

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.CV2009-2498

BETWEEN

RAMDEO SEEWAH

Claimant

AND

VISHNU SIEWAH

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Kelvin Ramkissoon for the Claimant.

Mr. Beresford Charles instructed by Ms. Safiya Charles for the Defendant.

Index

	Page
Background	3
Issues	3
Disposition	3-4
Evidence – analysis and findings of fact	4-23
(a) Heat	6-7
(b) Explosions	7-8
(c) Noxious Fumes	8-9
(d) Noise	9-23
Law	24-25
Conclusion	25-27

Judgment

Background

1. The Claimant, RAMDEO SEEWAH is the owner and occupier of a parcel of land situate at No. 37 Knaggs Street, Frederick Settlement, Caroni, in the Island of Trinidad.
2. Defendant is the owner and occupier of a parcel of land at No. 35 Knaggs Street, Frederick Settlement, Caroni. The Claimant and the Defendant are adjoining land owners/occupiers and the Defendant's premises abut the Claimant's premises.

Issues

3. Claimant seeks relief in his Claim Form and Statement of Case in respect of nuisance occasioned by:-
 - a) excessive noise.
 - b) noxious fumes.
 - c) vibrations from the Defendant's premises.
 - d) damage to the Claimant's land and house caused by the escape of dangerous and noxious fumes.

Disposition

4. It is therefore ordered as follows:

An injunction is granted restraining the Defendant, by himself his servants or agents from carrying out the following acts or any of them other than on Monday to Friday between the hours of 9:00 a.m. to 2:00 p.m. that is to say:-

Carrying out or permitting to be carried out upon those premises known as No. 35 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad the business and activity of the melting of aluminium and in particular, the operation of the gas furnace thereon, and the conducting of that activity in such a manner as to permit or cause

excessive noise, so as to cause a nuisance or injury to the Claimant residing at No. 37 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad.

An injunction is granted restraining the Defendant, by himself his servants or agents from carrying out the following acts or any of them other than on Wednesdays between the hours of 11.30 a.m. to 2:00 p.m., namely the carrying out or permitting to be carried out upon those premises known as No. 35 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad the business and activity of the grinding of aluminium pots.

Costs

5. The defendant is to pay the claimant's costs of the action in the sum of \$14,000.00 and the costs of the claimant's application for injunction to be assessed in default of agreement.

Evidence – analysis and findings of fact

The allegations

6. It is alleged in the statement of case that the following matters constitute a nuisance caused or permitted by the Defendant, his servants and agents by reason whereof the Claimant has suffered loss and damage.

Particulars of Nuisance

- a. Excessive noise occasioned by the chopping of scrap metal which is audible for several hundred meters within the area.
- b. Noxious fumes which emanate from a chimney constructed from galvanise which leads from the blast furnace and points upwards which come unto the Claimant's premises and contains **nitrous oxides, sulphur dioxide, carbon monoxide and other material.**
- c. Excessive vibrations and **loud explosions** occasioned by the **blasting of the metal and explosions.**

- d. **Excessive heat** produced by the furnace which permeates unto the Claimant's premises.
7. At paragraph 16 the Claimant claims against the Defendant:
- a. Damages for nuisance occasioned by excessive noise, noxious fumes and vibrations coming from the Defendant's premises situate at No. 35 Knaggs Street, Frederick Settlement, Caroni, by virtue of the manner of the use and operations of the aluminium pot smelting business of the Defendant at the said address which said excessive noise, noxious fumes and vibrations have come unto and about the Claimant's adjoining lands and buildings situate at No. 37 Knaggs Street, Frederick Settlement, Caroni.
 - b. Damages for damage caused to the Claimant's lands and house situate at the said address caused by the escape of dangerous and noxious fumes coming from the Defendant's premises.
 - c. An injunction restraining the Defendant whether by himself, his servants and or agents or otherwise howsoever from doing the following acts or any of them, that is to say, carrying on or permitting to be carried on upon those premises known as No. 35 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad, the business aluminium smelting facility at No. 35 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad, in such a manner as to permit or be caused excessive noise, vibrations and air pollution so as to cause a nuisance or injury to the Claimant who resides at No. 37 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad.

