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Nebulous Injunction Decrees Against Noise-Nuisances - Meadowbrook Swimming Club v. Albert

Comments and Casenotes

NEBULOUS INJUNCTION DECREES AGAINST NOISE-NUISANCES

Meadowbrook Swimming Club v. Albert[1]

Defendant-appellant corporation operated a public outdoor dance floor upon its property situated in a narrow valley bordered on two sides by residential districts. Modern jazz music was played in the summer months from nine to twelve, on six nights of the week. Persistent complaints about the noise were made by the surrounding residential property owners; and after alleviatory efforts on the part of the defendant had failed to produce the necessary quiet, the property owners filed a bill in equity to enjoin the continuation of an alleged noise nuisance. A decree was granted permanently restraining the defendant from "the playing of loud music, or the creation of similar noises in such manner that the noise made by the same is transmitted on the properties of the Plaintiffs, or any of them, so as to deprive the Plaintiffs and the members of their families from the reasonable use and comfortable enjoyment of their respective homes." On appeal, *held:* Affirmed. A business not a nuisance *per se* may be so conducted as to be subject to injunctive restraint. Noise alone, even if produced by skilled musicians, may constitute a nuisance where it interferes with the reasonable enjoyment by another of his property.

The principles of equitable relief against nuisance caused by the misuse of one's property in relation to that of another are well recognized and established in the field of the law.[2] The Maryland statement of the general rule may be found in *Dittman v. Repp,*[3] where the court said:

> "A court of equity will interfere and restain by injunction an existing or threatened nuisance to a party's dwelling, if the injury be of such a character as to diminish materially the value of the property as a dwelling, and seriously interfere with the ordinary

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[1] 173 Md. 641, 197 A. 146 (1938).
[2] See Joyce, Law of Nuisances, Sec. 415.
[3] 50 Md. 519 (1879). See also Adams v. Michael, 38 Md. 123 (1873).

comfort and enjoyment of it, and if the injury be such as to entitle the party complaining to substantial damages in an action at law . . .

"In all such cases, the question is whether the nuisance complained of, will or does produce such a condition of things as, in the judgment of reasonable men, is naturally productive of actual physical discomfort to persons of ordinary sensibilities, and of ordinary tastes and habits, and as, in view of the circumstances of the case, is unreasonable and in derogation of the rights of the complainant."

The solution of any noise-nuisance problem depends in a large measure upon the balancing of the conflicting rights of the parties; and this, in turn, will naturally hinge upon the circumstances of each individual case. A brief review of several Maryland decisions dealing with injunctive relief against noise in general will serve to illustrate the general application of the principles enunciated. It is, of course, obvious that noise is but one of the means whereby a nuisance may be created, and that principles applicable to other types of nuisance will, in the main, be applicable to the particular type in question. However, the inherent differences in the circumstances surrounding the various nuisance media make a separate study interesting and instructive.

In *Dittman v. Repp*,[4] the parties to the injunctive proceeding occupied adjoining premises in the city of Baltimore. The plaintiff lived with his family upon his property; the defendant operated a brewery upon his. The defendant used steam machinery in its building, the steam pipes running alongside the plaintiff's wall. The noise was not only loud, but had a heavy jarring quality. An injunction was granted. The court said that urban inhabitants must expect to encounter and to endure certain inconveniences inherently related to their manner of life, but that there was a limit to the discomforts to be met; and that noise alone might create a nuisance subject to equitable injunction, although the clamor might result from the carrying on of a trade or business in the city.

In *Lohmuller v. S. Kirk & Son Co.*,[5] the plaintiffs, attorneys, occupied offices in the Calvert Building in Balti-

[4] *Supra*, n. 3.
[5] 133 Md. 78, 104 A. 270 (1918).

more. The defendant inhabited an adjacent building wherein it engaged in the hammering of silver upon iron bars during the office hours of the plaintiffs. The latter sought an injunction against the noise which, in the words of one of the complainants, was described as follows: "It is a peculiar penetrating noise. It goes right through you, it affects the nerves, it is a nerve-racking noise. It is almost enough to give you nervous prostration." The injunction was refused. The court recited the general principles, namely, that the court should take into consideration not only the character of the noise, but the locality in which it was produced, and that not every inconvenience in the nature of a nuisance would call for equitable relief. It was emphasized that the plaintiffs were tenants with comparatively short leases, that the alleged nuisance existed in the business section of the city, and that while the noise apparently subjected the plaintiffs to *some* annoyance and discomfort, it was not clearly shown that the noise complained of was productive of actual physical discomfort to a person of ordinary sensibilities.

