No. C924091
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

October 1, 1993
Vancouver, B.C.

BETWEEN:
GERALD A. REID
PLAINTIFF)
AND:
THE CORPORATION OF THE DISTRICT)
OF NORTH VANCOUVER
DEFENDANT)

JUDGMENT
OF THE HONOURABLE
MR. JUSTICE WILKINSON

G.B. LONGPRE, ESQ. appearing for the Plaintiff

B. BAYNHAM, ESQ. and MS. J. CURRIE (A/S) appearing for the Defendant

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THE COURT: (Oral)

I am giving this judgment orally. I will be changing some of the wording in it, but the substance of the judgment -- the finding of a basis for liability -- the denial of liability on a limitations basis and, finally, commenting on and reducing damages claimed, will not change.

In this action Mr. Reid, a homeowner, seeks damages from the defendant Corporation of the District of North Vancouver arising from alleged faulty inspections of, first, his home during construction in 1959 and, secondly, his swimming pool during its construction in 1971. His house and pool settled due to being placed over fill which was loose and not compacted and which also contained improper materials such as stumps,

rocks, boulders, and some rubbish.

The home was constructed in 1959 and has been owned by the plaintiff since 1965. The plaintiff says that uneven settlement manifested itself over the next 25 years with various indicia including cracks, sticking doors and windows and sloping floors. Mr. Reid made several attempts to sell the home. He and his companion looked at other sites, but preferred the location, view, and pool of their existing home. He came into a substantial inheritance in 1989. In early May 1990, he saw an architect's ad in a local paper and had him over. The architect told him if he is going to rebuild he should first have a geotechnical engineer look at the property to see if the ground was suitable for rebuilding. He called Mr. Peart on May 7th, 1990. Mr. Peart was admitted as an expert in the field of geotechnical engineering and gave evidence in addition to his reports as did a further geotechnical engineer, Mr. Brawner.

Mr. Peart's report dated May 30th, 1990, does not give details of the condition of the house, although it discusses in passing the possibility of selling the home once removed from the lot. In brief, the report says that it was requested to consider remedial action to prevent further

settlement if a new home were built, discussions of the site and field work, and sets out that the house was built on imported, unsuitable fill to a depth of at least eight feet. It then sets out that Mr. Reid is interested in demolishing the home and constructing a new house and recommends that after removal of the house and slab that the ground beneath be excavated five to eight feet deep and replaced in layers with suitable compacting. By way of summary it sets out that rebuilding is reasonable if the compaction is carried out. Mr. Reid says he was told by Mr. Peart at the time of receipt of the report that North Vancouver should never have allowed the home to be built on the lot, but this is not set out in the report.

Mr. Reid next contacted neighbours who had rebuilt, and was directed to a house designer, Mr. Poskitt, who looked at the report, suggested that a new house would be no problem with proper compaction and gave Mr. Reid a preliminary plan and the names of three builders who were contacted in July of 1990. The new home was substantially larger and of better quality than the old home and total monies for the home furnishing, landscaping, pool, and yard compaction and extension ran to $400,000. The claim here is for the cost to have

placed new foundations under the old home and work on the pool in the amount of $110,000 together with other expenses. Mr. Reid decided to build through the auspices of Mr. Poskitt and demolition and building permits were applied for in December 1990 and granted in March of 1991. A copy of Mr. Peart's report was given with the application for demolition permit. The plaintiff left the residence in March 1991, demolition took place in April, and the site was prepared.

The soil was excavated, boulders and stumps were taken out, and the soil was replaced and compacted in layers. As well the swimming pool was raised slightly and the ground around it was compacted. About six truckloads of boulders up to three feet in diameter were removed as well as a substantial amount of stumps, some up to three feet in diameter. These would have the effect of rendering compaction difficult, if not impossible, quite apart from the question of whether compaction was ever attempted.

