

Citation: ☼



Date: ☼  
File No: 108605  
Registry: Kelowna

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

BETWEEN:

**GERHARD KASDORF**

CLAIMANT

AND:

**GORDON REGAN**  
**(operating as: K & G Lawn Maintenance and**  
**K & G Lawn Maintenance and Landscaping Ltd.)**

DEFENDANT

**REASONS FOR JUDGMENT**  
**OF THE**  
**HONOURABLE JUDGE J.P. CARTWRIGHT**

Appearing on their own behalf:

G. Kasdorf

Counsel for the Defendant:

E. Unrau

Place of Hearing:

Kelowna, B.C.

Date of Hearing:

October 13, 2016

Date of Judgment:

October 17, 2016

[1] Mr. Gerhard Kasdorf sues Gordon Regan, operating as K & G Lawn Maintenance, and K & G Lawn Maintenance and Landscaping Ltd. (collectively, "the defendant") for the sum of \$17,862.35 and costs for repairs to his hardwood floors. Mr. Kasdorf maintains that the defendant's negligence caused overwatering of his lawn, which caused water to seep into his crawl space, which in turn provided moisture to warp the floors above the crawl space.

[2] Mr. Kasdorf owns property in the gated community known as "Sandstone Gated Community" ("Sandstone") on Cameron Avenue in Kelowna, B.C. Sandstone's governing Strata Council contracted with the individual defendant (he did not incorporate until 2015) in 2014 for lawn maintenance and irrigation for the community of 189 homes.

[3] Mr. Kasdorf testified that the north side of his house has an alley of grass, with a width of about 12 feet, between his house and his neighbour's house. There are 6 sprinkler heads situated next to his house, evenly spaced, and 6 on his neighbour's side. Mr. Kasdorf testified that at the critical time, in September, 2014, his neighbour's sprinklers were set for a 12 minute run, and his were set for 16 minutes. He testified this meant that this small alley was watered for 28 minutes, 5 days a week.

[4] Mr. Kasdorf maintains that those sprinklers need to be set for only 2 to 3 minutes, now 3 days a week, and consequently his lawn was over watered, to the point that his crawl space flooded.

[5] Mr. Kasdorf and his wife left for vacation on September 4, 2014, and returned on September 29, 2014.

[6] When they returned, they noticed that their hardwood floors (covering approximately 1800 square feet of their home) were "wavy". The hardwood flooring industry refers to this as "cupping". Mr. Kasdorf testified that he was told that this was due to excessive moisture, and at that point they located the water in the crawl space.

[7] The Kasdorfs called a plumber and were advised that all lines were secure and not leaking.

[8] The water pooled to a depth of a couple of inches in some areas of the crawl space (the floor wasn't even).

[9] Mr. Kasdorf previously worked as a contractor and has experience with irrigation systems. He has adjusted his own sprinklers around his residence. He testified that he never reset the timers but has managed to reset the sprinklers for another run when he felt he wasn't getting enough water. He knew that home owners were not allowed to adjust the sprinklers, but he justified his behavior by claiming that re-running the system was not "adjusting" it. Mr. Kasdorf has, in the past, requested another sprinkler head in another zone, and arranged to have others removed for landscape renovations.

[10] The home owners have a system which appears to work well for repairs or changes to the system. They would fill out a requisition, and send it to the appropriate council member, who would then forward reasonable requests to the defendant. The defendant devoted one day a week to repairs and other requests.

[11] Mr. Kasdorf's property had evidence of a water problem when he purchased the home in 2011. He remedied that problem by having 2 out of the 4 sprinkler heads

removed on one side of his home (not the north side). He was aware there were cracks in the foundation. He did not feel these cracks affected the integrity of the foundation.

[12] The alley in question was not evenly saturated, but seemed to be saturated near one end, closest to the water leak in the crawl space. Mr. Kasdorf's property backs onto a pond in the development.

[13] Mr. Regan, testifying for the defendants, said that he is currently in his 5<sup>th</sup> year with his Sandstone contract. His scope of work is to trim and cut grass, blow off walkways, shape bushes and cedars, and run and maintain the irrigation system. He and his 5 employees cut the grass on Mondays, and he completes any repairs to the system on Tuesdays.