In *Singer v. James,*[6] where the adjoining property owners resided in a suburban district, the defendant was in the business of raising for sale poultry, hogs, and dogs. The plaintiff, whose land was improved by a dwelling house, sought an injunction against the noise caused by the barking and whining of the dogs, in particular, and against other animal disturbances in general. The defendant was enjoined from keeping on his premises "such a great number of fowls, hogs and dogs that the noise made by the same shall deprive the plaintiff and members of his family from the reasonable use and comfortable enjoyment of the plaintiff's property . . ."[7]

Somewhat more pertinent to the particular problem of the principal case are certain out-of-state decisions dealing with noise-nuisance as related to recreational operations. In *Phelps v. Winch,*[8] an injunction was sought to restrain the defendant from operating a dance pavilion near the

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[6] 130 Md. 382, 100 A. 642 (1917).

[7] For other cases involving noise-nuisance, see Green v. Shoemaker, 111 Md. 69, 73 A. 688 (1909); and Langley v. McGeoch, 115 Md. 182, 80 A. 843 (1911). These cases involve relief against blasting operations. While noise was a part of the trouble complained against, perhaps the greater part consisted of the menace of rocks and stones falling on the plaintiff's premises.

[8] 309 Ill. 158, 140 N. E. 847, 28 A. L. R. 1169 (1923).

summer country residences of the plaintiffs.[9] In the words of the court, "music was furnished by four college boys, with a piano, saxophone, banjo and drum, and was the character of music suited to the present day methods of dancing, called 'jazz' music." The noise of which the plaintiffs complained consisted of the music, laughter, applause, the making of announcements, the shuffling of feet, the noise and confusion incident to the breaking up of the dance, such as calling back and forth, the starting of cars and the blowing of horns. The plaintiffs alleged that their ordinary conversations and their sleep were greatly interfered with. The defendant was enjoined from operating the pavilion in such a manner as to interfere with the reasonable enjoyment of life by the plaintiffs and other persons of ordinary sensibilities occupying their premises. The court said that as the nuisance was clearly established, there was no necessity of proceeding first at law; for the injury was such that damages would not be adequate relief.[10]

In *Gilbough v. West Side Amusement Co.*,[11] injunctive relief was sought to restrain a noise nuisance arising from the close proximity of a baseball park to the residences of the plaintiffs. The park was operated on Sunday, and the plaintiffs alleged that the shouts and stampings incident to baseball-spectator activity so disturbed their rest as to constitute an unlawful and inequitable obstruction to the enjoyment of their property. The court stated that, in modern civilization, people were forced to endure those noise annoyances which should reasonably arise from the necessary operations of society, and that the necessity and purpose of any given noise would be a factor in determining whether it constituted a nuisance. The court also pointed out the time relation involved. Here, the noise was particularly disturbing on Sundays when the complainants were trying to rest. An injunction was granted restraining the defendant from allowing the production of such noise at that particular time. The court, in stating that mere

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[9] For another interesting recent case dealing with noise-nuisance as incident to public dances, see Bartlett v. Moats, 120 Fla. 61, 162 So. 477 (1935). See also for a discussion of the instant problem (1936) 15 Oregon L. Rev. 268, and Lloyd, *Noise as a Nuisance*, (1934) 82 U. Pa. L. Rev. 567.

[10] See Woodyear v. Shaefer, 57 Md. 12 (1881). In that case the Court said, "where a nuisance operates to destroy health, or to impair the comfortable enjoyment of property, an action at law furnishes no adequate remedy, and protection by injunction must be given."

[11] 64 N. J. Eq. 27, 53 A. 289 (1902).

noise may constitute a nuisance, said that the occurrence of constant disagreeable noise was not conducive to mental health, especially when it tended to break up sleep and rest.

