

UKELA Moot Problem 2013

IN THE COURT OF APPEAL

BAGGINS AND OTHERS (Appellants) v ORC LIMITED (Respondent)

The Respondent, ORC Limited, purchased an old a land-fill site to the north of Shireville, in Northfolk. ORC obtained a permit under the Pollution Prevention and Control (England and Wales) Regulations 2000 to deposit waste at the site and operations began in 2005. It was a condition of the permit that any waste deposited at the site was pre-treated to reduce the smell. The waste deposited by ORC was pre-treated by Dragonfly, a firm sub-contracted by ORC for that purpose.

In 2007, Northfolk D.C. granted planning permission for a development of 50 houses on land adjoining the site but within the defined boundary of Shireville. The development was completed by 2009 and the first residents moved in early 2010. In early 2010, Dragonfly experienced financial difficulties and started using chemicals in its pre-treatment operation, which were not in accordance with accepted national and international standards. This fact did not become public until Dragonfly went into liquidation in early 2012.

During the summer of 2010, the Northfolk D.C. Environmental Health Department started to receive complaints about the smell emanating from the site from local residents. On several occasions the local Environmental Health Officer was called out to the properties adjoining the site as a result of complaints. On each occasion, however, she concluded that the smell did not interfere unduly with the residents' enjoyment of their properties and informed the residents that there was nothing that she could do in any event, as ORC had a permit to continue its activities.

The smells and resultant complaints continued through summer of 2011 and by the end of 2011, the residents brought a claim against ORC, claiming damages as a result of the alleged nuisance caused by its activities at the site.

ORC argued that it had statutory authority for its activities and/or that the activities carried out were in accordance with the permit and it constituted a reasonable user of the land. ORC also relied on the evidence that the Northfolk D.C. Environmental Health Officer was of the view that no nuisance had in fact been caused over the material period.

BAGGINS AND OTHERS argued that the fact ORC had a permit was no absolute defence to the alleged nuisance and that ORC had been negligent as a result of the use in its operations of chemicals which failed to meet accepted standards. The residents group relied on the evidence of its members in contending that a nuisance existed.

HELD: The Defendant's user was to be deemed reasonable if it complied with the terms of the permit and the permit had by implication given statutory licence for the alleged nuisance. The Defendant had not been negligent in its operations and had not breached the permit and therefore the defendant's user was to be deemed reasonable. Further, judged by the threshold of one complaint per week, there had been no real interference with the comfort or convenience of living of the residents. Accordingly, the claims were dismissed.

The Appellants appealed on the following grounds: (1) An environmental permit is not an absolute defence to a private law action in nuisance; and (2) the Judge was wrong in holding that the level of one complaint per week did not constitute a nuisance.