****

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

****

FLYNN, C. J., dissenting. I respectfully disagree with the majority's decision. This case arises out an unfortunate dispute between neighbors.[1] Our role on appeal is to review whether a reasonable person in the plaintiffs' shoes would have a legal right to a $100,000 prejudgment attachment of the defendants' property on the basis of the submitted affidavit, unsigned complaint and the evidence introduced at the hearing on the plaintiff's application for a prejudgment remedy. Although the existence of a nuisance generally is a question of fact, for which we invoke a clearly erroneous standard of review; see *Murphy* v. *Ossola*, 124 Conn. 366, 372, 199 A. 648 (1938); where the court makes legal conclusions or we are presented with questions of mixed law and fact, we employ a plenary standard of review, as the plaintiffs concede in their brief. See *Robinson* v. *Coughlin*, 266 Conn. 1, 5, 830 A.2d 1114 (2003) (where court's decision based on conclusion of law rather than exercise of judicial discretion, review is plenary); *Fish* v. *Fish*, 90 Conn. App. 744, 754, 881 A.2d 342 (2005) (court's determination of proper legal standard is question of law subject to plenary review), cert. granted on other grounds, 275 Conn. 924, 883 A.2d 1243 (2005). After invoking the required plenary standard of review in this case, I would reverse the judgment of the trial court granting a prejudgment attachment in the amount of $100,000 because I believe that the court used an improper standard in finding probable cause for the plaintiffs' nuisance claim and that it employed an improper measure of damages, which in this case would reward the plaintiffs for their self-dealing.[2]

Our prejudgment remedy statutes, General Statutes § 52-278a et seq., require that any person desiring to secure a prejudgment remedy attach to his proposed unsigned writ of summons and complaint an ''affidavit sworn to by the plaintiff or any competent affiant setting forth a statement of facts sufficient to show that there is probable cause that a judgment in the amount of the prejudgment remedy sought . . . will be rendered in the matter in favor of the plaintiff . . . .'' General Statutes § 52-278c (a) (2). Where a prejudgment attachment is sought, the defendant has a right to a hearing at which the court shall determine whether such probable cause exists. See General Statutes § 52-278d.

Prior to the enactment of our current prejudgment remedy statutes, a plaintiff's attorney simply was allowed to attach a defendant's property in an amount that he or she chose, without the court's objective assessment of probable cause as to the merits of the underlying action or the amount of the attachment. ''Connecticut's prejudgment remedy statutes were adopted in response to a line of United States Supreme

Court cases prescribing the standards of procedural due process in the area of property rights, foremost among them the opportunity to be heard at a meaningful time and in a meaningful manner.[3] *Roundhouse Construction Corp.* v. *Telesco Masons Supplies Co.*, 168 Conn. 371, 377–78, 362 A.2d 778, vacated, 423 U.S. 809, 96 S. Ct. 20, 46 L. Ed. 2d 29 (1975), aff'd on remand, 170 Conn. 155, 365 A.2d 393, cert. denied, 429 U.S. 889, 97 S. Ct. 246, 50 L. Ed. 2d 172 (1976); 16 H.R. Proc. Pt. 12, 1973 Sess., pp. 5834–42. The statutes were enacted in response to the constitutional requirements set forth in those cases by providing for notice to the debtor and for a hearing prior to any attachment of property. 16 H.R. Proc., supra, pp. 5834–42.'' *Rafferty* v. *Noto Bros. Construction, LLC*, 68 Conn. App. 685, 691–92, 795 A.2d 1274 (2002). ''[T]he 1993 amendments [to the prejudgment remedy statutes] substituted a finding of probable cause that judgment will at least be in the amount sought in the application and that the remedy should be granted for a finding of probable cause merely to sustain the validity of the plaintiff's claim. See General Statutes §§ 52-278c, 52-278d.'' *Rafferty* v. *Noto Bros. Construction, LLC*, supra, 692 n.4.