In *Edmunds v. Duff*,[12] a suit was brought in equity to restrain the proposed erection of an amusement park in a residential section,[13] to be operated day and night for six months of the year. The alleged prospective disturbances included music, shooting galleries, dance halls, restaurants and electric lights. In granting an injunction, the Court said:

> "Even music, however elevating and enjoyable at times, and depending, of course, on its character, may be continued so long as to become an annoyance to those compelled to remain in the immediate vicinity. In fact, the general trend of decisions has been to hold that any noise, whether of musical instruments or the human voice, or by mechanical means, or however produced, may be a nuisance, especially if its tendency is to draw together in the vicinity of a person's residence or place of business large crowds of noisy and disorderly people."

In *Peragallo v. Luner*,[14] an injunction was granted to the plaintiff restaurant owner to restrain noise and vibration caused by the operation of a bowling alley. The court said that noise alone might constitute a nuisance, but that in determining the question, the character and volume, and time and place and duration of its occurrence must be reckoned with.

The foregoing digest of case material does not, of course, exhaust the situations in which noise nuisances may be created. It merely serves to show how the general equitable principles have been applied in particular instances. The equity court necessarily acts upon consideration of the whole picture, and the combination of the factors involved is the basis of the decision. The result obtained in the principal case is in harmony with the prior Maryland decisions, as well as with those of other states. A residential district was affected; the noise occurred inconveniently

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[12] 280 Pa. 355, 124 A. 489, 33 A. L. R. 719 (1924).

[13] See Hamilton Corporation v. Julian, 130 Md. 597, 101 A. 558 (1917), involving an injunction to restrain a threatened nuisance.

[14] 99 N. J. Eq. 726, 133 A. 543 (1926).

at night;[15] the disturbance was unquestionably annoying in character and volume. The trial court summarized the situation as follows:

> "The blare of the brasses, the beating of the drums . . . is so penetrating and loud that it cannot be questioned that witnesses, who are doubtless normally constituted, and of exceptional integrity and intelligence, who live on the sides of the hills and the plateau, have been unable to sleep, to study, or otherwise lead normal lives in their own homes for four evenings a week during the past and present summers."

Serious difficulty is encountered as to the character and form of the decree to restrain a noise-nuisance as well as in various other equity cases. The definiteness and finality characteristic of a common law judgment are the exception, and not the rule, where an equity decision is concerned. This is, of course, inherent in the nature of things. The equitable principles involved in nuisance situations are broad in scope and largely depend upon the somewhat delicate balancing of conflicting rights and interests. In granting an injunction in such instances, the court cannot with propriety ignore the rights of the defendant figuratively reposing on the upper half of the scale. When restrictions are placed upon the right of the defendant to use his property, principles of equity and justice demand that said restrictions go no farther than the circumstances actually warrant. When they go beyond this point, the defendant has as just cause for complaint as the plaintiff may have had in the first instance. Improper restraints imposed in such cases by judicial fiat are really more objectionable from the standpoint of a sound social policy than affirmative tortious acts of a nuisance defendant. In the former situation, redress is precluded by reason of the very decree which has established the wrong. This injustice is readily apparent when considered in the abstract, but it is nevertheless not easily obviated where concrete cases are concerned.

The relation which the form of an equity decree bears to the problem is not difficult to ascertain. Where a decree,

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[15] In Gilbough v. West Side Amusement Co., *supra* n. 11, the Court stated: "By common consent of civilized man the night is dedicated to rest and sleep, and noises which would not be adjudged nuisances under the circumstances, if made in the daytime, will be declared to be nuisances if made at night."

in a nuisance case particularly, is so indefinite and uncertain that the defendant cannot reasonably discover where the line must be drawn,[16] it may quite easily have the practical effect of restricting the defendant's proper use of his premises. The defendant is likely to lean backwards with a natural reluctance to expose himself to the ever present possibility of the contempt penalty. Such a decree may be tantamount to a flat prohibition where none was actually intended by the court. Thus the form of the decree affects its substantial character.

But it is often far from a simple matter properly to frame a decree in a nuisance case, once the court has decided to grant an injunction. In looking at some of the cases, one may readily imagine that the court found it far less difficult to discover the presence of a nuisance than to point out the proper steps to abate it. Each individual case is apt to be specially complicated by the different circumstances involved.

The attitude of the courts in regard to the instant problem has not been uniform.[17] Some have embraced the difficulty with frank misgivings, but have endeavoured to do substantial justice. Others have seemingly ignored the difficulties and have left the defendant in an embarrassing and equivocal position. In the absence of bad faith on the part of the defendant, this latter course on the part of the courts would seem to be legally indefensible. It overlooks the correlative rights of the defendant while imposing an onerous burden upon him.

