

COURT FILE NO.: 51357SR

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

IRIS MANDY POTTER and STEPHEN POTTER

Plaintiffs

- and -

IMANTS OZOLS

Defendant

) Jonathan de Vries, for the Plaintiffs

) R. Lee Akazaki, for the Defendants

) HEARD: November 25, 2008

LITTLE, J.

[1] In March 2006 the plaintiffs' residence was located immediately adjacent to property occupied, *inter alia*, by the defendant.

[2] The plaintiffs went away for the long March break weekend from March 10 to March 14, 2006. It was a wet weekend with considerable precipitation. The plaintiffs left the discharge hose from their sump pump in such a position that it was discharging water onto the property occupied by the defendant.

- 2 -

[3] In the plaintiffs' absence, the defendant admittedly took the discharge hose, added several pieces of additional hose he found on the plaintiffs' property to the original hose, and relocated the hose to the plaintiffs' front yard.

[4] When the plaintiffs returned home on March 14, 2006 they found water in their basement which caused damages which have been, as I understand it, agreed upon at approximately \$34,000.

Defendant's Position

[5] The defendant admits trespassing on the plaintiffs' property. The defendant admits extending and relocating the discharge hose. The defence in this case is based upon causation.

[6] The defendant's position is that the plaintiffs have failed to prove that the discharge hose relocation was the cause of the basement wetness and damages suffered by the plaintiffs.

[7] No expert witnesses were called on behalf of either party.

[8] The defendant argues that without expert testimony linking the sump pump discharge to the basement wetness, the plaintiffs rely only upon a theory, which they have failed to establish, as a possible cause of the damage. The defendant argues that no expert evidence was provided as to such things as water migration, water table levels, frost table, and the porosity of the cement foundation blocks.

[9] The defence position is that no possible explanation exists as to how so much water accumulated in the plaintiffs' basement causing such extensive damage.

[10] The defendants direct the court to the following citation:

- 3 -

The gap or hiatus in the coincidence of cause and effect has not been bridged by a reasonable inference or inferences from the facts actually observed and proved.¹

The Plaintiff's Position

[11] Stephen Potter's evidence was to the effect that:

1. He built his residence in 1989 and lived there with his family until 2007 when it was sold.
2. The sump pump was working at all relevant times.
3. Upon his return on March 14, 2006 to the residence, he found the sump pump hose located in his front yard with water gushing out of it.
4. He found approximately one inch of water on the front part of the basement floor.
5. He observed water coming in through the cold cellar concrete block wall located under the porch.
6. The wall was saturated with water running down it.
7. The basement at the other side of the house was not flooded.
8. No problems had been experienced with basement water since 1989 when the house was built up until this occasion when the discharge pipe for the sump pump was placed in his front yard.
9. He observed a depressed area of at least four feet in circumference in the mulch covered ground at the hose discharge outlet near his front porch, which he pointed out in photo #11 of Exhibit #1.

[12] The plaintiff, Mandy Potter confirmed her husband's evidence that upon return to their home she observed water gushing out of the hose when they entered the house

¹ *Campbell's Soup Co. v. Inter-City Gas Utilities Ltd.*, [1989] 4 W.W.R. 289

- 4 -

and further, that they had not experienced any problems with water in the basement prior to that occasion.

Evidence

[13] I accept that evidence as being reliable. Both parties gave their evidence in a direct and straightforward manner. Mr. Potter honestly admitted that he did not know how the water got into his house except that he saw the pipe gushing water, he saw the basement flooded, and he saw the cold cellar walls soaking wet.

[14] I further accept his evidence as to the location of the end of the extended sump pump hose being near his foundation. The depressed area at the mouth of the hose supports this, as did his wife's evidence.

[15] Mr. Ozols, the defendant, testified that he placed the mouth of the hose some considerable distance away from the house foundation on the other side of a green bush located in the front yard. He showed this location by marking picture #9, Exhibit #1.

[16] I reject this evidence completely. I also reject the defendant's evidence that one of the reasons for extending and relocating the discharge hose was to assist the plaintiffs. Having viewed the parties and their demeanour, and their attitudes towards each other, this just does not make sense.

Causation

[17] The plaintiffs must prove causation on the balance of probabilities. They have done so. There are "no gaps" in the proof of causation. Not all causation evidence must rely upon expert testimony.

[18] As Sopinka J. stated in *Snell v. Farrell*:²

² *Snell v. Farrell* 2 S.C.R. 311 @ 330

- 5 -

The legal or ultimate burden remains with the plaintiff, but in the absence of evidence to the contrary adduced by the defendant, an inference of causation may be drawn although positive or scientific proof of causation has not been adduced.

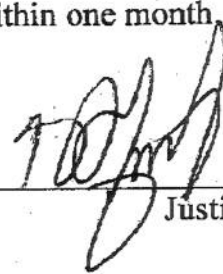
[19] Such an inference must be just that, and not merely conjecture. As Lord MacMillan stated in *Jones v. Great Western Railway Co.*:³

A conjecture may be plausible but it is of no legal value. An inference, in the legal sense, on the other hand, is a deduction from the evidence and if it is a reasonable deduction, it may have the validity of legal proof.

[20] I accept the evidence that the hose was placed by the defendant at the area of depression adjacent to the steps. This placement was at least negligent, if not completely careless or intentional.

[21] This caused the water to be pumped by the sump pump into the ground and through the concrete block foundation wall in the cold cellar, as witnessed by Mr. Potter, causing the agreed upon damages. No other evidence to the contrary was forthcoming, nor were any theories advanced to dislodge the very logical common sense inference that the sump pump hose placement caused the damages.

[22] There will be judgment for the plaintiffs, together with costs. If those costs cannot be agreed upon, I will accept written submissions within one month.



Justice T. D. Little

Released: November 27, 2008

³ *Jones v. Great Western Railway Co.* (1930), 47 T.L.R. 39 @ p. 45