

1996

Barbara Schwarz v. Barbara Spalding : Brief of Appellant

Utah Court of Appeals

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FILED

JUN 28 1996

COURT OF APPEALS

BARBARA SCHWARZ,
235 South 200 East, Apt.111
"The Woodruff"-Bldg.
Salt Lake City, Ut. 84111

IN THE UTAH COURT OF APPEALS

BARBARA SCHWARZ,

(PLAINTIFF-APPELLANT)

VS.

Case no: 960286-CA

OPENING BRIEF

**UTAH COURT OF APPEALS
BRIEF**

BARBARA SPALDING,

(DEFENDANT-APPELLEE)

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DOCKET NO. 960286-CA

On January 1, 1995, Barbara Spalding, a middle aged woman moved into apartment 211, directly above our apartment 111, an apartment which Rosemarie Bretschneider, my 69-years old room-mate and me rented since November 1991.

Briefly after Spalding had moved in, she started to harass us with noise, loud music, rolling of heavy balls over the floor, sounds as bowling balls and billiard sized balls, but out of heavy steel or iron. She also slammed the heels of her street shoes in the floor as she would want to dig holes in the ground and she did (and still does it) for hours. She dropped objects to the floor to frighten us, is bumping with her fitness machine or other heavy instrument with electrical motor on the floor for hours and did and does this just for the purpose to harass us and drive us out of our home.

When she leaves the house, Spalding allows her cats to roll the heavy balls over the floor, to drop objects and to scratch on the floor. There is no time of the day or night when we would be secure of noise harassment by Spalding and the pain the noise and concussion causes. (See also hereto the three pages long declaration by my room mate Rosemarie Bretschneider, filed to this court April 26, 1996.)

We are convinced that Spalding has a hidden agenda to make us homeless, because she ignored our friendly requests in the beginning not to do those noises. She continues to harass us and denied our constitutional right of peace in our home,

She also litters hundreds of rubber bands, blue plastic strings and brown paper from her news paper delivery job on the parking lot, which also is prove what kind of rude person Spalding is. Managers, especially her friend manager Carolyn Brakey let her come away with everything. Both came to our door at Sunday night, April 21, 1996 to yell at us: "Get out! Get out of here! You got evicted, get out!"

We of course are not evicted. No judge signed an eviction order and he can't sign one, because we have evidence enough to show that the termination of tenancy, signed by Spaldings friend Carolyn Brakey on January 31, 1996 was in retaliation for our good faith complaints.

But this is the situation we have to live in.

I believe that Spalding thinks, when we move out, because can't handle her noise harassment, that she gets rid of that case. It should be made clear to her, that even when we would move out one day, that we still can and will claim damages for what she has done to us. She needs to understand that driving us out of our home just makes her legal situation more difficult, because we are forced to file more actions against her.

We also are aware that Spalding tries to turn the matter around by saying we would harass her. This is of course not true. In a few occasions we bumped briefly with the broom stick on the ceiling, to give her a signal that we can't take her stomping, rolling, jumping or loud music anymore. We also tried to move out of apartment 111 to escape Spaldings noise harassments, but managers did not provide any safe apartment for us elsewhere in house. Spalding is the pet of the manager Brakey. When Spalding indeed would feel harassed by us, she would have asked the manager to provide her another apartment. Spalding would get any other apartment she wants by the managers, but she feels happy above us harassing us with noise. She should move in the base-

ment anyhow, to disturb nobody else when she wants to keep her zoo of crazy cats jumping up and down, rolling with balls, hitting down objects and scratching on the floor or when Spalding wants to continue to use her apartment as work-out-place, as a gymnasium in which she rolls, stomps, jumps for many hours even in middle of the night.

Following was handled absolutely improperly by judge Young. All following points should be considered by the Utah Court of Appeals for the judges decision on this case:

A) Judge Young kept the case pending for almost a year, despite that defendant Spalding was served by police with summons and complaint. (See record of case.)

He should have responded to my motions to clarify the case or instructed one of his clerks to respond. Judges all over the United States respond to motions to clarify status of the case. He should have not tried to blame the delay only on me, by knowing exactly that he deliberately delayed the case and that we had to suffer meantime under Spaldings daily noise torture.

B) Spalding was in default. She first filed her response motion after I filed my motion for default. He allowed her to to come away with default and misused his power as judge to protect a defendant he favored.

C) He should have not denied a trail to me. I can bring credible witnesses as to what Spalding is doing to us and I also can provide a tape with her deliberate noise harassment. Spaldings "witnesses" are people which are not living close to her apartment, but live in other parts of that big apartment house, who can't hear what she is doing to us. The only credible witnesses are people which live under her or visit while she is doing her noise harassment to us.

D) Young should have not allowed Spalding to come away with telling the untruth under oath that she would not do the noise harassment. He should have issued a preliminary injunction, because Spalding continued right away her noise harassment and obviously thinks the judge allowed her to continue with it, that she and the manager even can come to our door at nights, screaming at us that we should move out

because being "evicted".

