

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

1618 Sheridan Road Condominium Association, an Illinois corporation,)
)

Plaintiff,)

vs.)

No.)

1616 Condominium Association, an Illinois corporation)
)

Defendant.)

09 CH 16549

Complaint in Chancery for Damages and Injunctive Relief

1618 Sheridan Road Condominium Association ("1618 Sheridan") by its attorney Daniel C. Meenan, Jr., Kralovec Meenan LLP, complains against 1616 Condominium Association ("1616 Condo") as follows:

1. 1618 Sheridan is an Illinois not for profit corporation with its principal place of business in Wilmette, Illinois. It operates as a condominium association under the Illinois Condominium Property Act, (765 ILCS 605/1, et. seq.)

2. 1616 Condo is an Illinois not for profit corporation with its principal place of business in Wilmette, Illinois. It operates as a condominium association under the Illinois Condominium Property Act (765 ILCS 605/1, et. seq.)

3. 1618 Sheridan, and 1616 Condo are contiguous properties, sharing two common boundary lines. The properties are bounded on the west by Sheridan Road and on the east by the Lake Michigan shoreline. Attached to this complaint as Exhibit No. 1 is an aerial view of the area involved in this dispute. The exhibit references by designation,

particular areas relevant to this dispute and to the requested injunctive relief. The source of the matter at issue is designated at the approximate location of the "Generator truck."

4. This court has jurisdiction over the subject matter of this dispute, and the parties.

5. This court is the appropriate venue within which to adjudicate this dispute in that both of the corporations involved have their principal places of business in Cook County Illinois, real estate involved is in Cook County Illinois and the matters which are the subjects of this action are occurring within Cook County Illinois.

6. 1618 Sheridan is an 8 unit condominium building, fully owner-occupied. It is a four story structure, consisting primarily of glass enclosed construction. It is located directly to the northwest of 1616 Condo.

7. 1616 Condo is an 84 unit, 10 story brick and concrete structure. It is approximately 40 years old. Its property is significantly larger than that of 1618 Sheridan, and bounds 1618 Sheridan on two sides. 1616 Condo's property also includes significant areas of open space and both surface and underground parking facilities.

8. On or about April 29, 2009, apparently without the prior approval or consent of the Village of Wilmette, 1616 Condo installed an 800 kilowatt, Cummins diesel engine generator directly behind, and in close proximity to the 1618 Sheridan building. In addition to the close proximity, the area involved includes a canyon like area created by, and between the two buildings. A copy of a specification sheet describing the extremely large, and as will be explained, illegally loud power generation facility is attached Exhibit No. 2.

9. No prior notice or discussion occurred regarding the placement or installation of the power unit between the plaintiff and the defendant. The Plaintiff is informed and believes, and on information and belief alleges that due to deferred maintenance or its failure to properly maintain its 40 year old property, some or part of the main electric service at 1616 Condo failed, at or about the time that the Cummings diesel generation facility was installed.

10. The Plaintiff is also informed and believes, and on information and belief alleges that the necessary work required at 1616 Condo may take in excess of one month. The 1616 Condo has stated informally and without commitment that a shorter period of time may be involved; plaintiff's consultation with knowledgeable professionals indicates that the longer period of time is probable, given the need to order custom manufactured parts and other considerations.

11. On or about May 1, 2009, the Village of Wilmette notified 1616 Condo that its conduct in placing this Cummings power generation unit in its current location was inappropriate, and required immediate attention and correction. See Complaint Exhibit No. 3. To the best knowledge of the plaintiff, none of the noise abatement measures demanded by the Village have been implemented.

12. The plaintiff is also informed and believes and on information and belief alleges that the Village of Wilmette is in the process of citing 1616 Condo for various civil violations, relative to the installation and operation of this generator unit. At least one citation has already been issued. See Exhibit No. 4.

13. 415 ILCS 5/23 et. seq., sets forth certain standards promulgated by the State

of Illinois, prohibiting "noise that unreasonably interferes with the enjoyment of life..." if Illinois citizens. That section also authorizes the Illinois Pollution Control Board to enact regulations and standards in connection with implementation of the stated public policy. The Illinois Pollution Control Board has promulgated such rules and regulations. They are, *inter alia*, Title 35 of the Illinois Administrative Code, Subtitle A: General Provisions; Subtitle H: Noise; Chapter I: Pollution Control Board; Part 900, et seq. (the "Regulations"). Applicable to the disputes at hand, Section 901.102(b) specify "Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitting to any Receiving Class A Land from...Class A Land". 1618 Sheridan and 1616 Condo are each Class A Land, as defined in the Regulations.

