

Date released: November 14, 1990

NO. B892296
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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BETWEEN:)	
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JOLLENA TYLOR)	REASONS FOR JUDGMENT
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)	
AND:)	
)	
THE CORPORATION OF THE)	
TOWNSHIP OF RICHMOND)	OF THE HONOURABLE
)	
DEFENDANT)	
)	
)	
)	MR. JUSTICE MACZKO

Counsel for the Plaintiff:	D.T. Fox, Esq.
Counsel for the Defendant:	M.C. Woodward, Esq.
Date and Place of Hearing:	October 22, 1990 Vancouver, British Columbia

This action involves a single car accident in which the plaintiff struck a cement slab which the defendant placed in a dangerous position touching the road.

The matter came before the Court as an application by the defendant pursuant to Rule 18A of the Supreme Court Rules to determine the question of liability.

1990 CanLII 2122 (BC SC)

The plaintiff was travelling west on River Road intending to turn left on No. 1 Road. River Road is a through street going east and west, whereas No. 1 Road goes from south to north and is a dead end on the north side of River Road. On the southeast corner is a rectangular cement drain. This drain is approximately 15 feet long, 5 or 6 inches high and from photographs appears to be 4 to 8 feet wide. It is located so that the northwest corner of the drain touches the shoulder of the road where it curves from south to east and the northeast corner is 3 to 4 feet from the edge of the pavement.

The plaintiff was injured when she attempted to negotiate the turn but struck the cement drain. The time of the accident was 10:00 p.m., when it was dark and raining hard. The plaintiff's evidence is that she has lived in the area for two years, has made this turn approximately 100 times and on a few of those occasions would have made the turn when it was dark and raining.

The plaintiff states that on the night of the accident it was very dark and that the corner was inadequately lit even though there is a lamp-post on the southwest corner. I have no evidence as to how far the lamp-post is located from the corner. She said that the concrete slab had a sheen on it because of the rain and darkness and she mistook it for part of the road.

In addition to the plaintiff's evidence a Mrs. Smith swore an affidavit stating that the lighting at this intersection is poor and she had called the defendant because there had been a number of accidents at this intersection. Mrs. Smith resides in a house on the southeast corner beyond the cement drain.

The plaintiff also filed an affidavit from a Mr. Gary Webb which states that there had been another accident at the same intersection which happened in a similar fashion.

LIGHTING

The lighting in this area was installed by agreement between City Council and B.C. Hydro sometime around 1979 but no study was ever done to determine whether it was adequate. The plaintiff argues that the defendant ought to have known that this was a dangerous corner and inadequately lit. The defendant had received a phone call from Mrs. Smith about the inadequacy of lighting. Of 13 accidents at this intersection between 1978 and 1989 at least 8 of them were single car accidents. Of those, 6 of them were at a time when it was dark. The plaintiff argues that when there have been so many single car accidents the defendant should have studied the lighting to determine if it was adequate. Although there is no obligation on the defendant to install lighting, once it undertakes to do so it must do it adequately because motorists may be misled by the lighting.

I find that the lighting at the intersection was not adequate. Two witnesses have sworn that it was not adequate and there is no evidence to the contrary.

HAZARD

The cement drain which touches the edge of the road was placed there by the municipality and constituted a hazard. The municipality was therefore under an obligation to adequately mark it with a reflector post or some other device which could easily be seen by a motorist. Counsel have agreed that it would be very easy and inexpensive to install a reflector post in front of the drain.

I find that when it is dark and raining it is difficult to distinguish the cement slab from the road and a motorist could be misled into thinking that it is part of the road. I find that the plaintiff was in fact misled by the cement slab.

CONCLUSION

I find the defendant 75% liable because of the inadequate lighting and because the cement slab placed touching the road looked like the road when it was dark and wet.

I find the plaintiff 25% responsible for the accident because she was familiar with the area and had previously travelled the route on dark and rainy nights.

"F. Maczko, J."