See para. 24

Indexed as:

E. Carpenter Inc. v. Clarenville (Town)

Between
E. Carpenter Inc., first plaintiff, and
Ephriam Carpenter and Rowena Carpenter, second plaintiffs, and
The Town Council of the Town of Clarenville, defendant

[2001] N.J. No. 162

202 Nfld. & P.E.I.R. 113

106 A.C.W.S. (3d) 537

Docket No.: 1998 05 0034

Newfoundland Supreme Court - Trial Division

Easton J.

Heard: May 23, 2001.
Judgment: filed June 20, 2001.

(36 paras.)

Municipal law -- Liability of municipalities -- Torts -- Powers of municipalities -- Particular powers -- Respecting water supply and sewers.

This was an action by Carpenter for damages suffered when the Town of Clarenville turned off the water to his residence and business. When the town informed Carpenter that it had approved his application to build an extension for a laundromat, the town advised him that he would be responsible for any costs associated with the installation of a new water and sewer hookup. He was subsequently sent a bill for the costs. Several months later, Carpenter's water was turned off. When he complained to the town, he was told that it would not be turned back on until he paid his outstanding water bill. He paid the bill later that day and the water was restored. Carpenter complained that he was treated unfairly by the town and sought general damages, including damages for mental distress, and a declaration that the town had not acted properly. He did not seek the return of any money paid on the outstanding bill. The town took the position that it had not

committed any actionable tort, and that it had a policy that water lines would not be activated until property owners paid any outstanding bills. It submitted that the water had been turned off accidentally.

HELD: The action was dismissed. The town did not commit any actionable wrong for which redress could be made. Carpenter's water was turned off inadvertently. There was no evidence that Carpenter had suffered any damages as a result. It was not within the court's mandate to make declarations of the nature requested by Carpenter. The town was legally entitled to take the action that it did.

Statutes, Regulations and Rules Cited:

Newfoundland Rules of Court, Rule 55.03(1).

Counsel:

Katrina Brannan, for the plaintiffs.
Corwin Mills, Q.C., for the defendants.

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1 **EASTON J.**:-- The action in this case is brought by E. Carpenter Inc. as First Plaintiff, Ephriam Carpenter and Rowena Carpenter as Second Plaintiffs and the Town Council of the Town of Clarenville as Defendant. For simplicity sake, the Plaintiffs in this case will be referred to only as Ephriam Carpenter as he, apparently, is the major shareholder in E. Carpenter Inc. and was the moving force behind all of the activity surrounding this particular matter. The Defendant, of course, is as referred to in the pleadings.

2 The facts of this case are quite simple and in most cases there is no dispute between the parties. Any discrepancies between the evidence given by the Plaintiffs' witnesses and by the Defendant's witnesses can be resolved and are not in any event of a magnitude that would affect the ultimate question of liability.

3 It was in February of 1998 that Mr. Carpenter sued the Defendant alleging that the Defendant had turned off the water to the his residence on July 16, 1997 and that as a result he had suffered damages.

4 On April 14, 1997 Mr. Carpenter applied for a permit to build an extension to his building at 156-158 Memorial Drive, Clarenville. The extension was for the purpose of installing a laundromat consisting of ten washers and five dryers.

5 On May 7, 1997 the Defendant wrote Mr. Carpenter indicating that his application had been

approved and that the:

> "approval is granted as per plans presented and subject to all counsel regulations. Any costs associated with the installation of water and sewer to be the responsibility of the property owner."(my underlining)

He was advised that he had to have a building permit prior to the start of any construction.

6 Attached to this decision is a photocopy of Consent No. 1 which roughly indicates the location of "Carpenter's Store", the location of the water main, curb stops and copper lines from the main line to the residence and store and other information which may be of assistance in a review of this matter.

7 It is generally agreed that because Mr. Carpenter was experiencing low water pressure in the servicing of the convenience store and his residence, it was decided that the laundromat and the residence would be connected to a water main situate on Summerville Heights. Apparently the convenience store remained connected to the original water main.

