

ILLINOIS POLLUTION CONTROL BOARD
February 20, 2025

ANNA ANDRUSHKO,)	
)	
Complainant,)	
)	
v.)	PCB 23-133
)	(Enforcement - Noise)
THOMAS EGAN,)	
)	
Respondent.)	

INTERIM ORDER AND OPINION OF THE BOARD (by M.D. Mankowski):

On June 27, 2023, Anna Andrushko (Complainant) filed a complaint against Thomas Egan (Respondent), alleging noise-related violations of the Illinois Environmental Protection Act (the Act) (415 ILCS 5 (2022)). On December 16, 2024, Respondent filed a motion for summary judgment (MSJ). On January 15, 2025, Complainant filed a response to Respondent's motion (MSJ Resp.).

For the reasons discussed below, the Board finds that there is a genuine issue of material fact for Complainant's claim. The Board denies Respondent's motion for summary judgment and directs the hearing officer to proceed to hearing.

The Board's interim opinion begins below with the procedural history and the undisputed facts of this matter. After providing the legal background, the opinion discusses the issues and whether summary judgment is appropriate. The Board concludes by denying the motion for summary judgment and directing the hearing officer to proceed to hearing.

PROCEDURAL BACKGROUND

On June 23, 2023, Complainant filed a complaint (Orig. Compl.). On January 4, 2024, the Board struck all the claims and requested relief as frivolous because Complainant failed to state any claim on which the Board could grant relief (Board Order 1). The Board declined to accept the complaint but allowed Complainant to file an amended complaint remedying identified deficiencies within 30 days or face dismissal. *Id.*

On January 29, 2024, Complainant timely filed an amended complaint (Compl.). On March 21, 2024, the Board determined that all but one claim and one request for relief were frivolous (Board Order 2). Specifically, the Board found that Complainant had sufficiently alleged a violation of Section 24 of the Act (415 ILCS 5/24 (2022)) and Section 900.102 of the Board's regulations (35 Ill. Adm. Code 900.102). *Id.* at 5-6. The Board also found that Complainant had properly requested relief in the form of a noise abatement order. *Id.* at 10. The Board dismissed the remaining claims and remedies and accepted the amended complaint as modified for hearing. *Id.* at 14.

FACTS

Respondent did not provide a statement of facts in his motion for summary judgment. From the amended complaint and Complainant's response to the motion for summary judgment, the Board finds the following facts.

Complainant and Respondent are next-door neighbors in Evergreen Park, Cook County. Compl. at 3. Complainant states the noise issues have been ongoing for 10 years. MSJ Resp. at 3. The issues began with loud stereo noises and car horns. Compl. at 5; MSJ Resp. at 3-4. More recently, Respondent obtained a mid-sized dog. Compl. at 6. Although the dog knows commands, Complainant alleges that Respondent does not stop the dog from "barking, jumping, and chasing along the fence" and instead encourages the dog's aggressive behavior against Complainant and her cats. *Id.*

Complainant states she has "suffered inconvenience, health issues, annoyance, discomfort, disruptions to their peace and quiet, invasions of privacy, and the inability to fully use and enjoy their property from the pervasive and intrusive dog barking" coming from Respondent's property. MSJ Resp. at 3. Complainant states she has also been disturbed by loud stereo noise and car horns. *Id.* at 3-4. Complainant's cats are also "disturbed and frightened" by Respondent's barking dog. *Id.* at 7. After unsuccessfully attempting to hire a professional acoustical engineer, Complainant eventually purchased an A-weighted sound level meter to measure the noise levels coming from Respondent's property. *Id.* at 12-13.

LEGAL BACKGROUND

Summary Judgment

Summary judgment is appropriate where the record, including pleadings, depositions, and admissions on file, together with the any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b). For summary judgment, the Board construes all evidentiary material strictly against the movant and liberally in favor of the respondent. *See Pagano v. Occidental Chem. Corp.*, 257 Ill. App. 3d 905, 908, 629 N.E. 2d 569, 572 (1st Dist. 1994).

In deciding a motion for summary judgment, the Board considers the pleadings to determine what the issues are. *See Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill. App. 3d 675, 680, 832 N.E. 2d 403, 407 (1st Dist. 2005). The issues in controversy and the theories upon which recovery is sought are fixed in the complaint. *Steadfast Ins. Co. v. Caremark Rx, Inc.*, 373 Ill. App. 3d 895, 900, 869 N.E. 2d 910, 915 (1st Dist. 2007). A party cannot seek summary judgment on a theory that was never pled in the complaint. *Id.* The very purpose of a complaint is to advise the defendant of the claim it is called upon to meet. *Pagano*, 257 Ill. App. 3d at 911, 629 N.E. 2d at 574.

Statutory and Regulatory Authorities

Section 24 of the Act states: “No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.” 415 ILCS 5/24 (2022).

Section 900.102 of the Board’s regulations states: “A person must not cause or allow the emission of sound beyond the boundaries of that person’s property, as defined in Section 25 of the Environmental Protection Act [415 ILCS 5/25], that causes noise pollution in Illinois or violates any provision of this Chapter.” 35 Ill. Adm. Code 900.102.

