**Spur Industries, Inc. v. Del Webb Development Company**

Supreme Court of Arizona, 1972

108 Ariz. 178, 494 P.2d 700

[The following public nuisance case is best known for its surprising remedy that is influenced by the usually disfavored affirmative defense of coming to the nuisance, but the environmental implications of its cause of action are likewise notable.]

Cameron, J. The area in question is located in Maricopa County, Arizona, some 14 to 15 miles west of the urban area of Phoenix, on the Phoenix-Wickenburg Highway, also known as Grand Avenue. About two miles south of Grand Avenue is Olive Avenue which runs east and west. 111th Avenue runs north and south as does the Agua Fria River immediately to the west.

Farming started in this area about 1911. In 1929, with the completion of the Carl Pleasant Dam, gravity flow water became available to the property. By 1950, the only urban areas in the vicinity were the agriculturally related communities of Peoria, El Mirage, and Surprise located along Grand Avenue. Along 111th Avenue approximately one mile south of Grand Avenue and 1 1/2 miles north of Olive Avenue, the community of Youngtown was commenced in 1954. Youngtown is a retirement community appealing primarily to senior citizens.

In 1956, Spur’s predecessors in interest, H. Marion Welborn and the Northside Hay Mill and Trading Company, developed feedlots about one-half mile south of Olive Avenue. The area is well suited for cattle feeding and in 1959, there were 25 cattle feeding pens or dairy operations within a 7 mile radius of the location.... In April and May of 1959, the Northside Hay Mill was feeding between 6,000 and 7,000 head of cattle and Welborn approximately 1,500 head on a combined area of 35 acres.

In May of 1959, Del Webb began to plan the development of an urban area to be known as Sun City. For this purpose, the Marinette and Santa Fe Ranches, some 20,000 acres of farmland, were purchased for $15,000,000 or $750.00 per acre. This price was considerably less than the price of land located near the urban area of Phoenix, and along with the success of Youngtown was a factor influencing the decision to purchase the property in question.

By September 1959, Del Webb had started construction of a golf course south of Grand Avenue and Spur’s predecessors had started to level ground for more feedlot area. In 1960, Spur purchased the property...and began a rebuilding and expansion program extending both to the north and south of the original facilities. By 1962 Spur’s expansion program was completed and had expanded from approximately 35 acres to 114 acres.

Accompanied by an extensive advertising campaign, homes were first offered by Del Webb in January 1960 and the first unit to be completed was south of Grand Avenue and approximately two and a half miles north of Spur. By May 2, 1960, there were 450 to 500 houses completed or under construction. At this time, Del Webb did not consider odors from the Spur feed pens a problem. [In 1963 Webb’s staff knew of the potential conflict, but decided to continue its southward development.] By December 1967, Del Webb’s property had extended south to Olive Avenue and Spur was within 500 feet of Olive Avenue to the north.... Del Webb continued to develop in a southerly direction until sales resistance became so great that the parcels were difficult if not impossible to sell.... Del Webb filed its original complaint alleging that in excess of 1,300 lots in the southwest portion were unfit for development for sale as residential lots because of the operation of the Spur feedlot.

Del Webb’s suit complained that the Spur feeding operation was a public nuisance because of the flies and the odor which were drifting or being blown by the prevailing south to north wind over the southern portion of Sun City. At the time of the suit, Spur was feeding between 20,000 and 30,000 head of cattle, and the facts amply support the finding of the trial court that the pens had become a nuisance to the people who resided in the southern part of Del Webb’s development. The testimony indicated that cattle in a commercial feedlot will produce 35 to 40 pounds of wet manure per day, per head, or over a million pounds of wet manure per day for 30,000 head of cattle, and that despite the admittedly good feedlot management and good housekeeping practices by Spur, the resulting odor and flies produced an annoying if not unhealthy situation as far as the senior citizens of southern Sun City were concerned. There is no doubt that some of the citizens of Sun City were unable to enjoy the outdoor living which Del Webb had advertised and that Del Webb was faced with sales resistance from prospective purchasers as well as strong and persistent complaints from the people who had purchased homes in that area....

It is noted, however, that neither the citizens of Sun City nor Youngtown are represented in this lawsuit and the suit is solely between Del Webb Development Company and Spur Industries.... It is clear that as to the citizens of Sun City, the operation of Spur’s feedlot was both a public and a private nuisance. They could have successfully maintained an action to abate the nuisance. Del Webb, having shown a special injury in the loss of sales, has a standing to bring suit to enjoin the nuisance. The judgment of the trial court permanently enjoining the operation of the feedlot is affirmed.

A suit to enjoin a nuisance sounds in equity and the courts have long recognized a special responsibility to the public when acting as a court of equity: Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations of public interest.... 27 Am. Jur. 2d, Equity, §104, 626.

