

Canada

PROVINCE OF BRITISH COLUMBIA

SMALL CLAIMS DIVISION

In the Provincial Court of British Columbia
(BEFORE HIS HONOUR JUDGE SIMPSON)

No. 21345

KAMLOOPS, B.C.
13 MARCH 1990

BETWEEN:

SUSAN CHAPMAN

PLAINTIFF

and

CITY OF KAMLOOPS; it's servants or agents

DEFENDANT

REASONS FOR JUDGMENT

APPEARANCES:

J. NELSON
T.S. GRIFFIN

Clerk Recorder.
Transcriber.

Reasons for Judgment
SIMPSON, P.C.J.
13 March 1990

1 THE COURT: (ORAL) The Plaintiff, owner of premises
2 in the City of Kamloops is suing the City for damages
3 incurred as a result of sewage back up into the
4 basement of their (sic) residence August 8th, 1989.
5 The Plaintiff alleges negligence by way of improper
6 maintenance and having no understanding of sewer
7 systems logically relies upon the doctrine of res ipsa
8 loquitur. It is clearly established that this problem
9 occurred through no act or default of the Plaintiff and
10 not in any portion of the system connecting the
11 residence of the Plaintiff to the main sewer system.
12 It is clear to this Court that the damage occurred by
13 reason of a blockage in the main sewer system over
14 which the Defendant has absolute control. Res ipsa
15 loquitur is not strictly speaking, a doctrine or a
16 ground of tort but a Latin phrase relating to the
17 burden of proof and it applies in this case. Res ipsa
18 loquitur means as follows:

19
20 There must be reasonable evidence of negligence,
21 but where a system is shown to be under the management
22 of the Defendant and the accident is such as in the
23 ordinary course of things does not happen, if those who
24 have management use proper care, it affords reasonable
25 evidence in the absence of explanation by the Defendant
26 that the accident arose from want of care.

27
28 The Plaintiff has established sufficient to rely
29 upon the maxim res ipsa loquitur whereby, although the
30 legal burden of proof does not shift, the evidentiary
31 one does. A prima facie case, therefore, exists based
32 on circumstantial evidence.

33 In answer to this the City of Kamloops adduced
34 evidence of its sewer maintenance program. City sewers
35 are periodically power flushed to ensure proper
36 functioning according to a pre-arranged schedule. This
37 schedule was introduced. The power flushing and the
38 dates were also narrated before this Court. This
39 schedule was maintained in this case. The Utility
40 Department records indicate that maintenance of the
41 main sewer lines on this stretch of Beach Avenue was
42 proper and adequate during the month prior to August
43 1989, including the month the back up occurred.

44 Persons in the position of responsibility of the
45 Defendant, aside from the law of nuisance, are not
46 guarantors. They, too, are at the mercy of persons
47 making improper use of the sewer system. The City

Reasons for Judgment
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1 adduces evidence which does not justify any finding of
2 negligent maintenance. The City does owe a duty of
3 care which, in my opinion, has been off-set. The fact
4 of damage does not in itself and by itself establish
5 fault.

6 Municipalities such as Kamloops were absolved in
7 1987 by the Province of British Columbia from further
8 damage actions arising out of the cause of action for
9 nuisance. There is therefore no recovery permitted
10 after 1987 on that ground, aside from actions for
11 negligence.

12 I am compelled to find that there is no action for
13 negligence in this case. Substantial damage was caused
14 to the Plaintiff's property through no act or default
15 of their (sic) own. And somewhat to my surprise, I am
16 also required to find that this damage was not caused
17 by the likelihood of any act or default of the
18 Defendant. That being the case there is no
19 preponderance of evidence against the Defendant that
20 the Defendant is guilty of negligence and that action
21 must be dismissed.

22 Thank you. You are free to leave.

23
24 (PROCEEDING CONCLUDED)

25
26 23 JULY 1990/TSG
27 R. 17 AUGUST 1990/TLP

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I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.



T.S. Griffin, Transcriber
for Scott Personnel Ltd.