In determining whether probable cause exists to support the granting of a prejudgment attachment, the trial court, although vested with broad discretion, must possess ''a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a [person] of ordinary caution, prudence and judgment, under the circumstances, in entertaining it. . . . The court's role in [a prejudgment remedy] hearing is to determine probable success by weighing probabilities.'' (Citations omitted; internal quotation marks omitted.) *Three S. Development Co.* v. *Santore*, 193 Conn. 174, 175–76, 474 A.2d 795 (1984). Furthermore, although the likely amount of damages need not be established with mathematical precision, ''the plaintiff bears the burden of presenting evidence [that] affords a reasonable basis for measuring her loss.'' (Internal quotation marks omitted.) *Rafferty* v. *Noto Bros. Construction, LLC*, supra, 68 Conn. App. 693. In other words, to justify issuance of a prejudgment remedy, probable cause must be established both as to the merits of the cause of action and as to the amount of the requested attachment. That dual requirement ensures that a person is not deprived of the use of property without due process of law.

In *Pestey* v. *Cushman*, 259 Conn. 345, 788 A.2d 496 (2002), our Supreme Court sought to clarify the elements that a plaintiff must prove to prevail on a claim for damages in a common-law private nuisance cause of action. The court explained: ''A private nuisance is a nontrespassory invasion of another's interest in the private use and enjoyment of land. 4 Restatement (Second), Torts § 821D (1979); see also *Herbert* v. *Smyth*, 155 Conn. 78, 81, 230 A.2d 235 (1967). The law of private

nuisance springs from the general principle that [i]t is the duty of every person to make a reasonable use of his own property so as to occasion no unnecessary damage or annoyance to his neighbor. *Nailor* v. *C. W. Blakeslee & Sons, Inc.*, 117 Conn. 241, 245, 167 A. 548 (1933). The essence of a private nuisance is an interference with the use and enjoyment of land. W. Prosser & W. Keeton, Torts (5th Ed. 1984) § 87, p. 619.'' (Internal quotation marks omitted.) *Petsey* v. *Cushman*, supra, 352. ''[I]n order to recover damages in a common-law private nuisance cause of action, a plaintiff must show that the defendant's conduct was the proximate cause of an *unreasonable* interference with the plaintiff's use and enjoyment of his or her property. The interference may be either intentional . . . or the result of the defendant's negligence. . . . The determination of whether the interference is unreasonable should be made in light of the fact that some level of interference is inherent in modern society. There are few, if any, places remaining where an individual may rest assured that he will be able to use and enjoy his property free from all interference. Accordingly, *the interference must be substantial to be unreasonable*.''[4] (Citations omitted; emphasis added.) Id., 361–62.

In the present case, therefore, the plaintiffs had the burden of establishing probable cause that they would be successful in proving that the defendants substantially and unreasonably interfered with the plaintiffs' use and enjoyment of their property, causing them damages in the amount of $250,000.[5] However, nowhere on the face of their affidavit, in their complaint or in their testimony did the plaintiffs allege an unreasonable and substantial interference with the use and enjoyment of their property, nor did the court make this necessary finding. Rather, the court specifically found that the defendants' actions were ''completely unnecessary [and that] the defendants acted solely to annoy and hamper the plaintiffs.'' It was on this basis that the court made its finding of probable cause as to the plaintiffs' nuisance claim. I cannot agree with the court that unnecessary actions intended to annoy and to hamper someone meet the probable cause standard of a prima facie case for nuisance without an allegation and a finding that there was an unreasonable and substantial interference with the plaintiffs' use and enjoyment of their properties. To meet the probable cause standard necessary for the granting of an attachment of the defendants' property, the trial court had to have a bona fide belief that the plaintiffs likely would succeed in proving that the defendants had substantially and unreasonably interfered with the plaintiffs' use and enjoyment of their property, thereby causing them more than nominal damages. As our Supreme Court explained in *Pestey*, there is a difference, although often confused, in *conduct* that is unreasonable and *interference* that is unreasonable. See *Pestey* v. *Cushman*, supra, 259 Conn. 359–60. It appears

evident to me that the court in this case found the defendants' conduct to be unreasonable without finding that the interference, itself, was unreasonable.

