

Nuisance

***Pusey v Somerset County Council* [2012] EWCA Civ 988**

Background and decision

As is the case with the vast bulk of nuisance actions, the facts were simple. The claimants, P, owned and occupied a farm which was in close proximity to a strip of land which was adjacent to a highway which was owned by the defendant, Somerset County Council in its capacity as the Highway Authority. The strip of land had been used as a lay-by since before the Second World War. The use of the lay-by as such was, therefore, well-established before the claimants purchased their property. However, the activities which formed the basis of the action dated back to at least 1993. The activities of which P complained were almost redolent of Dante's *Inferno*. It was claimed that the use of the strip constituted a nuisance by virtue of noise and vibrations which were caused by vehicles on the strip; emission of fumes from vehicles which used the strip; lewd and abusive behaviour, which included public urination and swearing amongst those using the strip; screeches and sudden bangs and clangs and the sounding of motor horns and, finally, the sound of varied whirring and whining sounds, which continued for long periods, from heavy goods vehicles which used the lay-by.

At first instance the trial judge, in effect, simply swept these claims aside. In short, the judge was of the opinion that P's complaints were extremely exaggerated. He went on to hold that no nuisance existed. P appealed.

The Court of Appeal upheld the decision of the judge at first instance. The Court emphasised that the question whether the use of the defendant's land amounts to an actionable nuisance is one of fact and degree in every case. There was required to be a real interference with the comfort or convenience of living according to the standards of the average person. Abnormal sensitivity to noise or the other matters complained of was not, therefore, sufficient to found a cause of action. The court was required to make an assessment of the degree of interference, taking all relevant circumstances into account, including the character of the neighbourhood, the duration and the intensity of the interference and its frequency. In the last analysis, the court was required to ascertain whether the adverse state of affairs was a nuisance by determining whether an average resident would have been adversely and unreasonably affected by the state of affairs which was the subject matter of the action. The trial judge's decision could not, therefore, be impugned.

Comment

This case simply emphasises the point that nuisance cases are fact-sensitive. It is, therefore, often difficult to predict the outcome of a particular case. Much depends on the credibility of the relevant witnesses. Finally, one of the activities which was complained about in the instant case was the lewd conduct of certain individuals who used the lay-by. There is very scant UK authority on the subject as to whether indecent conduct which takes place on the land of the defender can constitute a nuisance. Normally nuisance actions are based on complaints concerning noise, odours etc. The court seemed tacitly to accept that lewd conduct could rank as a nuisance.