

Odors/Automobile Assembly Plant: Federal District Court Addresses Dismissal Motion for Nuisance/Negligence Claims



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A United States District Court (W.D. Missouri) (“Court”) addressed in a March 31st Order issues arising out of a class action that had been filed against a Kansas City, Missouri, Ford Motor Company (“Ford”) assembly plant (“Plant”). See *Thornburgh v. Ford Motor Co.*, 2021 WL 1230271.

Plaintiff Otto E. Thornburgh (“Thornburgh”) alleged upon behalf of himself and others similarly situated that the Plant releases odors that:

. . . invade Plaintiff’s property, causing property damage through negligence, gross negligence, and nuisance.

The putative class had been defined as:

. . . including [a]ll owner/occupants and renters of residential property residing within two (2) miles of the Plant’s property boundary.

Ford filed a Motion to Dismiss both counts pursuant to Federal Rule 12(b)(6).

The Court notes that Ford in pursuing its Motion to Dismiss does not contest the facts at this stage of the proceedings.

The company argues there is no cause of action for nuisance or negligence as a matter of law.

The Court first addresses whether the nuisance cause of action should be dismissed.

Ford argued that the nuisance cause of action should be dismissed for the following infirmities:

- Failure to specify whether the nuisance is public or private
- Failure to characterize the alleged nuisance as either permanent or temporary

As to the alleged failure to specify whether the nuisance is public or private, the Court states that Missouri law holds that public and private nuisances are not mutually exclusive approaches to an alleged nuisance factual situation. It further notes that:

. . . Permitting both types of nuisance to proceed as a general nuisance claim is also consistent with “mixed” nuisance theories as stated in the Restatement 2d. of Torts, § 821C, Ill. 2(e) . . .

Similarly, the Court holds that distinguishing between temporary and permanent nuisance is not necessarily required. Instead, it is related to statute of limitations and damage measurements considerations.

Ford also argued that, as to the alleged public nuisance, it should be dismissed because:

- Failure to plead any special injury recognized by Missouri courts
- The alleged special injury necessarily cannot be special because a large part of the community suffers from it as well
- Recent decisions dismissed public nuisance claims very similar to what is asserted for failing to adequately allege a “special injury”
- Failure to adequately allege that a common community right has been interfered with

The Court rejects these arguments holding that the Complaint includes specific allegations of harm for 15 individuals in addition to Thornburgh. It further cites Missouri law for the proposition that plaintiffs have been allowed to recover for the loss of use and enjoyment of their land or property. Interference with the full use and enjoyment of property is stated to have been held under Missouri law to constitute a special harm for purposes of public nuisance claims.

The Court rejects Ford’s argument that an injury cannot be special if there are a large number of plaintiffs (i.e., the harm those plaintiffs suffered is not special).

As to common community right, the Court holds that in viewing Thornburgh’s allegations in its most favorable light Thornburgh has put forth sufficient allegations that the right to uncontaminated land and unpolluted air has been interfered with.

The Court next rejects Ford’s argument that Thornburgh has only alleged that the nuisance is “annoying and inconvenient.” The company argued that this is insufficient to support a private nuisance action under Missouri law.

The Court reviewed the Complaint and references allegations that it considers more significant than inconvenience and annoying, citing:

- A strong paint-type smell can often be smelled outside our home
- Fumes are strong and a plaintiff can’t go outside because of potential nausea
- Requirement to stay inside most of the time due to the smell
- Smell causes headaches and nausea

Such allegations are deemed by the Court to have (if true) substantially unreasonably interfered with the use and enjoyment of private property.

The Court then addresses Ford’s argument that the negligence and gross negligence causes of action should be dismissed because:

- Missouri does not recognize gross negligence
- The allegations are insufficient to support a claim for ordinary negligence

The Court states that the Supreme Court of Missouri has held that it does not recognize gross negligence. As a result, it holds that:

. . . to the extent Count II asserts a claim based on Gross Negligence, plaintiff is precluded from asserting a claim based on gross negligence.

However, the Court rejects Ford’s argument that negligence was not properly pleaded. It cites allegations in Thornburgh’s Complaint regarding alleged Ford failures with respect to:

- Exhaust emission stacks
- Paint shop spray booths
- Curing ovens

- VOC emission processing systems
- Emission capture and add-on control systems
- Systems for processing wastewater and paint sludge

The Complaint further cites alleged issues with the paints utilized by Ford which are stated to contain higher levels of VOCs than other reasonably available alternatives. As a result, the negligence claim is not dismissed.

A copy of the Order can be downloaded [here](#).