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Judge throws out noise pollution complaint

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Published Aug 26, 2014 at 8:00 am (Updated Aug 26, 2014 at 9:37 am)

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Special court session: report on judiciary - Chief Justice Ian Kawaley (Photo by Mark Tatem)

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The Supreme Court dismissed claims that the noise and vibrations of a desalination plant had caused "actionable nuisance" to a neighbour.

However Chief Justice Ian Kawaley noted that the claims had highlighted areas to be looked at when considering reform of noise pollution regulations on the Island.

According to a judgement issued earlier this week, Simon Payne had complained to the court that a desalination plant operated by Tobacco Bay Condominium Ltd had caused a "constant, unbearable, insufferable and annoying humming sound," and the vibrations had caused irreparable damage to his home on Coot Pond Road.

He also argued that the Minister/Ministry of Health was jointly responsible for the damages to his home because they had issued a licence to operate the desalination plant.

During a trial in July, the court heard that Mr Payne began to complain about the noise from the plant soon after moving into the home in 2008. The Ministry of Health became involved in 2009, restricting the hours the plant could be used, and in 2010, Chief Environmental Health Officer David Kendell instructed that steps be taken to dampen vibrations from the plant in response to continued complaints.

In a letter dated March 24, 2010 the plaintiff complained to the Minister of the Environment about structural damage to the property evidenced by cracks which he blamed on vibrations from the plant, however he acknowledged in court that he had not commissioned a structural survey to look into the damage.

The court heard that Environmental Health Officer Crystal Baxter conducted subjective noise assessments at the property in 2012, and based on these assessments, an Abatement Order was issued against the Tobacco Bay Condominium Ltd. However that order was never enforced because the view was taken that

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any enforcement action should be based on "objective measurements of noise and vibrations".

President of the Noise Consultancy LLC Eric Zwerling meanwhile testified that based on his readings the sounds emitted by the unit would not be, to any material extent, louder than the limit imposed for night-time purposes in the UK when heard from inside the plaintiff's home.

The parties disagreed about the hours the plant had been operating, but the Chief Justice found on the balance of the evidence that the unit was more often than not operating during only the daytime, and occasionally during the night "either by accident or design".

Delivering his judgement, the Chief Justice wrote that, while operating the plant outside of the guidelines set by the Ministry of Health would be an actionable nuisance, Mr Payne had failed to prove that the use of the desalination plant constitutes a nuisance by noise.

And he said geologist and vibration specialist Ken Tully had found the level of vibrations generated by the plant were negligible, saying: "Wind gusts of a sort regularly experienced in Bermuda would have a far greater impact on structures than the desalination unit."

Concerning the complaint about the Ministry of Health, the Chief Justice found that the only statutory power engaged by the issuing of the licenses regards the purity of water processed by the plant.

"Even if the Minister was legally empowered to refuse to reissue the license on noise grounds, the plaintiff would have to go further and establish that the Minister knew or ought to have known that the device could not be used at all without creating a nuisance," he wrote.

He dismissed the claims against both of the defendants, but noted that Mr Payne's claims had highlighted areas for consideration in noise pollution regulatory reform.

"Bermuda lags behind many jurisdictions including the UK in not fixing statutory noise levels, especially for residential areas," he said. "[And] reverse osmosis plants are only seemingly regulated at present from a water purity perspective. Consideration should be given from a noise pollution perspective to regulating where such units are located on residential properties, especially in areas where for historical or other reasons the modern standard of boundary setbacks do not exist."

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So, this guy moves into a house near the existing noise source & then proceeds to complain about the noise.

Kinda like moving in near an airport then complaining about aircraft noise.

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I will tell you what noise that needs to be cracked down are these loud bikes on the roads. Cannot understand why these guys are not ticketed everytime by police when they drive by. getting a ticket everyday would make them think about those loud mufflers!

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sao → **Bermy Triangle** · 7 months ago

This sounds like a job for Triangle Drifter's police 'commission', proposed under the slow-down letter last week

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