IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Lang v Knickle, 2006 NSSC 177

Date: 20060721
Docket: SH 218799
Registry: Halifax

Between:

Christopher Gerard Lang

Plaintiff

v.

Gary D. Knickle and Lauren R. Marsh-Knickle

Defendants

Judge:	The Honourable Justice Gordon A. Tidman
Heard:	May 15, 16, 17, 18, 19, 29, 2006, in Halifax, Nova Scotia
Written Decision:	July 21, 2006
Counsel:	James D. MacNeil, for the plaintiff
	B. William Piercey, Q.C., for the defendants

Tidman, J.:

The Claim

[1] This is an action for damages allegedly caused by the defendants' breach of the terms of an Agreement of Sale of a residence in Fall River, Halifax County which terms warranted an adequate supply of well water to the residence and that certain chattels were in good working order.

Circumstances

[2] In March, 2003 the plaintiff purchased from the defendants a residence situate at 164 Philip Drive in Fall River, Halifax County. The property consists of a large 6 bedroom, 4 bathroom house on a large lot with an outdoor swimming pool. The purchase price was $327,500.00. The plaintiff, an Air Canada pilot and recently remarried, was relocating from Ontario and wished to purchase a home in close proximity to Halifax International Airport. The plaintiff and his wife each had 3 children from earlier marriages and both were strangers to Nova Scotia.

[3] The Agreement of Purchase and Sale in effect consisted of four documents:

1) Agreement of Purchase and Sale dated March 14, 2003. (Exhibit 1, Tab 3)

2) Addendum Form 101, Schedule "AA" to Agreement of Purchase and Sale dated March 14, 2003. (Exhibit 1, Tab 4)

3) Counter Offer dated March 15, 2003. (Exhibit 1, Tab 5)

4) Property Condition Disclosure Statement dated March 2, 2003 and signed by both defendants. (Exhibit 1, Tab 6)

[4] Material to this action are the following provisions contained in those documents:

1) Agreement of Purchase and Sale dated March 14, 2003, part of 3(b), referring to the Property Condition Disclosure Statement i.e. "The Seller warrants it to be complete and current, to the best of their knowledge, as of the date of acceptance of this agreement, and further agrees to advise the Buyer of any changes that occur in the condition of the property prior to the closing date. If notice to the contrary is received, then either party shall be at liberty to terminate this contract. Once received and accepted, the Property Condition Disclosure Statement shall form part of this Agreement of Purchase and Sale."

2) Agreement of Purchase and Sale 5(b) –" The following chattels, owned by the Seller and presently located on the property shall remain with the property, be included in the purchase price and shall be conveyed to the Buyer in good working order, free and clear of encumbrances on the date of closing: CENTRAL VAC & ATTACHMENTS, ALL LIGHTING

FIXTURES, ALL WINDOW TREATMENTS, BLINDS, CURTAINS, RODS, ALL POOL EQUIPMENT, JENNAIR AND ATTACHMENTS, GARAGE DOOR OPENERS."

3) Addendum - part of Clause 1(F) – "The Seller warrants that during his occupancy the water supply has provided sufficient water for the normal household needs of a family of 4. That the Seller has never had any problems with the quantity or quality (including odour) of water & that the water source is (1) a dug well (2) a drilled well (3) lake (4) cistern (5) other (specify)...

4) Counter Offer Clause (c) Re clause 1F Schedule "AA" - Please refer to Property Condition Disclosure Statement - "Additional Comments". ...

5) Property Condition Disclosure Statement - Clause 11. Additional comments written in by defendant, Mr. Knickle. "New well drilled 2000, hydrofracted as well as 200 gallon holding tank."

6) Property Condition Disclosure Statement - Clause 1 (A)... "Are you aware of any problems with water quality, quantity, taste, or water pressure." Answer, "No."...

7) Property Condition Disclosure Statement - Clause 7... "Have there been any problems with pumps, purifiers, air conditioning systems, garburators, built-in appliances, etc.?" Answer, "No."...

