
NUISANCE - CALIFORNIA

Citizens for Odor Nuisance Abatement v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - February 9, 2017 - Cal.Rptr.3d - 2017 WL 526503 - 17 Cal. Daily Op. Serv. 1307

Neighbors of ocean cove brought action for declaratory, injunctive, and writ relief challenging city's failure to prevent accumulation of sea lion excrement.

The Superior Court granted summary judgment for city. Neighbors appealed.

The Court of Appeal held that:

- City's conduct in building a fence around an ocean cove was not a substantial factor in causing the alleged accumulation of sea lion excrement;
- To the extent that the city had a duty to address the odor, it complied with that duty; and
- City's memorandum and press release did not establish any obligation enforceable by writ of mandate for the city to abate the odor of sea lion excrement.

City's conduct in building a fence around an ocean cove was not a substantial factor in causing the accumulation of sea lion excrement on the rocks within the fence, and thus neighbors could not establish the causation element of their public nuisance cause of action against city, where the cove's sea lion population increased many years after the construction of the fence, and the sea lion population increase at the cove was consistent with overall population growth up and down the coast.

Assuming that city had a duty to address the odor of sea lion excrement at an ocean cove, the city did not fail to act and thus was not subject to nuisance liability for any such failure, where regulations prevented the city from washing waste off the rocks and into marine waters, the city attempted to treat the waste odors with a microbial solution, and the city continued to seek alternatives to address the odor.

City's issuance of an memorandum and press release stating that the city would abate the odor of excrement from "cormorants, gulls, pigeons and pelicans" at ocean cove did not assume any obligation enforceable by writ of mandate for the city to also abate the odor of sea lion excrement at the cove, where sea lions were nowhere referenced in those documents.

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