At the prejudgment remedy hearing, the plaintiff Diane Neligon testified that in March or April, 2004, targets appeared in a lower window of the defendants' home. In June, 2004, an inoperable Jeep first appeared on the defendants' property, a small utility trailer, with attached bumper stickers, was parked on the street in front of the defendants' property and "no trespassing" signs were posted in the defendants' yard. Another neighbor also parked an inoperable Jeep on his property at that time. The wind chime in the defendants' backyard was enlarged from six feet high to ten feet high on Father's Day weekend in 2004.[6] Additionally, Diane Neligon testified that the defendants' boat had been parked at the end of the cul-de-sac or in another neighbor's yard, but that this neighbor was not involved in or contributing to this dispute, and that the boat had a kite attached to the mast. Diane Neligon also testified that she thought the actions of the defendants had caused the diminution in the value of her home and the home owned by the plaintiff Kinsale, LLC (Kinsale). However, she also specifically testified that Kinsale dropped the price on 38 Economy Drive to $700,000, which Diane Neligon and her husband, the plaintiff Thomas Neligon, the sole members of Kinsale, then purchased for that reduced price, because that is what 50 Economy Drive had been sold for and she had always valued the properties similarly. There was no explanation as to why this self-dealing transaction was necessary, and there was no additional testimony or evidence offered to support the contention that the actions of the defendants had diminished the values of these properties; nor was there evidence as to market value of these properties except that offered by the defendants' appraiser, who testified that the value of each property was $700,000 both before and after the properties were sold.[7] Additionally, although the court found that after having sold their home at 50 Economy Drive and having purchased 38 Economy Drive from Kinsale, the plaintiffs moved into 38 Economy Drive, that finding is not supported by the record. Diane Neligon specifically testified that Kinsale did not have a certificate of occupancy until the fall of 2004 and that the home was not substantially completed until that time. She further testified that after selling 50 Economy Drive in September, she and her husband had to rent that home back from the buyers until November, 2004, because they had no certificate of occupancy for 38 Economy Drive.

Review of the documentary evidence submitted by the plaintiffs during the prejudgment remedy hearing reveals photographs depicting the following: an old inoperable Willy Jeep parked on the defendants' lawn; another old inoperable Willy Jeep parked on a neighbor's lawn; a small enclosed utility trailer with a Con-

necticut registration plate attached, with two bumper stickers on the rear bumper, which was parked in front of the defendants' home on the public street; a sailboat on a boat trailer parked on the street at the end of the cul-de-sac, with an inflated device or a kite attached to the mast;[8] the same sailboat and trailer parked on other private property located at the end of the cul-de-sac, along with another boat and trailer and a pick-up truck bearing a Connecticut registration plate, apparently not owned by the defendants; a few preprinted private property signs of the type one would find for sale in a hardware store; target signs located in one small lower window of the defendants' split-level home; and several photographic depictions of a large wooden and metallic mobile or wind chime, located in the rear yard of the defendants' property, which appears different in various photographs.

On the basis of this evidence and the court's memorandum of decision, I agree with the defendants' claim that there was no allegation or evidence that would provide a reasonable person with the bona fide belief that the plaintiffs would succeed on their nuisance claim, which requires that the defendants' actions substantially and unreasonably interfere with the plaintiffs' use and enjoyment of their properties. I also do not believe that the court utilized this standard in finding probable cause for the order of attachment.

Additionally, even if I were to agree that probable cause to support a nuisance claim was established, I would have to conclude as a matter of law that the court employed an incorrect measure of damages in this case, which also would warrant reversal of the attachment. Although the court in *Pestey* used the diminution in market value of the property as the proper measure of damages in that case, *Pestey* involved a nuisance that was permanent in nature. See *Pestey* v. *Cushman*, supra, 259 Conn. 347–48. ''A permanent nuisance is one which inflicts a permanent, irreparable injury onto the property.'' R. Newman & J. Wildstein, Tort Remedies in Connecticut (1996) § 19-3, p. 283. On the basis of my review of the record in the present case, including the photographic exhibits submitted by the plaintiffs, I am of the firm conclusion that no bona fide belief could be entertained that these wheeled vehicles, signs or the wooden and metallic mobile were permanent in nature. See *Three S. Development Co.* v. *Santore*, supra, 193 Conn. 175 (legal idea of probable cause is bona fide belief in existence of facts essential under law for action such as would warrant a reasonable person to entertain it).