8) Property Condition Disclosure Statement - Unnumbered Clause immediately following Clause 11. – ... "The information contained in this disclosure statement has been provided to the best of my knowledge. I confirm receipt of a copy of the Statement and agree that it may be given to prospective purchasers. I further agree to provide prospective purchasers with a further disclosure of any changes in the condition of the property that have occurred since completion of this statement" ...

9) Property Condition Disclosure Statement - Immediately following vendors' signatures – "NOTICE: THE INFORMATION CONTAINED IN THIS PROPERTY CONDITION DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE SELLER OF THE PROPERTY AND IS BELIEVED TO BE ACCURATE, HOWEVER, IT MAY BE INCORRECT. IT IS THE RESPONSIBILITY OF THE BUYER TO VERIFY THE ACCURACY OF THIS INFORMATION. THE BROKERAGE SALES PEOPLE AND MEMBERS OF THE ASSOCIATION OF REALTORS ASSUME NO RESPONSIBILITY OR LIABILITY FOR ITS ACCURACY."

[5] The property transaction, in the absence of the plaintiff, closed on June 27, 2003. The defendant vacated the property on June 15, 2003 but returned to clean and check on the swimming pool prior to the closing.

[6] The plaintiff arrived in Nova Scotia by car and took occupancy in the evening of June 29, 2003. Arriving with the plaintiff were his wife, 5 children and 2 adult friends of the plaintiff. The testimony of the plaintiff and his wife, Susan, is that on the night of their arrival the 4 adults took showers and the washrooms were used by all. They both say that on the following morning 4 of the children took showers and the washrooms were used by all 9 persons with normal use. They also say the showers were limited to 10 minutes to ensure sufficient hot water

for all showers. Following a celebratory meal out the family returned in the early evening of July 30. Ms. Lang opened a tap and found no water. They subsequently found that the drilled well was dry necessitating a new drilled well, which they subsequently had hydrofracted.

[7] The defendants purchased the residence in question in 1998. They purchased on the basis that the water supply was not warranted by the vendors. The defendants resided in the home with their then 4 year-old daughter until June of 2003. A friend babysat the daughter while the defendants were working and often stayed overnight at the defendants' residence.

[8] The defendants ran out of water in the year 2000 and had a new well drilled. Ralph Jacobs of Bluenose Well Drilling Ltd. installed the new well for the Knickles. Mr. Jacobs says he found a broken casing and installation problems in the well and as a result the well had to be abandoned. He says that he had drilled other wells on the street and high water usage in the area, particularly with the use of swimming pools and lawn sprinklers, had caused water quantity problems on that street over the previous 15-20 years. He described the sub-surface in the area as containing high amounts of shale and bedrock making it difficult while drilling

to find water-flowing fissures to supply the drilled wells. Mr. Jacobs also says that with new construction there had been blasting over the years 2002 and 2003 which could have caused fissures in the bedrock leading to the well to open and close. He says the well on the property was a low-yielding well which could not take that kind of interference.

[9] The defendants in 2002 had listed the property for sale. A prospective purchaser, one Jamieson, engaged Dean Walker, a geo-scientist, to do a water-flow test on the defendants' well. Mr. Walker did the test on May 13, 2002 and found the well to be low yield. It was producing 1.7 litres of water per minute which was lower than the acceptable standard of 3.6 litres per minute. Because of the low-yield well the Jamiesons did not purchase the home.

[10] Dean Walker says that on August 22, 2002 for another potential purchaser of the Lang residence, one Cameron, he also performed a water-flow test. Mr. Walker says the yield at that time was 0.4 litres of water per minute and that the flow was not sufficient for a family of four. The defendants say that they neither recall the name Cameron nor that Mr. Walker was on the property at that time and both say they only learned of that test at trial. Also the defendants say they never

saw either of the water-flow reports prepared by Mr. Walker but knew of the report prepared for Jamieson. On May 11, 2002, two days before the first Walker water-flow test, the defendants had the well hydrofracted by Mike Rushton, owner of Aquaterra Resource Services Ltd. and partner with Peter Verge in the company Allswell Pumps Direct Ltd.