The Evidence

8. In support of the pleaded case an **Affidavit of Ramdeo Seewah** was filed. Relevant portions, with emphasis added, are set out below: -

(I) Heat

9. With respect to Heat the claimant claims as follows at paragraphs 9 and 10:-

*9. The Defendant maintains as part of his operations **a blast furnace oven** on the said premises. This device is approximately 20 feet in width and about 12 feet in length. It is fired by LPG gas which is stored in several 100 pound cylinders close to its operations and at the side of my wall. The scrap metal pieces are placed into **huge iron cauldrons** in the furnace where they are placed for heating to an ultra high temperature until they reach a molten stage and is viscous to be placed into a mould for shaping into pots and covers.*

*10. The metal pieces take several hours of heating at this ultra high temperature before they can reach the molten stage. **The heat produced in this process often comes in the direction of my brick fence on the Northern boundary line of my premises. The wall heats up to a high temperature and transfers heat to my yard**, and my house which is just about 20 feet from my house and about 12 feet from Mr. Brown's house. **The gas used to flare this furnace is turned on at high volumes and produces a loud noise.***

However, the defendant, Vishnu Seewah contends in his witness statement:

4. The first stage of the operations is usually done between 7.00 am and 12 midday. This is the molding stage where we use our hands to shape the items in a box filled with sand. There's absolutely no noise involved in this process.

5." The second stage of the operation is usually done between 12:00 noon and 2:00 p.m. This is the point where we melt aluminium objects in an iron melting pot. This melting

pot is fuelled by liquid petroleum gas. The melting pot measures twenty four (24) inches in circumference and is twenty (20) inches deep. We place aluminium items into the pot and they are melted. The liquid aluminium is then poured on to the mold formed by the sand. The aluminium cools and forms the item within twenty (20) seconds.

18. It is not true for the Claimant to say that his property is affected by heat coming from my business operations. The only time I use heat in my business operations is when I am melting aluminium material in the melting pot. During this process my workers and I have to stand close to the melting pot. We use a ladle to dip out the melted aluminium from the pot and pour it into the box filled with sand that I use as a mold to manufacture the various items. The ladle is a container with a handle about two (2) feet long. A photograph of the ladle is numbered 17 in my List of Documents."

10. **Finding** - I accept the evidence of the defendant as underlined.

I find that the allegations of heat are unsupported and inconsistent with the fact that workers work in far closer proximity to the cauldron than the claimant. I note that no mention is made of this by the Claimant's independent witness Sharda Maharaj. Further I find that the evidence does not support the existence of a blast furnace oven, and the cauldron used to melt the aluminium pieces cannot be described as huge. I find that this claim is exaggerated.

(II) Explosions

11. With respect to Explosions the claimant claims at paragraph 11 of his witness statement as follows:-

*'At times which are about 3 times a day, the operations at the furnace produce **loud and frightening explosions and the cauldron frequently bursts.** This has the potential to spew molten pieces into the air thereby posing a danger to my property. Indeed, **it has often spread molten pieces into the air in a volcanic like manner.**'*

12. This is inconsistent with the evidence. If the cauldron burst frequently then it would constitute a fire and health and safety hazard to the workers and the defendant himself. The operation described is one where aluminium is melted in a cauldron, and it is not clear why such an operation would produce explosions, or be allowed to do so frequently, at great risk to the defendant's own person and property.

Finding - I do not accept that this is so, and I find it constitutes an exaggeration.

(III) **Noxious fumes**

13. With respect to noxious fumes the claimant claims at paragraphs 12 and 13 of his witness statement as follows:

12. In addition to the intense heat generated from the furnace operations, the business of the Defendant also produces noxious fumes and smoke from a chimney constructed of galvanise which leads from the furnace and points upwards. The chimney itself is only about 22 feet in height. My house is a 2 storey dwelling house which is only about 24 feet in height. The result is that when the wind blows in the direction of my house, these noxious fumes containing effluent and carbon waste generated from melted aluminium come into my house.

*13. The smoke produced by the operations is **foul smelling and of a thick black colour**. It is nauseating and contains **carbon particulars (sic) and particulars (sic) of other metals such as copper, iron and magnesium** which are also used in the process. When I breathe in this smoke it burns my nostrils, my throat and I get nauseated. Throughout the day, I close my windows and doors to avoid the noxious fumes and heat coming from the Defendant's operations. I have had cause to place air conditioning units in my bedrooms at great financial outlay to avoid these fumes. However even when the air conditioning is on, the air sucked inside from the units comes into the bedroom resulting in the same noxious fumes. I frequently cough uncontrollably usually when this happens.*

15. The smoke also causes my eyes to burn and turn red in colour. I am then required to run water into my eyes to avoid the burning. When it becomes intense, I immediately close my windows and doors for about half hour and then re-open them. I then close them again when it recommences. Further, I am unable to come out into my yard since the fumes are nauseating.

