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November 16, 2023

Neighbour liable for over $505,000 in damages caused by water nuisance *(Warren v. Gluppe)*

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Neighbours owe each other a duty of care not to cause damage to the other's property. One of the major sources of potential damage is water flooding from sump pump run off, septic sytems, or improperly maintained eavestroughs. The consequences for causing damage to a neighbour's property may be significant, as shown by a decision of the Ontario Superior Court of Justice in *Warren v. Gluppe*, 2023 ONSC 6301 (CanLII).

The dispute concerned two neighbours in Prince Edward County, Ontario. In 2016, the plaintiff grew concerned about pooling water along the property line with his neighbour's house. He determined that the water was coming from the neighbour's sump pump line. Foul odours were emitting from his neighbour's septic system and/or leaching bed. Waters samples were determined to contain E. coli and Coliforms.

The plaintiff's neighbour acknowledged the flooding but failed to remediate the issues. He said that he could not afford to fix the problems and did not have property insurance to cover the damage.

The municipal Planning Department ordered the plaintiff's neighbour to dig a trench and redirect the sump line pipe to the opposite side of the property along his driveway, which would redirect the water to the main road where municipal culverts could collect it. However, this remediation did not succeed. Rather, the redirected water travelled through a pipe that had not been removed and drained back to the area where the pooling first occurred.

By the end of 2016, the pooling water undermined the foundation of the plaintiff's home resulting in its structural collapse to the point where it was no longer safe for him to live there.

In December 2016, the plaintiff sued the neighbour for the damage. The trial eventually took place in 2023, seven years later.

At trial, an engineer retained by the plaintiff opined on the collapse of the home. His opinion was that the neighbour's sump pump line, which came out of his basement, was supposed to discharge into the municipal culvert

Continued on page 2

but was not doing so. The neighbour's efforts to reroute the water had been unsuccessful and by the time he completed a new trench following the intervention of the Planning Department, it was too little too late as the plaintiff's house had already collapsed. In the engineer's opinion, the sump pump water discharging from the neighbour's property had caused damage to the plaintiff's home and rendered it unsafe to the point where it needed to be demolished.

The engineer further concluded that the flooding issues were exasperated due to the location of the neighbour's septic system being a significant violation of the Ontario *Building Code*, which requires septic units to be a minimum of ten feet from property lines. According to the neighbour's septic permit, his septic bed should have been 18 feet away from the property line. In fact, the septic bed was only 12 inches from the property line and the septic slope terminated at the property line, which was five and a half feet from the plaintiff's house. The engineer concluded that since the septic system was located so close to the plaintiff's property it had been adversely affected by waters from the septic system.

Lastly, the plaintiff had evidence that his neighbour had failed to properly maintain his eavestroughs which resulted in additional water saturation on this property. While this water was not flooding in regular intervals like the sump pump water, it contributed to the saturation of the affected area which in turn put the property's foundation at risk.

The trial judge determined that the plaintiff's neighbour was liable on three grounds: (i) the doctrine of strict liability in *Rylands v. Fletcher*; (ii) negligence; and (iii) nuisance.

Under the doctrine of *Rylands v. Fletcher*, liability is imposed due to the discharge of water onto the property of an adjoining neighbour where there is: (a) a non-natural use of the land; and (b) an escape resulting in some form of mischief to the adjoining property. "Non-natural" means "special, exceptional, unusual or out of the ordinary"; "natural" means "normal, common, everyday or ordinary rather than primitive or in a state of nature": *Alfarano v. Regina*, 2010 ONSC 1538 (CanLII).

The trial judge found that the discharge of water from the basement through faulty black and white pipes placed along the property line was a non-natural use of the land. The discharge onto the area along the plaintiff's house was not a natural occurrence but was caused by the deliberate conduct of the plaintiff's neighbour in trying to manage his own flooding basement. While the neighbour tried to reroute his sump pump line away from the house, he failed to remediate the problem in a timely or effective manner.

Further, the flooding caused by water from the neighbour's property was not due to "the laws of nature" but was water coming from the faulty and improperly placed sump pump lines and septic system along the property line. This flooding and the failed remediation efforts resulted in the collapse of the plaintiff's house and the contamination of his land.

The neighbour was also found liable for negligence, as neighbours owe a duty of care to each other not to use their respective properties in a way that would pose a foreseeable risk to another's property and cause it damage: *Alfarano v. Regina*, at paragraph 69. Based on the evidence, the neighbour's failure to ensure the effective rerouting of the sump pump waters constituted a breach of the standard of care. The neighbour also breached the duty of care by failing to ensure his septic system was in compliance with zoning bylaws and was adequately serviced to prevent contamination

of the neighbouring property, and for failing to repair and maintain his eavestroughs.

Lastly, the neighbour was liable for nuisance, which requires a plaintiff to establish an interference with their use or enjoyment of land that is both substantial (non-trivial) and unreasonable. A substantial interference is one that is non-trivial: *Antrim Truck Centre Ltd. v. Ontario (Ministry of Transportation)*, 2013 SCC 13, at paragraphs 18-19.

Nuisance may arise in circumstances where there has been physical damage to a property, where the interference has caused a significant diminution of the market value of the property, or where a defendant's use of their own property has significantly altered or interfered with the plaintiff's intended use of their property: *St. Pierre v. Ontario (Minister of Transportation and Communications)*, 1987 CanLII 60 (SCC).

As with the negligence findings, the trial judge concluded that the neighbour's failure to adequately deal with the water from his sump pump line and to properly maintain his septic system and eavestroughs resulted in the flooding along the plaintiff's property. This, in turn, undermined the foundation of the home resulting in its structural collapse. The misconduct also resulted in the contamination of the plaintiff's property. He was unable to live in his home or resell it and will have to undergo environmental remediation to address the contamination. This misconduct was clearly substantial and unreasonable.

The trial judge awarded damages to the plaintiff based on the replacement cost for his home at current market value, assessed at $487,211. The neighbour was also liable for $18,143.53 in special damages for the plaintiff's maintenance, repair, travel, and accommodation costs since 2016, and pre-judgment interest of $35,577.99. Costs for the action were awarded to the plaintiff of $100,000.

The decision shows the potentially enormous financial consequences that may arise if one is found liable for damages to a neighbour's property. Utmost care should be taken to prevent such circumstances from occurring or continuing.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact James Cook, at 416.865.6628 or jcook@grllp.com.

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