

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD KOLENO and SANDRA KOLENO,
Plaintiffs

vs.

ROBERT LEWIS, DVM and MARY CATHERINE LEWIS,
and SIT HAPPENS, INC.,
Defendants

: NO. 08 – 02,506
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: CIVIL ACTION - LAW
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: Non-jury Trial

OPINION AND VERDICT

Before the Court is Plaintiffs’ request for injunctive relief directed against Defendant Sit Happens, Inc.¹ A trial was conducted on November 3, 2009, and as trial briefs were filed at the time of trial, the matter is now ripe for decision. Accordingly, the Court enters the following:

FINDINGS OF FACT

- 1) Plaintiffs, Richard and Sandra Koleno, reside at 79 Water Street in Linden, Pennsylvania, which is located in a residential zoning district in Woodward Township, immediately adjacent to the property owned by Defendants, Robert and Mary Lewis, at 6565 North Route 220 Highway, Linden, which is located in a commercial zoning district in the township.
- 2) Denise Greninger operates a kennel business known as “Sit Happens”, from the rear of the property owned by the Lewises. Kennels are a permitted use in a commercial district in Woodward Township, but are subject to certain requirements as set forth in Section 520 of the township’s zoning ordinance.
- 3) The kennel business cares for up to 80 dogs on any given day.
- 4) There are two doors which lead from the building wherein the kennel business is conducted which face Plaintiff’s home, one regular sized door and one garage door.

¹ Prior to trial, Plaintiffs entered a settlement agreement with Defendants Robert and Mary Lewis and therefore, for ease of reference, Defendant Sit Happens, Inc., will be referred to as simply “Defendant.”

These doors are kept open or partially open during the kennel's business hours and sometimes overnight.

- 5) There is an outside area in which the dogs are exercised, located immediately outside of the above-referenced doors, which faces Plaintiffs' home. The dogs are confined to this area by a chain link fence containing vertical wooden slats through the links. The fence is approximately 100 feet from the Plaintiffs' property line.²
- 6) The dogs are allowed to remain in the outside area during most if not all of the kennel's business hours, and sometimes overnight.
- 7) The dogs' barking can be heard by Plaintiffs as well as all surrounding neighbors, both from outside and inside their homes, more so in the summer when they have their windows open but also in the winter, albeit to a lesser extent, when the windows are closed.
- 8) The dogs' barking is nearly constant for lengthy periods of time, occurs during both day and night, and has awoken Plaintiffs and some of the neighbors during the night. Plaintiffs and all of the surrounding neighbors are bothered by the barking.
- 9) Section 520 of the Woodward Township Zoning Ordinance requires that kennels "shall be effectively screened from adjacent residential properties and shall not be detrimental to any abutting use."³

DISCUSSION

Plaintiffs contend the kennel constitutes a nuisance and also violates the zoning ordinance by failing to "effectively screen" the dogs' barking and by being detrimental to the quiet enjoyment of their home. It appears the zoning ordinance was written to ensure that use of a property as a kennel did not constitute a nuisance and thus, the Court will focus on the requirements of the ordinance in addressing Plaintiffs' request for relief.

² At trial, counsel for Defendant agreed that in some places, the fence is less than 100 feet from the property line and that Defendant was willing to construct an interior barrier so as to restrict the kennel operation in accordance with the 100 foot setback. Thus, the Court will not address the fence issue, other than to note it and provide for the agreed upon resolution in the final order.

³ See Plaintiffs' Exhibit 4, p. 68.

It is clear to the Court that the kennel as it currently operates is detrimental to all abutting uses as the dogs' excessive barking significantly interferes with the neighbors' quiet enjoyment of their property. Plaintiffs testified that the barking was "so irritating" that they were unable to be outside in the summer or to have company at their home and, in fact, they frequently went away on the weekends to get away from the noise. Gretchen Mantle testified that the barking was "annoying" and that even though her bedroom was on the far side of her house, facing away from the kennel, she had been woken up at night by the barking. Beverly Shirey testified that the barking was "very irritating, very annoying," and "constant". She said she had been awakened by the barking in the middle of the night "many, many times." Nancy Corage testified that the dogs' barking "bothers [her] at times", and that although it has not woken her up, she can hear them barking at 3 or 4 a.m. when she gets up in the night. Robert Shirey testified that the dogs' barking is "most bothersome at night", and that it does wake him up at night. Further, all of the neighbors testified that although they live very near a four lane highway, which is a source of noise from cars and trucks, and that although the previous owner of the building had operated a Harley Davidson dealership, and the motorcycles attendant to that business had produced noise, the noise from the kennel was much, much worse. As Mr. Shirey put it, "at least you knew that at 5 o'clock it was going to stop."

The Court notes a video tape with audio recording was presented by Plaintiffs to demonstrate the noise from the dogs' barking. Considering this evidence and the testimony of Plaintiffs and all of their neighbors regarding the frequency and duration of the barking, the Court finds that the kennel has not been effectively screened from the adjacent residential properties.

Accordingly, the Court draws the following:

CONCLUSION OF LAW

1. Defendant's operation of the kennel is in violation of Woodward Township Zoning Ordinance, Article 5, Section 520, in that it is not effectively screened from the adjacent residential properties and is detrimental to their use.

VERDICT

AND NOW, this 6th day of November 2009, for the foregoing reasons, Plaintiffs' request for injunctive relief is hereby GRANTED. Within thirty (30) days of this date, Defendant Sit Happens, Inc. shall complete steps necessary to effectively screen the kennel from Plaintiffs' property to Plaintiffs' satisfaction. If such cannot be accomplished, Defendant shall vacate the property within sixty (60) days of this date.⁴

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christopher Williams, Esq.
Patricia Shipman, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

⁴ The Court realizes that a continuation of the noise for an additional sixty day period may appear to Plaintiffs to not be in keeping with the granting of their request for relief. The Court is cognizant, however, of the upcoming holidays and that many people may be counting on Defendant to provide kenneling services for them over those holidays, and the Court does not wish to disrupt the plans of many others. The Court has also considered that the kennel has been operating for nearly four years so it would seem that an additional two months is not an unreasonable burden on Plaintiffs, especially in light of the fact that we are now in the winter - "keep the windows closed" - season of the year.