14. This is inconsistent with the evidence of Sharda Maharaj and appears to be either another exaggeration or a description of a state of affairs that no longer exists. There is no evidence of carbon or metallic particulates.

(IV) Noise

15. With respect to noise the claimant claims at paragraphs 6, 7, and 8 as follows:-

6. The Defendant purchases scrap or waste aluminium by the truck loads which are off-loaded in front of his property in his yard. These items are then chopped into smaller pieces with a metallic chop saw and stored. The process of chopping these items produces noise at an unacceptable level since this activity is characterized by screeching sounds of metal cutting metal. When these sounds are produced, they are heard for several hundred metres in the area which is a 100 percent built up area with homes.

7. The chopping of these items usually commences shortly after 7:00 a.m. and continues on most days to around 5:00 p.m. On other days, this activity goes on for as late as 9:00 p.m. to 10:00 p.m. at nights.

8. The sounds produced, in addition to the screeching cutting sounds, are exacerbated by the flinging and clanging of metal thrown unto other metal heaps. It is annoying and disturbing and affects the peace and quiet of both my home and the subjacent neighbours.

At paragraphs 41, 42, and 45 he states as follows:-

41. The Defendant's activities have expanded in operations and he operates his smelting facility well past midnight on occasions up to 1:00 to 2:00 a.m. During the late night periods and the wee hours of the morning, in the still of the night, the deafening sounds of metal cutting and metal grinding against metal are amplified in the still of the night thereby disturbing my nights rest and that of my family. The situation is further exacerbated by bellowing smoke coming into my bedrooms which very often leaves me gasping for breath and having to wake up to breathe in other parts of the house. Further my eyes and throat are sore from the chemical contaminated smoke and noxious gaseous effluent coming from the operations.

42. During the Christmas season of 2008, the Defendant conducted his activities well past 11:00 p.m. on most nights including the day before Christmas Eve and on New Year's Eve. There was no respite from the Defendant who continued to work on the Monday after Christmas right through to New Year's Eve. In January, 2009, his weekend hours increased and he starts work at 7:00 a.m. on Saturdays and Sundays. He started grinding the pots from as early as 7:00 a.m. on Saturday 10th and Sunday 11th January, 2009. These activities continued right up to 11:00 p.m. on the said dates.

45. The Defendant has as of the week beginning 20 July, 2009, continued his activities well into the night. At present I am ill and unable to rest at nights comfortably as the Defendant's continuous pounding and banging noises associated with the business have kept me up. Further, the smoke and fumes penetrate my home resulting in fits of coughing spells.

However the defendant, Vishnu Seewah in his witness statement contends as follows at paragraphs 20 and 23:

"My operations do not produce any noise that can affect anyone. Most of the items for melting come in pieces that can be placed directly into the melting pot. There is no cutting whatsoever of those items. A photograph showing the aluminium items in the

melting pot is numbered 14 in my List of Documents. The only noise in the business operations is from the polishing of items after the moulding process has been completed. This is done one (1) day per week. I use a sanding machine in an enclosed room as approved by the E.M.A..... I do not work on a Saturday or Sunday. My wife and I and our children attend a church in Santa Cruz on a Sunday.”

23. I use a grinding machine for polishing my products but I do this in an enclosed room. The Claimant, however, conducts his business in an open area and the noise from his operations is much louder than any noise can ever come from my business operations. The noise coming from the property of the Claimant would also be louder because he cuts steel which is a tougher material than aluminum. The noise made by the Claimant's business every day can be very overbearing and annoying at times but we do not complain about his activity.

16. The Defendant curiously vague on the amount of pots he makes on a weekly, monthly or yearly basis, that he exports the items, or that his operations ever extend beyond normal working hours.

Findings:-

17. Having heard the evidence of both the claimant and the defendant I do not accept the defendant's evidence that the claimant conducts steel cutting operations in a business. Neither do I accept that the items for melting come in pieces that can be placed directly into the melting pot or that there is no cutting whatsoever of these items. The photograph of those items includes sheets of galvanize for example, that cannot easily be bent to fit the dimensions of the melting pot.

18. I further find that it is more likely than not, on a balance of probabilities, that the defendant's operations on occasion extend beyond the hours he describes.