There is a distinction usually observed between permanent and temporary nuisances and the damages that flow therefrom. See *Filisko* v. *Bridgeport Hydraulic Co.*, 176 Conn. 33, 40, 404 A.2d 889 (1978). ''A permanent nuisance has been said to be one which inflicts a perma-

nent injury upon real estate; the proper measure of damages is the depreciation in the value of the property. . . . A temporary nuisance is one where there is but temporary interference with the use and enjoyment of property; the appropriate measure of damages is the temporary reduction in rental value [or use value], not depreciation in market value." Id.; see *Krulikowski* v. *Polycast Corp.*, 153 Conn. 661, 670, 220 A.2d 444 (1966); *Nailor* v. *C. W. Blakeslee & Sons, Inc.*, supra, 117 Conn. 246. "[I]n a nuisance case, the jury [also] may properly consider discomfort and annoyance . . . ." (Internal quotation marks omitted.) *Filisko* v. *Bridgeport Hydraulic Co.*, supra, 41; see *Krulikowski* v. *Polycast Corp.*, supra, 670; *Nailor* v. *C. W. Blakeslee & Sons, Inc.*, supra, 246.

"Once a nuisance is established under substantive law, damages are similar to those in many trespass cases. . . . If the nuisance, whatever it is, whether in the form of noxious gases, or noise, or water pollutants, is permanent, the same measure of damages as in cases of permanent damages by trespass is normally used—that is, the depreciation in the market value of the realty by reason of the nuisance. As a rule this will mean a nuisance that is, in the physical nature of things, unlikely to abate or to be avoided by any reasonable expenditure of money . . . . Where the nuisance . . . is not permanent and has been or can be abated, damages are usually measured differently. The plaintiff usually recovers the depreciation in the rental or use value of his property during the period in which the nuisance exists, plus any special damages.[9] Rental value and use value are not necessarily the same thing, and some courts allow a plaintiff who actually occupies the premises to recover the 'use value,' or special value to him, but limit the recovery of the owner who does not occupy the premises to the more objective measure of rental value. Discomfort or inconvenience in the use of the property is, of course, relevant both to establish special damage and as evidence bearing on the loss of rental or use value." (Internal quotation marks omitted.) W. Prosser & W. Keeton, supra, § 89, pp. 637–39.

"Also, in addition to the depreciation measure of damages, the plaintiff in a nuisance case may recover the reasonable cost of his own efforts to abate the nuisance or prevent future injury. For example, where a sewer line backed up and overflowed into the plaintiff's theater, the plaintiff hired a contractor to re-lay lateral sewer lines to avoid the problem in the future, and the contractor's charges being reasonable, the plaintiff was allowed to recover them. Such decisions seem correct, though it should also be noted that to the extent the plaintiff is in fact able to abate the nuisance by his own efforts, *or to the extent it is abatable in injunction, permanent damages are not assessed*." (Emphasis added; internal quotation marks omitted.) Id.,§ 89, p. 640. Here, the plaintiffs never sought an injunction.[10]

The plaintiffs' affidavit, complaint and their testimony at the hearing alleged that their damages were the diminution in market value of their properties because of the actions of the defendants, which specifically were alleged to have occurred from April to September, 2004. Both the plaintiffs' affidavit and their complaint state that their properties were sold on September 20, 2004, apparently after the alleged nuisance had been abated. Absent from their affidavit, complaint or their testimony is any evidence concerning the monetary value of a temporary interference with the plaintiffs' use and enjoyment of their property.[11] Nevertheless, the court, finding that the actions of the defendants amounted to a nuisance, granted a prejudgment remedy in the amount of $100,000 for the alleged diminution in the market value of the plaintiffs' properties. I conclude that this was an incorrect measure of damages for what could be termed, at best, a temporary private nuisance, which certainly was abatable. Boat and utility trailers, other wheeled vehicles, signs or targets placed in a window and private property signs placed on private property were all things that easily could have been removed from the defendants' land, adjoining street or other neighbors' properties and, therefore, could not properly be considered permanent in nature. Furthermore, whether the plaintiffs regarded the wind chime as unsightly or as a work of art, the device rested on two 4'' x 6'' pieces of timber, which easily could have been removed with a chain saw within a time span of five minutes. In this sense, all of these things very easily can be distinguished from businesses that cause pollution, onerous odors, noxious gases and the like, which normally form the basis for permanent nuisance claims.

