

COURT FILE NO.: 53551-08 Whitby
DATE: 20080307

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SYLVIA SCOTT and ROBERT SCOTT

)
)
) **Paul Gemmink, for the Plaintiffs**
)
)
)

Plaintiffs

- and -

IAIN PIKE and MARION PIKE

)
)
) **Paul S. Lenardon, for the Defendants**
)
)
)

Defendants

) **HEARD: February 26, 2008**

RULING ON MOTION

Graham J.:

Issue

[1] On the basis of a claim for private nuisance, the plaintiffs seek an interlocutory injunction preventing the defendants from operating the outdoor wood-fired boiler (OWB) located on the defendants' residential property.

Background

[2] The plaintiffs, the Scotts, and the defendants, the Pikes, have been next-door neighbours since the plaintiffs moved into their home in 2004. They live in a predominantly rural area south of the town of Uxbridge.

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[3] The defendants state that until the fall of 2006 they heated their home using an interior wood-burning fireplace insert and, rarely, an oil furnace. They state that they also used a wood-burning stove and a kerosene heater to heat their garage. They state that their annual heating costs were about \$900 per year compared to \$3,500 per year paid by the previous owners of their house who used the oil furnace and did not heat the garage.

[4] The defendant, Mr. Pike, operates a tree cutting and trimming business. He uses wood cut in the course of his business for heating purposes. This benefits him twice because he does not have to pay for the wood and he does not have to pay to dispose of it.

[5] The defendants state that they received some complaints from the plaintiffs about smoke from the fireplace insert although they did not receive any complaints about smoke from the previous owners of the plaintiffs' house.

[6] The defendants state that after the winter of 2005/06 they were worried about chimney fires and felt that they would have to install a stainless steel liner in the chimney in order to continue to use the fireplace insert. They also state that the wood stove had then fulfilled its life expectancy and had to be replaced.

[7] The defendants approached their next-door neighbours, on either side, and asked if they would be interested in buying an OWB together.

[8] An OWB is a wood-fired furnace that is usually housed within a small insulated shed located some distance from a house. Inside an OWB is an oversized firebox that can accommodate large loads. Surrounding the firebox is a water jacket that can be heated. The OWB cycles water through the jacket and delivers hot water to the house by water pipes that run underground to deliver hot water for both space heating and domestic use.

[9] The plaintiffs were not interested. They state that they told the defendants that they were concerned about smoke. The defendants deny that the plaintiffs mentioned smoke. In any event, the neighbours on the other side of the defendants, the Kerrigans, agreed to participate.

[10] In the fall of 2006, an OWB was installed in the defendants' backyard. The defendants state that the cost of the OWB was about \$13,400 including installation.

[11] The plaintiffs state that they complained to the defendants about smoke from the OWB the first day it was used and that they have suffered as a result of smoke from the OWB many times since.

[12] The plaintiffs submitted copies from a daytimer which they say contains references to some of the occasions that the OWB emitted smoke onto their property.

[13] The entry for October 10, 2006, the day the OWB was first fired up, indicates that Ms. Scott spoke with Mr. Pike as the plaintiffs' house was full of smoke because their windows were open.