Damage to property

19. In support of his claim for damages and injury the Claimant itemized particulars at paragraph 6 of his Statement of Case as:-

- a) *Excessive oxidizing of the Claimant's walls and flaking and wearing off of applied paint.*
- b) *Black soot deposits on and in the walls and ceiling of the Claimant's house.*
- c) *Coughing and respiratory problems to the Claimant and occupiers of the premises resulting in frequent medical visits at a cost of \$200.00 each.*
- d) *Claimant's inability to obtain proper night rest.*

The Defendant denied paragraph 6 of the Statement of Case.

20. I note that in the expert's report at page 5 under the rubric "Sampling points on premises" she stated that "The PM10 meter was left upstairs in Mr. Seewah's bedroom because the brick enclosure was at ground level and hence, not high enough to detect emissions from the blast furnace".

Findings :-

21. I find there is insufficient evidence of this to accept it, especially in light of my findings regarding particulate emissions, and the claimant's propensity to exaggerate.

22. I am persuaded that the claimant is prone to exaggerate some aspects of his complaint. I find that the defendant is prone to minimize the impact of his operations and was curiously vague on the scope of his operations. The evidence of the defendant's worker was of limited assistance to the court on the majority of the issues, save with respect to heat emanations from the operations. His evidence was from the perspective of

a worker in those operations, acclimatized to the impact of those operations. I am constrained to place weight therefore on the evidence of the independent witness, Sharda Maharaj, subject to a critical examination thereof.

The Evidence of Sharda Surujdeo-Maharaj

23. Her qualifications and experience were accepted by the court as sufficient to qualify her as an expert.

Extracts from her witness statement are set out below:-

In a preliminary meeting in January 2008, Mr. Seewah explained that the inhabitants of his two-storey, two bedroom house were being disturbed by noise and air pollution coming from a cast iron pottery to the north of his house.

...sampling was done covertly with the equipment hidden in large bags and suitcases. I sampled on the 24th January and 21st and 22nd February. These dates were chosen based on the ad hoc work schedule of the furnace operators. I obtained equipment for the sampling of noise and air quality from Rose Environmental Limited of Unit #7, Lot 2C, Chootoo Road, El Socorro, San Juan. These meters measured noise in decibels (dbA) and air quality in Particulate Matter of size 10 µm (PM10) values, which are standard measurement units for these parameters. They were also properly calibrated and test certificates for quality assurance were also issued.

The results indicated that PM10 values increased when the furnace was operational. The average concentration for PM10 measured on the 24th January was the highest amongst the three sampling days. Overall, PM10 values measured on all three days complied with the Air Pollution Rules (2000).

With respect to noise, the sources of the noise were generally described as fluctuating and intermittent. Average and maximum sound levels measured on all three sampling days were below 120dbA, the limit specified by the Noise Pollution Rules (2001). However, the Noise Pollution Control Rules for Trinidad and Tobago (2001) clearly state that during daytime periods, “the sound pressure level when measured as equivalent

continuous sound pressure level shall not be more than 5dbA above the background sound pressure level.” Average and maximum equivalent continuous sound pressure level for the 24th January and 22nd February do not meet this stipulation as their values were greater than the average background sound level by more than 5dBA.

Researchers have shown that PM10s can affect the lungs and the heart and aggravate health conditions of these organs. The PM10 values measured, despite being within the standards, can be categorized as a nuisance. The emissions were malodorous and also elicit respiratory responses such as sniffing, snorting and coughing. Based on the fact that noise levels did not meet the required stipulation on two days, and that Mr. Seewah was very annoyed by the noise pollution, it was recommended that the furnace and pottery operation should be closed until the required environmental stipulations are met.”

24. Her findings and methodology are set out in greater detail in her report as follows. Extracts are reproduced below.

Air Quality

At page 9 it was found:

21st February

The blast furnace began operation at around 2:30 pm with very light emissions, less than what was noted on the 24th January. During this sampling however, the pungent smell of smoke was only obvious shortly after the furnace began operating (around 2pm) and only for a few minutes around 4pm, after the furnace was switched off.

I note she observes not much pungent smell and smoke on this occasion.

22nd February

On this day, the blast furnace was started at 10:30am and it continued to work throughout the day, producing a very light smoke as was noted in previous sampling days. However, there were a couple of times when the furnace produced a dark coloured

smoke which was easily visible despite the very heavy wind and the brightly coloured sky (Plate 7). Of the three days, the emissions noted on this day were the heaviest; however, the wind took the emission away from the sampling sites (Plate 7).

