

PROXEMNITY

RISK EDUCATION



## Field Level

**In this claim story, an architect's duty to the Owner as "Inspector of work" is tested; limits of expertise are exceeded, and liability for incorrect work is incurred.**

## PARTIES

### Plaintiff

The Hills, Norman and Marie (Owners)

### Cross-Claims

Both defendants against each other

### Defendants

Lucas Bering, Architect

Flood Brothers, General Contractors

---

## CONTEXT

The Owner had requested that a house be designed to accommodate a handicapped relative, in addition to normal family use. The Architect sloped paths to entrances and avoided steps.

The House required a septic field, but it was built on steep slope from the rear down to the road. The Architect located the septic field beside the house, placed landscaping berms around house and showed levels and direction of surface drainage that effectively prevented natural run-off. The house was subject to frequent flooding.

## PLEAS

The Plaintiff's case against Contractor was: "We refuse to pay the balance of the money owed to the contractor and the holdback until the problem is solved."

The case against the architect was: "We hired an architect to look after the construction of our residence. We have serious damages that speak for themselves as to liability. The architect failed in his duty."

At trial the Owner recounted harrowing experiences of working at midnight in midwinter, digging trenches to redirect flood water.

## DEFENCES

The Architect's defence was that the Contractor was responsible for the placing of the septic field. The Architect only indicated the "general arrangement". Levels and dimensions were to be verified by the Contractor, with discrepancies brought to the attention of the architect etc. The Architect did as much as he was able, giving oral directions to workers and shooting his own levels.

The Contractor claimed that he had recommended to the Architect that the house be placed a foot higher, but this suggestion was rejected. This was confirmed in written evidence. He also claimed that the level of the septic field was determined by the local authority. This was also confirmed by evidence. Furthermore, the Architect interfered and would not listen to reason.

## JUDGEMENT

A judge found that both Defendants - the Architect and the Contractor - were jointly and severally liable<sup>1</sup>. The Owner had a right to expect the Architect to ensure against major errors. The Contractor had a duty to protect the owner against errors that were clearly demonstrable.

## CLAIM CONTROL ANALYSIS

The Architect should not have intervened in the location of the septic system. A landscape architect or surveyor should have been engaged to advise on such a difficult site. Reliance on verbal evidence such as "I told him to dig a swale in this or that location" proved to be worthless.

The Judge did not buy into the theory that "review" is a lesser duty than "inspection." He stated the architect's duty by quoting from *Hudson's Tenth Edition*, the construction law bible, which states, "An architect must properly supervise the works and inspect them sufficiently frequently to

ensure that the materials and workmanship conform to contractual requirements ..." etc.

## POSTSCRIPT

The architect's error was an insurable risk under his professional liability insurance policy, so the costs and legal fees were covered by Pro-Demnity\*. As for damages: Although the Defendants were found jointly and severally liable, the Contractor proved to be insolvent; Pro-Demnity\* paid the full cost of a new site drainage system.

## LESSONS TO BE LEARNED

**Lesson 1:** There should be no half-measures when it comes time to review the work in progress. Forget the fine print. If you are on the scene of the error and don't correct it, it will be yours.

**Lesson 2:** What's in a name? What an architect might call a "review," a judge might see as an "inspection."

**Lesson 3:** When dealing with a difficult site, hire professional consultants to help with the problems. And, without good reason, don't interfere with their decisions.

### **NOTE:**

1. Cross-claim: a claim by a plaintiff against another plaintiff or a defendant against another defendant. <https://uslawessentials.com/what-is-a-crossclaim/>
2. Joint & Several Liability: Liability shared with other parties to a suit may fall upon any of the parties that has the assets to meet the claim, each being liable for the whole. This is the "deep pocket" factor.

---

*Names and places have been changed to protect the innocent, and partially innocent, also the guilty. Situations are slightly modified and fictionalized from Pro-Demnity's actual claims files and imbued with our real experience in protecting and defending Ontario architectural practices over three decades.*

## GENERAL DISCLAIMER

The contents of this PDF are derived from a website and offer information for general purposes only. The material presented does not establish, report or create the standard of care for Ontario

architects. The information is by necessity generalized and an abridged account of the matters described. It should in no way be construed as legal or insurance advice and should not be relied on as such. Readers are cautioned to refer specific questions to their own lawyer or professional advisors. Efforts have been made to assure accuracy of any referenced material at time of publication; however, no reliance may be placed on such references. Readers must carry out their own due diligence. Professional Liability Insurance provides valuable coverages and benefits however does not cover everything. Please refer to the Policy wordings for specific coverages, benefits, exclusions and limitations. This PDF should not be reproduced in whole or in part in any form or by any means without written permission of Pro-Demnity Insurance Company. Please [contact mail@prodemnity.com](mailto:mail@prodemnity.com).