DISCUSSION

Respondent’s Arguments

Respondent cites to Section 901.102 of the Board’s noise regulations (35 Ill. Adm. Code 901.102), noting this rule establishes limits for sound emitted to specified land. MSJ at 1. Respondent states it is Complainant’s burden to prove, by an accurate measurement of sound emissions pursuant to procedures outlined Section 910.105 (35 Ill. Adm. Code 910.105), that there has been a violation of noise limits. *Id.* at 1-2. Respondent then argues that although Petitioner alleged he violated Section 901.102(a) and (b) (35 Ill. Adm. Code 901.102(a), (b)), Petitioner cannot meet her burden to prove the alleged violation of the noise regulations. *Id.* at 2. Respondent concludes that, therefore, there is no genuine issue of fact remaining. *Id.*

Complainant’s Arguments

Complainant states that she has been working with a noise expert. MSJ Resp. at 1-2, 25. Complainant first alleges that Respondent has violated certain municipal ordinances and describes her difficulties with local authorities. *Id.* at 4-5. Complainant then turns to state law, providing language from Sections 1, 2, 5, and 25 of the Act. *Id.* at 5-7. Complainant also cites Section 33(c) of the Act (415 ILCS 5/33(c) (2022)), describing facts about Respondent’s dog and other noise issues for the Board to consider under each factor of that section. *Id.* at 7-9. Next, Complainant discusses the civil penalty factors in Section 42(h) of the Act (415 ILCS 5/42(h) (2022)), describing the disruptions she has experienced because of Respondent’s dog. *Id.* at 9-10. Finally, Complainant discusses the specific Board noise-related regulations, providing evidence for the nuisance standard in Section 900 (35 Ill. Adm Code 900) and the numeric noise standards in Section 901 (35 Ill. Adm. Code 901). *Id.* at 11-24.

Board Discussion and Findings

As noted above, the Board previously accepted the amended complaint as modified, allowing only the claim for nuisance noise pollution to proceed. Section 900.102 is the corresponding Board regulation for a nuisance noise pollution claim. 35 Ill. Adm. Code 900.102. However, Respondent’s motion for summary judgment addresses Section 901.102 and the “accurate measurement of sound emissions pursuant to the procedures outlined in Section

910.105.” MSJ at 1; 35 Ill. Adm. Code 901.102, 910.105. Respondent correctly notes that Section 901.102 is a Board regulation that “establishes limits for sound emitted to specified land” (MSJ at 1), but this regulation was never at issue in this case. Complainant never mentioned Section 901.102 in her amended complaint, and the Board did not include Section 901.102 in its order accepting the amended complaint for hearing. Compl.; Board Order 2. Instead, the Board’s order clearly set forth the nuisance noise claim, thereby advising Respondent of the claim he was called upon to meet. *See Pagano*, 257 Ill. App. 3d at 911, 629 N.E. 2d at 574.

The record to date further indicates this was not a one-time misunderstanding or typo. Respondent’s discovery requests, which include Interrogatories (Interrog.), Requests to Admit (RTA), and Requests for Production of Documents (RFP), contain references to the numeric noise regulations in Section 901.102(a) and (b), as well as the measurement standards in Sections 900.103 and 901.105. Interrog. at 4; RTA at 1-2; RFP at 1.

Respondent’s motion appears to rely on Complainant’s noise measurement data (or lack thereof). Regardless of the kind of evidence that Complainant may have offered to support her claim, “[a] party cannot seek summary judgment on a theory that was never pled in the complaint.” *Steadfast Ins. Co.*, 373 Ill. App. 3d at 900, 869 N.E. 2d at 915 (citing *Gold Realty*, 358 Ill. App. 3d at 680, 832 N.E. 2d at 406-407). In *Gold Realty*, *Steadfast*, and *Pagano* cited above, the plaintiff (rather than the defendant) moved for summary judgment based on claims or theories that were never in the complaint. Here, the Board concludes that the same principle applies to a respondent filing for summary judgment on a claim that was never in the complaint – or accepted for hearing by the Board. The Board cannot rule on matters that are not properly before it.

Even assuming the Board could consider a motion based on a claim outside the pleadings, Respondent’s motion is devoid of evidentiary facts and contains only conclusory statements. *See Carruthers v. B.C. Christopher & Co.*, 57 Ill. 2d 376, 380-381, 313 N.E. 2d 457, 459-460 (1974) (plaintiff’s unsupported allegations in the complaint could not raise issues where affidavits and depositions in support of defendant’s motion for summary judgment contained only evidentiary facts to the contrary). The Board cannot determine “the existence or absence of a genuine issue as to any material fact from the affidavits, depositions, admissions, exhibits and pleadings in the case” when Respondent failed to attach or reference any of these forms of evidence. *Carruthers*, 57 Ill. 2d at 380, 313 N.E. 2d at 459.

Therefore, the Board finds that there is still a genuine issue of material fact for Complainant’s nuisance noise pollution claim.

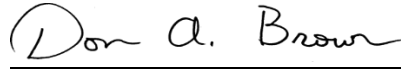
CONCLUSION

The Board finds that there is a genuine issue of material fact for the sole claim of nuisance noise pollution. The Board denies Respondent’s motion for summary judgment and directs the hearing officer to proceed to hearing.

ORDER

1. The Board denies Respondent's motion for summary judgment.
2. The Board directs the hearing officer to proceed to hearing.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 20, 2025, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board