

# **Bond Case Briefs**

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## **ZONING & PLANNING - CALIFORNIA**

### **Chase v. Wizmann**

**Court of Appeal, Second District, Division 2, California - November 1, 2021 - Cal.Rptr.3d - 2021 WL 5045754**

Property owners filed suit against neighbors and related defendants for private nuisance and other causes of action related to neighbors' air conditioning and pool equipment, and property owners sought preliminary injunction.

The Superior Court granted preliminary injunction ordering neighbors to move pool and air conditioning equipment. Neighbors appealed and the injunction was stayed.

The Court of Appeal held that:

- Municipal ordinance did not preclude nuisance actions for equipment noise that did not violate ordinance;
- Property owners showed likelihood of prevailing on merits of private nuisance claim; and
- Balance of hardships favored grant of preliminary injunction.

Municipal ordinance prohibiting operation of air conditioning, refrigeration, or heating equipment for structures, or operation of any pumping, filtering, or heating equipment for pools, above certain decibel levels did not preclude nuisance actions for equipment noise that did not violate ordinance, and thus, irrespective of an ordinance violation, plaintiff could claim the existence of a nuisance; ordinance did not expressly immunize all equipment noise below decibel level proscribed in ordinance or preclude nuisance liability for otherwise excessive or inappropriate equipment noise below that level, and ordinances contained "catchall" for "any" loud noise, indicating possibility of unreasonable noise violations on case-by-case basis, irrespective of decibel level.

Property owners seeking preliminary injunction requiring neighbor to relocate air conditioning and pool equipment from below their bedroom window to other side of property showed likelihood of prevailing on merits of private nuisance claim at trial, though neighbors asserted that property owners' noise concerns were not credible; record indicated near-constant equipment noise invading property at all hours, mostly at decibel levels in violation of municipal ordinance, reasonable persons of normal sensibilities would find that to be unreasonable amount and duration of noise near bedroom window and in their yard, noise deprived property owners from comfortable enjoyment of property, and property owners made several attempts to address noise concerns before seeking injunction.

Balance of hardships favored preliminary injunction requiring neighbor to relocate air conditioning and pool equipment from below property owners' bedroom to other side of neighbors' property, in property owners' action raising private nuisance claim, though neighbor asserted that any noise violation was minor and controllable and that there were less burdensome alternatives than relocation; record indicated that equipment frequently operated all at the same time, at all hours of day and night, at decibel levels in violation of municipal noise ordinance, there was no guarantee that noise would be adequately controlled if equipment remained in place, and neighbor had already

been ordered to comply with noise ordinance and had not done so.