

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0731989 B.C. Ltd. v. District of Hope*,
2013 BCSC 2315

Date: 20131217
Docket: S108115
Registry: Vancouver

Between:

0731989 B.C. Ltd.

Plaintiff

And

District of Hope

Defendant

Before: The Honourable Mr. Justice Goepel

Reasons for Judgment

Counsel for the Plaintiff:

D.C. Creighton

Counsel for the Defendant:

K. Ameyaw
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Written Submissions of the Defendant:

September 26, 2013

Written Submissions of the Plaintiff:

October 7, 2013

Place and Dates of Trial:

Vancouver, B.C.
September 16-19, 2013

Place and Date of Judgment:

Vancouver, B.C.
December 17, 2013

INTRODUCTION

[1] The plaintiff, 0731989 B.C. Ltd., claims damages against the defendant, District of Hope (the “District”), for negligence and negligent misrepresentation. The claim arises in the context of a water leak that was ultimately traced back to the municipal water system.

BACKGROUND

A. The Municipal Water System

[2] The District maintains the municipal water system. Property owners pay for the water they use. The water is transported from a reservoir to the city water mains. Individual property owners connect to the water system at their property lines by way of private service lines.

[3] Individual property owners must pay for all water used and consumed on their properties. Their usage is measured by water meters that are connected to the private service lines. The District is responsible for the maintenance and repairs of the water meters.

[4] Over the years the District has grown in size. The water system, which is the subject of this proceeding, was initially installed and maintained by the local Regional District. There was no charge for water usage under the Regional District. The area was incorporated into the District in 1994. It was only then that water meters were installed.

[5] The District maintains service maps which are supposed to show the location of the municipal water lines. The service maps for the subject area were inherited from the Regional District in 1994. The District acknowledged at the trial that the service maps have at times been found to be inadequate and incomplete. The policy of the District is to update their service maps from time to time as work is done in the area.

B. The Plaintiff

[6] At the material times the plaintiff owned and operated the Silverhope Mobile Home Park (“Silverhope”). Mr. Neil Fourchalk was the plaintiff’s sole director, shareholder and operating mind.

[7] Silverhope rents out mobile homes, cabins, an old house and R.V. pads. It has some 40 units. It is located on Frontage Road, sometimes referred to as Flood Hope Road.

C. The Leak

[8] On May 9, 2008 a resident of the District brought to the District’s attention that water was flowing in the area of a culvert under Frontage Road (the “leak”). The leak was located immediately across the road from Silverhope. The water system in that location was constructed at a time when that area formed part of the Regional District.

[9] Mr. Al Trick, the District’s utilities foreman, investigated the leak. He reviewed the water service maps that identified the location of known water lines in the region, including in the area immediately surrounding the location of the culvert. The service map showed a water line running below Frontage Road in the direction of the culvert. Mr. Trick believed that this line had developed a leak and was the source of the water running through the culvert.

[10] To test his theory, Mr. Trick attempted to close the valve of the water line running below the culvert. When this did not stop the flow of water, he concluded that the valve was dysfunctional. When, however, he shut off the municipal water line at the water valve connection at the pedestrian overpass, which is located to the east of the Silverhope property, water stopped flowing through the culvert. Mr. Trick then knew that the leak was in some manner connected to the municipal water system, albeit he did not know the exact location or source of the leak.

[11] Mr. Trick suspected that the source of the leak was the water line immediately adjacent to the culvert. Rather than excavating and removing that line, the District crew pushed a new smaller pipe through the larger existing pipe to tie into the main water supply line. Having followed this procedure, there was no actual evidence that the old larger pipe was broken.

[12] When the new line was activated, the leak continued. Mr. Trick took no further steps to determine the source of the leak. Having replaced the only line in close proximity to the underground water source according to their service map/cards, and observing that the water continued to run in the area of the culvert, Mr. Trick testified that he concluded that the source of the leak was an underground natural fissure spring.

[13] I have considerable trouble with this evidence. Mr. Trick knew in May 2008 that the leak would not have been caused by a spring because it had dried up when the municipal water system had been shut down at the overpass. While Mr. Trick may not have known in May 2008 the exact cause of the leak he did know that the water that was escaping from around the culvert had its origin in and was in some way connected to the municipal system. Mr. Trick agreed that if he had again shut off the water value at the overpass after the water line adjacent to the culvert had been replaced he would have known in May 2008 that the leak was somehow connected to the municipal system.

D. Impact on Silverhope

[14] In June 2008, Mr. Fourchalk was advised that the District was going to replace the head of the water meter that serviced the Silverhope property. He was told that the existing meter was not properly calibrating the consumption of water.

[15] While the modification to the water meter was taking place Mr. Fourchalk noticed the leak for the first time. He brought the matter to the attention of the District and spoke to Mr. Trick. Mr. Trick advised him that the water accumulating near the culvert was spring water and it was nothing to do with Silverhope's water system.

