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1. **PEDRO'S CLAIMS AGAINST DIANA**

Pedro has two claims against against Diana for Private Nuisance and Trespass to Land.

A. **Private Nuisance**

The tort of private nuisance is an intentional act involves a substantial interference of the quiet enjoyment on the owner's own land. Requiring that the interference is not extraordinary that would be affect a reasonable person under the same circumstances.

Here, Pedro recently purchased a house in a subdivision located adjacent to Diana's theater. Because the theater is a large open-air theater, it is foreseeable that noise would be filtering out the premises to the surrounding premises. On weekend evening, Diane hosts rock concerts at the theater and this has created a great interference with his quiet enjoyment at his home which was directly adjacent to the open-air theater.

Pedro was horrified by the noise and vibration coming from the theater during rock concerts. He could feel the floor shake and could not have a normal conversation because of the loud noise. Because Diane intended to host weekend concerts every weekend at evening this has created a substantial interference of Pedro's quiet enjoyment at his own at evening last until 11:00 p.m.

In addition, not only Pedro has suffering the interference of quiet enjoyment, Pedro's neighbors has had complained to Diana about the noise and vibration, but they were unsuccessful in obtaining any relief. This meaning that the interference will continue indefinitely.

Therefore, Pedro has a viable claim under private nuisance.

1. *Defense of Coming to the Nuisance*

Diana, however, could raise a defense of coming to the nuisance. Thirty years ago, Diana built a large open-air theater to provide an outdoor multi-use entertainment venue. Diana has been successful in conducting her business and since has also rented the venue to the local dance companies on weekday. In order to sustain her business and raising revenue, Diana needs to operating the rock concerts for operating costs of the venue. In the beginning, when built, its location was near the edge of the city meaning that did not create any interference to the surrounding premises. The theater employs about 200 people and has been a focus of the city's cultural scene.

As such, Diana's best argument would be that she has met all the requirement under City ordinance by in compliance with the zoning regulations and because she employs 200 employees, the City's revenue has also benefited and consider the Theater

as the City's cultural scene.

However, as time went by, city development expanded to include housing in the vicinity. Diana will argue that she had no control over the City's planning to include housing residents in the vicinity. Since Pedro knew about the Theater when he bought his house, he should be made an informed decision in whether to take on the foreseeable interference with noises.

While the City will be listening to both Diana and Pedro due to the real concern raised by Pedro and his neighbors in the subdivision, the City will balance the hardship and benefit to the City's cultural scene. Perhaps, there will be some remedial action such as to install sound blocking products surrounded the Theater. Another option can be to built a sound proof roof to cover the open-air.

B. Trespass to Land

Trespass to land is an intentional tort involves someone enters land of another without consent of the true owner.

Here, Diana let herself into Pedro's backyard, took some measurements, and left without disturbing anything. While there is no damages created on Diana's intentional trespass, the trespass is valid.

However, any damage seek by Pedro will be minimal due to no damages. Therefore, Pedro can recover nominal damages.

1. ***Defense of Mitigation by Diane***

Diana can argue that the reason she came over to Pedro's backyard was to seek some sort of relieve to the noises that Pedro has been suffering. Since the purpose of trespass to Pedro's land was to measure the space for the installing some sound deadening material that might elevate the noise, Diana was acted in good faith to mitigate the matter.

In any event, any damage would be minimal.

2. **PEDRO'S REMEDIES AGAINST DIANA**

Pedro might consider taking provision reliefs from the court.

A. **Temporary Restraining Order**

A temporary restraining order (TRO) is a court order which could be granted provided the plaintiff can show there is 1) irreparable harm; and 2) there is a likelihood of success on his underlying relief. A TRO can be granted *ex parte*, i.e., without notifying the person against whom the TRO is sought, but notice is encourage when the plaintiff know where the defendant is located. A TRO last only about 10 in state court or 14 days in federal court until a preliminary hearing on the merit is held. A bond might be required to reimburse cost for the defendant.

Here, due to the continuous nature of the substantial interference of noises every weekend evenings, it would be

considered an ongoing harm, but the harm might not rise up to the level of irreparable. Next, Pedro will need to show that he has a likelihood of success in claiming private nuisance. Pedro has established that he has a private nuisance claim, however, the only issue remain is whether the harm is irreparable.

If Pedro decides to file a TRO, he should contact Diana first before he unilaterally file it because the evidence of irreparable harm is not very strong. The fact that Diana (although she did not tell Pedro) had already attempting to make some sort of remedial mitigation to install some sound-deadening materials on Pedro's property is a significant evidence that the harm could be mitigated.

B. Preliminary Injunction

A preliminary injunction is followed by the TRO providing an opportunity for the opponent to make her case against the injunction. As discussed above, the court might not grant Pedro's TRO if he decided to file it. Due to the fact that it would be difficult for the court to supervise the mandatory injunction to compel Diana to do something on her theater. Or to grant a negative injunction against Diana to stop her from hosting rock concerts on weekends.

Moreover, court will be reluctant to interfere with Diana's business venture if doing so would create a financial hardship because she need the operation to maintain her business expenses. In addition, there is a possibility that her 200

employees would also be suffering from financial hardship if Diane were forced to stop hosting Rock concerts.

On the other hand, Pedro will continue to suffer the substantial interference of his quiet enjoyment in his own home.

The court will listen to both parties and balance the interests between Diana and Pedro in order to make a decision based on the merits of the matter.

There may be some relief that that the court can make to satisfy both parties' action. As Diana is willing to take some remedial action on her own to alleviate the noise suffering in Pedro's home, the court can order the installation of sound-proof material on both Pedro's home and on the outdoor theater.

C. Abating the Nuisance

Abating the nuisance could be done by self-help or by a court decree. However, this is a drastic measure and the court most likely would not take this measure. Also, it would not be feasible for Pedro to take self-help because he cannot physically abate the theater.

Given that Diane is ready and willing to take remedial measure to cure the noise interference on the neighboring residents in the subdivision, the abating of the nuisance by the court is not likely.

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