[14] Sandstone has upgraded to a computer backed irrigation system which automatically adjusts every sprinkler head in accordance with the weather. Prior to this development, in 2014, Mr. Regan set the timers manually. He first set them in April, when he checked each zone and each house. He testified he also had to do 200 to 400 repairs each spring. In late May or early June he would readjust each timer for the hotter weather. In September he would dial back the timers if the weather was cooler. If the weather stayed warm, he would leave the timers until the system was shut down and blown out in October.

[15] Mr. Regan can't recall if he readjusted the timers in September, 2014. It takes a full day to change the timers. Mr. Regan handled that personally.

[16] He testified that the north side of Mr. Kasdorf's house would have timers set for 4 or 5 minutes in the spring, and 8 or 9 minutes in the summer, 4 times a week.

[17] Mr. Regan testified that he would never have set a timer for 12 minutes or 16 minutes, such as Mr. Kasdorf testified he found in September, 2014. Mr. Regan testified he would never set a timer for over 10 minutes in any zone.

[18] Mr. Regan's priority is water conservation in order to save Sandstone considerable sums of money.

[19] Mr. Regan testified that he experienced a constant challenge with residents resetting their own timers. He said the timers are tampered with, turned on or off, and some residents actually tamper with their neighbours' sprinklers. He testified that the timers are locked, but this is ineffective as every home owner's key fits every lock.

[20] Mr. Regan had adjusted Mr. Kasdorf's water a few times. He recalls that Mr. Kasdorf wanted more water on his side and back lawns. He recalls adjusting the water output but not significantly.

[21] Mr. Regan testified that he drove his 1,000 pound ride-on mower across the front and back lawns, and never experienced any saturation in the lawns adjacent to the affected alley. He testified that he did not sink or leave a rut or track in Mr. Kasdorf's lawn. Mr. Regan's employees cut the lawn between the homes, including the affected alley on Mr. Kasdorf's north side. Mr. Regan testified that he didn't see any tracks that one would expect if the lawn was over saturated, and didn't receive any reports from his employees of saturated lawns.

[22] Mr. Regan pointed out drainage problems in Sandstone. He testified that some downspouts, after a rain, are clogged and the water pools around some home's foundations. He testified that water can accumulate between the houses.

[23] Ms. Hedberg has lived near Mr. Kasdorf's residence for 6 years. She has experienced water in her crawl space as well. She testified that the soil is marshy, with areas of clay soil, so that water drains well in one area, and not in others, sometimes in adjacent flower beds.

[24] Mr. McKenzie has lived in the Sandstone development for 14 years. He has worked, as a volunteer, on various irrigation issues. He confirmed the community's priority of water conservation, in order to keep the complex within the Tier 1 boundaries set by the City, which saved the community tens of thousands of dollars annually.

[25] He confirmed the on-going problem of residents resetting their irrigation timers. He said that council tried to discourage others from re-running their systems. He confirmed that Mr. Regan was not expected to check the timers on a weekly or monthly basis, only when he reset them, which would occur in April, May or June, and on occasion in September. He provided photographic evidence that Mr. Kasdorf had run his sprinklers other than when set, and had run the system for one of his neighbours.

[26] The defendant produced an expert report from Mr. Remi Allard, P. Eng, the Principal Hydrogeologist for Piteau Associates Engineering Ltd. The report was properly served on Mr. Kasdorf, and he did not require that Mr. Allard be produced for cross examination.

[27] That report examined the following issues:

1. The likelihood that excessive irrigation resulted in the groundwater level rising to an extent that the crawl space in Mr. Kasdorf's residence would flood;
2. The potential sources of water that might infiltrate the ground and cause the water torise;
3. Challenges in precisely identifying the cause of the reported high groundwater levels; and
4. Issues with the contention that irrigation output at 16 minutes per cycle, three times a week, in September 2014, would cause an increase in groundwater levels.

[28] Mr. Allard considered the layout of the community, the hydrogeological conditions in the area,( including examining the wells logs of 7 water wells close by, and the aquifers in the area), the precipitation records for the irrigation season in 2014, and the City's guide to water efficiency for landscape and irrigation. Mr. Allard assumed conservatively that there was no further evapotranspiration, which meant that excess water would soak into the ground. Mr. Allard made various assumptions about the porosity of the soils and permeability of the soils.