It is accepted that the problem arose because the original owner of the Reid and adjoining lots was an excavating contractor and used the lots in the early and mid-'50s, 1950s, as a dumping site for earth and material removed from other lots in the area. After leveling, this had the additional

effect of making the Reid and other lots, which sloped steeply, appear to have level building areas. When the Reid lot was built on in 1959, the thickened edge slab forms for the concrete "slab on slope" foundation were placed at the north end of the lot near Sylvan Avenue and some gravel was apparently placed over the fill, although Mr. Peart saw no signs of the gravel when the sign was removed.

The fill in question extended towards the south boundary of the lot where it sloped down steeply. At this length of time it is difficult to conclude what took place on the inspection by the North Vancouver building inspector prior to the pouring of the slab at the time of his inspection pursuant to the relevant by-law. His visit took place March 18th, 1959, according to the master card in the Municipal files; one of the few remaining documents after old documents were removed some time ago. I make the following findings:

1. I accept Mr. Peart's opinion, particularly so far as the south portion of the lot is concerned, that the inspector should have known that he was looking at substantial fill.

2. There is no evidence that there was to be seen any of the stumps, boulders, or rubbish later

uncovered by Mr. Peart and I cannot conclude that the inspector saw and ignored those.

3. Nevertheless, the inspector should have been put on alert by the presence of fill by the local terrain and by his presumed knowledge that compaction is necessary for fill and he should have checked both the north and south ends of the lot. He was obligated to look into the matter and the question becomes whether I can conclude that he took no steps or inadequate steps.

4. I cannot simply conclude that the "foundations" were unsuitable, that settlement took place, and that the Municipality has to share responsibility. It is necessary to break down the "foundations" into components of the slab and the soil it rested on. It is also necessary to consider the extent of settlement, which I shall deal with later. I do conclude that the slab foundation in itself was suitable and that the only problem was the lack of compaction of the underlying soil.

5. There have been two explanations by the District as to what may have been in the mind of their inspector. First, it may have appeared that the northern portion of the lot had not been filled and may have been cut into undisturbed soil. More importantly, he may have conducted

inquiries as to whether there had been compaction. If he conducted inquiries as to the nature of the soil underlying the house and/or as to compaction and was misled, is he, and the District through him, negligent? Should he have done more? I must consider the standards existing in 1959. There was little evidence of a difference in practice then and now.

Accepting as I do the plaintiff's evidence that the presence of fill was manifest, it seems to me far more likely that the inspector made inquiries and was misled than that he did not inquire. Mr. Peart's evidence was that one could not tell whether the soil was compacted simply by looking at the surface. He said that there would have to be a good clean up or a dilatory inspection to miss the material that he found in his test holes. He spoke of an inspector jamming his heel or a bar into the soil. Mr. Brawner said that an inspector if alerted to fill, should conduct inquiries of the owner or builder as to compaction and examine any excavations available to him. If unsatisfied thereafter, he could test himself or order tests or engineering reports. Brawner did not see the site until immediately prior to trial. The defendant's expert, Mr. Butler, on cross-examination said that he was

aware that there were unscrupulous builders who would try to make things look better than they were and that he would check around if his suspicions were aroused. Mr. Carr, an inspector with the District since 1955, gave the most direct evidence in my view. He said that the house was not in his usual work area at the time, but as to his practice at the time, he said that he had seen many similar slab on slope sites. Usually the forms were in place, heat ducts were installed and gravel was spread around the heat ducts. He would do a visual inspection, then if he suspected the potential for an unsatisfactory base, would probe with a bar. He said and I accept that if thus probed the bar would move freely in loose fill. I find in this case based on Mr. Peart's and others' description of the looseness of the fill and the presence of voids therein that such a probe would have revealed the lack of compaction here. Carr went on to say that if such testing was not feasible or he did not have the equipment, he would call for an engineering report.

6. I conclude primarily on the evidence of Mr. Carr, but supported to some extent by the evidence of the plaintiff's experts and Mr. Butler, that the inspector in question ought to have gone farther than simply inquiring as to

whether the house was on original soil or if the soil was compacted, if indeed he did those things, and ought further to have probed the soil with a bar or if he could not do so, should have called for a report. Either step would have unquestionably revealed the problem. A current inspector gave testimony that he had been led into error when the first few feet of subsoil had compacted, but that was not the case here.