8 It is clear that it was on a Friday, May 23, 1997 that Sandy Lethbridge, a backhoe operator who testified that he was doing a favour for Mr. Carpenter, accidentally tore the existing water line that supplied water to Mr. Carpenter's residence out of the main line on Memorial Drive in Clarenville. Mr. Lethbridge was at that time was trying to find the curb stop on the existing water line. Town officials were called and employees of the Defendant came to the site and the main line was plugged. James Burge, an operator with the Defendant, testified that the curb stop near Mr. Carpenter's property line was turned off on that Friday evening. Mr. Burge also testified that there were no arrangements made for him to come back on Saturday to turn the water back on.

9 It appears that on Saturday, May 24, 1997 Mr. Lethbridge went back to the area to, as he said, "clean up and back fill". It was his evidence that Mr. Burge was also there that morning. The new line was run out to the residence and it was Mr. Lethbridge's evidence that when Mr. Burge left the area on that Saturday morning, the water was, in fact, on. He said that Mr. Carpenter left the area to go to his residence to have a shower and that as far as he was concerned, there was water, in fact, going through the line to the residence and to the laundromat.

10 The evidence is conflicting as to whether in fact the curb stop was on or off on May 24, 1997. However, the evidence clearly establishes that between May 24, 1997 and July 16, 1997 the Plaintiff did have water to both his residence and to the laundromat.

11 Nothing appears to have happened after May 24, 1997 until July 16, 1997. Mr. Carpenter testified that he got up at 7 a.m. that morning and at 7:45 he opened the convenience store. He remained at the store until about 9 a.m. and when he went upstairs, his wife told him that the water was off to his residence. He then checked the laundromat and found that it, too, had no water pressure.

12 Mr. Carpenter called the defendant, complaining that he had no water and in fact visited the mayor's house after the town clerk advised him that water had been turned off because there was an outstanding bill. Mr. Carpenter says he was told by Ralph Smith, the Public Works superintendent, that he had turned off the water, essentially because the outstanding bill had not been paid.

13 Mr. Carpenter became very upset with the fact that his water had been turned off and that it would not be turned back on until the outstanding bill had been paid. He went to the Defendant and tried to negotiate, but it appears that the Defendant was adamant that the outstanding bill of $1,413.91 had to be paid before the water would be turned back on. Sometime in the early afternoon Mr. Carpenter, quite reluctantly, paid the bill and the water was turned on.

14 It was the of evidence Mr. Smith that he had told Mr. Carpenter earlier that any costs associated with the hooking up of his water line to the higher pressure main line from Summerville Heights would have to be paid by him before the water was in fact turned on. It was his evidence that the invoice was prepared and the actual cost amounted to $3,503.11. However, according to Mr. Smith, it was decided that the bill would be reduced by a considerable amount because some delay in finishing the work could not be attributed to Mr. Carpenter. Consequently, for this and other reasons the bill was reduced to $1,413.91.

15 At the trial of this matter, Mr. Smith testified that it was on July 16, 1997 he received a call from the town clerk indicating that Mr. Carpenter had no water. It appears that earlier on July 16, 1997 Mr. Smith had gone to the Summerville Heights area and noticed that the curb stop in that area was still turned on. Because there was work to be done in the area, Mr. Smith either turned off the curb stop himself or had someone else turn it off. When he did this, he unwittingly turned off the supply of water to Mr. Carpenter's residence and laundromat. Mr. Smith maintained that the turning off of Mr. Carpenter's water was done accidentally by him and he was not aware when he turned off the curb stop at Summerville Heights that the net result of it would be that Mr. Carpenter would be deprived of water. However, it was his evidence that he was then told that he was not to turn the water back on until the bill had been paid. It appears, as indicated earlier, the bill was paid by Mr. Carpenter some short time after and the water was, in fact, turned back on.

. . . . . .

