

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| KELLY BRANTON; SHAWN BRANTON; MITCHELL | : | |
| BRANTON, a Minor, by Kelly Branton and Shawn | : | |
| Branton, Guardians; LILLY BRANTON, a Minor, by | : | |
| Kelly Branton and Shawn Branton, Guardians; BECK | : | |
| BRANTON, a Minor by Shawn Branton, Guardian; | : | |
| PAT COURTWRIGHT; PHILIP COURTWRIGHT; | : | |
| GARY E. JOHNSON; GEORGINA B. JOHNSON; | : | |
| CAROL KLINE; RICHARD LONG; ANN MCKEAN; | : | CV-2013-01,502 |
| THOMAS J. MCKEAN; DEBORAH A. MUTHLER; | : | |
| STEPHEN K. MUTHLER; STEPHEN P. RICE; | : | |
| SUSAN RICE; and KIM SHIPMAN, | : | |
| Plaintiffs, | : | |
| v. | : | |
| NICHOLAS MEAT, LLC; BRETT BOWES d/b/a | : | |
| BOWES FARM; CAMERER FARMS, INC.; | : | |
| WILLIAM R. CAMERER, III; and | : | |
| JAB LIVESTOCK, LLC, | : | |
| Defendants. | : | SUMMARY JUDGMENT |

OPINION AND ORDER

Before the Court are Defendants’ motions for summary judgment based upon Pennsylvania’s Right to Farm Act, 3 P.S. §§ 951-957. Upon review and consideration of the argument, motions, briefs, and the summary judgment record of evidence, the Defendants’ motions for summary judgment are GRANTED. The Court provides the following in support of its decision.

FACTUAL BACKGROUND

This case arises from Defendants’ farming activities, chiefly spreading food processing residual (“FPR”), broadly described as organic animal material, on Defendants’ Camerer and Bowes fields in the Antes Forte area of Lycoming County. Neighboring land owners filed suit as a result of allegedly strong obnoxious odors emanating from the fields.¹

¹ On November 15, 2013, Plaintiffs filed their second amended complaint containing a separate count by each individual plaintiff against all defendants for two causes of action: temporary nuisance and failure to abate and negligence. In their brief, Plaintiffs have withdrawn the negligence claims.

The following facts are essentially undisputed. *See*, page 2 of Plaintiffs' brief. Defendants are family-owned farming businesses. Defendant Nicholas Meat, LLC, ("Nicholas Meat") owns and operates a slaughterhouse in Loganton, Pennsylvania which generates FPR and temporarily stores FPR for transport. Five USDA inspectors check that the Nicholas Meat facility is properly run. Defendants collect the FPR and transport it eighteen miles, where it is either immediately spread on the Bowes and Camerer Farms in Jersey Shore, PA or stored in a 2.4 million gallon storage tank on the Bowes Farm. Spreading FPR on the farmland enriches the nutrient value of the soil and boosts crop production.

Defendants began spreading FPR on the farms in 2011 after consulting with the Pennsylvania Department of Environmental Protection (DEP) and developing a Nutrient Management Plan (NMP). The NMP involves a nutrient balance sheet and guides the total amount and scheduling of spreading the FPR. Defendants hired a specialist in nutrient management planning. Pursuant to the nutrient management plan, defendants are permitted to spread up to 9,000 gallons of organic wastewater per acre at one time. The specialist writes and develops NMPs and balance sheets for all of the spreading on the farms. The land application at the farms is overseen and regulated by DEP. Since 2011, DEP has visited the farms dozens of times and investigated plaintiffs' complaints. Failure to fully comply with the NMPs can result in DEP issuing a notice of violation (NOV) indicating that the conduct occurred without a permit and without adhering to the best management practices. Since 2011, DEP has issued NOVs to the defendants for three instances of

specific conduct.² DEP never fined defendants. DEP never ordered defendants to cease operations.

Bowes Farm includes about 156 acres that has been in the Bowes family for generations. The owner, Mr. Bowes, also owns Defendant JAB Trucking, which transports the FPR from Nicholas Meat to the Bowes and Camerer farms. Camerer farm is about 800 acres adjacent to Bowes. Since 1979, the Camerer farm has produced seed corn, commercial corn and soy. The owner of Camerer farms, Mr. Camerer, also farms about 200-300 acres on Bowes Farm. Since April 2012, Defendants have stored FDR in a 2.4 million gallon storage tank existing on Bowes Farm prior to land application. See Plaintiffs' Second Amended Complaint, ¶¶ 46, 51. Representatives from DEP have visited the farms and observed the generation, storage, transportation and spreading of the FPR on the farms.

Plaintiffs initiated this lawsuit on June 14, 2013. Plaintiffs complain that the offensive odors and emissions impair their ability to use and enjoy their property which is within the surrounding 2 miles of the farms.

