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NOISE IN THE CITY

The topic of nuisance, especially noise, originating from a property owner's neighbour, is quite a contentious topic. However, it is widely accepted and outlined by our courts that property owners are expected to bear reasonable levels of nuisance from their neighbours.

In *Van der Merwe and Others v Drenched Boxing (Pty) Ltd and Others* the Applicants (*Van der Merwe and Others*) resided in a building that is situated in the Cape Town City Centre. In the building right next to theirs, *Drenched Boxing* (the Respondent) opened their doors for business during August 2020. The gym's premises are zoned for commercial use. As can be expected from a gym, they had classes during the week, during which loud techno and dance music was part of the class, and the instructor's voice was amplified by a microphone. The Applicants claimed that they were being woken up by the noise originating from the gym, 6 days of the week.

After contacting the manager of the gym, the City of Cape Town ("the City") and the Ratepayers' Association, who contacted the City's officials and the ward councillor, a written warning was issued to the Respondents by the City. When the Respondents still proceeded with the classes, the Applicants approached the court for relief.

The Court granted an interim interdict against the Respondent. The Respondent then approached acoustic engineers and Audio-Visual specialists to minimize the noise that was being produced by the gym. However, the Applicants still sought to make the interim order, a final order, claiming that the Respondent was still creating noise that was disturbing them.

On the return day, the court held that the interim order can only be made final if the applicants establish the requirements for a final interdict, which are that the owners must establish: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of similar protection by any other ordinary remedy.

The court found that everyone is in general permitted to use their property for any purpose they choose, provided that the use of the property should not intrude unreasonably on the use and enjoyment by the neighbours of their properties. The Court highlighted that a person setting up home in the inner city cannot expect the tranquillity of life in the leafy suburbs, but, such a person is still entitled to expect that his or her neighbour, whatever its character, will use its property in such a manner so as not to unreasonably intrude on the ordinary amenities of the inner city resident.

The court then looked at the final requirement that there must be no other remedy or protection available to the applicants, and found the Applicants failed to comply

with the mechanisms that are contained in the Noise Control Regulations, and therefore the interdict could not be made final.