Knapp Road/Remsen Rd. Homeowners Assn. v RC Pulsars of WNY, Inc.
2018 NY Slip Op 32683(U)
September 25, 2018
Supreme Court, Erie County
Docket Number: 809207/2014
Judge: John L. Michalski
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

KNAPP ROAD/REMSEN ROAD HOMEOWNERS ASSOCIATION, by its President JOSEPH HALLECK And JOSEPH HALLECK,

Plaintiffs,

v. **Index No. 809207/2014**

RC PULSARS OF WNY, INC., BENJAMIN J. MILES,

Defendants.

Richard E. Stanton, Esq.
Attorney for the Plaintiffs

Patrick B. Curran, Esq.
Attorney for Defendants

DECISION

Michalski, J.

For the reasons set forth below, the Court finds that the Plaintiffs have established the Defendants' liability as to both causes of action.

I. ILLEGAL USE OF LAND CLAIM

It is clear that the land owned by Defendant Miles, and leased to Defendant Pulsars, is zoned "Agricultural-Residential (AR)". Equally clear is that flying radio controlled model aircraft on AR designated property is not permitted under the Town of Pembroke Zoning Law. Cognizant of this

restriction, Defendant Miles sought – and was granted – a Special Use Permit from the town in order to allow them to fly their aircraft. However, as the town's code enforcement officer testified, such activity was ineligible for a Special Use Permit, and is otherwise proscribed under §305 of the zoning law. Additionally, the application[1] for the permit significantly understated the extent, volume, and frequency of Pulsar's flying activities.

Considering the governing zoning provisions, we find that the town erred in granting the Special Use Permit. We also find the Defendants' argument that the Plaintiffs are foreclosed from seeking redress from the town after it issued the permit to be unavailing. Though initiating a CPLR Article 78 special proceeding may have been a more efficient means of addressing their concerns, the Plaintiffs are nonetheless not precluded from initiating an action at law or in equity . Once they repeatedly brought said concerns to the town's attention, and the town declined to take any action, they were entitled to seek a judicial remedy to enjoin the Defendants interference with their property.

Accordingly, we find the Special Use Permit to be *void ab initio*, and that Pulsar's use of the property in flying model airplanes, therefore, to be unlawful.

II. PRIVATE NUISANCE CLAIM

In establishing a private nuisance claim, a Plaintiff must show that: 1) the Defendant interfered with the Plaintiff's right to enjoy his land, 2) the interference was substantial, 3) the Defendant's conduct was intentional, and 4) that such conduct was unreasonable under all the circumstances.

The first two elements are established where the Defendant's conduct causes annoyance,

[1] We do not suggest that Pulsars intended to deceive the town in its application.

inconvenience, or discomfort; or the threat of future substantial damages, and where a reasonable person in the area would be annoyed or disturbed by such conduct. The element of "intent" is satisfied where the Defendant is substantially certain to know that his actions will result in interference with the Plaintiff's use of his property, or where the Defendant becomes aware that such conduct is so interfering, and yet continues it. "Unreasonableness" is measured by weighing the need for the Defendant's conduct, and its usefulness and social value, against the harm the Plaintiff suffered or suffers from. In making an unreasonableness determination, circumstances to be considered include the character of the neighborhood, the location of the properties, the nature and purpose of the Defendant's use of their property and its value to the community, whether such use began prior to the Plaintiff's occupation of their property, the nature, extent, and the frequency of the interference, and whether it can be avoided or lessened without causing the Defendants undue hardship.

Here, the witnesses' testimony coupled with the Court's on-site inspection clearly establish a private nuisance. Five different property owners described in great detail the near constant high pitched noise from dawn until dusk during the flying season, and how it interfered with the enjoyment of their respective properties in myriad ways, including *inter alia*: multiple planes flying loudly, and daily during the eight month flying season, planes flying over their homes, the need to shut windows, the inability to carry on conversation – both inside and outside of their houses – and planes crashing in their yards. Moreover, they all described how this interference had been ongoing for several years – up to the date of trial – despite their protestations to both the Town of Pembroke and the Defendants. Additionally, the town received noise complaints from multiple non-party residents, strikingly similar to those described by the Plaintiffs, who lived in close proximity to

Pulsars' landing strip.

Considering all the pertinent factors and circumstances, the Plaintiffs have proved their private nuisance cause of action. Accordingly, we hereby permanently enjoin Defendant Pulsars from engaging in any model airplane flying activity at Defendant Miles' property.

Dated: Buffalo, New York
September 25, 2018

Hon. John L. Michalski