

TYPES NOT MAPPED YET November 29, 2021 | TTR not mapped yet | Jeffrey N. Brown, Aya Elalami

CA appellate court ‘sounds off’ on neighborly dispute over noisy property

In *Chase v. Wizmann*, the California Court of Appeal affirmed a preliminary injunction that ordered a neighbor to relocate his loud pool and air conditioning equipment to the other side of his house, at considerable expense, before trial. This case reminds real property owners to be neighborly to adjacent property owners.

Chase v. Wizmann involved an “acrimonious noise dispute between neighbors” in the Hollywood Hills neighborhood of Mount Olympus in Los Angeles. The plaintiff’s neighbor renovated his home for short-term rentals, installing pool and air conditioning equipment directly under the plaintiff homeowner’s bedroom window. The plaintiff, an elderly man with multiple health conditions, complained to the neighbor multiple times about the noise generated by the equipment before finally bringing a nuisance action. Among other claims, the plaintiff alleged violation of Los Angeles Municipal Code (LAMC) section 112.02, which outlaws noise in excess of 55 decibels during the day and 45 decibels at night.

To prevail on an action for nuisance, a plaintiff must prove (1) an interference with the use or enjoyment of his property, that is (2) substantial and (3) unreasonable. “Substantial” and “unreasonable” are determined by asking “whether a person of normal health and sensibilities living in the same community would be substantially damaged by the interference and whether an impartial reasonable person would consider the interference unreasonable.” The homeowner’s particular sensitivity to noise due to his age and poor health is irrelevant because the standard is an objective one. “Specifically, whether a person of normal health and sensibilities living in the same community would be substantially damaged by the interference and whether an impartial reasonable person would consider the interference unreasonable.”

In 2020, the trial court issued a temporary restraining order mandating that the neighbor comply with LAMC section 112.02. Despite the neighbor’s alleged mitigation efforts, however, the noise continued to exceed ordinance limits. The trial court then made a finding that the neighbor intentionally violated the temporary restraining order, and issued a preliminary injunction ordering the neighbor to move the equipment. Relocating the equipment away from the homeowner’s property would require substantial time, breaking walls, and obtaining a permit from the city. The neighbor appealed.

The Court of Appeal first addressed the legal question: does LAMC section 112.02 proscribe nuisance actions for noise emissions that do not violate the ordinance? The Court of Appeal found it does not, reminding us that compliance with statutes and ordinances will not save a defendant from a nuisance claim, unless the defendant is acting according to express statutory authority. In other words, not violating a law is not the same thing as the government endorsing an action. Even if the neighbor had abided by section 112.02, the nuisance claim could proceed.

The Court of Appeal found there was substantial evidence to support plaintiff’s claim of an unreasonable interference by the neighbor, with substantial damage to the plaintiff. Even after some mitigation efforts, “many configurations of the equipment noise still violated LAMC section 112.02.” Finally, the Court of Appeal rejected the neighbor’s contention that because less burdensome alternatives were available, such as only running the equipment in certain combinations at certain times, the order was an abuse of discretion. The neighbor had shown that he was not able or willing to adequately mitigate the noise when he defied the temporary restraining order.

This case reminds us that nuisance laws are not tied to or dependent upon statutes or ordinances; a landowner can comply with a law and yet still substantially and unreasonably interfere with another’s use or enjoyment of that person’s property. More importantly, this case demonstrates why it is never a good idea to disrespect or violate a court order. When the preliminary injunction was affirmed, the neighbor essentially lost the dispute.



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