[29] Mr. Allard, assuming that Mr. Kasdorf's lawn was irrigated at the city rates, at 16 minutes 3 times a week, found that this would not constitute a significant rise in the groundwater level to the extent that water would be expected to infiltrate the foundation.

[30] Mr. Allard considered whether over irrigation in surrounding lots would cause problems, and his opinion, subject to various qualifiers, was that it would not. He stated that leaks from underground water supplies and irrigation water lines could contribute water to the water table, and noted these leaks are common particularly with older

systems. Mr. McKenzie had advised the Sandstone system was 27 years old. Further, Mr. Allard stated that leakage from the decorative water ponds could be a contributing factor.

[31] Mr. Kasdorf takes issue with this report, pointing out that his irrigation system watered his lawn at the rate of 16 minutes, 5 days a week, not 3 days a week. He further said that as his neighbour's irrigation timer was set for 12 minutes, this should be added to his 16 minutes, providing 28 minutes of watering.

[32] Mr. Kasdorf also objects to the opinion nature of the report, and criticizes Mr. Allard for not performing field work to determine the groundwater level on site. He further points out that Mr. Allard didn't consider the irrigation rates used during September, 2014 for all of the lots at Sandstone.

[33] Mr. Kasdorf has to prove, on balance of probabilities, the following:

1. that his floors warped due to the moisture from the crawl space;
2. that the moisture in the crawl space is from the irrigation system;
3. that the irrigation system timers were improperly set by the defendant;
4. and that such actions constituted negligence on the part of the defendant; and
5. that the claimant didn't contribute to the negligent actions.

[34] In this case, I do not have any expert report that proves that the floor problems were caused by moisture. However, the defendant accepted this, and therefore I assume that the floor was damaged from the crawl space moisture.

[35] I do not know if the moisture in the crawl space is from the irrigation system. Although Mr. Allard's calculations don't match the rate that Mr. Kasdorf claims, he does



point out other sources of groundwater, which sources were not challenged by the claimant. Mr. Allard's evidence is opinion evidence, which is exactly what one would expect in an expert report. He specified his sources of information accurately, and I do not know whether field work to measure Mr. Kasdorf's property water table would be useful or feasible.

[36] Furthermore, Mr. Kasdorf has had previous problems with water in his crawl space. He tied the 2011 problem to the number of sprinkler heads on the property, but there could be other explanations. Ms. Hedburg testified about her crawl space water problems, the fact that such problems were not uncommon, and the differing porosity of the soil in the community.

[37] I have no expert's report that ties the crawl space water problem to the irrigation system, whatever the water flow rate.

[38] There is insufficient evidence to prove that Mr. Regan set the timers inappropriately. He testified, and I accept, that he wouldn't set a timer for over 10 minutes, and that water preservation was one of his top priorities. Any resident could have reset that timer, including Mr. Kasdorf, who was no stranger to overriding the timers, despite clear instructions from the strata council not to do so.

[39] Mr. Regan was not under any duty to check all the timers for all of the properties, except for his seasonal adjustments. He testified that he and his employees were always on the lookout for under or over watering problems, and detected none with Mr. Kasdorf's property.

[40] Because there is no evidence that the crawl space water was a result of the irrigation system, and no evidence that Mr. Regan improperly reset the timers, or was under a duty of care to check the timers more frequently, the claim cannot be proven and is dismissed.

[41] Mr. Kasdorf was dismayed, at trial, that the email from his plumber was not allowed in evidence as an expert report. The email was not signed, there was no statement of qualifications, and it was not served on the defendant as an expert's report, thereby precluding the defendant from requiring that the plumber attend for cross examination.

[42] Even if that email was accepted, it would not have changed this decision. Mr. Thompson, the plumber, thought that the water in the crawl space was from possible outside irrigation or perhaps a high water table. He did not discount other possibilities. He did not turn his mind to all the other possible water sources as did Mr. Allard.

[43] The claim is dismissed with costs to the defendant.

[44] I accept that the defendant's costs amount to \$1,457.86, including the cost of the expert's report and filing fees.

[45] The claimant is ordered to pay that sum to the defendant within 30 days of the stamped date of this judgment.

  
THE HONOURABLE JUDGE J. P. CARTWRIGHT