

Bond Case Briefs

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Benetatos v. City of Los Angeles

Court of Appeal, Second District, Division 5, California - April 14, 2015 - Cal.Rptr.3d - 2015 WL 1650766

Owners of 24-hour fast food restaurant petitioned for writ of mandate, seeking to overturn city determination that they operated a nuisance and imposing conditions on further operation. The Superior Court denied the petition, and owners appealed.

The Court of Appeal held that:

- Imposition of operating conditions did not implicate fundamental rights, and thus substantial evidence review was appropriate, and
- Substantial evidence supported determination that restaurant was operated in a manner that constituted a nuisance.

Imposition of operating conditions on fast food restaurant which allegedly operated as a nuisance did not implicate fundamental rights by forcing restaurant to shut down, and thus substantial evidence standard of review applied to superior court's consideration of petition for writ of administrative mandamus challenging the conditions. Although there was some discussion in the record about the cost of a security guard, there was no evidence concerning restaurant's profitability and projected losses, and thus owners suggested only an economic effect from the required operating conditions, rather than showing that the operating conditions would severely impair their ability to function or would drive them out of business.

Substantial evidence supported city's determination that owners of 24-hour fast food restaurant operated restaurant in a manner that constituted a nuisance in violation of city ordinance. There was evidence owners failed to maintain the restaurant or the property the restaurant occupied, as there was trash and debris throughout the property and graffiti covered the building, walls, and menu signs, there was evidence of loitering and gang activity, and that persons were drinking alcohol at the restaurant, there was evidence that, in less than three-year period, police department received 58 calls for service at restaurant for crimes including misdemeanor battery, public drinking, drug offenses, prostitution, pimping, two homicides, and two assaults with deadly weapons, there was evidence that half of those service calls took place during overnight hours, and there was evidence that a second restaurant, located 20 blocks away in an area with similar crime statistics, did not have any problems associated with it, and that nearby restaurants were not the subject of nuisance investigations.