Nuisance – Premises Liability

SERVICES

Premises Liability

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Dawn M. Piccirilli

Boyle | Shaughnessy Law shareholder Dawn Piccirilli obtained a defense verdict in Essex County Superior Court, Massachusetts. The plaintiff's case was a unique claim for an alleged nuisance caused by Tedeschi Food Shops, Inc. The plaintiff, who owns property and resides directly behind a Tedeschi's, alleged that noise from Tedeschi's rooftop mechanical equipment, and light from Tedeschi's parking lots, substantially interfered with his use and quiet enjoyment of property. He alleged a diminution in the value of the property and severe emotional distress. The plaintiff further alleged that Tedeschi's breached its duty to operate its convenience store and deli in a reasonably careful manner by installing the rooftop equipment and allowing the rooftop equipment to operate. The plaintiff alleged that the rooftop equipment produced a sound that exceeded a Massachusetts Department of Environmental Protection (MDEP) guideline in direct violation of a Massachusetts regulation. The plaintiff offered expert testimony of the alleged excessive sound through an acoustics expert. In addition, the plaintiff proffered evidence of the alleged diminution in value due to Tedeschi's commercial influence through a real estate appraiser. In response, the defense offered evidence that the plaintiff's acoustics expert's measurements were unreliable by attacking his method of measurement of the ambient background sound level against which he compared all measurements of sound produced by Tedeschi's rooftop equipment. In addition, the defense offered evidence to refute the accuracy of sound measurements through expert testimony of a second acoustics expert who also took measurements of the ambient background sound level and of the sound produced by Tedeschi's equipment. The defense also offered a favorable expert opinion through a lighting expert. Lastly, the defense presented compelling evidence that any diminution in value of the plaintiff's property was due to market influences rather than noise or light. After a five day trial, a defense verdict was returned.

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