DISCUSSION

Oral argument focused on the Supreme Court's recent decision in Gilbert v. Synagro Cent., LLC, 2015 Pa. LEXIS 2998, 41-42 (Pa. Dec. 21, 2015). Defendants claim this decision – which concluded that the application of waste to farms is a normal agricultural operation - is

² Plaintiffs assert that five notices were issued. Two of the NOV's were directed to different defendants for the same conduct. As a result of a complaint made to DEP on March 4, 2011, DEP issued a notice of violation to William Camerer III of Camerer Farms dated March 17, 2011 and one to Gene Nicholas of Nicholas Meat dated March 18, 2011 upon determining that FPR from Nicholas Meat was being spread on the Camerer Farms between February 25 and February 27, 2011 without a NMS covering those fields at that time. As a result of a complaint made to DEP on April 2, 2013, DEP issued a notice of violation dated April 15, 2013 to Brett Bowes and one to Nicholas Meat essentially for the ponding and spreading of FPW within the required 150ft set back from a stream. As a result of a complaint made, on July 8, 2013 DEP issued a notice of violation for spreading FPR in fields that at the time did not have an NMS for spreading during summer months.

dispositive here. Plaintiffs claim that violations of statutes, rules and regulations, coupled with construction of a storage tank, factually distinguish this case from Synagro. This Court concludes that Synagro is controlling and Defendants' motions for summary judgment are granted and Plaintiffs' Complaint is dismissed.

This decision falls under Pennsylvania's Right to Farm Act. Section 951 of that Act sets for the legislative policy of the Commonwealth as follows.

It is the declared policy of the Commonwealth to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and ordinances. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this act to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances. Gilbert v. Synagro Cent., LLC, 2015 Pa. LEXIS 2998, 46-47 (Pa. Dec. 21, 2015), *quoting*, 3 P.S. § 951 (emphasis added).

Our Supreme Court sweepingly endorsed this policy in Synagro, *supra*. This policy is confirmed further by the title of the chapter, 14B, "PROTECTION OF AGRICULTURAL OPERATIONS FROM NUISANCE SUITS AND ORDINANCES." 3 P.S. Ch. 14B, §§ 951-957. Synagro, *supra*, *citing*, 3 P.S. Ch. 14B, §§ 951-957.

In furtherance of the expansive protections, 3 P.S. 954 creates a one year statute of repose which bars this suit because the record reflects the application of waste began in 2011 and the suit was filed in July 2013.

The Plaintiffs' argument that the farming operations were unlawful (and therefore beyond the scope of the Right to Farm Act) is without merit. First, the regulations, codes and statutes allegedly violated are essentially enforced by governmental agencies, such as DEP, and yet DEP

has taken no action to shut down the operation.³ DEP has not fined Defendants. Instead, Defendants remedied the violations. Plaintiffs do not cite any cases in the Commonwealth in which a Court has ruled that the Right to Farm Act does not protect a family run farm because DEP issued NOV's or because instances of non-compliance with regulations, codes and/or statutes rendered the farms unlawfully operated. Second, in Synagro, DEP issued NOV's very similar to the violations in the instant case and yet the farming operations at issue fell within the protections of the Right to Farm Act. The violations were deemed unrelated to any harm.⁴

Similarly, Plaintiffs' argument that the addition of a storage tank on the Bowes Farm in April 2012 is a substantial change is likewise without merit. What is at issue is the application itself, which has been in existence since 2011.⁵

In short, dismissal is mandated by the public policy of the Commonwealth as set forth the by Legislature and sweepingly endorsed by the our Supreme Court Synagro.

Accordingly, the Court enters the following Order.

³ Five USDA inspectors check that the Nicholas Meat facility is properly run.

⁴ 3 P.S. § 954(b) essentially provides that the Right to Farm Act does not defeat the right of any person to recover damages for harm caused by farming operations that violate statutes or regulations. However, that provision does not apply to injunctive relief and an action to recover such damages must establish a causal connection between the violation and harm. In the present case, Plaintiffs' only remaining counts are for nuisance and failure to abate, seeking an injunction and damages.

⁵ A substantial change in the farming activities which form the basis of the nuisance resets the one year statute of repose under the Right to Farm Act. The Court notes that the Plaintiffs Second Amended Complaint indicates that the use of the tank occurred in April 2012, which is more than one year prior to the filing of the instant litigation. See Plaintiffs' Second Amended Complaint, ¶¶ 46, 51. Furthermore, Defendants have stored FPW at Nicholas Meat since 2011.

ORDER

AND NOW, this 4th day of **March 2016** it is ORDERED and DIRECTED that summary judgment is GRANTED in favor of the Defendants. Plaintiffs' complaint is dismissed. This matter is removed from the trial list and from the Court's schedule. All matters that have been scheduled are cancelled.

BY THE COURT,

March 4, 2016

Date

Richard A. Gray, J.

cc: Peter Britton Bieri, Esq. for Plaintiffs
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