

magyar v Racz

8th July, 1982



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DEPUTY BAILIFF: The plaintiffs in this action live at the premises known as "Chalet des Fraises" which is a small house and garden to the north and to some extent to the west and east, because it is surrounded on three sides by property owned by the defendant company Jersey Strawberry Nurseries Limited. The beneficial owner of that company, Mr. J. Racz, and the company for some years before this action was commenced in June of this year enjoyed friendly relations and sometime in 1978 the defendant company through Mr. Racz conceived the idea of extending its business activities, which it had been carrying on at what is conveniently to be called The Strawberry Farm, to include a craft centre or area which would be for the production and sale of certain craft items. A plan was submitted to the Island Development Committee to which the male plaintiff Mr. Magyar was party in as much as he knew at that time that a craft centre was envisaged. It is unimportant, in our view, whether a glass blowing centre was mentioned or not because it is not the law of nuisance that a person is deprived of his rights under that law if he moves to the nuisance. However it is clear to us that the starting up of the glass blowing activity by the defendant company was not just a wilful wanton act of anti-social interference with the plaintiffs' rights as adjacent neighbours but was something which both the company through Mr. Racz and the male plaintiff Mr. Magyar expected could be carried out without causing inconvenience by noise. In the event we are satisfied that Mr. Racz himself was horrified, as indeed of course were the plaintiffs, at the resulting noise when the boiler was first started in April of this year, March of this year, we think the date was the 15th March of this year. It is clear to us that Mr. Racz anticipated, having visited Italy, that he would be able to produce there without noise and without causing difficulties to his neighbours a good clear type of glass artifact. He was disappointed for two reasons; firstly the machinery which was Italian, which he had brought back from Italy, didn't prove capable of manufacturing or blasting clear glass from sand as he had hoped without making and I repeat the adjective, what he described as a horrifying noise and also costing his company a great deal more money a week to run to service the gas necessary to keep the boilers going than he had anticipated, and therefore the company through Mr. Racz took immediate steps to try to change matters. Part of these steps included an effort to insulate the furnaces and, as Mr. Racz said when he gave evidence, insulation covers not only heat loss but also helps to reduce noise. However again it is not the law that a person may not be actioned for nuisance

if he took reasonable steps to prevent a nuisance occurring. We are satisfied that Mr. Racz's company did take some reasonable steps but that does not prevent the plaintiffs from bringing this action. Now the question of nuisance in Jersey has been thoroughly canvassed in two previous cases but particularly in the case of Arthur Graham du Feu v. Granite Products Limited which is reported at page 2441 of Jersey Judgements. There the Court referred to the three types of private nuisance which Clark & Lindsell had set out and said that in that case the plaintiff based his action on the third type of nuisance which was unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land. That was described, as the Court said, by Lord Westbury L.C. in St. Helen's Smelting Company and Tipping (1865) 11 House of Lords Cases 642 at page 650 as "the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves." In that connection I should add that if a person is unduly sensitive to something which would otherwise not be a nuisance to the average person he is disentitled to a remedy, and I cite from The General Principles of the Law of Torts by Professor James at page 183 where he says "That where injury is attributable not to the defendant's activities but to abnormal sensitivity on the part of the plaintiff himself or of his property no action lies." In the du Feu case the Royal Court set out fully on pages 2447 to page 2449 a number of principles which govern the law of nuisance where an action is brought under the third head as I have just mentioned. It is not necessary I think for me to repeat them except to draw attention to the words of the Court on page 2448 when it said this: "In organised society everyone must put up with a certain amount of discomfort and annoyance from the legitimate activities of his neighbours. The homely phrases "give and take" and "live and let live" are relevant in striking a just balance between the right of a defendant to use his property for his own lawful enjoyment and the right of the plaintiff to the undisturbed enjoyment of his property. The following extract from paragraph 162 of Volume 28 of Halsbury's Laws of England, 3rd edition, is valuable and I now cite what the Court said there - "An act which in some circumstances is innocent may in others become actionable as a nuisance. Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself but by reference to all the circumstances of the case including for example the time of the commission of the act complained of, the pl

of its commission, the manner of committing it, that is whether it is done wantonly or in the reasonable exercise of rights, and the effect of its commission, that is whether these effects are transitory or permanent, occasional or continuous. So that the question of nuisance or no nuisance is one of fact". Over the page the Court goes on - "In particular the law takes into consideration both the object and duration of that which is alleged to constitute the nuisance." A further point which was particularly stressed in this case quite properly by Mr. Le Marquand for the defendant company was that the property was already in a rather noisy area inasmuch as there was a number of commercial activities carried on at Strawberry Farm and that therefore in order for the plaintiffs to succeed they would have to show that the measure of noise which emanated from the glass blowing activities was substantially higher than the ordinary level of noise occasioned by those commercial activities. That is perfectly true but on the other hand the fact as was said by the Royal Court in the du Feu case citing another case on nuisance Halesea and Esso Petroleum Company Limited that does not mean that a person who lives in, for example, a noisy neighbourhood can never complain of any additional noise. He can do so if the fresh noise is by itself so substantial as to be a nuisance. It is to be noted that in this case the plaintiffs do not complain of any such noise that may emanate from Strawberry Farm in the course of its ordinary commercial activities but only because of the glass blowing. We had the opportunity of visiting the site and listening to the noise that emanated from the area where the glass blowing activity was carried on. We have noticed that there is a considerable amount of other commercial activity but apart from the occasional shouting by the agricultural workers when we were there, we were not aware of any other particular over-riding noise which it could be said might constitute a nuisance from the ordinary commercial activities carried out by Mr. Racz's company and indeed, as I repeat, the plaintiffs do not complain of those activities. Now it is clear from the evidence of Mr. Manson, the young man who came to work some nine weeks ago to run the boiler or perhaps more accurately to be the glass blower for the defendant company, that the activities carried on there are as follows, it'll be convenient to start in the late afternoon - at about half past five the boiler or furnace is lit and glass is melted. The glass that is melted is a quantity of broken glass which is imported by the defendant company for that purpose. When it first started, as I have said, the defendant company was endeavouring to make glass by melting sand and that was not a successful operation and we were told that that