Here, the plaintiffs are seeking monetary damages for the alleged diminution in the value of their properties that allegedly resulted from several easily abatable things in the defendants' yard, on the public street or in the yards of other neighbors, who are not alleged to be involved in this dispute. Despite the fact that these things were easily abatable, no attempt at abatement was made and no request for an injunction was sought. Rather, the plaintiffs continued in their attempt to sell their properties, allegedly for less than market value, and then sought to collect the difference from the defendants, never giving them the opportunity to correct or to abate any alleged nuisance. I simply cannot agree that the plaintiffs are entitled to damages for a permanent nuisance solely because they sold their properties, where no attempt at abatement was made.

This is especially true in the present case where Kinsale sold 38 Economy Drive to its only two members, the Neligons, allegedly for less than market value. The Neligons, now owning that home, have secured an attachment for $50,000, in Kinsale's name, for the tem-

porary diminution in the value of that property, from which they, themselves, benefited. The problem with allowing such a measure of damages is fully demonstrated by this case. If Kinsale were awarded permanent damages for the alleged diminution in the value of the property, although that diminution was only temporary and no attempt at abatement was made, the Neligons, who were the only members of that company and purchased that home from their company, allegedly for less than market value, now own that home, which they, themselves, allege is worth nearly $800,000, having purchased it for only $700,000 from their company. That is an unjust windfall.

To conclude, I believe that the court used an improper standard in finding probable cause for the plaintiffs' nuisance claim and that it employed an improper measure of damages, which, in this case, would reward the plaintiffs for their self-dealing. For these reasons, I would reverse the judgment of the trial court granting the prejudgment attachment in the amount of $100,000.

[1] The plaintiffs and the defendants have had several disputes, culminating in the present case. There was testimony at the hearing from various witnesses that the defendants and other neighbors had telephoned the police on various occasions to complain about the plaintiffs Diane Neligon and Thomas Neligon firing a loud cannon from the deck of their home at different times. Diane Neligon testified that she and her husband had repeatedly shot the cannon on ''celebratory occasions.''

Additionally, while the Neligons' home at 38 Economy Drive in Westbrook was being constructed by the plaintiffs, the defendant Nile Barrett tripped on some construction debris in the roadway and fractured her foot. She brought suit against the plaintiffs for her injury and settled that case, allegedly in reliance on an off the record statement by the trial court that it would order a $25,000 prejudgment attachment in the present case. One of the defendants' claims on appeal in the present case centered around this off the record ''ruling'' and their reliance on it in settling the prior case. I agree with the majority's holding that this claim was not adequately briefed, however, and, in any event, there is no record concerning this ''ruling'' for us to review.

I also note that the defendants objected to the application for prejudgment remedy on the grounds that the action was a malicious abuse of process meant to pressure the defendants from pursuing their personal injury claim and that the plaintiffs had unclean hands. Nowhere in the court's memorandum of decision was this objection or the evidence offered in support of it discussed. General Statutes § 52-278d (a) requires that a finding of probable cause for a prejudgment remedy hearing be made ''upon consideration of the facts before [the court] . . . taking into account any defenses, counterclaims or set-offs, claims of exemption and claims of adequate insurance . . . .'' See also *Rafferty* v. *Noto Bros. Construction, LLC*, 68 Conn. App. 685, 690–92, 795 A.2d 1274 (2002). The defendants, however, have not raised this as an issue in their appeal.