I note therefore that the wind blew smoke away.

24th January

Page 8 Observations – 24th January

However the pungent smell of smoke and burnt metal could be detected in the living room of Mr. Seewah's house on a number of occasions (at 12 noon, at 1.40 pm, 2:20 pm, 4:30 pm) and each incident lasted between 2-15 minutes.

I note that she observed smoke – 4 times – 2-15 minutes each ending at 5 pm.

Air quality –

Table 1: Summary statistics for PM10 values collected on all three days.

<i>Date</i>	<i>Average</i>	<i>Maximum</i>	<i>Minimum</i>
<i>24/01/2008</i>	<i>0.0250</i>	<i>0.0650</i>	<i>0.0190</i>
<i>21/02/2008</i>	<i>0.0135</i>	<i>0.0300</i>	<i>0.0080</i>
<i>22/02/2008</i>	<i>0.0118</i>	<i>0.0140</i>	<i>0.0070</i>

National air quality standards (Air Pollution Rules, 2000) indicate that the maximum permissible level for PM10 over a 24-hour period is 0.150 mg/m³. PM10 concentration values collected on all three days of the sampling were within this criterion value.

25. From this the following observations can be made:

With regard to Noise

1. The expert was directing her mind to noise pollution and air pollution.

2. She was checking the levels of each against the parameters set out in the Environmental management Act.

26. The air quality tests were for particulate matter.

a. Overall, PM10 values measured on all three days complied with the Air Pollution Rules. The negative effect of particulate matter she attested to in her witness statement is therefore irrelevant.

b. Despite that the expert concluded that the emissions were malodorous and elicited a respiratory response.

c. There is no basis on the evidence for her conclusion that the emissions elicited a respiratory response. The evidence elicited in cross examination in this regard is tenuous and unreliable. The statement that the emissions were malodorous is subjective and not based on any test as to the nature of the emissions or gases comprising it. The extent of “malodorousness” is not described and the conclusion that “the PM10 values measured, despite being within the standards, can be categorized as a nuisance” is questionable. The air quality in particulate matter – which is what PM values measure, and the composition of the air – whether containing noxious substances or not – are 2 different matters. There is no evidence that the former constitutes a nuisance as it falls within EMA stipulated guidelines.

d. There is no evidence that the latter was tested for, so as to substantiate an assertion that this aspect of air quality constitutes a nuisance.

e. I therefore find that there is no evidence on which I can place reliance that air quality as a result of the defendant’s operations was affected to the extent necessary to constitute a nuisance.

f. I do not accept the expert’s conclusions regarding air quality.

Noise Pollution

27. The expert concluded that:

“Based on the fact that noise levels did not meet the required stipulation on two days, and that Mr. Seewah was very annoyed by the noise pollution, it was recommended that

the furnace and pottery operation should be closed until the required environmental stipulations are met.”

28.

1. With respect to noise pollution she found that the noise levels did not exceed the maximum stipulated by the Act.

2. However the appropriate comparator was not the maximum so stipulated but the continuous sound pressure level, and this was exceeded by more than 5 DB, in excess of the maximum prescribed by the **Noise Pollution Rules (2001)**.

3. It is necessary therefore to examine the evidence as to methodology of the noise sampling by the expert to assess whether it is valid.

29. Her report sets out the following findings -

Air and Noise Pollution Report – Sharda Surujdeo-Maharaj

Page 5

The sampling points for the three days differed slightly. On the 24th January, two sampling stations close to windows were identified to position the meters for sampling. The noise meter was placed in Mr. Seewah’s bedroom approximately 1.3 meters away from his window ...

On the 21st and 22nd February, the PM10 meter was placed approximately 1.3 meters away from Mr. Seewah’s bedroom window (4) whilst the noise meter was placed in a small enclosing made of bricks approximately 1 meter outside of Mr. Brown’s bedroom window and more than 2 meters away from the partitioning wall between Mr. Seewah’s residence and the blast furnace operators (5)

Noise

Page 8 Observations – 24th January

...The grinding of the pots began at 9.15 am and could be heard intermittently from Mr. Seewah’s bedroom. The blast furnace started operating again at approximately 12:00

noon. The grinding stops around 1.40 pm and 2.00 pm, clanging of iron pots could be heard for about then minutes. The grinding recommenced at around **3:45...**

Grinding became intermittent (lasting for 5-10 minute period at a time) from **3:30 - 5pm**, after which it stopped. Blast furnace operations ended at approximately **5.00 pm**.

