

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

Dudley v. API Indus., Inc.

2025 NY Slip Op 07379 (N.Y. Ct. App. 2025) · No. 2022-00273 · Decided December 31, 2025

SUMMARY

The New York Appellate Division, Second Department, held that a private nuisance claim may be maintained collectively by homeowners alleging interference with the use and enjoyment of their private property, even when many households are affected. It held that the plaintiffs' negligence claim failed because they alleged neither tangible property damage nor physical injury, and that stigma damages and diminution in property value were insufficient. The court modified the lower court's order accordingly and otherwise affirmed, including the class certification ruling.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Helen Voutsinas; Angela G. Iannacci, J.P.; Robert J. Miller; Donna-Marie E. Golia
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 31, 2025
DOCKET	2022-00273
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from an order denying summary judgment on negligence and private nuisance claims, granting class certification, and ruling on motions to strike evidence in a putative class action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Class-certification and evidentiary rulings are reviewed for abuse of discretion or whether the lower court providently exercised its discretion.
PRECEDENTIAL VALUE	published
PARTIES	API Industries, Inc. v. Joseph Dudley, et al.

TOPICS

negligence

class actions

summary judgment

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether plaintiffs could maintain a negligence claim based solely on alleged odor invasions, interference with property use, and diminution in property value without alleging physical injury or tangible property damage.
2. Whether a private nuisance claim may be asserted collectively by a large group of homeowners whose individual property-use rights were allegedly affected by a common source of odors.
3. Whether the Supreme Court properly granted class certification for the private nuisance claim.
4. Whether the Supreme Court properly declined to strike certain evidence submitted on the class-certification motion and properly struck defendant's exhibit R.

HOLDINGS

1. The negligence claim must be dismissed because plaintiffs alleged neither physical injury nor tangible property damage; diminution in property value and stigma damages alone are insufficient under New York law to sustain negligence.
2. A private nuisance claim may be maintained by a collective of individuals when the alleged nuisance interferes with each individual's private right to use and enjoy privately owned land; the number of affected persons alone does not convert the claim into a public nuisance.
3. The Supreme Court properly granted class certification because common questions predominated and the private nuisance claim was not a sham at the certification stage; variation in damages among class members did not defeat certification.

KEY QUOTATIONS

“However, the plaintiffs failed to allege any tangible property damage or physical injury resulting from the odors.” ([*3])

“We determine that the conclusion that a private nuisance cause of action is restricted only to a relatively few individual property owners is not supported by the law.” ([*4])

“The sheer number of people affected by a private nuisance does not serve as a bar to maintaining a cause of action alleging private nuisance for one or any number of plaintiffs.” ([*6])

“Accordingly, the order is modified, on the law, by deleting the provision thereof denying that branch of the defendant's cross-motion which was for summary judgment dismissing the cause of action alleging negligence, and substituting therefor a provision granting that branch of the cross-motion; as so modified, the order is affirmed insofar as appealed from.” ([*7])

FACTUAL BACKGROUND

API Industries operated a facility in Orangeburg that manufactured industrial liners and other plastic products through an extrusion process. Plaintiffs alleged that the process emitted noxious odors that invaded nearby residences, interfered with the use and enjoyment of their properties, and diminished property values. The putative class covered owners or occupants of residential property within specified portions of a 1.5-mile radius around the facility, allegedly encompassing at least 195 and potentially as many as 3,000 households.

PROCEDURAL HISTORY

Plaintiffs commenced a putative class action alleging that noxious odors from defendant's manufacturing facility interfered with the use and enjoyment of nearby residential properties and diminished property values. The Supreme Court, Rockland County, dismissed the public nuisance claim, denied summary judgment on the negligence and private nuisance claims, granted class certification, and made evidentiary rulings. The Appellate Division modified the order by granting defendant summary judgment dismissing the negligence claim and otherwise affirmed the portions appealed from.

DISPOSITION

other

CASES CITED

- William Metrose Ltd. Bldr./Dev. v. Waste Mgt. of N.Y., LLC, 225 AD3d 1223, 1224-1225
- Davies v. S.A. Dunn & Co., LLC, 200 AD3d 8, 16-17
- 532 Madison Ave. Gourmet Foods v. Finlandia Ctr., 96 NY2d 280, 292
- Copart Indus. v. Consolidated Edison Co. of N.Y., 41 NY2d 564, 568-570
- People v. Brooklyn & Queens Tr. Corp., 283 NY 484, 490-491
- DeLuca v. Tonawanda Coke Corp., 134 AD3d 1534, 1536
- Burdick v. Tonoga, Inc., 179 AD3d 53
- Jenack v. Goshen Operations, LLC, 222 AD3d 36, 41
- Matter of Commerce Holding Corp. v. Board of Assessors of Town of Babylon, 88 NY2d 724, 731-732
- Criscuola v. Power Auth. of State of N.Y., 81 NY2d 649, 651
- Murphy v. Both, 84 AD3d 761, 762
- Turnbull v. MTA N.Y. City Tr., 28 AD3d 647, 649
- Del Vecchio v. Gangi, 225 AD3d 666, 668
- Harris v. Miranda, 219 AD3d 1498, 1499
- Barricella v. Papadopoulos, 241 AD3d 1249, 1251
- City of New York v. Smokes-Spirits.Com, Inc., 12 NY3d 616, 626-627
- Domen Holding Co. v. Aranovich, 1 NY3d 117, 123-124
- Sharp v. Norwood, 89 NY2d 1068, 1069
- Burns Jackson Miller Summit & Spitzer v. Lindner, 59 NY2d 314, 334

- Little Joseph Realty, Inc. v. Town of Babylon, 41 NY2d 738, 744-745
- Sullivan v. Keyspan Corp., 155 AD3d 804, 804, 807
- Broxmeyer v. United Capital Corp., 79 AD3d 780, 782
- Benjamin v. Nelstad Materials Corp., 214 AD2d 632, 633
- Queens County Bus. Alliance v. New York Racing Assn., 98 AD2d 743, 744

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