

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Lyon v Halifax Regional Municipality*, 2021 NSSM 63

Date: 2021-12-31

Docket: *Halifax*, No. SCCH 21-505535

Registry: Halifax

Between:

Scott Duncan Lyon

Claimant

v.

Halifax Regional Municipality

Defendant

Adjudicator: Dale Darling, QC

Heard: December 9th, 2021, in Halifax, Nova Scotia

Final Written December 31, 2021

Counsel: Scott Lyon was self- represented
Nicolas Foran, Counsel for the Defendant

By the Court:

Decision:

[1] This matter came before me for hearing at a special time virtual proceeding on December 9th, 2021. Mr. Lyon was self represented, and the Defendant Halifax Regional Municipality (HRM) was represented by Mr. Nicholas Foran, with Ms. Imogen Phipps-Burton, articulated student in attendance. Ms. Heidi Schedler, Corporate Legal Counsel, Halifax Regional Water Commission, conducted a watching brief.

[2] Mr. Lyon's claims that HRM owes him the cost of repairing what is described by the parties as a "connection stub" for main water and sewage water pipes which had been installed at 546 Shore Drive, Bedford, Nova Scotia (the "Property") in 2002, as part of the installation of main water and sewage along that part of Shore Drive. The evidence before me was that Halifax Regional Water Commission took over responsibility for permitting around water and waste water in 2007.

[3] Mr. Lyon says that he purchased the Property in 2019 from his father-in-law, Mr. John Tolson, as a serviced lot. Mr. Tolson applied for a Building Permit

on Mr. Lyon's behalf July 19, 2019. Halifax Water received a New Service Application on or about October 9th, 2019 to connect the pipes to the home that Mr. Lyon was having built on the property.

[4] On October 31, 2019 Mr. Kevin Gray, Manager, Engineering Approvals, sent a letter to Mr. C.R. Falkenham, the contractor who had been hired to complete the connection work to the property, advising that the application to renew the wastewater service connection had been approved, but that the broken section of the wastewater service connection would have to be repaired, as well as extended to the property. The repair was necessitated by the findings on photos taken of the connection stub on October 4th, 2019. These photos showed that the connection stubs had flexible sleeves holding them together. Ms. Anne Marie Orman, an Inspection Coordinator at Halifax Water called to give evidence on behalf of the Claimant, explained that these joins were the problem – the pipes had to be continuous and these joins would not allow the water to flow freely.

[5] So that the building could proceed, Mr. Falkenham completed the required repair, sending Mr. Lyon a bill for \$11,000 (plus \$1650 in GST), which Mr. Lyon paid in January of 2020.

[6] Mr. Tolson in his evidence says that he contacted HRM in the fall of 2019 to discuss this matter. In cross-examination, Mr. Tolson confirmed that he advised Mr. Lyon of the issue sometime in the fall of 2019.

[7] Mr. Lyon says that he contacted HRM in October of 2020 regarding compensation for the repair, but his evidence was that he was told that HRM did not consider they were responsible for the repair.

[8] Mr. Lyon says that HRM is liable for the cost of his repairs. He believes that HRM negligently damaged the pipes when they installed sidewalks in the area in 2005.

[9] I am denying Mr. Lyon's claim, because there is no evidence before me to prove on a balance of probabilities that HRM was responsible for the damage to the pipes in question. Further, I find that the claim is barred by the operation of a twelve month time period in which claims must be filed against HRM, by reason of the operation of the Nova Scotia *Limitation of Actions Act*, SNS 2014, c. 35, and the *Halifax Regional Municipality Charter*, SNS 2008, c. 39, ss. 376 and 378. My reasons for this decision follow.

How “negligence” is proven:

[10] Before I review the evidence, and because Mr. Lyon is self-represented, let me quickly review the legal test to be met if a Claimant is to establish negligence. Very broadly speaking, prior to a decision in Britain in 1930 called *Donahue v. Stevenson*, [1932] UKHL 100, the law of tort (civil compensation for harms done by one individual to another) dealt largely with what were described as “intentional torts”, such as assault and battery. *Donahue v. Stevenson*, a products liability case established that the negligence principle applied in circumstances where the following test could be proven:

1. Is the Claimant the Defendant's “neighbor”, that is, do their actions raise an obligation to meet a duty of care to the claimant and be careful about potentially harmful acts affecting the Claimant?
2. If there is a duty of care, has that duty been breached by the defendant?
3. Did the Defendant cause the loss the Claimant is said to have suffered?
4. Did the claimant suffer a loss?