[11] Mr. Rushton explained the term "hydrofracting" as a process in which pressurized air is blown into the well pipe in an attempt to force silt and gravel out of the fissures in the bedrock which may be blocking or hindering the flow of water along the fissures into the well.

[12] Mr. Knickle says he thought he had his well hydrofracted for the Jamiesons, but on cross-examination said he was not sure why he had his well hydrofracted. Ms. Knickle says she was away from home when the well was hydrofracted. She says her husband told her it was for the Jamiesons. On cross-examination Ms. Knickle allowed that it did not make sense that testing of the well would be conducted after and not before the hydrofracting process.

[13] Peter Verge, co-owner with Mr. Rushton, of Allswell Pumps Direct Ltd. says that at the request of the Knickles he installed a 200 gallon water storage tank at their residence on August 30, 2002. He explained the purpose of the tank or reservoir as being to store water to get over peak usage times.

[14] Mr. Knickle says he found out that a reservoir could be put in for the Jamiesons. He says he thought his wife or one of the workmen told him that. He says he recalls that the holding tank was recommended because the well was not producing one gallon per minute. He says the reservoir or holding tank was installed because his wife thought it may be useful if the next prospective purchaser, after the Jamiesons, had an issue with the well production. Mr. Knickle says that after the reservoir was installed he noticed no change in the water supply and there was no change in the family's living habits.

Issue

[15] The issue as posed by counsel for the parties is: Did the defendants breach the terms and conditions of the Agreement of Purchase and Sale that there was a

sufficient water supply for the home? If so, what is the amount of damages that flow from the breach.

[16] The secondary issue is whether the defendants breached the terms of the Agreement of Sale that certain chattels were in good working order.

The Law

[17] The plaintiff alleges that the defendants negligently misrepresented that there was a sufficient water supply for the home and that such negligent misrepresentation breached the terms of the agreement.

[18] In **Queen v. Cognos Inc.** (1993), 99 D.L.R. (4th) 626 (S.C.C.) the Supreme Court of Canada sets out the 5 criteria that must be satisfied in order to establish negligent misrepresentation. They are:

(a) There must be a duty of care based on a "special relationship between the representor and the representee;

(b) the representation in question must be untrue, inaccurate or misleading;

(c) the representor must have acted negligently in making said representation;

(d) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and

(e) the reliance must have been detrimental to the representee in the sense that damages resulted.

[19] I deal with each of those elements and relate the actions of each of the parties to the elements.

"(a) There must be a duty of care based on a "special relationship between the representor and the representee;."

Counsel for both parties agree and I find that such a "special relationship" existed between the parties.

"(b) the representation in question must be untrue, inaccurate or misleading;"

> Clause F of Schedule "AA" to the Agreement of Sale contains two separate warranties as to water supply:
>
> 1) that the water supply has provided sufficient water for the normal household needs of a family of four, and
>
> 2) the seller has never had any problems with the quantity of water.

[20] Mr. Piercey argues that the vendors warranted sufficient water quantity for only a family of four and since the supply failed during use by nine persons, the quantity warranty has not been breached.

[21] The "family of four" warranty does not seem relevant to the circumstances of the sale. First of all, the vendors were a family of three not four, notwithstanding the defendants' attempt to include their babysitter as a fourth person. The purchasers were a family of six. As well, the residence contains 6 bedrooms, 4 bathrooms and a swimming pool.

[22] The defendant, Mr. Knickle, says his real estate agent told him that "family of four' is the standard in warranting well-water quantity. However, there was no

other evidence that there is such a standard in the industry and it is noteworthy that the agent who allegedly spoke to the standard was not called to give testimony. Because of the size and number of bedrooms and bathrooms in the house, it would be likely that the purchase would be by a family of more than 4 persons.

[23] Even if such is the standard, the clause, in the Court's view, could only be interpreted as meaning reasonable use by four persons over a reasonable period of time. It would be unreasonable to apply an interpretation of the clause that would effectively relieve the vendors of responsibility in this circumstance where quantity failed by limited use by even nine persons on the first day of occupancy. In any event, Mr. Walker, whose evidence I accept, stated that the well produced insufficient water for a family of four.

