

Private nuisance related to construction work under long-term leases

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On 8 July 2022, the District court of Luxembourg-City clarified the scope of Article 544 of the Civil Code in the event of an emphyteusis.¹

A neighbour complained about the nuisance caused by the construction of a large building complex nearby and sued the administration of the City of Luxembourg, who owned the land, as well as the companies involved in the redevelopment project having emphyteutic rights in rem on the respective plots of land.

Based on Article 544 of the Civil Code, the court recalled that this legal provision can be invoked not only against the owner but also against any person who, by reason of a right in rem or a personal right, has one of the attributes of the right of ownership over the property. The court noted that the companies each had such attributes on their respective lots. The judges concluded that it was "the emphyteutic lessee and not the owner of the land (...) who is liable under Article 544 of the Civil Code."

Furthermore, the court pointed out that in matters of private nuisance, the damage suffered by the neighbour must not only be causally related to the new construction directly, but must also be serious and exceed the standard of usual damages caused by construction work carried out nearby. In this case, the court found that, in view of the information submitted, the plaintiff could not have been unaware of the existence, nature and scope of the planned works at the time he moved in next door, so that the inconveniences resulting from the construction works were foreseeable. The court therefore dismissed all of the plaintiff's claims.

1 District Court of Luxembourg-City 8 juillet 2022, civil judgment n°2022TALCH10/00145, role number n°TAL-2019-06288 et TAL-2020-00603.

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