunction

An order to prevent someone from doing something or to enforce someone to do something.

Temporary Injunction

For a temporary injunction, which is an order to either maintain the status quo or for the event to stop until a hearing, the following requirements need to be met. 

Here, Pedro could initiate a temporary injunction on Diana and the theatre to refrain from rock concerts on the weekends until a solution/resolution could be reached.

Immediate injury

Plaintiffs must have suffered an injury such that they are being harmed or will continue to be harmed without the injunction.

Here, Pedro is unreasonably disturbed by the loud noise and vibration from the rock concerts such that he is unable to hold a conversation or enjoy his property.

Feasibility

The enforcement of the injunction must be feasible, that it is possible without being burdensome.

Here, Pedro would not be asking Diana to stop hosting all events, or shut down. He would request that he rock concerts on the weekend evenings be stopped until a resolution could be found.

Balancing

There must be balancing between the parties such that one is not unduly burdened more than the other.

Here, Diana revenue from the rock concerts funds most of the operating costs of the venue. The theatre employs about 200 people.

Thus, not only would revenue be impacted during the temporary order (14 days or until hearing) the employees would be impacted as well that work the concerts. Diana has expressed to Pedro that the theatre could not survive without the rock concerts.



Defenses

Mitigation

Diana would claim as she told Pedro, had taken steps to mitigate the negative impact by requiring that all concerts end by 11:00 pm and setting a maximum noise level.

Assumption of the Risk

When someone knowingly either expressly or in writing that they are aware of the dangers of something, they are said to have had assumption of the risk.

Here, Pedro knew about the theatre and still bought the house. Also, as Diana mentioned rock concerts are loud by nature.

Conclusion

Diana would be impacted for by the temporary order.

Permanent Injunction

Similar to above, but time duration would be determined by the court following a hearing.

Irreparable Injury

Here, Pedro has not been injured to the point that he or his home cannot be "fixed". There will be an ongoing disturbance during the concerts, but there could be solutions.

Protectable Property Interest

Defendant has to have an interest in protection his/her property.

Here, Pedro has an interest in having the ability to enjoy his home on the weekends without vibration and louse noise.

Feasibility

Similar to above, the injunction would be feasible.

Balancing

Defined above.

As mentioned, the theatre would not survive without the money from the concerts and the theatre would have to close.

Public Interest

There is public interest in this matter because it affects the neighbors and not just Pedro.

Conclusion

It is likely that Diana has taken measure to mitigate the disturbance and Pedro will be unsuccessful in his claims against Diana.

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