
BILL KING

The Law of the Links: TOO CLOSE FOR COMFORT

by Lawrence Savell

Real estate listings indicate that properties next to a golf course often command handsome prices. This is no doubt due to the premium golf devotees place on having their sport of choice only a few spike steps away.

But not everyone who lives adjacent to a course is happy. Some people view the course next door as a nuisance.

This was the case in *Bechhold v. Mariner Properties, Inc.* Robert and Marianne Bechhold purchased a house in Sanibel Island, FL, in 1983. Their house sits adjacent to the Dunes CC, owned and operated by Mariner Properties.

When the Bechholds bought their home, their back yard was very close to the third tee, and golf balls rarely fell in their back yard. Mr. Bechhold estimated that twelve landed there each year between 1983 and 1988.

In 1988, however, Mariner reconfigured the course. As a result, the Bechholds' back yard is now approximately 170 yards from the blue tees. The fairway is bounded on the right by a lake and on the left by a row of houses including the Bechholds'. The fairway is about 50 yards wide near their home. Thus, a drive that seeks dry land and drifts a few degrees to the left will likely land in their back yard.

Mr. Bechhold estimated that, since the reconfiguration, approximately one thousand balls enter his back yard annually. He stated that balls have damaged the roof and solar heating system. Balls also have broken windows, which he replaced with bulletproof glass. Bechhold reported that he and his wife were afraid to use parts of their yard or park their car in their driveway.

Subsequently, the Bechholds sued Mariner, alleging that the course was a nuisance. In law, a *nuisance* occurs when one's unreasonable or unlawful use of their property obstructs or injures the rights of others (including their right to enjoy their property). A nuisance that affects only a single person or a few persons is often called a *private nuisance.*

In response, Mariner filed a motion for *summary judgment,* asking the court to rule in its favor without a trial on the ground that there were no *issues of fact* (that is, a dispute between parties over the circumstances of the case, as distinguished from *issues of law,* which deal with the legal principles applied to those facts) to be decided. The court granted the motion, but the Bechholds appealed.

The Court of Appeal of Florida, Second District, reversed the trial court's granting of summary judgment to Mariner. The appellate court observed that private nuisance cases generally hinge on whether the use of the offending property (in this case the reconfigured golf course) was *reasonable* under the circumstances. The existence of such a factual question makes it difficult for a party to win on summary judgment, and Mariner had not proved that there was no dispute over whether the use of the course was reasonable.

The Court thus sent the case back down for trial. The Court noted, however, that its decision did not mean it was ruling that the conditions constituted a nuisance. In fact, the Court pointed out the difficulty the Bechholds would have proving their case, stating "Living on a golf course and living with golf balls necessarily go hand-in-hand." The Court specified that the issues for the trial court to decide were (1) whether the Bechholds were being subjected to an unreasonable exposure to falling golf balls and (2) if so, what steps, if any, would be appropriate to remedy the problem.

Other courts facing nuisance actions against golf course operators have come to varying conclusions based on the particular state law and facts involved in each case. Some cases focus on the frequency of errant drives. For example, a New York court concluded that golf balls landing "once or twice a week" on an adjacent property was not a sufficient impairment of the plaintiff's rights to qualify as a nuisance. Other cases focus on what actions the parties have or could have taken. For example, an Ohio court ruled for a golf club where the plaintiff had built his house knowing it would be next to a fairway and where the club had made remedial changes to the fairway layout to reduce the risk. A New Jersey court ruled that, if a simple relocation of the tees could greatly reduce the hazard, relocation would be required. □

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