[11] Where it could be proven that HRM in the course of constructing sidewalks adjoining the property damaged the pipes that had previously been installed, the test for negligence would be met. HRM would owe a duty not to cause harm to landowners in such installations.

[12] The problem in this case is the cause, the third part of the test. There is no evidence before me by which the Claimant can draw a line between acts of the Defendant and the eventual damage.

The Evidence:

[13] Mr. Lyon testified on his own behalf. His evidence confirmed that an inspection October 4th, 2019 confirmed the presence of a flex hose connection in the pipes. He contacted HRM in October of 2020 and that he was told by HRM that they were not responsible. He says that he and his family moved into the property in October of 2020 but he had had to have the pipes repaired in December of 2019. He provided a receipt from the contractor for that repair in the amount of \$12,650.

[14] Mr. Lyon provided a handwritten drawing which provided his explanation for how the pipes were broken, that being that when sidewalks were installed in 2005 that they had been damaged at that time. His evidence was “it had to be the people who put the sidewalks in”.

[15] Mr. Lyon then called Mr. John Tolson. Mr. Tolson testified that he had purchased the lot as a serviced lot in 2002, and had Cyril Falkenham install the

pipes in question. He says he watched Mr. Falkenham dig up Shore Drive and that he was there when the pipes were put in, and that no flex joints were used.

[16] He says that HRM put in sidewalks in 2005. He speculated that the work was subcontracted. On cross-examination, he agreed that he did not see the sidewalk work being done.

[17] He says that he told Mr. Lyon about the issue in the fall of 2019, which accords with an invoice for the repair work from Mr. Falkenham submitted in evidence by Mr. Lyon, showing payment in early January of 2020.

[18] Mr. Lyon then called Mary Ann Orman, who works for Halifax Water as a Inspection Coordinator. Ms. Orman has been employed by Halifax Water for 12 years. She testified that she had no knowledge of the state of the pipes in 2002, or really at any time until she saw the October 2019 video inspection. She testified that the flexpipe which was discovered by the video could not have been approved. She further advised that she had no knowledge of when the sidewalks were installed.

[19] HRM called Kevin Gray, who is the Manager of Engineering Approvals at Halifax Water. All connections and extensions of Halifax water systems now are approved through his office.

[20] He advised that his research indicated that the Shore Drive “mains” were installed in approximately the 1950s or 60s. In 2007 the assets of the old Town of Bedford (which is where Shore Drive is located) were transferred to Halifax Water. Halifax Water now manages storm and wastewater assets in that area and indeed in all of HRM.

[20] Mr. Gray’s evidence was that in terms of the lines in question, if service connections were “in service” that Halifax Water would have been responsible. Since these lines were not yet in use they constituted out of service connectors, and all costs of creating a new connector had to be borne by an applicant in order to create a connection from the building to the main. He agreed with the other witnesses that the flexible connection shown in photographs would not have been permissible. He had no knowledge of who had installed the flexible joint.

Decision:

[21] As I stated above, I am denying this claim, for the following reasons:

a) The evidence is clear that in 2019, the pipe in question shows a flexible connector, and that such connector rendered the repair necessary in order to have the water service application approved for the property. However, there is absolutely no evidence before me that can show how that connector ended up on

the pipes. Mr. Lyon and Mr. Tolson say that it must have happened when HRM installed sidewalks in 2005, but that is not so much evidence, as pure speculation. It is impossible on the evidence before me to determine when in the 17 years from installation to discovery, the damage occurred. Without proof of cause, the Claimant's negligence claim against HRM fails, and I therefore dismiss it.

b) If I am wrong in this conclusion, I note that the evidence makes it clear that the timelines provided by the Claimant as to the discovery of the damage, and the filing of the claim, exceed the 12 month time limit created by the *Halifax Charter* noted above. The latest point of discovery I can find is when the bill for the repair was paid in January of 2020 (and it is probably somewhat earlier than that, at some point after October 31, 2019 when the letter from Mr. Gray indicated the required repairs).

In order to avoid being struck (dismissed) due to the limitation period, the claim would have had to be filed no later than January 19, 2020 when the bill was paid, and the Claim itself was not filed until April of 2021. It was filed too late, and I have no jurisdiction to change these statutory requirements.

Conclusion:

[22] I thank both Mr. Lyon and Mr. Foran for their careful submissions. For all of the above reasons, I dismiss the claim in its entirety, and an order will issue accordingly.

Dale Darling, QC,

Adjudicator