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CIVIL DIVISION  
Case No. 22-CV-00330

Town of Newport v. Barry Sahagian et al

### **Decision of Appeal from Small Claims Court**

The Town of Newport (“Town”) appeals a decision from the Small Claims Court (which will be referred to as “the trial court”) awarding Barry Sahagian judgment in the amount of \$950 plus costs. The judgment stems from damage Mr. Sahagian’s property suffered as a result of a culvert that failed, causing erosion and a sinkhole at the site where two sections of culvert pipe join underneath his property. The Town appeals the decision, arguing that the trial court misinterpreted the evidence presented and that the decision awarding Mr. Sahagian judgment should be reversed.

#### Factual and Procedural Background

Mr. Sahagian filed an amended complaint against the Town in June 2021 in which he alleged that, pursuant to 19 V.S.A. § 985(a), the Town was responsible for damage his property suffered from a “broken town culvert” that runs underneath his property located at 46 Vance Hill Road in the town of Newport Center. The Town denied liability, stating that the culvert at issue was “privately owned and controlled.” In support of the Town’s claim that the culvert at issue was privately owned, the Town attached to its answer a permit dating from 1974 for a 12” culvert to be installed from a private residence and connected to a storm drain on Route 105 in the Town. The portion of Vance Hill Road where Mr. Sahagian’s property is located intersects with School Street to the northeast and Route 105 to the southwest.

The evidence Mr. Sahagian presented to show the Town is responsible for his damages include minutes from a Selectboard Meeting held on June 7, 2016, which was before Mr. Sahagian began experiencing flooding in his backyard. At that time, the Selectboard was addressing flooding concerns by one of Mr. Sahagian’s neighbors who lived next door to him on Vance Hill Road. The minutes state: “The landowners affected by the town possibly repairing the culvert from School Street to Route 105 agreed to be responsible for the repairing of their own lawns. Selectboard asked Fred to get someone to come up and camera that line before any digging is done.” Mr. Sahagian testified that his property was not affected by this culvert until 2018, when water began to spew out of the pipe and his backyard became covered with water. Mr. Sahagian testified that he brought this issue to the Selectboard’s attention in 2018, but the Selectboard declined to take any action to fix the problem.

Mr. Sahagian disputed that the permit the Town attached to its answer was the same culvert that caused the flooding, and ultimately a sinkhole, in his backyard. He presented evidence that the culvert referenced in the permit ran parallel to Route 105, which is approximately 90 degrees to Vance Hill Road and 90 degrees to the culvert that was underneath his property. He also introduced a map

indicating that the culvert at issue in the permit relied upon by the Town (to argue that the culvert was privately owned) was not the same culvert that ran underneath his property. In addition, Mr. Sahagian introduced several photographs. One photograph shows that the diameter of the culvert underneath his property was much larger in diameter than the 12" culvert at issue in the permit that the Town was relying upon. Another photograph shows a storm drain cover on School Street, abeam of the culvert that passes underneath his backyard, that supports his argument that the culvert that runs underneath his property is connected to the Town sewer on School Street and empties out on the other side of Route 105 into Mill Pond. Mr. Sahagian also submitted email correspondence between him and a Town clerk who was providing Mr. Sahagian documents he was requesting. In her email, the clerk referred to "our culvert that crosses School Street."

Mr. Sahagian presented evidence that the sinkhole that developed in his backyard, directly above the culvert, measured one foot across in 2018 and had enlarged to six feet across by 2020. Mr. Sahagian submitted an estimate he received from an excavating company to fill the sinkhole and seed the area for \$950. The estimate included the placement of a type of fabric around the coupling of the culvert pipe to prevent dirt from escaping into the pipe.

The Town presented testimony from Jerry Waterman, who was a selectboard member. Mr. Waterman testified that culverts that pass under town roads only extend to the edge of the Town's right-of-way and that private individuals can arrange to connect private culverts to the Town's culverts. Mr. Waterman testified that the Town only maintains the culverts that extend to the edge of the Town's rights-of-way. Mr. Waterman did not have personal knowledge about the culvert that runs underneath Mr. Sahagian's property.

