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TriBeCa Family Sues Neighbor in Luxury Condo Over Secondhand Smoke

December 7, 2009 7:14am

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A TriBeCa family is suing a neighbor over secondhand cigarette smoke. (Flickr/Lanier67)

By Nicole Breskin

DNainfo Reporter/Producer

TRIBECA — In a landmark lawsuit, a TriBeCa family is suing a neighbor over his secondhand cigarette smoke they say is wafting into their \$2.1 million luxury condo and causing them various health problems.

Christian and Britt Ewen filed suit against Federico Maccherone, their neighbor at 200 Chambers St., for negligence, saying his smoking has caused them headaches, loss of sleep and chest pain, and caused their 4-year-old daughter nosebleeds.

"It was like fumes and exhaust invading their home," said Victoria Kennedy, who is the lawyer representing the Ewens. "They couldn't breathe. They'd huddle together in one room and wait for the smoking to subside."

The \$25,000 suit was filed in Manhattan Civil Court back in July, but last week a judge dismissed Maccherone's motion to dismiss the case.

"The bylaws, rule and regulations on their face are silent regarding whether smoking is permitted or prohibited in individual units," civil court Judge Anil Singh wrote in the decision.

"On the other hand ... the rules and regulations clearly state that unit owners are not allowed to permit objectionable odors to interfere with the rights, comforts and conveniences of other owners, tenants or occupants."



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CUNY law professor Rebecca Bratspies said she could see the case having broad implications.

"This could likely accelerate the trend of bans on smoking not only in public spaces, but privates places," Bratspies said.

To date, there have been no successful lawsuits brought by a condo owner suing a neighbor in New York City due to secondhand smoke.

New York City currently bans smoking in restaurants and bars. There has been a push to ban smoking in public housing by the Department of Housing and Urban Development. But condos and co-ops have typically taken a hands-off approach.

"Were this case to be a victory," said Bratspies. "This could change how we're going to think about the boundaries of rights of neighbors."

Calls and e-mails to the Maccherone's lawyer were not returned.



TriBeCa's 200 Chamber St. where the Ewens live across from Federico Maccherone. (Nicole Breskin/DNAinfo)

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By Nicole Breskin, DNAinfo.com
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