16 Mr. Carpenter takes the position that he has been unfairly treated by the Town and is seeking, primarily, general damages, including damages for mental stress. He is not seeking the return of any portion of the monies that was paid on the disputed invoice but is, as his counsel suggests:

> "pursuing his principles regardless of the cost and regardless of the financial gain that he may or may not receive."

17 Mr. Carpenter freely admits that any financial loss caused to the laundromat operation would have been minimal and it is agreed by all concerned that the water, both to his residence and to the laundromat was off only for the morning and a small part of the afternoon.

18 Counsel for Mr. Carpenter indicates that in this case Mr. Carpenter is looking for a declaration that the Town did not act property.

19 The Defendant takes the position that it has not committed any actionable tort in this case. The Town points out that it certainly had an unwritten policy that when water lines were hooked up to the main municipal water supply or main line, the line would not be activated until any costs associated with the project were paid by the property owner. It appears now that what previously had been a practice in Council has been enshrined in policy manual which has been adopted by Council and is adhered to in all cases. There is some question as to whether or not the practice or policy had been faithfully followed prior to this particular incident coming to light.

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Analysis

20 The issue here, in my opinion, is quite simple: Has the Town committed an actionable wrong for which Mr. Carpenter is entitled to be compensated?

21 Much of the evidence at the trial concerned the activities that took place on the days of May 23 and May 24, near Mr. Carpenter's residence. There was considerable discussion and some dispute as to whether or not the curb stop was left in an off or on position. With all due respect to the parties, this would appear to be a bit of a "red herring". It is obvious from the evidence, that Mr. Carpenter's residence and laundromat was in fact serviced by water from the Summerville Heights area (water main) from May 24, 1997 until July 17, 1997. It is inconceivable that Mr. Carpenter, his family and his business would have been without water for that period of time and not have complained. Clearly the water was flowing to the store and residence until it was turned off either accidentally or deliberately by the Town employee. This occurred on July 16, 1997.

22 The evidence is clear that on May 7, 1997 the Defendant approved the application of Mr. Carpenter to add an extension to his building. However, he was clearly told in the letter that "any costs associated with the installation of water and sewer was to be the responsibility of the property owner".

23 I accept the evidence of the Town Clerk that on June 2, 1997 Ephriam Carpenter was sent an invoice for "water and sewer maintenance - materials re extension 156-158 Memorial Drive as per list attached" for $1,413.91. The evidence from the Town Clerk was that the actual cost of the line was $3,503.11, but the invoice for which payment was solicited amounted to less than half of that amount. It was her testimony that she was not aware of any dispute regarding the bill before July 16, 1997. It was not until July 16, 1997 that she received a call from Mr. Carpenter indicating that his water had been cut off.

24 It was also the evidence of the Town Clerk, which I accept, that the at least unwritten policy of the Council was that water to a particular residence or business was not to be turned on until any

outstanding bills were paid. While the Town Clerk may have accepted this as being the unwritten policy, I am not so sure that the same knowledge can be imputed to all of the other employees involved in this contentious matter.

25 Mr. Carpenter himself in his testimony indicated that he had discussed the matter of the hookup with Mr. Smith and was told by Mr. Smith that he would have to pay for materials. However, apparently, there were no actual figures quoted to him. Mr. Carpenter denies that he was ever told that the cost of all materials had to be paid before the water system would be hooked up.

26 Mr. Carpenter in his evidence indicated that it was two or three days after May 24th that Mr. Smith gave him the invoice for the outstanding $1,413.91. Mr. Smith denies this. Also, it must be remembered that the evidence of the Town Clerk was that the invoice was, in fact, not sent out by the Council until June 2, 1997.

27 If Mr. Carpenter's evidence is to be believed, he had the bill for the $1,413.91 sometime before the end of May 1997. At that time he said when he received the bill from, as he claims Mr. Smith, he went directly to the mayor because by his own admission he was quite upset by it. It was his evidence that he did not expect this charge. He said the mayor assured him that he would take it to the finance committee and that it would be discussed and then according to Mr. Carpenter, he "left it at that".