At page 9 she reports as follows:-

21st February

The blast furnace began operation at around 2:30pm with very light emissions, less than what was noted on the 24th January. During this sampling however, the pungent smell of smoke was only obvious shortly after the furnace began operating (around 2pm) and only for a few minutes around 4pm, after the furnace was switched off.

On arrival at the sampling site, the grinding could be heard, however, shortly after the sampling began, the grinding stopped. Noises which sounded like the clanging of metal pots could be heard intermittently coming from next door but these were not as loud as the grinding and lasted only ten to fifteen minutes around 2:40pm and 3:30 pm. Later, at approximately 3:40pm, the grinding began again but lasted only 20 minutes.

February 22nd

The grinding of the pots began at 10:40 am and continued throughout the sampling. The grinding was intermittent, stopping and starting at irregular time intervals until around 11:30am when it stopped and the clanging of pots could be heard. At approximately 12 noon, the grinding began again and continued until approximately 1:00pm when there was a short period of silence. At 1:30pm, the grinding began again and continued even after the sampling was stopped.

Page 15:

Table 2: Summary statistics for Equivalent continuous sound pressure levels (L_{eq}) including background levels (units: dBA)

		24/02/2008	21/02/2008	22/02/2008
L_{eq}	Max	62.7	67.9	65.4
	Min	57.3	57.4	56.5
	Ave	57.9	57.4	58.6
Background	Min	46.4	50.2	43.0
	Ave	51.0	54.4	50.8

Min – Minimum, Max – Maximum, Ave – Average

Average and maximum sound levels measured on all three sampling days were below 120 dbA (Noise Pollution Control Rules, 2001). However, the Noise Pollution Control Rules for Trinidad and Tobago (2001) clearly states that during daytime periods, **“the sound pressure level when measured as equivalent continuous sound pressure level shall not be more than 5dbA above the background sound pressure level.”** Average and maximum equivalent continuous sound pressure level for the 24th January and 22nd February do not meet this stipulation since their values are greater than the average background sound level by more than 5dBA.

At page 17

Table 3: Maximum instantaneous peak sound pressure level (L_{max}) and the respective sampling period

	24/01/2008	21/02/2008	22/02/2008
L_{max}	85.1	93.3	84.3
Length of sampling period	8hours 20minutes	1hour 48minutes	4hours 23minutes

The Noise Pollution Control Rules (2001) states that the sound pressure levels when measured as instantaneous unweighted peak sound pressure level shall not exceed 120

dB (peak). The maximum values for instantaneous unweighted peak sound pressure levels do not exceed this requirement of the Noise Pollution Control Rules (2001).

I note that complaint is not made here about instantaneous sound.

At page 20 of the expert's report she observes as follows:

Average and maximum equivalent continuous sound pressure levels (L_{eq}) measured on the 24th January and the 22nd February were found to exceed the Noise Pollution Control Rules (2001) stipulations.

The Issue of Excessive Noise

30. Section 6(3) of the Noise Pollution Control Rules ("the Rules") provides that measurement of sound pressure level and reporting of sound pressure level measurement data shall be in accordance with the Second Schedule and the Third Schedule respectively. The Second Schedule deals with measurement of sound pressure levels. Rule 4.4 states that for the purposes of determining compliance with the prescribed standards, sound pressure levels may be taken under any prevailing meteorological conditions provided that there is the absence of precipitation, thunder and distinctly audible winds.

31. It was submitted that the expert's methodology was flawed because of the wind conditions prevailing. The witness reports at page 8 of the report that on the 24th day of January "*The wind strength was high, strong enough to sway coconut branches on the nearby trees. This breeze and tree branches moving was audible. However, there were a few instances when the wind died down.....*" At page 9 she says that on the 21st day of February "*Then it cleared up and a high wind began blowing. This wind was strong enough to sway the branches of the nearby coconut trees violently, which was audible.*" On the same page she says that on the 22nd of February "*It was clear and sunny and a high wind was blowing, making the coconut tree sway. This was audible. These conditions were observed throughout the sampling.*"

32. Rule 4.4 commences with the words “for the purposes of determining compliance with the prescribed standard”. Section 2 of the rules interprets “prescribed standard” as the maximum permissible sound pressure levels.

33. It was submitted that as Rule 4.1(c) warns that in order “to prevent measuring errors caused by the wind blowing across the microphone....”.