[2] Although the majority states that ''[t]he basis of the $100,000 attachment is not totally clear''; footnote 4 of the majority opinion; I disagree. In its April 1, 2005 memorandum of decision, the court specifically ''conclude[d] that the placement of the junk vehicles and other items . . . had the effect of depressing the fair market value of each parcel of property in the amount of $50,000.'' It was on the basis of this finding that the court ordered the $100,000 attachment. Additionally, there was no other evidence of damage or loss as to any of the plaintiffs' other claims. Although it is true that one count of the plaintiffs' proposed complaint sounded in libel, which can result in recovery of nominal damages even when no actual damages are proved, $100,000 is not a nominal sum. ''Nominal damages means no damages at all. They exist only in name and not in amount. In the quaint language of an old writer, they are 'a mere peg to hang costs on.' '' *Stanton* v. *New York & Eastern Railway Co.*, 59 Conn. 272, 282, 22 A. 300 (1890).

[3] ''See *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972); *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 92 S. Ct. 1113, 31

L. Ed. 2d 424 (1972); *Sniadach* v. *Family Finance Corp*., 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969). Although subsequent cases have held that a hearing prior to the entry of a prejudgment remedy is not an absolute necessity, the opportunity to be heard at a meaningful time and in a meaningful manner remains a fundamental principle of due process that may not be dispensed with. See *Roundhouse Construction Corp*. v. *Telesco Masons Supplies Co*., 168 Conn. 371, 377–78, 362 A.2d 778, vacated, 423 U.S. 809, 96 S. Ct. 20, 46 L. Ed. 2d 29 (1975), aff'd on remand, 170 Conn. 155, 365 A.2d 393, cert. denied, 429 U.S. 889, 97 S. Ct. 246, 50 L. Ed. 2d 172 (1976).'' *Rafferty* v. *Noto Bros. Construction, LLC*, 68 Conn. App. 685, 692 n.3, 795 A.2d 1274 (2002).

[4] *Pestey* involved a case in which the defendants were operating a dairy farm that emitted noxious and offensive odors that *permanently* interfered with the plaintiffs' use and enjoyment of their property. Although *Pestey* is useful in determining the elements necessary to prove a private nuisance cause of action, the private nuisance in *Pestey* was permanent in nature, and, therefore, the court in that case used the diminution in market value of the property as the proper measure of damages. See *Pestey* v. *Cushman*, supra, 259 Conn. 363–64.

[5] The plaintiffs requested an attachment of $250,000.

[6] Apparently, the plaintiffs had erected a six foot high fence, and the defendants raised the height of the wind chime in response to the fence.

[7] Diane Neligon was asked on cross-examination about many appraisals that had been done on these properties while the plaintiffs owned them. Although she acknowledged that the appraisals had been done, she could not remember the value that any of the appraisers had set on the properties nor did she have copies of the reports available at the hearing.

[8] Kites or inflatable objects often are attached to the mast of a sailboat to show the direction of the wind and to keep birds from landing on the mast. Inflatable objects also are used to prevent the mast from turning over 180 degrees in the water.

[9] Special damages have been interpreted as discomfort or inconvenience in the use of the property, the cost to repair or to restore the property and for illness caused by the temporary nuisance. See W. Prosser & W. Keeton, supra, § 89, p. 639.

[10] The present case is distinguishable from *Herbert* v. *Smyth*, supra, 155 Conn. 78, in which damages for the diminution in the market value of the property, not the asking price, of one of the plaintiffs were allowed for a temporary nuisance. In that case, several plaintiffs brought an action for an injunction and for damages against a neighboring property owner who was maintaining a commercial dog kennel, which was producing obnoxious odors, barking and howling at all hours of the day and night. One of the plaintiffs sold his property during the pendency of the litigation. The court awarded that plaintiff damages for the diminution in the market value, which was due to the commercial dog kennel. The remaining plaintiffs were awarded damages for discomfort and annoyance only, and our Supreme Court explained that ''[n]o damages for depreciation were granted to the [other plaintiffs] because any devaluation of their property was presumably restored by virtue of the prohibitory injunction . . . .'' Id., 84 n.1. Here, there was no injunction or abatement sought, and the plaintiffs alleged in the affidavit and complaint that the alleged nuisance occurred from April to September, 2004. I note that they did not sell these properties until September 20, 2004. Additionally, the plaintiffs made no effort to seek an injunction or to otherwise abate the alleged nuisance from its alleged inception through the time they were able to sell their properties, nor have they sought an injunction in this action.

[11] Diane Neligon did testify that she thought the defendants' actions amounted to ''sort of, emotional depreciation.''