7. I am satisfied that there was a duty on the Municipality under the relevant by-law to inspect the subsoil, a closeness of relationship to the first and subsequent owners so that a duty to them was contemplated by the Municipality, and reliance on the Municipal inspectors, all as set out in Kamloops v. Nielson S.C.C. 1984 5 W.W.R. 1, such that a case for pure economic loss is made out. The thoroughness of the inspection or lack of it was an operational matter and I do not accede to the defendant's argument that it was a policy matter in whole or in part.

Whether there was a breach of duty in connection with the construction of the swimming pool by the plaintiff in 1971 is the next question. It was built for Mr. Reid by Battison Bros. One of the brothers gave testimony as did Mr. Reid. A permit was applied for and granted.

That process required that a structural engineer's drawings be submitted with the application. This was done. I am satisfied that under the relevant by-laws and National Building Code at the time, the obligations on the District vis-a-vis underlying soil for a swimming pool were essentially the same in 1971 as for houses in 1959. The position of the District at trial was that the request for a structural engineer's stamp and drawings fulfilled their duty concerning the underlying soil or shifted the responsibility for it to the structural engineer. Since the plan is furnished before the soil is excavated and deals with design and reinforcing steel, it is difficult to understand this position. It is open to the District to fulfill its obligations as to subsoil by having that aspect looked after by a professional engineer, but there is no evidence of that here. The evidence of Mr. Carr is that he had no recollection of the pool, but that his usual practice was to attend at the time forms were laid and prior to concrete being poured, and that he would only check concerning siting of the pool and fencing if applicable. On cross-examination, he testified that he would object or stop work if there was an obvious problem of soft subsoil. I am left to conclude

that the District did not carry out its mandate at the time, but left the issue of subsoil suitability to the owner or contractor or mistakenly assumed that the original design engineer checked the soil. There was no evidence regarding this pool or others that a second certificate was either required or obtained at the time of excavation. Liability must be imposed as to the pool damage as well.

I turn next to general issues of limitations, discoverability, and losses. All require a recitation of the onset and development of settlement and cracking and other information coming to the plaintiff's attention.

1. Mr. Reid said and I accept that there was no evidence of settlement or cracking when he purchased the home in 1965.

2. He said he saw some of the excavated material in the evenings in 1971, when there were excavations south of the house for the swimming pool, and he said that some of it had "things" in it and was not good earth.

3. He recalled a conversation testified to by Frank Grant who told of some history of the lot. In 1975 or 1976, Mr. Grant told him he knew the area and on seeing the lot said, "That's what I thought. You're on one of the two worst lots in

North Vancouver. They dumped a bunch of stuff in there and couldn't sell and the lot sat there for years," or words to that effect.

4. In 1977 or 1978, he noticed that windows were sticking, that doors were not closing, and that sliding doors were sticking. He knew they were not right, but the house was livable. He said he thought settlement was part of living on a mountain.

5. About that time his son's employer on noticing a sticking door asked Mr. Reid if he realized his house was settling. This was the first time he recalled hearing the word settle with relation to his home.

6. Mr. Reid said he thought burst water mains may have had an effect on settlement.

7. Mr. Reid's wife died in 1980. By 1983 or 1984, he noticed more sticking of windows and doors, that floors dropped from moldings, that sliding doors had to be rehung, that fireplaces had developed cracks, that the hearth separated from its adjacent floor, and that there were vertical cracks in the Roman tile in the home. He said he did not want to consider the matter serious and did not want to call anyone concerning the problems.

8. He did put the property up for sale

several times in the 1970s and 1980s. Both he and his companion considered selling their relevant homes and getting one new one. They did some renovations to the kitchen and bathroom in 1985.

9. By 1987 or '88, there was more settlement. The kitchen floors sloped so that it was a bit of a joke with guests to put a marble down and watch it roll. There were cracks in gyproc and longer fireplace cracks. He put the home up for sale again.

10. Mr. Reid spoke to two realtors in the late 1980s. One, Mr. Pedley told him, "You have a major problem here. I can remember being in the house when it was listed before and we had open house. It's even worse now than it was then." Asked what he meant, he apparently replied, "If it was me, I'd just get rid of it and take what I could get on the home." He did not want to take a listing on the property. Mr. Reid listed the property one more time but got no offers.

