

to go ahead with the surgery."

[3] There is therefore no merit to this ground of appeal.

[4] We are all agreed that the provisional award of general damages in the amount of \$7,500 in the circumstances of this case was more than adequate.

[5] In the result the appeal is dismissed with costs.

Appeal dismissed.

Editor: Janette Blue/mjp

John Halabura (plaintiff/appellant)
v. Steve Maksymyk, Fraserwood Fire
Department and Local Government
District of Armstrong
(defendants/respondents)
(Suit No. AI 94-30-01855)

**Indexed As: Halabura v.
Fraserwood Fire Department
et al.**

Manitoba Court of Appeal
Helper, Kroft and Monnin, JJ.A.
September 13, 1995.

Summary:

A property owner sued the fire department and its employer for damages arising from the destruction of his property. He alleged that the fire department failed to take reasonable care to extinguish a fire or, alternatively, was negligent in failing to inform him of an approaching fire.

The Manitoba Court of Queen's Bench, in a decision reported at 91 Man.R.(2d) 118, dismissed the claim. The property owner appealed.

The Manitoba Court of Appeal dismissed the appeal.

Damages - Topic 4214

Torts affecting land and buildings - Normal measure - Destruction of buildings or improvements - Fire destroyed the plaintiff's house, barn, outbuildings and contents, including an enormous accumulation of moveables picked up by the plaintiff in bulk lots at auctions, etc. - The defendant suggested valuation of farm auction prices - The trial judge stated that ordinarily the property would be valued at replacement value less depreciation - The court would reject valuations where relevant factual information was withheld from the appraiser - Respecting the movables, the court would arbitrarily assess a value between farm auction prices and replacement cost less depreciation to avoid unjustly benefitting or penalizing the plaintiff - The Manitoba Court of Appeal affirmed the decision.

Damages - Topic 4344

Torts affecting land and buildings - Cost of reinstatement - Where not applicable - [See Damages - Topic 4214].

Torts - Topic 49.5

Negligence - Standard of care - Particular persons and relationships - Firefighters - The plaintiff alleged that a municipal fire department improperly extinguished a fire and that it reignited, spread to and completely destroyed his property - Alternatively, he alleged, although he was not at home on the day of the fire, negligence in not warning him of the approaching fire - Firefighters testified about their fire fighting procedures - The trial judge found that the fire department took reasonable care in fighting the fire and in its follow-up steps - The Manitoba Court of Appeal affirmed the decision, stating that the trial judge did

Helper, J.A.

not make any error in her assessment or weighing of the evidence and her conclusions thereon - See paragraphs 1 to 3.

Counsel:

R.M. Beamish and J.L. Jeffrey, for the appellants;
M.G. Finlayson, for the respondents.

This appeal was heard on September 13, 1995, before Helper, Kroft and Monnin, J.J.A., of the Manitoba Court of Appeal. On September 13, 1995, Helper, J.A., delivered the following judgment for the court.

[1] **Helper, J.A.:** The plaintiff alleged negligence by the defendants in failing to extinguish a fire on April 28, 1988, which fire he claims flared up again on April 29th and eventually destroyed his property. That property included buildings, farm equipment, crops and automobiles as well as other personal property.

[2] The trial judge in her reasons carefully and thoroughly reviewed the plaintiff's submissions, the evidence presented in support of those submissions and the defence evidence. Expert evidence was called on the origin of the fire. She correctly identified the narrow issue before her and concluded that the plaintiff had not proved his case. "There is no evidence that the department was in any way careless in its firefighting procedures or in its follow-up steps."

[3] The fire which resulted in the plaintiffs loss occurred following a week in which the fire department had been required to extinguish several fires of suspect origin. The conditions were dangerous and were known to the department. The temperatures were unseasonably warm, the area was dry and the winds were strong. The trial judge concluded that despite the possibility that the

fire of the 29th did originate with the flare-up in the roots of the willows on section 1 in Fraserwood, the department was not careless in its earlier efforts to extinguish that fire and took steps to check that site early on the morning of the 29th. She also canvassed other reasonable explanations for the cause of the fire. There is ample support for her conclusions based upon her credibility findings. The plaintiff has not satisfied us that the trial judge made any error whatever in her assessment or weighing of the evidence and her conclusions thereon.

[4] On the question of damages, we find no merit to the plaintiff's argument.

[5] In the result, the appeal is dismissed with costs.

Appeal dismissed.

Editor: Janette Blue/mjp