[24] However even if the "family of four" warranty in the circumstances relieved the vendors of liability, other warranty clauses in the agreement are not so equivocal, in the Court's view.

[25] The defendants by clause 1(F) warrant that the seller has never had any problems with the quantity of water. The defendants also warranted by Section

1(A) of the Property Condition Disclosure Statement that they were not aware of any problems with water quantity.

[26] Clause (c) of the Counter Offer completed by the defendants dated March 15, 2003 informs the plaintiff that in reference to Clause 1(F) in Schedule "AA", warranting that the defendants had never had any water quantity problems, that he should refer to the additional comments contained in Section 11 of the Property Condition Disclosure Statement. Section 11 provides "new well drilled 2000, hydrofracted as well as 200 gallon holding tank".

[27] When Mr. Knickle was questioned as to why he inserted the reference clause (c) in the Counter Offer his response was that he intended to alert the plaintiff to the water problems that he had encountered but those problems had been remedied by a new well, hydrofraction and a storage tank. When questioned on cross-examination as to why he had not revealed in both the Property Condition Disclosure Statement and Offer the problems he had experienced with water supply, his response was that because the problems had been remedied his real estate agent had advised him to answer that he had never experienced water supply problems. Mr. Knickle says, notwithstanding his real estate agent's advice, he did

not feel he had answered the water-supply questions fully and inserted the reference clause (c) in the Counter Offer to remedy that oversight. He says that if not for the advice of his real estate agent he may have noted in the Property Condition Disclosure Statement that he had experienced water-quantity problems. Mr. Knickle's real estate agent did not give evidence.

[28] Mr. Knicle says that after the installation of the new well in year 2000, his family never experienced water-supply problems and the well was hydrofracted after the Jamieson's water-flow test and the storage tank was installed. He had no answer as to why the well had been hydrofracted two days before the first Walker water-flow test. Ms. Knickle also says that no water problems were encountered after the new well was installed. However, after the execution of the Agreement of Sale the Knickles encountered two water problems. The first according to Mr. Knickle was 1 ½ to 2 months following the execution of the Agreement of Sale. Mr. Knickle says he heard a loud bang coming from the area of the water-holding tank. He says on investigation he found water escaping from the base of the holding tank near the holding-tank pump and called Mr. Verge to repair the problem. He says the problem was caused by an accumulation of sediment in the base of the tank which in turn was caused by the failure to install a part in the

pump or pump switch and the problem was rectified by the installation of the missing part. Mr. Knickle says the second problem occurred 2 or 3 weeks before the closing when he and his wife heard a similar bang and found flooding in the area of the holding tank.

[29] However, according to the testimony of Mr. Verge the problem occurred when the well went dry causing a malfunction in the holding tank pump and the submersible pump in the well. As a result, a new shut-off mechanism was installed for the storage-tank pump and the submersible pump was replaced.

[30] Mr. and Mrs. Knickle both say these problems were not brought to the attention of the plaintiff because they were fixed and they had no further water supply problems. Mrs. Knickle says she did not realize that under the terms of the Agreement of Sale she and her husband were legally obliged to advise Mr. Lang of those incidents occurring after the execution of the Agreement of Sale.

[31] The Court finds that the representations made by the defendants as to the water quantity from the well were untrue, inaccurate and misleading. The defendants obviously knew that the aborted Jamieson sale resulted from an

inadequate supply of water from the existing well. They themselves had run out of water in the year 2000 and installed a new well. That well was later hydrofracted in an attempt to produce more water because the new well produced insufficient water. A storage tank was later installed to provide additional water for use in peak times. All of those actions resulted from water quantity problems.

[32] In fact, Mrs. Knickle admitted herself that the defendants had breached the terms of the Agreement of Sale by not advising the plaintiff of the water problems encountered after the execution of the Agreement of Sale.

