

Motions, Pleadings and Filings

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
 Judicial District of Danbury.
 Christine ZIEMBICKI, et al.
 v.
 Charles E. WALSH, Jr., et al.
No. CV030348766S.

April 30, 2004.

Begos & Horgan LLP, Westport, for Christine Ziembecki, Robert Ziembecki and Theresa Marie Gereg.

[Lawrence Mix](#) and Daniel Readyoff, Danbury, for Charles E. Walsh and Patricia M. Walsh.

NADEAU, J.

*1 A.) Defendants' motion to dismiss Count One is denied.

Plaintiffs' effort to enforce a private restriction is not founded upon a specific statute which carries within its own terms a time limitation. As a result, it is the apparent teaching of *Ambroise v. William Raveis Real Estate, Inc.*, 226 Conn. that a temporal difficulty with plaintiffs' claims does not involve a substantive or jurisdictional threshold. This court must therefore refuse to dismiss the count on claim that a jurisdictional or subject matter flaw exists. See, *id.*, at 766-67.

B.) As to Count Two, alleging violations of zoning regulations, defendants suggest that dismissal lies for failure to exhaust administrative remedies. Administrative remedies need not be exhausted in actions alleging zoning violations wherein a plaintiff sets out "clear and precise allegations of specific material claims of damage ..." [Cumings v. Tripp](#), 204 Conn. 67, 76 (1987); [Raymond v. Rock Acquisition Ltd. Partnership](#), 50 Conn.App. 411 (1998).

This court initially felt the phrase "specific and material claims of damage" was not precisely pointed as to wrongs done or harm endured. However, it appears from the cases that the focus leans toward harm suffered. For example, *Raymond, supra*, at 416.

The allegations of harm suffered here would surely be embraced by the term "specific and material," and are assuredly more specific (and as material) as those reviewed in *Cummings* and *Raymond*. (Here, plaintiffs have complained of raw waste in the swimming area, and/or an inability to swim there; odors of waste; diminution of property value and annoyance, irritation and personal inconvenience.)

C.) As to Count Three, which sounds in nuisance, the court has also concluded that this count should not be dismissed. This result seems consistent with the theme of *Cummings, supra*. Against defendants' suggestion that this count must go out for failure to exhaust administrative remedies, it has already been concluded, as to Count Two, that an "exhaustion" dismissal would not be appropriate. With this third count, the same result should obtain, but for two reasons. First, the action seeks, *inter alia* money damages, not available administratively. Thus, to send nuisance issues to an administrative forum might require at least a two-forum resolution of the issues, for only this court can hear the damages claim. Similarly, once it has been determined that the "violation" theme of Count Two is set out sufficiently to meet the exception to exhaustion requirements, a dual forum adjudication would also be present were this nuisance-related defense motion to prevail, damages aside.

It is for this set of reasons that *Cummings, supra*, in a parallel situation, leaves standing the nuisance claim therein. [Cumings, supra](#), 204 Conn. at 79-81.

The *Cummings* court noted the likelihood that the establishment of a nuisance often necessitates weighing zoning regulations. Thus, this court concludes that its Count Two ruling essentially foreordained the Count Three result.

*2 Defendants' motion to dismiss is denied as to all counts.

Not Reported in A.2d, 2004 WL 1098785
 (Conn.Super.)

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