11. In May of 1990, Mr. Reid saw the ad of Mr. Bradbury, an architect, and told him he had options of building a new house or selling, and sought his advice. He was told, "If you're going to rebuild, get a geotechnical engineer's report and see if the lot is suitable to rebuild." Mr. Reid said he did not know what was causing the

problem, that he did not yet think it was serious, and that he thought it was minor. He had continued simply using minor or cosmetic repair techniques for cracks, windows, and doors, but the problems would renew.

12. He saw Mr. Peart May 7th, 1990, testing was done in mid-May, and he received Mr. Peart's report May 30th, 1990. After that report, he said he then understood the problem was with the ground, not just with the house. As related above, Mr. Reid said Mr. Peart told him on delivery of the report that the Municipality should not have allowed anyone to build on the lot. He said he did not consider taking action at that point and did not go to see a lawyer.

13. Mr. Reid next saw Mr. Poskitt, a house designer, about June 1990. Mr. Poskitt thought it feasible to rebuild if the lot was properly compacted and gave him the names of three builders. In July, Mr. Reid decided to rebuild through Mr. Poskitt.

14. On December 21st, application was made for permits to allow the demolition of the existing home and construction of a new home. The May 30th report of Mr. Peart was apparently deposited with the application to demolish, but there is no evidence of any notice of a claim

being made. The permits were issued in March 1991, Mr. Reid moved out March 23rd, 1991, and demolition took place in April 1991.

15. Mr. Reid testified that he gave consideration to a third option of repairing the existing house and remedying the foundation problem, but, based upon my consideration of the documents, the whole of his testimony, and that of others, I have no hesitation in finding that such an option was never given serious consideration by him. The expert evidence for repairing the foundations was not made until just before trial. There was no evidence of that expert or any expert on the scope of existing damage to the house in 1990 or 1991. The only evidence as to subsidence induced problems was that of Mr. Reid. In my view, the only two options considered were sale and rebuilding a considerably bigger and better house. That does not end the matter, however, so long as the damage to the house was such as to justify its demolition and so long as Mr. Reid did not intend to demolish the house in any event, (that is that the tort was the cause of the damage).

16. Mr. Peart in April 1991 supervised the excavation of the old fill to a depth of five to eight feet, the removal of stumps and boulders,

and its replacement in layers with suitable compaction in the area of the house and around the swimming pool. New foundations were laid and the new house proceeded. In addition, there was some raising, repairing, and compaction around the swimming pool, which is also claimed. There is no claim for compaction and a lock-block wall by the south end of the property and a widened patio. A report on pool and other repairs was received from Mr. Peart May 17th, 1991.

17. About April 15th, 1991, the plaintiff saw an article in a local newspaper printed April 9th, 1991, reporting a judgment given in the case of Petrie v. North Vancouver and others, unreported April 5th, 1991, Vancouver Registry C892379, before Mr. Justice Collver, wherein the District was held liable for subsidence of a home because of faulty inspection. He put the clipping in his file for the house. He said he thought it bore some relation to the problem, but still did not know he could sue.

18. Mr. Reid had discussions with the municipal taxing authorities in the fall of 1991 and told them he should have a tax reduction because he did not have a house on the property for a substantial part of the year. They told him to write to the B.C. Assessment Authority and he

did so on October 22nd, 1991. (Exhibit 1-36) That letter was not sent to the District, but in it Mr. Reid wrote of his intentions towards the District at page 1:

> "Obviously it (the house) had been approved by the District of North Vancouver's 'efficient inspection department' many years ago. Under no conditions should this (the approval following inspection) have been allowed. I intend to take this up with the District and make a claim for my expenses incurred to make the lot 'suitable' on which to build. I have had to spend $25,000 to have the property compacted."

And at page 3:

> "I must admit I was not aware of the seriousness of this situation until I had to have a geotechnical engineer make the necessary tests to see if it was feasible to rebuild. He mentioned to me that North Vancouver should never have allowed a house to be built..."