[16] When Mr. Fourchalk first observed the leak it was no bigger than a saucer of water. Over the next several months he observed it increase in size. As the leak increased in size Silverhope's water bills began to increase and the water pressure in the units decreased.

[17] Over time the ground near the property described as "the old house" became saturated. The drains in the old house stopped working. In the basement of the old house water was found seeping through the concrete slab foundation. To remedy this problem Mr. Fourchalk jack hammered the slab out and installed a sump pump in the basement of the old house to dispose of the excess water. Mr. Fourchalk also discovered that the septic tank was flooded and had to be pumped.

[18] Throughout 2009, Silverhope's water bills continued to increase while its water pressure continued to fall. The increase in water bills was quite dramatic. Mr. Fourchalk indicated that prior to the problems developing his average water bill was \$125 a month or \$375 quarterly. The four quarterly billings in 2009 were \$1,370.49; \$2,808.77; \$2,990.21; and \$4,049.69.

[19] Mr. Fourchalk continued to raise these matters with the District. He was continually advised that Silverhope's problems were not related to the increasing water observed by the culvert. He was told that the leak was from a natural spring and the fact it was increasing in size was just coincidental. Mr. Trick told Mr. Fourchalk that Silverhope's increased water bills and decreased water pressure were likely caused by a leak in Silverhope's own water system.

[20] Based on Mr. Trick's representations Mr. Fourchalk attempted to locate the water leak. He checked the water connection in all of Silverhope's units without success. Mr. Trick then advised him that he should retain the services of a company that specialized in water leak detection. The company that he retained could not observe any leaks. It suggested, however, it was possible that there were pinprick leaks in the Silverhope system that were causing the problem.

[21] Based on this advice and the information that he had received from the District that there was a leak in the Silverhope system, Mr. Fourchalk then undertook the replacement of all of the water lines at Silverhope. Once the new lines were laid they had to be connected to the District water system.

E. Fixing the Leak

[22] The source of the leak was discovered at the end of January 2010 when it came time to connect the new Silverhope water lines to the water meter. In order to connect the municipal system to the new Silverhope water lines it was first necessary to turn off the water to the existing private service line. When this was done, the leak by the culvert immediately dried up.

[23] Examination of the existing private service line indicated that it did not go directly into the Silverhope property. Rather, the line looped back under Frontage Road. Because the line looped under the road and the road was not dug up, the location of the leak in the line was not uncovered. In his evidence, Mr. Trick suggested that there was likely a second line connected to the private service line and that this additional line, which is not shown on the District's service maps, was the source of the leak.

[24] Following the determination of the cause of the leak Mr. Fourchalk sought to be reimbursed for various amounts that he says Silverhope expended because of the leak. The District agreed to credit Silverhope's water account for water consumption by \$3,231. 66. It denied all other compensation.

[25] In November 2011, the plaintiff sold Silverhope to a third party.

POSITION OF THE PARTIES

[26] The plaintiff submits that the District is liable in negligence and for negligent misrepresentation. It says that Mr. Trick knew as of May 2008, when the water leak continued after repair of the water line, that the leak was not caused by a natural spring. It says his representations to Mr. Fourchalk that the leak at the culvert was

caused by a spring were negligent. It says Mr. Trick should have realized when the water problems at Silverhope were brought to his attention, that those problems could be traced back to the leak at the culvert which he knew was sourced from the municipal system. It submits the damages that it incurred in the 20 months subsequent to June 2008 are recoverable against the District.

[27] The District submits that it acted in a proper fashion throughout. It says its belief that the water by the culvert was caused by a spring was, given the information available to it, reasonable. It further submits that the leak was ultimately discovered to exist in the private service line and, accordingly, the District has no responsibilities for any of the ensuing damage.

DISCUSSION

A. Liability

[28] Mr. Trick knew in May 2008 that the municipal water system was the source of the leak at the culvert. This was conclusively established when the leak dried up after the municipal system was turned off at the overpass. Mr. Trick at that time thought the source of the leak was the line under Frontage Road. Given the location of the leak, that was a reasonable conclusion. When that line was repaired, however, the leak continued. I find that in May 2008 Mr. Trick knew the leak was coming from water in the municipal system and could not be from a natural spring.

[29] Mr. Trick further knew that the leak was somewhere between the culvert and the overpass. The evidence indicates that there were approximately 12 properties that connected to the main water system between the culvert and the overpass. Of those 12 properties, Silverhope was the closest to the culvert.

[30] When Mr. Fourchalk first raised the question of the leak in June 2008, Mr. Trick told him it was from a spring. That representation was false and Mr. Trick knew from his prior investigation that the representation was false.

[31] When the leak continued to increase in size, at a time when the water pressure at Silverhope was falling and Silverhope's water bills were increasing, it should have been obvious to Mr. Trick that there was a connection between the leak and the problems at Silverhope. Rather than drawing that conclusion, however, Mr. Trick told Mr. Fourchalk that the increase in the size of the leak by the culvert had nothing to do with the problems with the Silverhope system and that the problems at Silverhope were related to a leak somewhere in the Silverhope system.

