



Hoffman v. Foxfire North

767 N.Y.S.2d 352 (2003) | Cited 0 times | New York Supreme Court | November 21, 2003

This opinion is uncorrected and subject to revision before publication in the Official Reports.
<---text--> (*1)

MEMORANDUM AND ORDER

It is hereby ORDERED that the order so appealed from be and the same hereby is unanimously affirmed with costs.

Memorandum:

Plaintiffs, owners of residential property adjoining a golf course owned and operated by defendant Foxfire North, Inc. (Foxfire) commenced this action seeking damages and a permanent injunction prohibiting Foxfire from using the fifth hole of the golf course. Plaintiffs allege that errant golf shots from the fifth tee have regularly damaged their residence and automobiles and struck members of their family and their guests. Supreme Court properly denied that part of Foxfire's cross motion seeking summary judgment dismissing the nuisance cause of action. Foxfire failed to meet its burden of establishing that the nuisance cause of action has no merit; indeed, Foxfire's own submissions in support of the cross motion raise issues of fact requiring a trial (see CPLR 3212 [b]; cf. Nussbaum v Lacopo, 27 NY2d 311, 316).

(*2)