1. That the inference to be drawn is that the blowing of the wind would cause errors in the measuring of the sound pressure level
2. That the “distinctly audible” wind that prevailed would have caused errors in determining the maximum permissible sound pressure level and
3. That the effect of the audible wind would have been to give a higher measurement than what really existed.

34. There is no evidence that this was so. It was accepted that the microphone did have a wind screen and there is no reason to believe that if wind noise were detected that it would not have equally increased the background noise levels, leaving the difference between the average background and the peak noise levels unaffected.

35. Further, it was submitted that Section 2 of the Rules, the Interpretation section, provides that “equivalent continuous sound pressure level (LEQ)” means the value of the “A” weighted sound pressure level of the sound as measured at a specific location averaged over a continuous thirty (30) minute period.

36. However at page 15 under the rubric “Noise Data” in explaining her method of assessing equivalent continuous sound pressure levels (LEQ) she says at paragraph 2 of the report that *“in order to illustrate the nature of the noise, the average LEQ levels per ten (10) minute periods on all three (3) days were plotted.”*

37. The Rules at the First Schedule under the rubric “prescribed standards” that relate to the maximum permissible sound pressure levels for Zone III – General area provide:

Daytime Limits on Mondays to Sundays of every week from 8.00 a.m. to 8.00 p.m. on each day:

- a) The sound pressure level when measured as equivalent continuous sound pressure level shall not be more than 5 dBA above the background sound pressure; and*
- b) The sound pressure level when measured as instantaneous unweighted peak sound pressure level shall not exceed 120 dB (peak).*

38. It was therefore submitted on behalf of the claimant that the rule requires that in order to determine compliance with the prescribed standard the equivalent continuous sound pressure level must be averaged over a continuous thirty (30) minute period. To determine a breach of the rule the sound pressure level has to be averaged over a thirty (30) minute period to determine whether or not within that period it averages more than 5 dBA above the background sound pressure.

39. It was submitted that there is a distinct possibility that an average over ten (10) minute periods could have distorted the accuracy of readings and given a much higher range than what actually existed if the sound pressure was averaged over a thirty (30) minute period.

It has not been demonstrated why the shorter interval used for measurement should produce "a much higher range than what actually existed."

Even if that were so however, the measurement prescribed relates to the standard under the rules, which is not necessarily the same issue as whether the noise produced constitutes a nuisance at common law. The observations and measurements in fact corroborate the evidence of the claimant with respect to noise with respect to its level and timing.

40. The measurements speak for themselves, and in fact indicate that apart from the fact that the sound pressure level averaged more than 5 dBA above the background sound pressure, there were peaks of sound on each day that exceeded the average background sound level by far in excess of 5 dBA and that corresponded to the defendant's operations.

At paragraph 8 of the Witness Statement of Sharda Surujdeo-Maharaj she concludes that *“Average and maximum sound levels measured on all three sampling days were below 120dbA, the limit specified by the Noise Pollution Rules (2001)”*. She went on to say that the sound pressure level when measured as equivalent continuous sound pressure was 5dbA above background sound pressure level.

41. It was further submitted that there was no breach of the Noise Pollution Rules as the Rules provide that “Notwithstanding the above, no person shall emit or cause to be emitted any sound that causes the sound pressure level when measured as the equivalent continuous sound pressure level to exceed 80dBA.

It was contended that the law allows a sound pressure level to go up to 120 dB intermittently. The average sound pressure level over a thirty (30) minute period, however, is not allowed to exceed 80dBA.

42. I reject that interpretation of the rule. I find in the circumstances of this case that a proper interpretation of the conjoint effect of the Noise pollution rules cited above is as follows:

- (i) Sounds exceeding 120 dBA are not permitted by the rules.
- (ii) Sound pressure levels when measured as equivalent continuous sound pressure are not permitted to exceed 5dbA background sound pressure level.
- (iii) A still further gloss is added to the above restrictions in that even if individual intermittent sounds are emitted which do not exceed 120dBA "notwithstanding the above, no person shall emit or cause to be emitted any sound that causes the sound pressure level when measured as the equivalent continuous sound pressure level to

exceed 80dBA." In other words individual loud sounds not exceeding the prohibited maximum level of 120dBA are prohibited where they have the effect of causing the sound pressure level when measured as the equivalent continuous sound pressure level to exceed 80dBA. (This would apply for example in an environment where those individual loud sounds may not exceed 120dBA but nevertheless averaged over a period result in that average exceeding 80dBA)

