Golf Course Liability to Adjoining Homeowners

Over the past fifteen years or so, there has been an explosion in the number of people who golf. This, in turn, has led to an increase in the number of golf courses. As the number of golf courses has increased, so too has the number of homes which adjoin those golf courses. Since, as the Court of Appeals has noted, "even the best professional golfers cannot avoid an occasional 'hook' or 'slice,'" *Nussbaum v. Lacopo*, 27 N.Y.2d 311, 319, 317 N.Y.S.2d 347, 353 (1970), one would think that the proximity of the homes to golf courses is a liability disaster waiting to happen.

The only reported case in New York in which an adjoining landowner sought to recover against a golf course for personal injuries resulting from a shot from the course is *Nussbaum v. Lacopo*, 27 N.Y.2d 311, 317 N.Y.S.2d 347 (1970). The injured plaintiff sought recovery under theories of nuisance and negligence in design. Nussbaum's residence was situated on land abutting the thirteenth hole of defendant's country club, with approximately 20 to 30 feet of rough containing 45 to 60 foot high trees between the fairway and plaintiff's patio. The proper line of flight from the tee to the green on the thirteenth hole was at a substantial angle from the property line. A trespasser on the golf course hit a shot from the thirteenth tee which hooked and allegedly hit Nussbaum, who was on his patio at the time. *Nussbaum* at 314, 317 N.Y.S.2d at 349-50.

The court held that the design of the golf course could not support a claim of nuisance or negligent design. Simply intruding on a neighboring property by reason of the golf balls is not, in and of itself, enough to create a nuisance. "[O]ne who deliberately decides to reside in the suburbs on very desirable lots adjoining golf clubs and thus receive the social benefits and other not inconsiderable advantages of country club surroundings must accept the occasional, concomitant annoyances." *Nussbaum* at 315-16, 317 N.Y.S.2d at 351 (citing to*Patton v. Westwood Country Club Co.,* 247 N.E.761 (Ohio App. 1969) discussed below). Finding that a nuisance would need to be a continuous invasion of rights, an occasional golf ball on the Nussbaum's property was not enough to constitute a nuisance. Prior to the incident in question, there was no evidence of any balls striking Nussbaum's house, though there were golf balls found in the bushes and fence area on their property near the rough. *Nussbaum* at 316-17, 317 N.Y.S.2d at 351-52. The court noted, however, that "[r]emedial steps would be called for only if defendant had notice of a danger." *Nussbaum* at 317, 317 N.Y.S.2d at 352.

Using *Patton* as support, the court determined that a homeowner who has decided to reside on property abutting a golf course is not entitled to the same protection as a traveler on a highway. The determination was based on a factual comparison with *Gleason v. Hillcrest Golf Course*, 148 Misc. 246, 265 N.Y.S. 886 (Mun. Ct. Queens Co. 1933), finding the *Nussbaum* barrier was not inadequate as in *Gleason* (a six foot high wire fence) and the direction of tee to green was away from the Nussbaum property (not parallel like in *Gleason*).*Nussbaum* at 316-17, 317 N.Y.S.2d at 351-52.

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In *Patton*, *supra*, plaintiff commenced an action to enjoin the operation of defendant golf club in a manner whereby golf balls landed on her property. Defendant constructed a nine-hole golf course in 1914, adding another nine holes in 1924. In 1955,

Patton purchased a parcel immediately adjacent to the fifteenth fairway, constructing her home there in 1956. Patton's back yard abutted the fifteenth fairway, approximately 180 yards from the fifteenth tee. *Patton* at 762.

At the trial of the action, there was evidence that golf balls landed on Patton's property on numerous occasions, breaking windows several times. There was also evidence that golf balls nearly struck one daughter several times, actually striking a daughter on one occasion. The record further showed that the condition complained of by plaintiff existed from the time her house was built and she moved in. Though Patton contended that the situation worsened over the years, the court found that the condition had remained constant. *Patton* at 762-64.

The trial court's denial of an injunction was affirmed. Without determining whether the act of hitting golf balls onto Patton's property was a nuisance, the court did determine that the plaintiff "came to the nuisance" by moving to the property after the course was already in operation. *Patton* at 764. Further, there was evidence that in 1963 changes were made to the fifteenth fairway, including moving the fairway farther from, and planting 20 pine trees opposite, the Patton premises.