And:

> "...it is my intention to seek recourse in the very near future from the District...for their negligence...I have sufficient professional evidence to prove that the District of North Vancouver had no right whatsoever approving the building."

19. Mr. Reid moved into the new home November 27th, 1991, and received an occupancy permit in January 1992.

20. On January 28th, 1992, Mr. Reid wrote a letter to the District complaining about drains. In it he makes reference to "legal steps against the District", but does not define the nature of

his intended steps in any way or make any reference to the claim here.

21. In early May 1992, Mr. Reid took out and reread the newspaper article, got in touch with his present counsel Mr. Longpre and met with him May 14th, 1992. A Notice of Claim was sent May 22nd, 1992, and after some correspondence, suit was commenced June 28th, 1992.

22. By way of relevant considerations for "reasonable excuse" under Section 755 of the Municipal Act and statutory or other considerations regarding the various limitation provisions, Mr. Reid testified:

(a) That at the time of and before and after the October 22nd, 1991, letter, he did not intend to sue the District, but was referring only to an intention to seek some redress or settlement from them. I cannot accept this.

(b) That he did not speak to counsel before May 22nd, 1992.

(c) That he did not know if North Vancouver ever inspected before a house was built, although, he said earlier he had assumed they did.

(d) That he did not know the exact date the first house was built although he had a pretty good idea.

(e) That he had not seen the master District

card, Exhibit 1-15, before being showed it by his lawyer.

(f) That he had never read Section 754 and 755 of the Municipal Act before he was showed them by his counsel.

(g) That no one told him he had to contact the District to give Notice of Claim within two months.

(h) That he was not aware of the by-law providing for inspections before consulting counsel.

(i) That he had no knowledge of how inspections were supposed to be done or what was required in inspections.

I turn next to matters of law relating to limitations.

1. Does Section 3(1)(a) of the Limitation Act apply? It provides:

> "After the expiration of 2 years after the date on which the right to do so arose a person shall not bring an action
>
> (a) ...for damages in respect of injury to person or property, including economic loss arising from the injury, whether based on contract, tort or statutory duty".

In the present case, it seems clear the Court is dealing with economic loss pure and simple. It is a relatively recent creation. Writers, courts, and even countries cannot seem to agree from where

it has sprung or what is its direction of travel. At this moment and in this country, however, two things seem clear. First, that it involves loss suffered without precipitating physical injury to persons or things and, secondly, that Municipal building inspectors are able to bring it into existence by not doing their job properly. There are a host of other matters not so clear including the question as to how an inspector can be liable if the building contractor cannot be, but this and some others were not addressed before me. Returning to Section 3(1)(a), it does not deal with pure economic loss, but with injury to property. It, therefore, cannot, by definition, apply. See W.C.B. v. Genstar B.C.C.A. 1986 24 B.C.L.R. (2d) 157. My conclusion is strengthened by the inclusion in Section 3(1)(a) of "economic loss arising from injury", that is, consequential economic loss. In my view, Section 3(1)(a) does not apply notwithstanding that its application appeared to be accepted by the parties in Kamloops v. Neilson.

2. Does Section 3(4) apply? It reads:

> "Any other action not specifically provided for in this Act or any other Act shall not be brought after the expiration of 6 years after the date on which the right to do so arose."

In my view, Section 3(4) does not apply. The

cause of action is, in my view, one that is "...provided for in...any other Act..." That is to say, in Section 754 of the Municipal Act. The legislature has, in my opinion, provided a legislative scheme between the Limitation Act and the Municipal Act by which the latter governs causes of action arising out of its own provisions and the Limitation Act governs actions generally whether taken against a Municipality or not. A review of the preceding Section 16(1), which repealed the old general one year limitation in the Municipal Act, makes this clear. I will repeat this theme in discussing Section 15(1), which was the predecessor of Section 16(2).

3. Does Section 6 of the Limitation Act apply to this case? In my view, it has no bearing having regard to my rulings concerning Section 3(1)(a) and Section 3(4).