Law on nuisance

43. *A private nuisance may be and usually is caused by a person doing, on his own land, something which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his act are not confined to his own land but extend to the land of his neighbour by:*

- (1) *causing an encroachment on his neighbour's land, when it closely resembles trespass;*
- (2) *causing physical damage to his neighbour's land or building or works or vegetation upon it; or*
- (3) *unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land.*

44. *It may be a nuisance when a person does something on his own property which interferes with his neighbour's ability to enjoy his property by putting it to profitable use: Clerk & Lindsell on Torts, 19th Ed, Paragraph 20-06.*

Nuisancecausing an interference with enjoyment of land, are, for example creating stench by the carrying on of an offensive manufacture or otherwise, causing smoke or noxious fumes to pass on to the claimant's property, raising clouds of coal dust, making unreasonable noises, or vibration, using a building as a hospital for infectious diseases....: paragraph 20-09.

No precise or universal formula is possible, but a useful test is what is reasonable according to ordinary usages of mankind living in a particular society.

45. *Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case, including, for example, the time of the commission of the act complained of; the place of its commission; the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights; and the effect of its commission, that is, whether those effects are transitory or permanent, occasional or continuous; so that the question of nuisance or no nuisance is **one of fact: paragraph 20-10.***

46. *A nuisance of this kind, to be actionable, must be such as to be a real interference with the comfort or convenience of living according to the standards of the average man. An interference which alone causes harm to something of abnormal sensitiveness does not of itself constitute a nuisance. A man cannot increase the liabilities of his neighbour by applying his own property to special uses, whether for business or pleasure: **paragraph 20-11***

47. *Private Nuisance is defined in Howard v Walker [1] by Lord Goddard as “an unlawful interference with a person’s use or enjoyment of land, or some right over, or in connection with it”.*

*Extent of the harm and the nature of the locality- This factor can be summarised in the words of **Thesiger L.J in Sturges v Bridgeman (1879) L.R 11 Ch.D 852 at 865**, as follows - “what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey”*

Conclusion

48. In the circumstances I find that the complaints have not been established on the evidence

- (i) With respect to heat
- (ii) With respect to air quality – particulate matter
- (iii) With respect to noxious fumes
- (iv) With respect to Explosions.

49. With respect to noise I find that the complaint has been established on the evidence of the Claimant to the extent corroborated by the independent expert. I find that evidence of non compliance with the standards set out in the noise pollution rules can be an important ingredient in determining whether a case of common law nuisance has been made out, although the common law of nuisance, and in particular, nuisance by noise, has not been eliminated or superseded by the standards set out in the Environmental Management Act. Apart from the fact that the prescribed standard has been exceeded I note that the expert's measurements demonstrate peaks of sound in excess of the background sound level, attributable to the defendant's operations, corroborating the claimant's complaint of noise nuisance at common law.

50. I find that scientific measurement of the noise levels prevailing at Mr. Seewah's home has confirmed his account of noise exceeding background levels that affects his use and enjoyment of his home, beyond the times attested to by the defendant. The defendant's light industrial/manufacturing activities are responsible for producing that noise. I do not believe that those activities are confined to the time periods attested to by the defendant. In any event I am persuaded he should, at the very least, be confined to those periods that he has attested to.

It is therefore ordered as follows:-

51. An injunction is granted restraining the Defendant, by himself his servants or agents from carrying out the following acts or any of them other than on Monday to Friday between the hours of 9:00 a.m. to 2:00 p.m. that is to say:-

Carrying out or permitting to be carried out upon those premises known as No. 35 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad the business and

activity of the melting of aluminium and in particular, the operation of the gas furnace thereon, and the conducting of that activity in such a manner as to permit or cause excessive noise, so as to cause a nuisance or injury to the Claimant residing at No. 37 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad.

An injunction is granted restraining the Defendant, by himself his servants or agents from carrying out the following acts or any of them other than on Wednesdays between the hours of 11.30 a.m. to 2:00 p.m., namely the carrying out or permitting to be carried out upon those premises known as No. 35 Knaggs Street, Frederick Settlement, Caroni, in the island of Trinidad the business and activity of the grinding of aluminium pots.

Costs

52. The defendant is to pay the claimant's costs of the action in the sum of \$14,000.00 and the costs of the claimant's application for injunction to be assessed in default of agreement.

Dated this 29th day of June 2010.

Peter A. Rajkumar
Judge.