In addition to protecting the public interest, however, courts of equity are concerned with protecting the operator of a lawful, albeit noxious, business from the result of a knowing and willful encroachment by others near his business.

In the so-called “coming to the nuisance” cases, the courts have held that the residential landowner may not have relief if he knowingly came into a neighborhood reserved for industrial or agricultural endeavors and has been damaged thereby:

**<<MMM –INDENT>>**

Plaintiffs chose to live in an area uncontrolled by zoning laws or restrictive covenants and remote from urban development. In such an area plaintiffs cannot complain that legitimate agricultural pursuits are being carried on in the vicinity, nor can plaintiffs, having chosen to build in an agricultural area, complain that the agricultural pursuits carried on in the area depreciate the value of their homes.... **<<MMM – END INDENT>>**

Were Webb the only party injured, we would feel justified in holding that the doctrine of “coming to the nuisance” would have been a bar to the relief asked by Webb, and, on the other hand, had Spur located the feedlot near the outskirts of a city and had the city grown toward the feedlot, Spur would have to suffer the cost of abating the nuisance as to those people locating within the growth pattern of the expanding city....

There was no indication in the instant case at the time Spur and its predecessors located in western Maricopa County that a new city would spring up, full blown, alongside the feeding operations and that the developer of that city would ask the court to order Spur to move because of the new city. Spur is required to move not because of any wrongdoing on the part of Spur, but because of a proper and legitimate regard of the courts for the rights and interests of the public.

Del Webb, on the other hand, is entitled to the relief prayed for (a permanent injunction), not because Webb is blameless, but because of the damage to the people who have been encouraged to purchase homes in Sun City. It does not equitably or legally follow, however, that Webb, being entitled to the injunction, is then free of any liability to Spur if Webb has in fact been the cause of the damage Spur has sustained. It does not seem harsh to require a developer, who has taken advantage of the lesser land values in a rural area as well as the availability of large tracts of land on which to build and develop a new town or city in the area, to indemnify those who are forced to leave as a result.

Having brought people to the nuisance to the foreseeable detriment of Spur, Webb must indemnify Spur for a reasonable amount of the cost of moving or shutting down. It should be noted that this relief to Spur is limited to a case wherein a developer has, with foreseeability, brought into a previously agricultural or industrial area the population which makes necessary the granting of an injunction against a lawful business and for which the business has no adequate relief.

It is therefore the decision of this court that the matter be remanded to the trial court for a hearing upon the damages sustained by the defendant Spur as a reasonable and direct result of the granting of the permanent injunction. Since the result of the appeal may appear novel and both sides have obtained a measure of relief, it is ordered that each side will bear its own costs.

**COMMENTARY & QUESTIONS**

1. **The twist in *Spur*.** On remand, Webb settled, reportedly paying Spur more than $1 million in moving costs. In a subsequent case, the Arizona court also allowed Spur to sue for indemnity, so that Webb would have to reimburse the feedlot for tort damages Spur might have to pay to individual homeowners. Spur v. Superior Ct., 505 P.2d 1377 (Ariz. 1973). The unusual feature of the *Spur* case is not its public nuisance theory but its remedy, conditioning the injunction on plaintiff’s payment of moving costs. Is this a case about comparative fault? The court seems to consider that it was the developer’s fault that caused the conflict. Is Spur’s nuisance therefore based on some kind of no-fault liability? What if the only suit for injunction and damages had been brought by homeowners, not by Webb? What if Webb lacked funds to pay Spur? Doesn’t this get the court into judicial land use decisions, as noted below? On a larger scale, it is useful to note that agricultural pollution cases generally can be litigated only under common law theories because the farm lobbies’ political strength has successfully inserted blanket exemptions for agriculture into all significant federal and state pollution statutes.

2. **The “right-to-farm” debate.** Common law nuisance claims have long provided a method for many rural and suburban residents to end the noise, odor, and annoyance that accompanies animal production. For farms that use manure and other odiferous fertilizers and for animal producers, injunctive relief granted in favor of their neighbors often means that they can no longer use existing barns and equipment, creating considerable hardship for members of the farming community. Agricultural interest groups have been able to obtain anti-nuisance “right-to-farm” legislation in roughly 40 states. Do these right-to-farm laws derogate neighbors’ common law nuisance rights to such a degree that their enforcement may be considered a taking of property? In Anti-Nuisance Legislation, 30 Envtl. L. Rep. 10253 (2000), Terence Centner analyzes cases including Bormann v. Koussuth County Bd. of Sup’rs, 584 N.W.2d 309 (Iowa 1998), where the Iowa Supreme Court held that a county board’s approval of an “agricultural area” that triggered nuisance immunity resulted in condemnation by nuisance of neighbors’ property without just compensation, thus making the board’s action unconstitutional. This question echoes issues that are seen in the “permit defense” setting later in this chapter.