



**NUISANCE COUNTERCLAIM BASED UPON PLAINTIFF'S PLAYING PIANO IN HER CONDOMINIUM SHOULD HAVE BEEN DISMISSED, NO SHOWING THE SOUND LEVEL WAS UNREASONABLE (FIRST DEPT).**

he First Department, reversing Supreme Court, determined that plaintiff's motion for summary judgment dismissing defendant's (Harlan's) nuisance counterclaim should have been granted. The nuisance counterclaim was based upon plaintiff's playing piano in her condominium:

Plaintiff made a prima facie showing that her piano playing and piano lessons were reasonable by averring that these activities usually occurred during business hours on weekdays, they usually totaled less than 4½ hours a day, and her sound technician concluded that the noise emanating from her piano was within acceptable boundaries ... . Harlan failed to raise a triable issue of fact in opposition because she did not submit any evidence showing that the level of sound that entered her apartment from plaintiff's piano was unreasonable. Harlan's reliance on the recordings by plaintiff's sound technician is unavailing; the expert did not take any volume measurements in Harlan's apartment and the recording taken in the condominium stairwell did not exceed that of a normal conversation. [Leon v Harlan, 2019 NY Slip Op 04045, First Dept 5-23-19](#)