[33] In the Court's view, Mr. Knickle's written in addition to Section 11 of the Property Condition Disclosure Statement "new well drilled 2000, hydrofracted as well as 200 gallon holding tank" was not a warning of water problems but rather was designed to give comfort to the purchaser that there were no water quantity problems and that, in fact, is exactly what it did. Mr. Lang says the term hydrofracting was unknown to him at that time and he and his real estate agent were both of the view that installation of the 2000 well, storage tank and hydrofracting all occurred at the same time and that the purpose of all three procedures was to assure sufficient water quantity. The plaintiff was unfamiliar

with the neighbourhood and could not be expected to know of the water-supply problems generally experienced in the area. He says that the statement gave him comfort that the well provided an adequate supply of water. He says that after discussion with his real estate agent he decided to investigate the water supply no further.

[34] The Court thus finds that the representations in question were untrue, inaccurate and misleading.

"(c) the representor must have acted negligently in making said representation;"

[35] I find that the defendants acted negligently in making representations that they had had no water quantity problems. In the Court's view Mr. Knickle knew, or ought to have known, that the statement in Section 11 of the Property Condition Disclosure Statement confirming the installation of the new well and storage tank and hydrofracting would indicate to the reader that there were no water-quantity problems. In the Court's view that statement, far from warning the reader of water

problems, was designed to provide comfort to the buyer that there were no water-quantity problems. It was information both given and taken as a selling feature.

[36] Although the defendants contend that they hydrofracted their 2000 well when it did not produce sufficient water to satisfy the prospective purchaser, Jamieson, the Court notes that the hydrofracting took place on May 11, 2002 two days before Mr. Walker performed the water-flow test on May 13, 2002. That begs the question as to how the defendants would know they had an insufficient supply of water to satisfy the Jamiesons' requirement before they knew of the results of the water-flow test performed by Mr. Walker. Notwithstanding that the defendants state they never had water-quantity problems, they were obviously aware of, or suspected, a deficiency in supply before Mr. Walker's test on May 13, 2002.

[37] The Court also cannot accept that the defendants were not aware of the water-flow test done for one Cameron by Mr. Walker on August 22, 2002. Mr. Walker says, and the Court accepts, that the rate of water flow from the Jamieson test was 1.7 litres per minute while the Department of Environment standard was 3.6 litres per minute. Mr. Walker indicated that the Knickle's had a low-yield well.

I also accept that the Cameron test showed a water-flow rate of 0.4 litres per minute, well below the results of the Jamieson test three months earlier and, as Mr. Walker noted, the flow rate was not sufficient for a family of four.

[38] The defendants say they did not see Mr. Walker's report on the Jamieson test and knew nothing of the Cameron test and Mr. Walker says that he did not provide the defendants with reports of either test. However, I cannot accept that the defendants did not know of either the results of those two tests or the inadequacy of their well's output during that time period since they installed the water-storage reservoir on August 30, 2002, just eight days after the Cameron test carried out by Mr. Walker. Neither can I accept the evidence of the defendants that they coincidentally installed the reservoir at that time simply because they wished to avoid the difficulty they had in attempting to sell their home to the Jamiesons.

[39] Mrs. Knickle, when the Knickles vacated the property, left a helpful note to the purchaser which, among other information, contained the following advice:

> It is always best to spread major water usage out through the day. You can check the holding tank by opening the white cap on the top of the tank and using a flashlight to see the level until you get use (sic) to a well.

[40] This note was found by Mrs. Lang in the home's mail box approximately two weeks after the Langs moved into the house. Mrs. Lang, understandably, says she was very annoyed when she read the note since the purchase documents all indicated there were no water-quantity problems with the well.

[41] The Court is satisfied that the defendants knew, or ought to have known, that there was a water-supply problem with their well and that the plaintiff ought to have been informed of those problems prior to the purchase of the home.

[42] **"(d) the representee must have relied, in a reasonable manner, on said negligent misrepresentation;"**

[43] Mr. Piercey, on behalf of the defendants, advances the defence of "*caveat emptor*" - let the buyer beware. He also submits that the plaintiff was "the author of his own misfortune" by failing to have a water-flow test conducted on the Knickle well and the Court should, therefore, find in favour of the defendants. Mr. Piercey submits that the statement in Section 11 of the Property Condition Disclosure Statement was intended to and should have indicated to the plaintiff that

water-quantity problems had been encountered on the property and thus by not having a flow test performed he assumed the risk of water-quantity problems.

