LEGAL CORNER

Raining golf balls create real nuisance

By NANCY SMITH, J.D.

While one golf course neighbor may enjoy the peace and beauty of a serene fairway view, another may find a daily barrage of golf balls akin to an unwelcome hail storm.

Appellate courts have often been asked to determine whether a course, by its very existence, is a nuisance. The conclusions vary.

In one case, Anita Hellman and Stanley Goldberg bought a house next to the existing La Cumbre Golf and Country Club in Santa Barbara, Calif. They complained the constant flow of stray balls into their yard was a hazard. They discovered five to 10 balls every week, collecting about 1,300 over the years.

Even their automobiles were affected. Ms. Hellman had to sell her car for $1,000 less than its standard value because of golf-ball dents. On several occasions, balls nearly hit Hellman and Goldberg. They were afraid of inviting guests during daylight hours. They did not use their swimming pool for fear a ball would strike them. They sued the club to force it to alter fairways and stop the nuisance.

At trial, an expert for the homeowners said changing tee locations on the 10th hole would correct the problem. The course's expert witness countered the 10th tee was the facility's "signature" tee. Changing it would alter par, affecting the course's appeal and ultimately membership values, he said.

Significantly, there was testimony the course had essentially been the same since opening in 1959, long before Hellman and Goldberg purchased their home. They were the first homeowners to complain.

The trial court ruled against the pair, finding they failed to establish the constant supply of errant golf balls constituted a nuisance. They appealed, unsuccessfully.

California statutes define nuisance as "anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." Whether a private nuisance exists depends upon the circumstances, including an examination of the "unreasonableness" of the conduct.

In reviewing the trial, the court of appeal held it was necessary to weigh the harm suffered by property owners against the utility of playing golf. The fact golf had been the same before and after the couple purchased the house influenced the court. "Appellants came to the property with knowledge that it was next to a golf course, which put them on at least constructive notice that golf balls would be landing on their property," the court wrote.

The same court came to a different conclusion, however, in Sierra Screw Products v. Azusa Greens, Inc. In this case, the court found that even though offices and parking facilities were built next to an existing course, errant balls were still a nuisance.

The City of Azusa is the longtime owner and operator of Azusa Greens Golf Course. In 1969 it sold neighboring vacant land to a developer, who built offices and parking facilities. The developer brought the suit to force the course to correct the problem of balls showering the parking lot. Balls struck several employees of the neighboring businesses, damaged cars and broke widows.

The land-sale contract included safeguards against errant balls. Buyer and seller agreed if a problem arose, trees and a fence would be installed as a barrier. At the buyer's request, the city constructed 800 feet of fencing, some as high as 30 feet. But the fencing did not block all the balls.

The trial court ruled against the course, finding the balls still constituted a nuisance. The course appealed, but lost again at the appellate level. The course argued it couldn't be considered a nuisance if it was lawfully operating in a properly zoned location, relying on a state statue to that effect. But the court noted the law requires even a lawfully zoned business to operate in a safe manner. If any company uses "unnecessary and injurious methods" in conducting its business, the business can be considered a nuisance. If a better, more efficient method of doing business is available at a reasonable cost that reduces the danger, then it must be used to stop the nuisance, the court ruled.

The court of appeal endorsed the lower court finding: "intrusion of golf balls onto plaintiffs' property from the third and fourth fairways is permitted by the inadequacy of the fencing along the third and fourth fairways.'

The court required the Azusa golf course to take whatever steps were necessary to redesign the course to stop the nuisance.

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