An injunction was also denied in *Hellman v. La Cumbre Golf and Country Club*, 8 Cal. Rptr. 293 (Cal. App. 2 Dist.. 1992). In August 1985, the plaintiffs' purchased their home which was constructed in 1970 and was adjacent to the tenth fairway of defendant's golf course, which had been in operation since 1957. Plaintiffs visited the home three times prior to purchase, once finding a golf ball in a gutter and also pacing the distance between the tenth fairway and the property line (determining that golf balls would not be a hazard). There was an expectation by one of the plaintiffs that living adjacent to a golf course may result in some golf balls landing on the property. *Hellman* at 294.

Plaintiffs claimed that, since moving in, five to ten balls landed on their property each week, with balls landing every day of the week, more on weekends. The plaintiffs were nearly hit on several occasions and their automobiles were dented by golf balls. They would not have guests outside during the day and would not use the pool for fear of being hit. The golf club put forth testimony that there were an average of 100 players daily and that the tees were in the same location as they had been since 1959 (except that championship tees were added). Its expert testified that the course met the standard practice at the time it was built, as well as at the time of the trial, relating to design and setbacks safety. *Hellman* at 294-95.

The appellate court affirmed the lower court's decision denying the plaintiff's monetary damages and injunctive relief. There was a sufficient basis for the lower court to conclude that the rate of balls landing on plaintiffs' property was constant since the club opened; that there had not been an increase in the number of players using the club over that period of time; that the tees were not moved; and that there were five to ten balls a week which landed on plaintiffs' property. That the plaintiffs acquired their property with knowledge of its location next to the golf course put them on constructive notice that golf balls would land on their property (though this, in and of itself, is not sufficient to bar a claim for nuisance, it is a factor). As such, there was no basis for the lower court to find that a nuisance existed. *Hellman* at 296-97.

However, in another California case an injunction requiring a golf course to redesign two of its holes was upheld in *Sierra Screw Products v. Azusa Green, Inc.*, 151 Cal. Rptr. 799 (Cal. App. 1979). Defendants operated a golf course beginning approximately 1964. In 1969, the plaintiff purchased a parcel of undeveloped land from defendant adjacent to the third and fourth fairways. At the time of the purchase there were no fences, trees or other obstructions between the golf course and the undeveloped parcel. A provision of the Contract of Sale between the parties obligated defendant to plant trees and install a fence along the border at plaintiff's request. *Sierra Screw* at 801. In 1971, construction of plaintiff's building was completed. Shortly thereafter, golf balls came onto plaintiff's property, hitting automobiles on the premises. This led to

plaintiff requesting that defendant plant the trees as set forth in the Contract. Plaintiff itself installed a fence along its property line, obtaining a credit from defendant for what defendant was to install. *Id*.

The lower court found that during the period of August 1971 and the date of the trial, "innumerable golf balls" landed on plaintiff's property from the third and fourth fairways which caused damage to automobiles and, on occasion, to employees who had been struck. *Id*. The lower court also found that the golf balls landing on plaintiff's property were the result of inadequate fencing and the design of the third and fourth fairways. The lower court concluded that the operation of the third and fourth fairways constituted a nuisance entitling the plaintiffs to an injunction directing a redesign of the two holes to "minimize" the intrusion of golf balls onto the plaintiff's property. *Id*. at 801-02. In affirming the judgment, the appellate court determined that there was sufficient evidence to support the lower court's findings. Further, the language in the Contract did not limit the defendant's liability for intruding golf balls nor did the Contract create an implied easement to allow golf balls to land on plaintiff's property.

It appears from these cases that in order for a landowner to successfully claim a nuisance against an adjoining golf course, there must be continuous, not occasional, instances of golf balls landing on the landowner's property. The location of the property in relation to the layout of the course is also a factor, as is the existence and extent of barriers between the course and property.

Whether the existence of an operational course predates the claimant's home is an important factor as is the claimant's knowledge at the time of their purchase of the possibility and probability of golf balls entering their property. Whether the golf course took any steps to minimize the intrusion once it became aware of it may also be a factor.

One who dreams of living on or next to a golf course must be advised that a golf ball may very well lawfully shatter that dream.