operation has ceased and the noise resulting from it has also ceased and therefore that matter can now be disregarded. After the glass has been melted, which can take up to nine o'clock and very occasionally ten o'clock, the furnace is then turned down to a sufficiently low level to enable the melted glass to founder, that is to say to allow the bubbles to come out of it, and that should normally be sufficient to last until the morning when Mr. Manson returned to work which is, according to him, somewhere round nine o'clock. If in the course of the night he had occasion to believe that the temperature had dropped too much he would return, sometimes as late as one o'clock, and adjust the furnace so that there would be an increase in the temperature to keep the furnace at the required temperature for the rest of the night. By doing so, of course, the amount of blast was increased and that would occur in the middle of the night. When he returns in the morning he then deals with the furnace sometimes turning it up, sometimes turning it down and extract the glass and start to blow. In the course of the day when he is not blowing glass he uses what has been called the glory hole, which is a kind of deep freeze reverse, that is to say when he is not blowing in order that the glass if he hasn't completed what he is doing on a particular piece of glass he puts it into the glory hole until he is ready to start blowing so that it can be kept malleable in the meantime. He said that that may occur twice a day, it depends entirely on the amount of glass blowing he had to do, and that takes him up to five thirty again. Now it was apparent to us that that kind of function continues seven days a week and indeed seven nights a week so therefore there is a continuous use of the boiler. We had a number of divisions of noise presented to us when we attended at the site yesterday. We thought that they were the following - sand blasting, but as I say that is no longer done so that can be omitted, secondly blasting and melting glass, thirdly blasting, melting glass and the glory hole on, fourthly what has been called idling and fifthly switched off. We were told that the furnace was switched off for more than three hours that would be detrimental to it because the bricks would crack and the furnace would be destroyed. In the event Mr. Manson told us today that the glory hole was not used at the same time as the furnace was blasting for the purposes of melting the broken glass and that what we had heard yesterday was the furnace on its own at the volume necessary to heat the broken glass and the glory hole on its own, and in our opinion the louder noise was that of the glory hole. So we had the noise of the glory hole, the noise of the blast of the furnace used for melting broken glass and what was called idling. We were not given an example of the volume of blast which was needed to allow

honestly, frankly and we would not wish it to be inferred otherwise, but they were called very near to the time when the sand blasting was taking place and when there was no doubt that the boiler was running at a much louder, was making a much louder noise, the furnace was making a much louder noise that was emanating from it towards the plaintiffs house than later. Indeed Mr. Magyar said that following the injunction the service of the injunction was obtained on the 17th June, there was something like fifteen to twenty per cent reduction in the noise. Having visited the site and having heard the evidence of the parties we are satisfied, and Mr. and Mrs. Magyar told us this, for example that at night time they had to sleep in a room away from the garden and furthermore they couldn't themselves sit in the garden; we are satisfied that anything above what, as I repeat, has been called the idling noise is a nuisance. A person is entitled to use their garden and is entitled to sleep with their windows open and sit in their room with their windows open. However we have listened most attentively to what Mr. Racz has said and we are satisfied that he has been doing his best to meet the objections. He hasn't succeeded but we are going to give him an opportunity to do that, but because we have found that there is a nuisance, the level of noise being in our opinion such that the average person cannot be expected to put up with it both because of its intensity as regards the glory hole and as regards its continuity, and the continuity I repeat because I have already mentioned this, the noise at night is not just idling, the noise at night is something louder than idling, we are going to impose an injunction but we are going to impose it for a limited time. We are going to impose the injunction until the 7th August, and that injunction will be in the following terms - that the furnace or furnaces must not be run beyond what we have had described as the idling limit between 9 p.m. and 7 a.m. We propose to review the matter after the 7th August. The defendant is to put into effect those matters which he said he could do or his company could do, and they were as follows:-

The insulation of the dome, the shading of the light, the insulation of the vent, the blocking up of the soffits and any other openings and the plaintiffs are ordered to allow access for this purpose, the insulation of the windows and the insulation of the flue. In addition to these particular matters we enjoin the defendant company to do such other works as may reduce the noise generally. There is one other special one which I have omitted and which Mr. Racz said could be done, the company is to reduce the noise from the inlet pipe in the greenhouse. And in order that these matters shall be properly

supervised from the point-of view of public safety; and that is the safety of course not only of the workers there but because of the highly inflammable nature of the work and the high pressures involved we think it right that we should ask the Greffier to write to the Fire Prevention Officer to inspect the area and to examine the work as it proceeds and to give his agreement and approval of the work we have specified. Now if that work can be done before the 7th August we will sit as soon as it is done, if not we will sit again at ten o'clock on the 11th August. If that work has not been done or if it has been done and there is some dispute as to whether there is still a nuisance we will go to the site again and consider how it is. We will say no more as to what our decision will be thereafter. We think because of our order we will leave the question of damages over for past nuisance and we will leave over the question as to whether, depending on what happens, we will lift the injunction or impose it more permanently for the rest of the season after we have sat again. The defendant company will pay the costs of the action to date.