[44] *Caveat emptor* is not a valid defence where, as in this case, express written warranties are given to the purchaser by the vendor where it is warranted that the seller never had water-supply problems. As in lending there must be "truth in selling" and the purchaser must be able to rely on specific warranties given to him by the seller.

[45] Mr. Piercey also submits that the notice section, following the signatures in the Property Condition Disclosure Statement, exempts the defendants from liability for inaccurate information provided in the Statement.

[46] The notice reads:

> The information contained in this Property Condition Disclosure Statement has been provided by the seller of the property and is believed to be accurate. However, it may be incorrect. It is the responsibility of the buyer to certify the accuracy of this information. The brokerage sales people and members of the Association of Realtors assume no responsibility or liability for its accuracy. Buyers are urged to carefully examine the property and have it inspected by an independent party or parties to verify the above information.

[47] The Court is satisfied that this disclaimer is for the benefit of the realtor only and not for the vendor. If that were not clear by and in itself, the paragraph immediately before that section of the Property Condition Disclosure Statement makes it clear that the vendors are responsible for the truth of their statements, it provides:

> ...The sellers are responsible for the accuracy of the answers on this disclosure statement and if uncertain should reply, "do not know". This disclosure statement will form part of the contract of purchase and sale if so agreed in writing by the sellers and buyers...

[48] In this case it was agreed in writing by the parties that the Property Condition Disclosure Statement formed part of the contract of sale.

[49] In this case Mr. Lang, in fact, had the property inspected by an independent party and also had the water tested for quality. The inspector turned on the tap, filled the bath tub to one-half full and inspected the water for silt. No silt was found and there was no indication of a lack of water quantity. Mr. Lang considered having a water-quantity test which would have been an additional expense of purchasing, but after discussion with his real estate agent, who

informed him that hydrofracting increases water flow, he relied on the information provided in the sale documents that the water quantity was sufficient.

[50] Even though I am certain Mr. Lang in retrospect under all the subsequent circumstances wishes he had tested the water flow before purchasing, I am satisfied that the plaintiff reasonably relied upon the negligent and misleading representations made to him by the defendants.

[51] **"(e) the reliance must have been detrimental to the representee in the sense that damage resulted."**

There is no question that damages resulted from the plaintiff's reliance on the misrepresentations by the defendants since the plaintiff, among other things, was required to have a new well drilled. The question remains as to the extent of the damages.

Damages

[52] As previously referred to, the plaintiff and his family on the day following their initial occupation of the property encountered water supply problems. As a result, the plaintiff incurred substantial expenses immediately and over time in remedying that problem. Two days after moving in the plaintiff was required to fill the well with water delivered by a tank truck. Ironically, the defendants had also been required to fill the well when it failed a few weeks before vacating the property, a fact which also was not revealed to the plaintiff prior to sale. The plaintiff continued to fill the well with tank-trucked water until August, 2003.

[53] On July 16, 2003 Harold Ward, a submersible pump installer and former well driller, checked the abandoned well on the property and found it produced no water. On July 23, 2003 Mr. Ward checked the new well and found it produced next to no water and recommended that the plaintiff have a new well drilled.

[54] In August 2003, after securing three price quotations, the plaintiff engaged Bluenose Well Drilling Ltd., the lower bidder, to drill a new well. That well also turned out to be a low-yield well. Even though the plaintiff and his family continued the careful monitoring of water use, because of the low-water yield, it was necessary to hydrofract the new well in May, 2005. Dean Walker supervised

the construction of the new well in August, 2003 at which time the new well was tied in with the 2000 well to aid in the production of water.

[55] Although the well currently produces enough water for the plaintiff's household, it is still necessary to use the reservoir and carefully monitor water usage.

