

## ***Morris v Curran* [2019] SC KIR 77**

### **Background and decision**

The pursuers resided in a ground floor flat. The upper flat was owned by the first defenders, who lived and worked in Hawaii. The flat was occupied by the second defender who rented the property. The upper flat was also used by the first defenders friends and family, as well as others. Prior to the purchase of the flat by the first defender the then owner installed a Saniflo macerator toilet in the premises. The pursuers claimed that the noise from the toilet sounded at times like noise akin to a motor bike or chain saw, and at other times, like a loud growl. The noise was more noticeable to the pursuers at night. They claimed that it disturbed their sleep. The pursuers claimed that the noise from the toilet was intolerable and not reasonable. Sheriff McCulloch stated that the pursuers had an obsession with activity of any sort in the upper flat.

The noise (as measured by the pursuers' sound engineer) from the toilet exceeded WHO guidelines on two occasions. The sheriff stated that the macerator had been properly installed and maintained. There was also inadequate sound insulation between the two properties which could allow increased noise to reach either property.

The sheriff then went on to address the legal issues which were involved in the case. In the leading Scottish nuisance case of *Watt v Jamieson* 1954 SC 56 at 58 Lord President Cooper (who was sitting in the Outer House) stated that in order that the state of affairs which is complained of ranks as a nuisance, it must be *plus quam tolerabile* when due weight has been given to all the circumstances of the case. The sheriff stated that it was up to the pursuers to establish the fact that the noise in question was, at all times, unreasonable. The sheriff expressed the view that whereas the pursuers were truthful, they had a tendency to exaggerate the degree of annoyance to which they were subjected. Indeed, they had become fixated on the noise and had become oversensitive and obsessed with the noise. The noise was simply an occasional annoyance, particularly at night. The sheriff added that the pursuers did not have a right to silence. He, therefore, dismissed the action.

### **Comment**

Over the years there has been a paucity of cases relating to noise nuisance, especially north of the Border. The courts take into account a variety of factors in determining whether an adverse state of affairs ranks as a noise nuisance, including the duration and intensity of the noise, and the time of day during which the noise is made (*Bamford v Turnley* (1862) 31 LJQB 286). The sensitivity of the pursuer is also taken into account (*Heath v Brighton Corporation* (1908) 24 TLR 414.) These were essentially the factors which were relevant in the instant case. However, given the fact that the pursuers had exaggerated the levels of noise to which they had been subjected, the occasions on which they were significantly annoyed by the noise, and the fact that they were oversensitive to the noise, the pursuers' action against the defenders was doomed to failure at the outset.

Francis McManus

University of Stirling