14. 1618 Sheridan commissioned the services of Acoustic Associates, Limited, to conduct an environmental noise survey, with respect to the operation of the offending generator unit. That analysis was conducted, and a preliminary report was produced on May 5, 2009. While the report is somewhat high level in terms of required analytic expertise, it reflects significant violations of applicable Pollution Control Board Regulations as to allowable octave band levels of noise being continuously generated by the unit. A copy of the report is attached as Exhibit No. 5.

15. The excessive, illegal and abusive noise levels currently being generated are adversely affecting the physiological and psychological well being of the residents of 1618 Sheridan. The generator unit operates 24 hours a day, 7 days a week, without any shut off or deviation in the level of noise levels produced. The abusive cacophony is constant and it is intolerable.

16. The operation of the offensive generator unit is interfering with the 1618 owners normal hours of sleep and their normal use and occupancy of their homes; it is producing material annoyance, inconvenience and discomfort to the 1618 Sheridan owners.

17. A representative of 1618 Sheridan has attempted to discuss potential alternatives including, *inter alia*, suggestions as to relocation of the unit; the use of multiple smaller units in alternate locations; soundproofing measures; the operation of the unit in the 1616 Condo underground garage, with ventilation; the possibility of a direct transformer hook up with Commonwealth Edison and the like, with the 1616 Condominium property manager. The last such telephone conversation ended when the 1616 Condominium property manager slammed down the phone, after indicating that in his view there were no alternatives to the abusive operations in place; certainly none that he would discuss. 1616 Condo also refuses to acknowledge a hard completion date for whatever its electric project may entail.

18. Absent the intervention of this court, for an unreasonable and unnecessary but undetermined period of time in the future, the residents of 1618 Sheridan will continue to suffer the adverse affects, physiologically and psychologically, with respect to their inability to sleep, eat or otherwise enjoy the reasonably expected benefits of home ownership given the intolerable conditions created by 1616 Condominium.

19. 1618 Sheridan has an ascertainable claim for relief and a protectable interest, in ensuring that its unit owners are afforded the reasonably expected use of their units, free from the excessive noise levels currently interfering with that use.

20. The plaintiff has created certainly at least a fair question, with regard to its likelihood of success on the merits with respect to the claims asserted in this action.

21. 1618 Sheridan has and continues to suffer irreparable harm and damage so long as the conduct of the defendant proceeds unchanged or unabated.

22. The plaintiff has no adequate remedy of law.

23. In balancing the hardships imposed and the equities available to each of the plaintiff and the defendant, equity dictates that the relief sought in this complaint be allowed.

24. The public policy of the State of Illinois is as stated in 415 ILCS 5/23 et. seq., and the Illinois Pollution Control Board Regulations promulgated thereunder. The conduct of the defendant in this action violates that stated public policy and those public interests.

25. The plaintiff's damages, occasioned as a result of the conduct of the defendant are apparent, but as yet undetermined.

Count I - 415 ILCS 5/23 et.seq. - Strict Liability

1-25. 1618 Sheridan adopts and realleges paragraphs 1-25 of the general allegations as paragraphs 1-25 of Count I.

26. 1616 Condominium has failed to comply with the terms and provisions of 415 ILCS 5/23 et. seq., and Title 35, Subtitle H, Chapter I of the Illinois Administrative Code - the noise pollution regulations promulgated by the Illinois Pollution Control Board. Its operation of the power generating unit is illegal.

27. As of the date of the filing of this action, costs attendant to the damages

involved will be incurred. Certain damages, consequential damages and punitive have not yet been fully ascertained. Damages that will be incurred will increase with the passage of time, absent the relief sought in this proceeding. They will also not suffice as a reasonable resolution to the problem.

Wherefore, 1618 Sheridan Road Condominium Association prays for the entry of an order against 1616 Condominium Association:

A. Entering judgment in favor of the plaintiff and against the defendant for an amount to be determined, including punitive damages and reimbursement of all incurred attorney fees;

B. Entering a temporary restraining order, and subsequently a preliminary injunction, enjoining and restraining the defendant from operating the existing or any other temporary electric generators or related equipment, in violation of the Illinois Compiled Statutes or the Illinois Administrative Code;

C. Entering a permanent injunction, with respect to all matters involved in the temporary restraining order and preliminary injunction, and awarding such other or further relief as the court determines to be appropriate after hearing; and

D. Allowing such other or further relief as the court may determine to be in accord with the equities involved.

Count II - Private Nuisance

1-25. 1618 Sheridan adopts and realleges paragraphs 1-25 of the general allegations as paragraphs 1-25 of Count II.

