

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CRYSTAL ALEXANDER, et al.,)
)
Plaintiffs,)
)
v.)
)
EVRAZ CLAYMONT STEEL)
HOLDINGS INC., a Delaware)
Corporation; EVRAZ CLAYMONT)
STEEL, INC., a Delaware)
Corporation; EVRAZ INC. NA,)
a Delaware Corporation; and)
DOES 1-1000,)
)
Defendants.)

C.A. No. N10C-08-151 JAP

MEMORANDUM OPINION

Appearances:

Michael P. Kelly, Esquire, David A. White, Esquire, Wilmington, Delaware
Attorneys for the Plaintiffs

Timothy J. Houseal, Esquire, William E. Gamgort, Esquire, Wilmington
Delaware
Attorneys for the Defendants

JUDGE JOHN A. PARKINS, JR.

Plaintiffs are eighty-two individuals who lived in the vicinity of a steel plant in Claymont allegedly owned by Defendants. They have brought suit against the owners of the plant and unidentified John Does alleging that they were injured as a result of toxic materials emitting from the plant. Plaintiffs have alleged a variety of theories. At issue here is whether they have stated a claim for public nuisance.

Procedural History

Although the complaint describes in very broad terms the injuries suffered by all or some of the plaintiffs, the pleading provides no information about which plaintiff suffered which injuries. At the request of the court, plaintiffs' and defendants' counsel negotiated a "Fact Sheet" to be completed by each plaintiff. The Fact Sheet calls for information about personal injuries allegedly suffered, including the name and address of any treating physicians, the date the physician was first consulted and the date any diagnosis was first made. The Fact Sheet also certain information about property damage claimed to have been suffered by the plaintiff. After approving the form of the Fact Sheet the court directed that they be distributed to each of the plaintiffs. The court further directed that each completed fact sheet would be deemed to be an amendment to the Second Amended Complaint.¹

¹ Even though the completed fact sheets are deemed to be an amendment to the Second Amended Complaint, Defendants were not required to respond. The factual assertions contained in the Fact Sheets are deemed to be denied.

Most, but not all, of the plaintiffs completed and returned their fact sheet.² Many of the Fact Sheets returned to date indicate that the responding plaintiff did not suffer a personal injury. Of those fact sheets indicating the plaintiff suffered a personal injury, the predominate injury are various respiratory maladies. A few Plaintiffs described other diseases, such as colorectal cancer and heart disease, which they believe were caused by emissions from the plant. Insofar as property damage is concerned, the large fraction of the claims seems to be for damages to motor vehicles, although there are some claims for damage to real estate. For purposes of the pending motion to dismiss, the court will assume that these plaintiffs have alleged personal injury or property damage (or both) which was proximately caused by the alleged wrongful conduct of one or more of the defendants.³

Defendants' Contentions

Defendants seek to dismiss Plaintiffs' public nuisance claim, arguing that Plaintiffs must allege, and eventually prove, that they suffered injuries different in *nature* from those suffered by the general public. According to Defendants, the mere fact that Plaintiffs have suffered an injury to a greater *degree* than the general public itself suffers does not confer standing upon them to bring a public nuisance claim. Plaintiffs does not dispute this legal contention but instead argue

² The court allowed additional time for Plaintiffs' counsel to retrieve and submit completed Fact Sheets from those Plaintiffs who did not return them.

³ This does not mean that the court finds that the claims are not otherwise barred. It means only that the responding plaintiffs have alleged injury.

that their “injuries are of a kind different and more severe than suffered by the general public” and therefore satisfy the standard posited by Defendants.

Analysis

The court finds that at least some of the Plaintiffs have alleged injuries which give them standing to pursue a public nuisance claim. There is no doubt that Plaintiffs have alleged the existence of a public nuisance. Nearly a century ago this court defined a “nuisance” as an interference with the enjoyment of life or property.⁴ There are two types of nuisances: public and private. A public nuisance is one which “affects the rights to which every citizen is entitled.”⁵ The Court of Chancery has found that “[t]he right to reasonable groundwater use is a right which all landowners possess and in this sense it may be termed a common or public right.”⁶ It is no stretch to conclude that Defendant’s alleged interference with air quality constitutes interference with a public right and therefore constitutes a public nuisance. Indeed, “There is no question that foul odors, dust, noise, and bright lights—if sufficiently extreme—may constitute a nuisance.”⁷

⁴ *Murden v. Town of Lewes*, 96 A. 506, 7 (Del. Super. 1915), *aff’d*, 108 A. 74 (Del. 1919)

⁵ Restatement (Second) of Torts, sec. 821B

⁶ *Artesian Water Co. v. New Castle County*, 1983 WL 17986 (Del. Ch.)

⁷ *Schneider National Carriers, Inc. v. Bates*, 147 S.W.2d 264, 269 (Tex. 2004)

Having concluded that Plaintiffs have alleged that the steel plant constitutes a public nuisance, the court must consider whether these Plaintiffs have standing to assert a claim based upon that alleged nuisance. The parties seem to agree that the test to be applied here is whether any given Plaintiff has suffered any injury which “different in kind from that suffered by the general public.”⁸

The court is satisfied that those Facts Sheets describing specific illnesses or property damage sufficiently allege an injury which is different in nature from that suffered by the general public. Those Plaintiffs are not simply complaining of malodorous air in the vicinity of the steel plant (a condition suffered by the public as a whole), they are alleging the existence of injuries specific to them and thus different in nature from those suffered by the general public. Accordingly, the court will not dismiss the public nuisance claims of those Plaintiffs who have described physical injuries on their Fact Sheets. It will dismiss the Public Nuisance claims of those Plaintiffs who have not.

Given the demonstrated ability of the attorneys in this case to work co-operatively the court trusts that the parties will be able to agree upon which Plaintiff’s public nuisance claim should be dismissed and which should not. If there are any in dispute the court will separately consider the Fact Sheet in question. Counsel or Defendants should advise the court on or before May 5, 2014 of the names of the plaintiffs the parties

⁸ Restatement (Second) of Torts, sec. 821B.

agree do not have standing to pursue a nuisance claim and the names of the parties for which there is a dispute.

March 31, 2013

John A. Parkins, Jr., Judge

cc: Prothonotary