The Maryland Court of Appeals likewise has been somewhat inconsistent in its approach to the problem. In the same year there appeared *Washington Cleaners and Dyers v. Albrecht*,[18] sustaining, and *International Pocketbook Workers' Union v. Orlove*,[19] condemning, a nebulous decree. While the cases may be distinguished on their facts, the nature of the decree called for in each (as being definite or general) was part of the same problem found in the instant case.

In *Washington Cleaners and Dyers v. Albrecht*, the defendant was faced with the task of abating a nuisance

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[16] See Note, *Nebulous Injunctions* (1920) 19 Mich. L. Rev. 83, for a general comment upon the desirability of a definite decree.

[17] *Ibid.*

[18] 157 Md. 389, 146 A. 233 (1929).

[19] 158 Md. 496, 148 A. 826 (1929).

caused by the escape of objectionable fumes from a cleaning and dyeing establishment. The final decree restrained the defendant from using gasolene or varnalene (a cleaning fluid) "in such quantity and manner as to be deleterious to the health of the neighborhood." To the defendant's complaint that the decree was too vague, the court replied:

> "It is no part of the function of a court of equity to tell the appellant how to run its business. Such a court has the undoubted power to prevent it from so using its property as to deprive others of the reasonable enjoyment of their properties or in appropriate cases it may grant affirmative relief by requiring a wrongdoer to remedy the mischief he has caused, but beyond that it cannot go. To require it, in such a case as this, to conduct an inquiry involving the employment of highly skilled and technically trained advisors and to formulate plans which would enable appellant to conduct its plant so as to conform to its decree verges upon absurdity."

The United States Supreme Court, however, did not consider it an absurdity to place a somewhat similar nuisance problem under technical advisement to enable the defendant to carry on its business in a proper manner. In *Georgia v. Tennessee Copper Co.*[20] the operation of the defendant's copper smelting plant caused the emission of destructive sulphur fumes. The Court determined by means of the evidence submitted that a certain quantity of escaping sulphur produced the harmful result. Therefore, the defend-

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[20] 237 U. S. 474, 35 Sup. Ct. 631, 59 L. Ed. 1054 (1915). This case was part of litigation extending over a period of eleven years. The state of Georgia brought the original suit against the defendants, who were the Tennessee Copper Co. and the Ducktown Sulphur, Copper and Iron Co., in 1905. The case was heard and determined in favor of the plaintiff in 1907, Georgia v. Tennessee Copper Co., 206 U. S. 230, 27 Sup. Ct. 618, 57 L. Ed. 1038 (1907). By consent, time for entering a final decree was extended to permit the defendants to devise some competent method of abating the nuisance. The Tennessee Co. and the State came to an agreement regarding proper operating conditions. The State promised to refrain from requesting an injunction prior to October, 1916, if the arrangements agreed upon were carried out. The Ducktown Co. was unable to come to any agreement with the State, and in 1914 the State asked for a perpetual injunction. The decree noted in the text above followed in 1915. The case was retained for further action, and in 1916, a final decree was given in conformity with the findings of the court-appointed official, 240 U. S. 650, 36 Sup. Ct. 465, 60 L. Ed. 846 (1916).

ant was ordered to keep daily records showing in detail the result of the operations; a Court-appointed inspector was given the right of access to the records; the defendant was enjoined from permitting the escape of a certain maximum amount of sulphur at all times; but a differential was set up to take care of the seasonal factor, for the danger was not as prevalent in the winter as it was in the summer.

The Court, in effect, gave an experimental decree, recognizing that a just balance could not be struck without an application of the trial and error method.[21] It is submitted that the principles behind such a decree are legally sound and socially desirable. Just why it should not be the function of the equity court to help the defendant to escape from what may be a perplexing dilemma is not readily apparent. A maximum amount of co-operation on the part of all parties concerned is the best assurance of a proper solution; and it would indeed be an anomaly if the Court, itself, should be the one to refuse to take a proper part.