4. Does Section 8 of the Limitation Act, the ultimate limitation of 30 years, apply vis-a-vis the house? In my opinion, it does not unless the date of action or inaction of the Municipality taken by itself is considered as the date on which the right of action arose. That is not the law as I understand it. In the event that the Pirelli test of physical damage is used, I cannot rule that any was present prior to 1962. Our Court of

Appeal in Wittman v. Emmott 1991 53 B.C.L.R. (2d) 228 has said that discoverability is not the test in a medical case of ultimate limitation, but held that damage was necessary.

5. Assuming that Section 754 of the Municipal Act providing for a six month limitation and Section 755 of the same Act requiring notice within two months from the date damage was sustained both apply, does Section 15 of the Limitation Act repeal them? It provides:

> "15. (1) Where an Act that incorporates or constitutes a private or public body contains a provision that would have the effect of limiting the time in which an action
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> (a) within section 3 (1), (2) and (3); or
>
> (b) to enforce any right or obligation not specifically created by that Act, may be brought against that body, that provision is repealed to the extent that it is inconsistent with this Act."

In Lloyd v. Richards & Delta 1985 67 B.C.L.R. at page 22 before Trainor, J., it has already been held that Section 15 does not affect Section 755 because Section 755 does not limit the time for bringing an action. Turning to Section 754, in my view, Section 15(1)(a) does not apply to Section 754 because Section 3(1) of the Limitation Act does not apply to this action. That leaves the question under Section 15(1)(b) as to whether Section 754 deals with "...an action...to enforce

any right or obligation not specifically created by that Act..." In my opinion, the present action is one to enforce an obligation created under the Municipal Act and Section 15(1)(b) does not affect its operation. I have previously referred to the legislative scheme between the two Acts. The intended approach in my view is to have actions which strictly arise out of breach of statute (if such exist following Canada v. Saskatchewan Wheat Pool 1983 1 S.C.R. 205) or more commonly actions for breach of a common law duty arising under a statute governed by the Municipal Act and all other general claims governed by the Limitation Act whether against a Municipality or not. See Holland v. District of Oak Bay before Ruttan, J., in chambers 1987 84 D.L.R. (3d) at page 91.

6. Section 754 of the Municipal Act does apply to this case. The claim is for faulty inspection, that is to say, for failing to carry out the duties of inspection as mandated to ensure that the subsoil was proper and/or compacted, all as called for in the relevant by-laws and/or National Building Codes.

7. Is the date on which the plaintiff discovered or ought reasonably to have discovered the damage, as set out in Kamloops, the date "the cause of action shall have first arisen" under

Section 754? The British Columbia Court of Appeal has held that the general rule of discoverability does not apply to the ultimate limitation in Section 8 of the Limitation Act, and Section 6 would render it superfluous with respect to Section 3. In Kamloops, the Supreme Court of Canada held that it would have applied discoverability to Section 738(2) the previous general one year limitation in the Municipal Act. For reasons that are unclear, Section 738(1), the predecessor to our present Section 754, was not raised in Kamloops. Based, however, on the comments of Wilson, J., in Kamloops regarding 738(2), I hold that discoverability applies to Section 754.

8. In my view, Section 755 providing for notice within two months of damage applies to this action subject to my rulings as to reasonable excuse for failure to comply and to a ruling as to whether or not the defendant has been prejudiced.

Based on the foregoing facts and law, I rule that Mr. Reid clearly had discovered or ought to have discovered all requisite aspects of a claim against the District at the latest by the end of May 1991 by which time he had seen the newspaper report of a successful claim against the District in a similar case and had a report on the pool and

repairs. Taken with all the earlier information, this is beyond doubt in my view. Others may feel the date was considerably sooner and in particular by May 30th, 1990, the date of the first Peart report. On my view of the case, a date earlier than the spring of 1991 is unnecessary to dispose of the action. In my view, Mr. Reid's letter of October 22nd, 1991, makes it absolutely clear that he was and had been in possession of all necessary facts for some time. That being so, his action is out of time. The "cause of action had arisen" for the house and pool notwithstanding that he may not then have known the exact amount of damages or taken the advice of counsel.

