

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-011128

04/21/2011

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT
M. Sahli
Deputy

GINO DENICOLA

MATTHEW D WILLIAMS

v.

WILLIAM H STANDAGE, et al.

ROBERT THOMAS SULLIVAN

MINUTE ENTRY

The Court took under advisement the Defendants' Motion for Summary Judgment. The Court having considered the motion and all the memoranda and arguments of counsel, finds as follows.

The Defendants argue that the Plaintiff does not have a cause of action for posit that the basis of the nuisance is water flowing from the Defendants' property onto the Plaintiff's property which is private nuisance because that cause of action is defined as a nontrepassory invasion of another's property. Defendants posit that the basis of the nuisance is water flowing from the Defendants' property onto the Plaintiff's property which is a physical intrusion, making the intrusion trespassing. The Defendants cite no legal authority for this proposition.

The RESTATEMENT 2.d Torts § 821.D indicates a contrary precept to Defendants' argument. It states:

Both trespass and nuisance there may, however, be some overlapping of the causes of action for trespass and private nuisance. An invasion of possession of land normally involves some degrees of interferences with the use and enjoyment and this is true particularly

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when some harm is inflicted upon the land itself. If the interference with the use and enjoyment is a significant one, sufficient is itself to amount to a private nuisance, the fact that it arises out or is accompanied by a trespass will not prevent recovery for the nuisance and the action may be maintained upon either basis as the plaintiff elects or both. Thus, the flooding of the Plaintiff's land, which is a trespass, is also a nuisance if it is repeated or of long duration . . .

RESTATEMENT 2d TORTS § 821 D, comment e.

The facts in this case could support a cause of action for private nuisance. But, the inquiry doesn't stop there.

The Defendants allege that the Plaintiff cannot prove and has not disclosed any proof of damage for trespass or negligence due to water running from Defendants' property onto Plaintiff's property. The Complaint seeks only monetary damages and not injunctive relief. The Plaintiff argues that the flow of water damaged a garage and perhaps some other permanent fixtures. The Plaintiff also argues he is not seeking damages in the form of the diminution in value of the property. Given this limitation, expert testimony is not necessary. The Plaintiff may testify as to the cost to repair the fixtures and the wall.

There remain issues of fact. Therefore,

IT IS ORDERED the Motion for Summary Judgment re the private nuisance and trespass is denied.

The Defendants also allege the damages to the wall and consequent damage to the improvements to the Plaintiff's property were caused by an independent contractor. Suffice it to say the record in this case is not sufficiently developed on this issue.

IT IS ORDERED the Motion for Summary Judgment is denied on the claim that an independent contractor was at fault.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.