28. 1616 Condominium's operation of the offending Cummings diesel power

generation unit is an unreasonable activity, and constitutes unwarranted and unlawful use of its property, working obstruction and injury to the rights of 1618 Sheridan.

29. The operation of the offending unit has produced and continues to produce such material annoyance, inconvenience and discomfort, that actual damages are presumed to have resulted.

30. The wrongful invasion of 1618 Sheridan's property interest and the use of its owners to the enjoyment of their homes is significant and intolerable, and is caused solely by either the negligence or the intentional unreasonable acts and omissions of the defendant.

31. As of the date of the filing of this action, costs attendant to the damages involved will be incurred. Certain damages, consequential damages and punitive have not yet been fully ascertained. Damages that will be incurred will increase with the passage of time, absent the relief sought in this proceeding. They will also not suffice as a reasonable resolution to the problem.

32. The defendant has negligently failed to take adequate precautions and measures to prevent damage to the plaintiff's property.

33. The damage currently existing, and that which may be subsequently suffered, is a direct and proximate result of the defendant's operation of the diesel generator.

Wherefore, 1618 Sheridan Road Condominium Association prays for the entry of an order against 1616 Condominium Association:

A. Entering judgment in favor of the plaintiff and against the defendant for an

amount to be determined, including punitive damages and reimbursement of all incurred attorney fees;

B. Entering a temporary restraining order, and subsequently a preliminary injunction, enjoining and restraining the defendant from operating the existing or any other temporary electric generators or related equipment, in violation of the Illinois Compiled Statutes or the Illinois Administrative Code;

C. Entering a permanent injunction, with respect to all matters involved in the temporary restraining order and preliminary injunction, and awarding such other or further relief as the court determines to be appropriate after hearing; and

D. Allowing such other or further relief as the court may determine to be in accord with the equities involved.

Count III - Trespass

1-25. 1618 Sheridan adopts and realleges paragraphs 1-25 of the general allegations as paragraphs 1-25 of Count II.

34. 1616 Condominium's operation of the offending Cummings diesel power generation unit is an unreasonable activity, and constitutes unwarranted and unlawful use of its property, working detectable intrusion injury to the rights of 1618 Sheridan without its consent.

35. The operation of the offending unit has produced and continues to produce such material annoyance, inconvenience and discomfort as a result of that trespass, that damages are presumed to have resulted.

36. The wrongful invasion of and intrusion on 1618 Sheridan's property and the

use of its owners to the enjoyment of their homes is substantial, and is caused solely by either the negligence or the intentional unreasonable acts and omissions of the defendant.

37. As of the date of the filing of this action, costs attendant to the damages involved will be incurred. Certain damages, consequential damages and punitive have not yet been fully ascertained. Damages that will be incurred will increase with the passage of time, absent the relief sought in this proceeding. They will also not suffice as a reasonable resolution to the problem.

38. The defendant has negligently failed to take adequate precautions and measures to prevent damage to the plaintiff's property.

39. The damage currently existing, and that which may be subsequently suffered, is a direct and proximate result of the defendant's operation of the diesel generator.

Wherefore, 1618 Sheridan Road Condominium Association prays for the entry of an order against 1616 Condominium Association:

A. Entering judgment in favor of the plaintiff and against the defendant for an amount to be determined, including punitive damages and reimbursement of all incurred attorney fees;

B. Entering a temporary restraining order, and subsequently a preliminary injunction, enjoining and restraining the defendant from operating the existing or any other temporary electric generators or related equipment, in violation of the Illinois Compiled Statutes or the Illinois Administrative Code;

C. Entering a permanent injunction, with respect to all matters involved in the temporary restraining order and preliminary injunction, and awarding such other or further relief as the court determines to be appropriate after hearing; and

D. Allowing such other or further relief as the court may determine to be in accord with the equities involved.

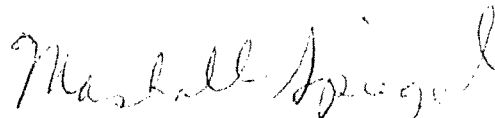
1618 Sheridan Condominium Association,
Plaintiff,

BY: 
Daniel C. Meenan Jr.

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this **Complaint in Chancery for Damages and Injunctive Relief** are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.



Marshall Spiegel, Secretary,
1618 Sheridan Road Condominium
Association

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