[56] The defendants have agreed to the amounts of items of special damages suffered by the plaintiff in securing the water supply with the exception of the following:

1) July 16/03 - Nova Pump Services - $172.50
2) July 23/03 - Nova Pump Services - $356.56
3) July 29/03 - Allswell Pumps Direct Ltd. - $362.25
4) Aug. 15/03 - Atlantic Water Investigations - $460.00

[57] Mr. Piercey submits that items 1, 2, and 4 were unnecessary expenses in obtaining an adequate water supply. Mr. Piercey submits further that item 3, replacement of the reserve pump-control switch for the sum of $362.56, should not be a claimable item since the control switch was working at the time the plaintiff took occupancy of the property.

[58] In the Court's view, as Mr. MacNeil submits, these items are all proper expenses related to the initial deficient water supply for the following reasons. Items 1 and 2 were payments to Mr. Ward to investigate the abandoned well and the 2000 well respectively. These expenses were incurred in an attempt by the plaintiff to mitigate his damages by ensuring that both wells could not be rehabilitated before deciding to incur the expense of drilling a new well.

[59] Dealing with item 4, which was a payment to Dean Walker for supervisory services. In view of all the difficulties the plaintiff encountered with the water supply to the house and considering that the residents in this geographic area had also encountered water-supply problems, it was understandably prudent of the plaintiff to have an expert oversee the locating and construction of the new well. Mr. Jacobs, who drilled the new well, testified that he usually located and drilled wells without supervision, but, on occasion, his customers engaged water-investigation experts to oversee the drilling operation.

[60] In relation to item 4, the pump control switch, the defendants had encountered the same problem and expense for repairing that same switch on the

reservoir pump. The switch failure resulted in the flooding of the pump area on both occasions. My understanding of the evidence of Mr. Verge is that the switch failure was related to the water-supply problem and I would allow that expense.

Second Issue

[61] The plaintiff also claims for the replacement of a solar panel used to heat the swimming pool, fixing a leak in the lining of the pool and the repair, or replacement, of a pump in the bar sink.

[62] The defendants at trial admitted responsibility for those items and I thus will allow those claims in the amounts of $287.50 for the solar panel, $86.25 for the pool lining and repair and Mr. Lang's estimate of $500.00 for repair or replacement of the bar sink pump.

[63] I shall award special damages in the amount of $26,019.74 made up as follows:

Date	Supplier	Amount
July 1, 2003	Receipt re. 'no water call' for 164 Philip Drive prepared by Bedford Plumbing & Heating Ltd.	$207.00
July 1, 2003	Receipt re. 'drilled well' for 164 Philip Drive prepared by Beaverbank Water Supply	$65.00
July 12, 2003	Receipt re. '1500 gal' for 164 Philip Drive prepared by Beaverbank Water Supply	$75.00

July 14, 2003	Invoice to Susan & Christopher Lang re. 164 Philip Drive prepared by Atlantic Water Investigations (1993) Limited	$207.00
July 16, 2003	Receipt to Chris Lang re. 164 Philip Drive prepared by Nova Pump Services	$172.50
July 16, 2003	Receipt re. 'drilled well and pool' for 164 Philip Drive prepared by Beaverbank Water Supply	$85.00
July 21, 2003	Receipt re. 'drilled well and tank' for 164 Philip Drive prepared by Beaverbank Water Supply	$75.00
July 23, 2003	Receipt to Chris Lang re. 164 Philip Drive prepared by Nova Pump Services	$356.56
July 23, 2003	Invoice 9298 prepared by Levy Pools	$86.25
July 24, 2003	Receipt re. 'drilled well and tank' for 164 Philip Drive prepared by Beaverbank Water Supply	$75.00
July 28, 2003	Receipt re. 'tank & drilled well & pool' for 164 Philip Drive prepared by Beaverbank Water Supply	$75.00
July 28, 2003	Invoice 28546 prepared by Levy Pools - Solar	$287.50
July 29, 2003	Invoice to Chris Lang re. 164 Philip Drive prepared by Allswell Pumps Direct Limited	$362.25
Aug. 12, 2003	Invoice to Chris Lang re. 164 Philip Drive prepared by Bluenose Well Drilling Ltd.	$14,049.55
Aug. 13, 2003	Receipt re. 'well & tank' for 164 Philip Drive prepared by Beaverbank Water Supply	$75.00
Aug. 15, 2003	Invoice to Susan & Christopher Lang re. 164 Philip Drive prepared by Atlantic Water Investigations (1993) Limited	$460.00
Aug. 22, 2003	Receipt re. 'drilled well & tank' for 164 Philip Drive prepared by Beaverbank Water Supply	$75.00
	....	
Sept. 3, 2003	Invoice re. 164 Philip Drive prepared for Chris Lang by Allswell Pumps Direct Ltd.	$1,116.13
Oct. 30, 2003	Work Order/Invoice re. 164 Philip Drive prepared for Chris Lang by Alls Well Pumps Direct Ltd.	$690.00
	....	
May 19, 2005	Invoice re. 164 Philip Drive well stimulation prepared for Chris Lang by Aquaterra Resource Services Ld.	$1,725.00
Apr. 17, 2005	Invoice to Chris and Sue Lang re. repairs to driveway as prepared by East Coast Paving Limited	$2,900.00
June 15, 2005	Invoice to Chris and Sue Lang re. repairs to landscaping and fence as prepared by East Coast Paving Limited	$2,300.00
	....	
Solar panel		$287.50
Pool lining repair		$86.25
Future expenses to repair the bar sink pump.		$500.00

