

12 February 2020

PRESS SUMMARY

Giles Duncan Fearn; Gerald Kraftman; Ian McFadyen; Helen Claire McFayden; Lindsay Urquhart (Appellants) v The Board of Trustees of the Tate Gallery (Respondent) [2020] EWCA Civ 104

On appeal from: [2019] EWHC 246 (Ch)

Judges: Sir Terence Etherton MR, Lord Justice Lewison, Lady Justice Rose DBE

BACKGROUND TO THE APPEAL

The appellants are the owners of four flats adjacent to the Tate Modern art gallery on the south bank of the River Thames in central London. The flats are of a striking modern design, and include “winter gardens”, a type of indoor balcony with floor-to-ceiling windows looking out over London. These flats were designed and constructed between 2006 and 2012. Around the same time, a new extension to the Tate Modern was built called the Blavatnik Building. On the top floor of the Blavatnik Building there is a viewing gallery which runs all along the four sides and allows visitors to the Tate Modern to enjoy a 360-degree panoramic view of central London. The viewing gallery attracts hundreds of thousands of people each year with a maximum of 300 visitors at one time. From the south side of the viewing gallery, visitors can see directly into the “winter gardens”, through to the general living accommodation of the flats. Visitors to the viewing gallery frequently look into the appellants’ flats, sometimes with binoculars, and less frequently take photographs which they post on social media.

The appellants claimed that by allowing visitors to overlook into their flats, the Tate had committed the tort of nuisance, and sought an injunction against the Tate to close the part of the viewing gallery which gives views into their flats. Private nuisance is a common law tort, or civil wrong, which is defined as an unlawful interference with a land owner’s use or enjoyment of their land. The trial took place before Mr Justice Mann in the High Court of Justice on 2, 5, 6, 7, and 12 November 2019. He dismissed the claim, and the flat owners appealed to the Court of Appeal.

JUDGMENT

The Court of Appeal unanimously dismisses the appeal.

REASONS FOR THE JUDGMENT

The Court of Appeal has dismissed the appeal on the basis that overlooking does not fall within the tort of nuisance. Over the hundreds of years that the tort of nuisance has existed, there has never been a reported case in this country in which a court has found that overlooking by a neighbour constituted nuisance [53]. On the contrary, courts have recognised that, subject to planning permission being given, an owner of land may create windows which overlook a neighbour’s property [54-61].

The Court of Appeal has held that there are other laws which protect privacy, including the law relating to confidentiality, misuse of private information, data protection (Data

Protection Act 2018), harassment and stalking (Protection Harassment Act 1997) [84]. Parliament has created legislation in this area, and is better able to weigh up the competing interests of landowners than the courts [85].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>