28 It appears to be Mr. Carpenter's contention that the Defendant deliberately turned off the water to his residence and laundromat on July 16, 1997. With respect, I consider this to be rather unlikely. Apart from Mr. Carpenter bringing this to the attention of the mayor, it does not appear that the Town Clerk knew anything about any dispute, neither did the superintendent, Ralph Smith. I could see nothing in the evidence to indicate anything which would precipitate such drastic action. There is nothing in the evidence to explain why Mr. Smith would quite suddenly, deliberately decide on July 16, 1997 decide to take this action. That Mr. Smith would take such precipitous action on that day, without any discussion with anyone else involving Mr. Carpenter (who at that time was a member of Council) is, to say the least, bewildering. In my view, it makes more sense to accept Mr. Smith's explanation that he on July 16th turned off the curb stop on Summerville Heights and that the net result of this was to deprive Mr. Carpenter inadvertently of his water supply.

29 This then, of course, begs the question, why would Mr. Carpenter be told that he would not get his water back until the bill had been paid?

30 I have come to the conclusion that we may never know the real reason behind this action on the part of the Town. It may be that the Defendant was embarrassed because it had accidentally turned off the water supply and then was looking for some reason to justify what it had done, even if it were done by inadvertence. It may be that in fact the Defendant reacted as it did because it was annoyed with Mr. Carpenter and the fact that he was so upset on July 16th that he called the mayor, Town Clerk and other councillors. But whatever the real reason may be, the fact remains that Mr. Carpenter was clearly told by the letter of May 7, 1997 that he was responsible for any costs

associated with the installation of water and sewer. The bill itself for the reduced amount of $1,413.91 was sent on June 2, 1997 and by July 16, 1997 it had been outstanding for approximately six weeks.

31 After reviewing all of the evidence in this matter, it is obvious that this whole matter could have been handled a bit more diplomatically. Unfortunately, however, the courts in this province are not set up to dictate manners, customs or diplomacy to unhappy litigants. I believe that legally the Town took action which it was entitled to take and Mr. Carpenter himself admits that he is not now seeking the return of any portion of the monies which he paid on the disputed invoice. Since this option is not available to Mr. Carpenter, I do not believe it is within the mandate of this court to make declarations of the nature requested by Mr. Carpenter. I do not believe that the Defendant has committed any actionable wrong for which redress can be made by this court.

32 An examination of the evidence does not indicate that Mr. Carpenter suffered any mental stress, as alleged in his statement of claim. There is no question but that he felt some embarrassment and suffered some inconvenience, but also, quite obviously, it was of very limited duration. There is nothing to indicate that his reputation in the community suffered in any way and there was no evidence of business deterioration or loss. All in all, he has not made out his claim and it must necessarily fail.

33 On the question of costs Rule 55.03(1) stipulates that costs follow the event unless otherwise ordered. However, as Marshall, J.A. pointed out in Dorset Seafoods Limited v. Registrar of Companies (1988) 69 Nfld. & P.E.I.R. 105 (NF C.A.):

> "...it is in the discretion of the court to depart from the general rule of the circumstances of a particular case require it."

34 In this case Mr. Carpenter is seeking to be reimbursed for his costs or as its counsel says "in attempting to take the Town to task for what they did to him and attempting to ensure that they won't do it to anyone else".

35 While I have some sympathy for Mr. Carpenter's position, vis-a-vis the fiscal or financial capabilities of the Defendant, nevertheless, it is clear that Mr. Carpenter has not succeeded in his claim against the Defendant. Mr. Carpenter has quite clearly, in my view, not proven that the Defendant committed any actionable wrong and cannot point to any damages that were incurred for which he should be reimbursed. It may very well be that in retrospect matters could have been handled differently, but, as I pointed out earlier, it is not the function of this court to dictate to parties how they should conduct themselves, as long as it is done in a legal manner.

36 In this case I can see no compelling reason to depart from the general rule regarding costs and consequently the Plaintiffs' action against the Defendant is dismissed with costs to the Defendant.

EASTON J.

cp/e/nc/qlbfd

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