Total Special Damages $26,393.49

[64] The plaintiff also claims general damages for diminution in the value of the property a result of the continuing water problem, as well as for loss of enjoyment of the property, inconvenience and stress.

[65] The plaintiff claims the amount of $32,750.00 for loss of property value. Mr. Piercey submits that no award should be made for loss of value since no expert evidence was called by the plaintiff in support of this claim. There is a paucity of evidence to support this claim, however, in dealing with the general damage claim I shall allow a nominal amount for loss of value. I do so in accepting the evidence that this property, as well as the surrounding properties, have encountered water-supply problems associated with the sub-soil structure which will undoubtedly be a negative factor in the property's future sales value.

[66] There is no doubt that the plaintiff and his family suffered a great deal of inconvenience, stress and loss of enjoyment in dealing with the water-supply problems. Following the initial loss of water the plaintiff severely restricted the frequency and duration of showers, toilet flushing was curtailed and the plaintiff since purchasing the property in 2003 has continually attempted to obtain an adequate water supply. The plaintiff says, and the Court accepts, that even now

after tying two wells together, hydrofracting the new well and continuing to use the water storage tank, he must still carefully monitor the use of water. Initially, until the new water supply was secured, the household laundry was washed at a laundromat and the plaintiff has had the trouble of continually dealing with well drillers, water suppliers, pump installers, repairers and an inspector.

[67] In hearing the evidence of the plaintiff and his wife as to the difficulties they have encountered in securing water supply, I find their testimony to be credible and without exaggeration.

[68] Plaintiff's counsel has referred the Court to several case authorities dealing with general damages in similar circumstances. Counsel has urged the Court to particularly consider the cases of **Keirstead v. Piggott**, (1999) N.S.J. No. 171, N.S.S.C. and **Wade v. Smith** [2001], B.C.J. # 2371 B.C.S.C.

[69] In **Keirstead** Justice Gruchy, of this Court, in circumstances where a land purchaser was effectively deprived of the use of his land because of lack of a right-of-way to it, for inconvenience, discomfort and disruption, awarded general damages of $60,000.00.

[70] In the **Ward** case Justice Melnick, in a case very similar to the case at bar, for inconvenience suffered because of an inadequate water supply in a vendor/ purchaser case awarded general damages of $5,000.00.

[71] Taking into consideration the circumstances outlined for inconvenience, loss of enjoyment and diminution of property value, I award the plaintiff general damages in the amount of $20,000.00.

[72] Thus the plaintiff shall be entitled to judgment for damages in the total amount of $46,393.49.

[73] Counsel made no submissions on costs and pre-judgment interest. If the parties are unable to agree on those issues, I shall expect to hear from them.

J.