Similarly, the "damage had been sustained" and the notice sent out in May 1992 was out of time under Section 755. Mr. Reid had been for months in a position to advise the time, place, and manner in which the damage had been sustained, although its amount and all details concerning it were not resolved.

Next I am obliged to state whether I believe that there was a reasonable excuse for not delivering the notice. I confess I am at a complete loss to understand the casual and even dilatory manner in which the plaintiff proceeded. Simple fairness or reasonableness would seem to

have called for some consideration where all traces of the pre-existing house and subsoil would be gone forever. Perhaps the kindest view would be that at all early stages Mr. Reid only intended to claim for the cost to compact the lot. In any event, even accepting that he did not know of Section 755, which I am obliged to consider as a factor, I find it incredible that he would have proceeded through investigation, decision, demolition, and rebuilding without either notifying the District of an intended claim or consulting counsel. I do not accept that the copy of the May 30th letter enclosed with the demolition permit constituted notice of a claim. I have considered all the cases submitted to me and the factors set out therein and find no reasonable excuse.

I also find that the District was prejudiced. It was foreclosed from investigation of the damage to the house and possible alternate repairs, any investigation of the site, the retention of experts to realize both purposes before all was changed, and of the possibility of settling the matter among other things. These things are manifest in my view.

One measure of that prejudice is the profound discomfort I feel on ruling on the twin issues of

whether the situation in the house necessitated the wholesale repairs claimed and the larger issue as to whether Mr. Reid would have decided to rebuild and tear down the old house in any event. I would prefer not to do so because the District's ability to call evidence before me as to the condition of the house and lot has been severely curtailed, but in the event I am overruled on the effects of 754 and 755 I should do so.

Mr. Reid was in this action in the uncomfortable position of minimizing the house damage for "discoverability" reasons while still seeking to satisfy me that he was forced to undertake major repairs or demolish the house. The overall picture that I gathered was of a house that had settlement problems and needed some repairs, but was by no means falling apart or dangerous. It had already lasted over 30 years and had what Mr. Reid considered "normal settlement problems". At the same time the defendants concede that the situation was worsening and that something would have had to be done eventually. This seems generous considering they were given no opportunity to inspect or appraise.

Turning to the more difficult issue of Mr. Peart's intentions and as to whether settlement

caused the demolition and thus can be taken to have caused the alleged necessity to "re-foundation" the existing home, there is evidence that Mr. Reid did not consider the home to be well built, that it contained only post and beam construction which made insulation difficult, and that it had single-pane windows. He testified to many efforts to sell the home and did not seem to consider that the condition of the house barred a sale. Mr. Reid said that he and his companion had looked in other areas, but found nothing to compare with the advantages of his existing lot. He had paid only $19,400 for the house and lot, had come into a sizable inheritance, and was interested in a bigger and better home. Next, I note that in his letter of October 22nd, 1991, he makes reference only to a claim for compacting his lot. There was no expert evidence as to the state of the home at the time or as to its repair. Finally, the report as to potential repair was only generated immediately prior to trial. My decision here is also made more difficult by the understandable lack of input from the defence, but, in my view, on the whole of the evidence Mr. Reid chose to demolish his home for reasons of his own and the settlement did not cause or lead to damage to him except as set out below. His claim

is limited to the costs of compaction after demolition and the costs of compaction and other work for the swimming pool together with the costs of experts for reports and supervision.

On the issue of damages, I understand the law to be that I am required to come up with some answer if there is any evidence at all. There is great difficulty here because of the division between work on the pool and work on the house, and because extra work was done in both areas. I am satisfied that the house area compaction would have been substantially cheaper with no house present than the $110,000 estimated to raise the home and work under it. The pool repairs were more difficult since the pool did remain. I have generally used the figures set out in Exhibit 1-49 with assistance from other evidence. I assess damages at $25,000 for the house area in total and $35,000 for the pool area and repairs in total together with the sum of $7,700 for expert fees, attributable three-quarters to the house. I do not make an allowance for other items including landscaping. In the event, the case is dismissed, and the parties may speak to costs if they wish at some other time.

* * * *