#### Trial Court Decision

The trial court entered a decision on November 2, 2021, that included, *inter alia*, the following findings of fact:

At a Selectboard meeting held in January of 2016, residents brought to the Board's attention that they believed that water that was going into the basements of Corr and Haselton (a property adjacent to the Sahagian lot) was coming from the storm drain on School Street and through the culvert pipe running through the 3 properties. The owners of lots between School Street and Route 105 agreed that if the Town repaired the culvert, they would be responsible for repairing their own lawns (presumably assuming there would be digging into their lawns). The Selectboard asked "Fred," the road manager, to "camera that line before any digging is done." Fred agreed to do it as soon as possible. The Town apparently accepted responsibility at that time for the culvert that ran from School Street under their land.

Fred investigated and determined that the reason there was flooding in the Corr and Haselton basements was due to drains that diverted water to those locations. The Town concluded that at that time there was no need for digging or repair to the culvert pipe that extended from the School Street culvert across the owners' lots. When this occurred in January of 2016, there was no sinkhole on the Sahagian property.

By January of 2018, a sinkhole had opened on the Sahagian property at a site where the culvert pipe runs underground. It increased in size over time, and by 2020, it was 72" wide. In April of 2020, Mr. Sahagian purchased wood planks and supplies at a cost of \$202.30 and constructed a cover over it, as he was concerned about the safety of children from two nearby playgrounds. In June of 2020 he filed this lawsuit seeking to hold the Town responsible for the costs of repair.

He has obtained a quote from an engineer that it would cost \$950 to repair the sink hole. Photo evidence shows that the sinkhole has developed at a site where two sections of culvert pipe meet. The proposed repair would include wrapping the coupling site with fabric to prevent dirt from escaping into the pipe, thereby preventing or minimizing future erosion at that location.

....

Selectboard member Jerry Waterman testified that the Town is only responsible for culverts underlying town roads as far as the edge of the right of way of the town road. His testimony was that once water from a culvert leaves the end of a town right of way, the water becomes the responsibility of the landowner. He testified that, for example, some owners direct water from culverts under town roads into a ditch; others allow it to disperse over the land; and others connect private culverts to the end of the town culvert to channel the water flow where they want it. In short, the Town's position is that the condition of the culvert and water on Sahagian land, and its effect on the property, is Sahagian's responsibility as a private owner, and the Town is not responsible.<sup>1</sup>

The court finds that in January of 2016, before the Sahagian sinkhole developed, the Selectboard accepted responsibility for the culvert pipe that runs from the School Street storm drain across the lands of Eastman, Sahagian, and Corr to the State culvert on Route 105. The Selectboard directed the road foreman to check out whether the culvert was causing flooding, and to run a camera line before doing any digging, which the Town apparently expected to undertake if necessary. The road foreman did so promptly and discovered that no repair of the culvert was needed because the flooding problem resulted from other causes. In that instance, the Selectboard demonstrated responsibility for the specific culvert pipe at issue in this case.

Mr. Waterman's testimony, on the other hand, was not about this specific culvert pipe, but about responsibility in general for water leaving culvert pipes that run under Town rights of way, and he specifically described situations in which the pipe ends at the end of the right of way. He did not address the difference between a culvert pipe that goes under a road to keep surface water from running over the road and ends

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<sup>1</sup> As the problem developed and Mr. Sahagian investigated it, the Town Clerk gave him a copy of a 1974 State permit obtained by a private owner to connect a 12" culvert to the State culvert under Route 105, implying that the permit applied to the culvert on the Sahagian land and showed owner responsibility. The same permit was attached to the Town's Answer in which it denied responsibility. It has since become clear that the permit was for an unrelated culvert involving a different property at a different location. The Town no longer asserts that the permit pertains to the culvert on Sahagian land. The Town's prior representation that the permit applied to Sahagian land was apparently simply a mistake.

at the right of way, and a culvert pipe that is part of, and connects to, other sections of pipe as part of a larger system of municipal water management. The evidence shows that there is a municipal storm drain on School Street, and that the pipe that runs across Sahagian land runs from the School Street storm drain and continues through the properties of Eastman, Sahagian, and Corr to the State culvert and a State highway and then drains into a pond. The evidence also shows that the Selectboard and road foreman previously accepted responsibility for investigating Town maintenance and repair obligations for this specific culvert system in 2016, before the sinkhole developed on Sahagian land. The court finds that the culvert pipe on Sahagian land is part of a municipal water management system and is the responsibility of the Town.

The court also finds that the cause of the sinkhole is that at the site where two sections of pipe join on Sahagian land, the connection is not secure and dirt is escaping from the ground into the pipe, causing erosion that has created, and may continue to enlarge, the sinkhole. Repair to the culvert pipe is needed at the coupling site to prevent further erosion, and erosion to date has damaged Sahagian land. The lack of repair over the last year has caused the sinkhole to enlarge and necessitate land restoration.

