



File No. 92 8060

OLIVER REGISTRY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
SMALL CLAIMS DIVISION

BETWEEN: RAYMOND PERRY)	
CLAIMANT)	REASONS FOR JUDGMENT
)	
)	OF HIS HONOUR
AND: THE CORPORATION OF THE TOWN)	
OF OSOYOOS)	JUDGE B. C. WEDDELL
DEFENDANT)	
)	
AND: LAWRENCE ENTERPRISES LTD.)	
THIRD PARTY))	

APPEARANCES: THOMAS J. JOHNSTON, FOR THE CLAIMANT
PETER G. ALTRIDGE, FOR THE DEFENDANT
PENNY PEARSON, FOR THE THIRD PARTY

DATE OF HEARING: MAY 7, 1993 AND MAY 19, 1993

The Claimant brings action against the Defendant, Town of Osoyoos, for damages which he says arose in 1992, from construction work ordered done by it and carried out by the third party, Lawrence Enterprises Ltd.

The trial was held on May 7, 1993 and May 19, 1993, and written arguments were called for and the last reply thereof was filed on July 2, 1993.

The facts out of which the claim arises are as follows:

In 1990, the Provincial Ministry of Transportation and Highways for British Columbia, decided to acquire additional property for highway widening purposes. To that end it negotiated with property owners whose property abutted the highway. The Claimant was one of those.

The Claimant and the Ministry of Highways concluded an agreement, whereby the Claimant sold a portion of his property to the Ministry of Highways for \$15,000.00. The boundaries of what was sold are outlined in Exhibit 5 Tab #4, and can be generally described as a 7.730 metre strip that runs the length of the Claimants property.

The works that give rise to this claim commenced approximately in January of 1992. At that time the Defendant Town of Osoyoos decided to lay new water lines along the highway in anticipation of its widening. The Town of Osoyoos

let a contract to the third party for this work, which contract is Exhibit 4, here.

The work was done by the third party and substantially completed on March 30, 1992.

The Claimant says he has suffered damages as a result of the carrying out of the work and looks to the Defendant Town of Osoyoos for recovery of the same. The Town of Osoyoos says if any damage was caused it is the third party who is liable thereto, pursuant to the agreement Exhibit 4, and has taken third party proceedings in that regard.

The damages claimed by the Claimant approximate \$18,000.00, but he has abandoned any claim over \$10,000.00 to bring the claim within the jurisdiction of the Small Claims Court.

The damages claimed are set out in the Notice of Claim and also, are particularized on Exhibit 3. They relate inter alia to damages arising from things done and not done on the property sold by the Claimant to the Ministry of Highways, and secondly to things done and not done on the Claimants property.

Dealing firstly with the claim for damages for things done and not done on the property sold to the Ministry of Highways.

The Claimant says he acquired a special status as to that property. He says he was allowed to treat it as his own and therefore acquired some quasi ownership rights, or some rights, sufficient to ground a damage claim in respect of things done and not done by the Defendant and the third party.

I am unable to accede to that proposition. I find that by conveying his property to the Ministry of Highways for a consideration (\$15,000), the defendant transferred the full legal estate in that property to the Ministry of Highways. That agreement, which is filed as Exhibit 5, tab 2, provided for only those exceptions stated therein, none of which I find support his claim for damages. That agreement clearly by its terms was intended to be an absolute purchase by the Ministry of Highways, of the property, and the payment therefore was clearly expressed to be payment for all of the Claimants interest therein, subject only to those exceptions specified which I find not to be relevant to the Claimants claim.

The Claimant is a person who for many years has taken great pride in the appearance of his property and, indeed, of the property that fronts his. There is also no doubt that he has spent many hours caring for and making that property as attractive as he could. There is no doubt that that the land on which the works here were done, did not look as attractive after, as it did before. That fact, however, does not give rise to a claim for damages for its lessened appearance nor for the loss of any of the structures on that land that had previously been sold by the Claimant to the Ministry of Highways.

I find that there is no evidence of any legal right acquired or possessed by the Claimant that would give rise to the claim for damages he has advanced for anything in respect of that property he sold.

That then leaves for consideration the claims advanced in respect of things done on and affecting his own property. I find these to be as follows and I am listing them according to the lettering attributed to them on Exhibit 3, herein. They are, items e, f, g, k, l, o, p.

With respect to items f, k, l, o, p, I find no causal connection between anything done by the Defendants or

the third party and the damage claimed. I also hold that the damages claimed have not been proven in respect of these items.

With respect to items e and g, I find that the claimant did suffer damages, in that the damages claimed by him would not have occurred but for the work of the Defendants Contractor, the third party.

These two items total \$930.00 and I therefore find for the Claimant in the amount of \$930.00 and he will have judgment against the Defendants and the third party, both jointly and severally for that amount.

As I have found these damages occurred due to the actions of the Defendant third party, the Defendant Town of Osoyoos will have judgment over against the third part for that amount.

Costs are awarded to the Claimant for the filing and service fees and disbursements herein. There will be no costs as between the Defendant Town of Osoyoos and the third party.

I am indebted to Counsel for their careful and thorough conduct of this case and the obvious care all counsel devoted to the arguments.

DATED AT THE CITY OF KELOWNA, IN THE PROVINCE
OF BRITISH COLUMBIA, THIS *9th* DAY OF *July*,
1993.



B. C. WEDDELL

PROVINCIAL COURT JUDGE