E) Judge Young should have corrected Spalding and manager Brakey of violating the information rules of the courts, instead of attacking me of violations of the information rules, because I asked judge Young for help that Brakey is harassing me by coming to my door in order to make me give up my case and violate the information rules.

F) Judge Young had already a chance to correct manager Brakey in court that retaliation actions and termination of tenancy in retaliation are forbidden by law, because she accompanied Spalding during the hearing before Young on February 9, 1996, but he has not done so. What he said in regards of termination of tenancy in retaliation is that we might have a claim for damages against Woodruff because of that, but we would have to move out, (See transcript, page 35 and 36)...probably move out. Fact is that we have a right for damages against Woodruff and Spalding, and that we don't have to move out, because the law protects us of termination of tenancy in retaliation. However, what judge Young said and not said, inspired obviously manager Brakey and Spalding to come to our door at night and scream at us: "Get out! Get out of here! You got evicted! Get out!" With judge Young not being strict in the case, he made the situation worse.

G) He also denied my right of damages by telling me that 50,000 Dollars for daily noise harassment and pain caused for more than a year would be too high, because I likely would not earn that kind of money in one year. He completely misjudged the situation. When somebody has a job, he or she usually can do that in peace, the person is not under pain all day and night. I have to work at home, taking care of elderly and sick Rosemarie Bretschneider and with my writing job and I have to suffer under pain. Young should have compensated me for suffering.

As far as finances of Spalding are concerned, she should think about that before she noise-harasses somebody. Just because she has not that money available, should not protect her from not being ordered to make that money to pay it to us. She thinks she does not have the money or all that money and can continue to harass us, because nobody can take from her what she does not have. But incarceration would be

would be another option to deal with Spalding.

H) Young also denied my right of a proper judgment in the case. (See transcript, last page.) I am not satisfied with just his minute order.

I) Judge Young did not correct his court reporter Gayle Campbell to transcribe the transcript pursuant to the facts of the hearing. (See my 7-pages long motion to judge Young to make his court reporter to correct wrongful transcribed transcript and to provide me with certified copy of transcript.) Despite that I paid 95 Dollars for that transcript I got none which is certified and none which is truthful. He also allowed his court reporter to write wrong dates on when transcript was requested and paid for to the Utah Supreme Court and Administrative Office of the Utah Courts to get extention of time for filing transcript and she informed the courts that transcript was filed April 4, 1996, when in fact it was filed April 12, 1996. (See records of case.)

J) Judge Young is biased towards me and he should have recused himself and should have given that case to a judge, who does not favor Spalding, but who would have spoken justice as ordered by the law.

RECOMMENDATIONS

I recommend to the Utah Court of Appeals to grant damages as asked by me in my complaint, also because Spalding is in default. I recommend strongly that Spalding gets a preliminary injuction to stop all deliberate noise harassment, e.g. rolling her bowling ball and other hard balls, not giving her cats those objects to play with, to stop to drop objects deliberately to frighten us, to stop to use her fitness machine in middle of the night, to not hammer with her heels on the floor, to not play her music so loud that we have to hear it or to immediately move in another apartment or other apartment house. Alternatively, the court should transfer that case back to the Third District Court, for a jury trail, in which we can bring the prove that Spalding does all those noises deliberately to harass us. Case should be given to absolutely impartial judge.

We cannot move out, because we are not in the financial situation to do so. The list for affordable housing in Utah is very long, as far as waiting tenants are concerned. I got told that the waiting time for affordable housing is at least three years and maybe longer. Spalding, as closed friend of manager Brakey would get any other apartment she wants to rent for same price she rents 211 or she might get even a cheaper apartment. Spalding, despite her litter and harassment actions is very dear to the manager as we noticed. The manager would not refuse her another apartment in the Woodruff-building as they refused us.

Also, we don't see any reason why we should move out, we live in the Woodruff longer than Spalding and she is the cause of all troubles which resulted from her harassment actions. We are protected by Federal Fair Housing Laws, but Spalding's harassment actions are not.

Spalding also should be stopped to scream in the public aisle of the apartment house, that everyone can hear it: "Get out! Get out of here! You got evicted! Get out!" because it is a lie.

The Utah Court of Appeals should also inform me when Spalding files a motion to this court. She never mailed me a Service Copy of what she filed to the courts and I have all reasons to believe that she would continue to violate the information rules, just to prevent that I can respond to it.

Barbara Schwarz

by Barbara Schwarz

Dated this: June 28, 1996

Mailing certificate: A true copy of foregoing Opening Brief was mailed today with prepaid first class postage to defendant Barbara Spalding, 235 South 200 East, Apt.211, Salt Lake City, Ut. 84111.

Barbara Schwarz
by Barbara Schwarz

Dated this: June 28, 1996