[32] Mr. Fourchalk relied on that advice to his detriment. He expended time and money checking all the plumbing connections on the Silverhope property and ultimately replaced all of the water lines at Silverhope. It was only when it came time to connect the newly laid lines to the water meter that the source of the leak was discovered.

[33] In these circumstances, I find that the District had an obligation, given its knowledge that the leak's source was the municipal water system, when faced with the difficulties that Silverhope was occurring, to further investigate the matter. It chose not to. Rather, the District advised Mr. Fourchalk that it was his responsibility to find the leak and charged Mr. Fourchalk ever increasing amounts for water use. If the District had conducted further investigations, it would have quickly determined the source of the leak. In the circumstances, I find that the District is liable both in negligence and negligent misrepresentation for the damages that Silverhope incurred as a result of the leak.

DAMAGES

[34] The plaintiff seeks a wide range of damages totalling some \$88,151. Included in the damage claim is \$30,000 for general damages as a result of the inconvenience for its business both in dealing with residents and District staff over a period of 30 months. The plaintiff also seeks to recover some \$19,600 representing the estimated cost of repairs to the old house, even though the proposed repairs were not carried out.

[35] I find that neither of those sums is recoverable. The evidence does not support a claim for general damages. The plaintiff cannot recover for the costs of repairs that were not carried out. There is no evidence that Silverhope's value was reduced by the damage to the old house or that the amount the plaintiff received when it sold Silverhope was reduced on account of the state of the old home.

[36] The plaintiff is entitled to recover the amounts it actually expended as a result of the District's negligence. This includes the excess water charges which would not have been incurred absent early detection of the leak, amounts spent attempting to discover the source of the leak, amounts spent fixing the problems in the old house basement and the costs incurred in replacing the existing water lines.

[37] In regard to the later item, the District submits that it should not have to pay for the costs of the new water line because the new water line conferred a benefit on the plaintiff. The difficulty with that submission is that there is no evidence that the plaintiff benefitted from the new line. The line was replaced because of the information provided to Mr. Fourchalk that the leak must be in the existing line. There is no evidence that the value of Silverhope was increased by the new lines or that the sale price of Silverhope was increased because of the new water lines.

[38] Both parties provided calculations in relation to the excess water charge. It is not possible, however, on the evidence to calculate the amount with precision because the Silverhope water meter was not working accurately for several months prior to its replacement in June 2008. The only water bill produced subsequent to the repairs to the system was for the three month billing period July 7, 2010 to October 10, 2010. That showed a billing of \$292.18. Whether that mid-summer billing is representative of annual billings cannot be determined on the evidence. Mr. Fourchalk, in his evidence, indicated that prior to the difficulties arising, his monthly water bills averaged \$125.00. I find that that is the most accurate figure to base the overages.

[39] I accept the calculations set out in Table 2 of Exhibit B of the plaintiff's written submissions, save and except I would change the referenced amount to \$375 from

\$292.18. This reduces the claim by \$579.74 ($\$375 - \292.18×7). Using that number and giving the credit to which the District is entitled, would lead to an overage of \$8,196.35 which I would round off to \$8,200.00,

[40] In regard to the work performed in relation to the old house, the plaintiff is entitled to recover \$1,406 (ex. 1-37). The plaintiff is, however, as noted above, not entitled to recover the estimated costs for reframing and repairing the old house.

[41] The plaintiff is entitled to recover the monies it spent attempting to isolate and locate the leaks in the fixtures and valves on its property including the hiring of an underground leak detection company and the replacing of its water lines which ultimately were determined not to be the cause of the leak. The work is detailed on the invoice set out at Ex. 1-8. It was reasonable for the plaintiff to carry out that work given the advice it had received from the District. The amounts total \$16,558.30 and are recoverable.

[42] The plaintiff has not proven its claim for loss of rental income. While the plaintiff suggests that certain tenants moved out or refused to pay rent because of the water problems in the units, there is no evidence in relation to historical movement of tenants or other evidence by which one could compare the rental income during this 20-month period with other time periods. Absent such evidence, the plaintiff has not proven a loss of rental income.

[43] The plaintiff also seeks to recover certain monies which it says were incurred in relation to maintaining and correcting the initial settling of the new water lines laid. The evidence is not sufficient to support those claims.

[44] In summary, therefore, the plaintiff is entitled to recover the following amounts:

Water overages	\$8,200.00
Work performed in relation to the old house	1,406.00

Monies spent attempting to locate and isolate leaks and repairing water lines	<u>16,558.30</u>
TOTAL:	\$26,164.30

[45] The plaintiff is entitled to judgment in the sum of \$26,164.30.

[46] Unless there are matters of which I am not aware, the plaintiff is entitled to costs. If either party seeks a different cost result, they should make written submissions within 21 days of the date of these reasons. Any submissions in response should be delivered within 15 days thereafter.

“R.B.T. Goepel J.”

The Honourable Mr. Justice R.B.T. Goepel