In the second Maryland case, *International Pocketbook Workers' Union v. Orlove,* involving a labor dispute, the Court of Appeals, not referring to the earlier case, indicated that the direction to the defendant should be as specific as possible.[22] The decree below forbade the defendants:

> "From unlawfully interfering or causing any person or persons to interfere with the business of the plaintiffs, by threatening, intimidating or coercing the employees of the plaintiff or any member of the family of any such employees of person who may desire to enter such employ; from injuring or destroying the property or materials belonging to the plaintiffs; from unlawfully assembling or causing persons to unlawfully assemble or unlawfully parade on the streets adjoining or in front of the property of the plaintiffs carrying

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[21] Cf. Smith v. Staso Milling Co., 18 Fed. (2nd) 736 (C. C. A. 2nd, 1927). In abating a nuisance caused by blasting and the influx of dust from defendant's stone crusher, the Court restrained blasting at night, and to such a degree that the plaintiff's houses were jarred, and also limited the dust to that escaping from dust arresters operating at a maximum efficiency determined by a court official.

[22] The court (citing Frankfurter & Greene, The Labor Injunction, 112 ff) stated that in the past it had been customary to draft labor dispute injunctions in broad terms, but that the injustice of such a practice had been made clear in certain instances. Can it be questioned that the injustice of an indefinite decree is just as apparent in a nuisance case as it is in a labor dispute?

> placards designed to create public prejudice against the plaintiffs for the purpose of threatening, intimidating or coercing the employees of the plaintiffs, or for the purpose of preventing by intimidation, coercion or threats any person from working for the plaintiffs."

In reference to this part of the decree, the court stated that it was:

> "So broad and indefinite that opinions might differ too widely on the consistency of specific acts, and well-intentioned pickets might too easily incur the penalty of contempt of court without knowing it, according as the court might or might not apply the injunction . . . The construction and application of the injunctions being unpredictable, violations could surely be avoided only by the abandonment of all picketing and other efforts; and that, we think, cannot be required."

The Court went on to say that it would not lay down any rigid rule, because what might be feasible in one situation might be impracticable in another. The case was remanded for the taking of further testimony to determine what number of pickets would be reasonable in the strike, and what should be the proper limits to their activities.

In the principal case, the defendant complained that the decree was too indefinite, and that it amounted to a general denial of the right to operate the dance floor. In answer, the Court stated that there was no flat prohibition against such operation, but that the defendant was left free to adopt its own means of so abating the nuisance that the plaintiffs would be protected in their right to the reasonable enjoyment of their property. A defendant under such instruction presumably would not be penalized if reasonable steps promptly taken to abate the nuisance should not be entirely satisfactory in the first instance. Yet, a more definite program with a judicial sanction behind it would seem desirable in the absence of some special reason swaying the Court against it.

An experimental decree to determine under what conditions the defendant might carry on its business without reasonable objection could have been used in the instant case. However, when it was urged that the injunction should not issue until the effects of a proposed roof over the dance floor had been demonstrated, the court said that

the defendant's right to defer the restraint had been forfeited by its failure to abate the nuisance over a two year period in spite of persistent complaints. Whether the Court would have called for a more definite decree in the absence of this special reason for refusing the defendant greater protection is conjectural.[23]

[23] Definite decrees have been used in situations of similar difficulty. (1) Collins v. Wayne Iron Works, 227 Pa. 326, 76 A. 24 (1910). Here the court was asked to abate a noise nuisance caused by the operation of the defendant's iron works. The court said: "In a case like the present where the annoyance arises from the conduct of a business which is not a nuisance per se, a strong effort should be made to conserve the rights of all parties, and an important question is: Can the noise by any reasonable means be so moderated as to accord with the degree of quietness the plaintiff has a right to enjoy; and if it can, by what means." The court looked at the testimony and enjoined the use of noisy machinery during hours when the plaintiffs would be likely to be at rest, and also restrained the use of the machinery while the windows in the plant were open, for the noise was much more objectionable when the windows were in such a position. (2) Peragallo v. Luner, 99 N. J. Equity 726, 133 A. 543 (1926) *supra circa* n. 14, where, after an actual investigation had been made by a court official to determine the extent of the disturbance, the use of the defendant's bowling alleys was enjoined only during the hours that the plaintiff restaurant owner was apt to have his heaviest trade. (3) Gilbough v. West Side Amusement Co., 64 N. J. Equity 27, 53 A. 289 (1902) *supra circa* n. 11, where the court restrained the defendant from permitting noise on its premises during the time when the annoyance was most disturbing to the plaintiffs.