Based on its finding that the culvert pipe on Mr. Sahagian's property was part of the Town's municipal water management system, the trial court determined, based on 19 V.S.A. § 985(a), that (1) the Town was liable for the repair that was necessary to maintain a continuous pipeline and prevent dirt from continuing to enter the pipe and (2) Mr. Sahagian was entitled to recovery for the cost of repair that the Town declined to perform.

The Town filed a motion for clarification of the decision, stating that the decision was "unclear as to whether the Court has determined that the Town has ownership of the culverts." If it owns the culverts, the Town wrote, it needs "direction regarding whether it can repair, replace, remove, or maintain the culverts themselves as they pass through these privately owned lots." The Town also asked for clarification regarding the Court's award of damages. The Town noted the award of \$950 to Mr. Sahagian but stated that the Court did not require Mr. Sahagian to use that money for the repair of the culvert. If Mr. Sahagian failed to repair the culvert, or defectively repaired the culvert, and more damage was caused, the Town wanted to know whether the additional liability would remain with the landowner or whether the Town would be responsible for further damages.

The trial court denied the Town's motion for clarification, writing: "Defendants seek rulings that depend on facts about which there was no evidence and no findings of fact as well as about prospective circumstances." This appeal followed.

#### Issues on Appeal

The Town raises several issues on appeal. First, the Town argues that the trial court misinterpreted the evidence presented and erred in finding that the sewer/storm drain located on School Street was tied in with the culvert that passed under Mr. Sahagian's property. The Town posits that "no evidence was presented to support such a conclusion and it is factually inaccurate. The sewer/storm drain system is separate and distinct from the culvert at issue, and no evidence to the contrary was presented." The Town next contends that the trial court exceeded its jurisdiction by determining that the culvert at issue runs through three different lots, only one of which belongs to Mr.

Sahagian, and that the trial court “effectively made a determination about the culverts on the abutting properties” without giving the additional property owners notice of this matter. Noting that a small claims court’s jurisdiction is limited to granting awards of damages, the Town argues that finding the Town responsible for maintaining the culvert at issue “well into the future is well beyond the scope of the small claims court.” The Town continues along this vein, stating that the trial court “issued a decision that requires the Town to provide maintenance that it is unable to legally conduct” because the Town does not have “access over, under and upon the land and premises in order to make any required repairs.” The Town then restates one of the issues it presented to the trial court: “If [Mr. Sahagian] fail[s] to repair the culvert, or defectively repairs the culvert, and more damage is caused, with the lower court determining that the Town has liability for the culvert system, that results in a situation where the Town is liable, but cannot make repairs.”

Mr. Sahagian responded, pointing out that the Town presented no evidence contradicting the trial court’s findings of fact and stating that the law supports the trial court’s award of damages to him. Mr. Sahagian asks that the trial court’s decision be affirmed.

### Analysis

#### Findings of Fact

The appeal of a decision from a small claims court is based upon “the record of the proceedings in the small claims action,” and “is limited to questions of law.” V.R.S.C.P. 10(c)(1), (d); see *Cheney v. City of Montpelier*, 2011 VT 80, ¶ 7, 190 Vt. 574 (mem.). An appellate court “will not interfere [with the decision by a trial court] if a reasonable evidentiary basis supports the court’s findings and the findings are sufficient to support the conclusions of law.” *Bartley-Cruz v. McLeod*, 144 Vt. 263, 264 (1984) (quoting *Emmons v. Emmons*, 141 Vt. 508, 511 (1982)); see also *In re Estate of Elliott*, 149 Vt. 248, 250 (1988); *Wyatt v. Palmer*, 165 Vt. 600, 601 (1996) (mem.). A finding by the trial court will be deemed clearly erroneous, and subject to reversal, if the record contains no evidence in support thereof. *Delisle v. Emmons*, 2002 WL 34423627, at \*4 (Vt. Feb. 1, 2002) (unpub. mem.). The reviewing court examines the evidence introduced at trial “in the light most favorable to the prevailing party, and the effect of any modifying evidence must be excluded.” *Bartley-Cruz*, 144 Vt. at 264 (citing *Jarvis v. Koss*, 139 Vt. 254, 254–55 (1981)).

As set forth above, Mr. Sahagian introduced evidence to support the findings of the trial court. The Town contends on appeal that “[t]he sewer system is separate and distinct from the culvert at issue,” and “[t]he sewer drain that was referenced . . . is for the municipal sewer system . . . that is separate and distinct from the culverts.” However, the Town presented no evidence in support of this contention or that directly contradicted Mr. Sahagian’s evidence. Despite the Town’s argument that the trial court misinterpreted the evidence Mr. Sahagian presented, the only evidence the Town introduced was testimony by a selectboard member, Jerry Waterman, who testified about the Town’s culverts in general. Mr. Waterman admitted that he had no personal knowledge about the culvert that runs under Mr. Sahagian’s property. The Town fails to point the court to any specific evidence in the record to support its argument, as it must, for the reviewing court to even consider overturning the trial court’s findings where, as here, the record contains evidence supporting the trial court’s findings.

#### Legal Arguments

Having concluded that the evidence in the record supports the trial court's findings of fact, the court next addresses the Town's legal arguments and considers whether the findings are sufficient to support the trial court's conclusions of law.

The trial court based its award of \$950 to Mr. Sahagian on 19 V.S.A. § 985, which is titled "Injuries from defective bridges and culverts" and provides, in pertinent part:

- (a) If damage occurs to a person, or his or her property, by reason of the insufficiency or want of repair of a bridge or culvert that the town is liable to keep in repair, the person sustaining damage may recover in a civil action.

In order for the trial court to determine whether or not Mr. Sahagian was entitled to recover under this statute, upon which he based his claim, the trial court first had to determine whether the Town was liable for keeping the culvert at issue in repair. As discussed above, the trial court found, based on the evidence Mr. Sahagian presented, that the Town was liable for keeping the culvert that ran under Mr. Sahagian's property in repair. Having made this finding, the court then considered whether Mr. Sahagian was entitled to an award of damages. Mr. Sahagian presented evidence of an estimate he received for fixing the sinkhole in his backyard, and this is the amount the court awarded him. We find the trial court properly applied the statute to the facts of the case.

The Town does not dispute the amount of the judgment that the court awarded Mr. Sahagian. Rather, the Town argues that the trial court exceeded its jurisdiction in making the rulings it did. The Town is correct that the relief a small claims court has jurisdiction to award is limited to money damages in an amount not to exceed \$5,000. V.R.S.C.P. 2(a). Because of this limitation, a small claims court has no jurisdiction to issue declaratory judgments or award injunctive relief.

The trial court here determined the Town's liability for the culvert at issue for the sole purpose of applying the statute (19 V.S.A. § 985) to the facts before it and to answer the question whether Mr. Sahagian was entitled to an award of damages.

Contrary to the Town's assertion, the trial court did not issue a ruling about the Town's liability to any property owner other than Mr. Sahagian, as no property was at issue in this case other than that belonging to Mr. Sahagian.

Further, despite the Town's representation otherwise, the trial court did not rule that the Town was responsible for maintaining the culvert under Mr. Sahagian's property "well into the future." As a small claims court, the trial court had no jurisdiction to issue declaratory judgments or provide injunctive relief. The trial court's decision was limited to awarding Mr. Sahagian \$950 (plus costs) to compensate him for damage he suffered from the Town's culvert. The trial court had no jurisdiction, and did not attempt, to determine any obligations the Town has with regard to its culverts, which would have constituted declaratory relief.

The preclusive effect of the trial court's judgment is limited to that which the trial court had jurisdiction to decide – the amount of money damages Mr. Sahagian is entitled to recover pursuant to 19 V.S.A. § 985(a). See *Cold Springs Farm Dev., Inc. v. Ball*, 163 Vt. 466, 472–73 (1995); *Brandt v. Menard*, 2018 WL 5793779, at \*2 (Vt. Nov. 2, 2018) (unpub. mem.).

Regarding the Town's concern that Mr. Sahagian may not use the money damages award to fix the damage to his backyard, that is an issue that is not ripe for consideration, and would involve an impermissible advisory opinion, because it requires the court to consider prospective circumstances that are not before it. See *Doe v. Dep't for Children and Families*, 2020 VT 79, ¶ 9, 213 Vt. 151 ("A claim is not ripe 'if the claimed injury is conjectural or hypothetical rather than actual or imminent.'") (quoting *Turner v. Shumlin*, 2017 VT 2, ¶ 9, 204 Vt. 78).

Conclusion

For the reasons stated above, the trial court's decision is affirmed.

**Dated June 13, 2022**



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**David Barra**  
**Vermont Superior Court Judge**  
**Electronically signed**