Neutral Citation Number: [2008] IEHC 165

THE HIGH COURT

2002 No. 1694 P

BETWEEN

FINTAN MULHOLLAND AND MARGARET MULHOLLAND

PLAINTIFFS

AND
PETER MURTAGH

DEFENDANT

Judgment of Mr. Justice Bryan McMahon dated the7th day of May 2008.

1. The plaintiffs are a married couple who reside and own property in Ravensdale, Dundalk, Co. Louth. The defendant is the resident and owner of property immediately adjacent to the plaintiffs. In or about February, 2000, oil leaked from the defendant's central heating tank and spread onto the plaintiffs' property where it contaminated the plaintiffs' domestic well. The defendant admits liability and the case before the Court is for the assessment of damages only. The plaintiffs claim damages under two headings:-

(a) General

(b) Special

2. I will consider the special damages first.

3. It is not contested by the defendant that some special damages are due to the plaintiffs for the damage suffered. The plaintiffs gave uncontroverted evidence that they first became aware of the effects of the spill when their daughter complained of an oily smell and unusual colour in the water in the bath in or about the 14th February, 2000. Not too much attention was paid to the daughter's complaint, however, since she was using some new bubble foam for the first time on that occasion. Shortly thereafter, however, another daughter, Nicola, complained of an unusual taste and some days later had to be removed from school with stomach problems which necessitated hospitalisation for some days. Nicola's complaint was the subject of separate legal proceedings which were settled out of court and because she was an infant at the time these were ruled by the Court. The plaintiffs also began to notice at this time, a strong kerosene odour when the central heating was operating. When Mr. Mulholland learned that his next door neighbour had an oil spill from his central heating tank, he set about assessing and addressing the problem in his home. It very soon became clear that the supply well on his property had been contaminated by the spill. He then consulted various people as to what he should do. He concluded that the existing well would have to be abandoned and a new well would have to be opened nearer to his house. The defendant concedes that this was necessary. Since they owned some five acres around the house, locating another well on his property was not a problem. After further consultation and advice, the plaintiffs decided that the entire water supply to the house, including the central heating system, had to be taken out and replaced with new pipes throughout the house. Needless to say, this was an expensive operation costing in the region of €56,000 in all, and it now forms a major part of the plaintiffs' claim.

4. The defendant resists this part of the claim saying that a less drastic solution was available, namely, to drain the entire water system in the house and flush it out, several times if necessary, with an appropriate degreasing detergent. The defendant claimed that this would have eliminated the odour problems and rendered the water safe for consumption. Such a procedure would be a fully effective solution and should have been the method adopted by the plaintiffs in addressing the problem. The cost of this alternative was calculated by the defendant as costing somewhere in the region of €22,000.

5. Before I address this issue, I will first outline the evidence of the plaintiffs as to the effect which the spill had on their domestic life after it occurred, as well as their immediate response to what they perceived was a very disturbing situation.

6. Margaret Mulholland, the second named plaintiff, gave evidence that they had the bungalow built in 1990 and were 10 years living in it when the events the subject of these proceedings took place. The couple had three daughters, they had their own well on the property and in January, 2000 the quality of the water was tested. The result indicated that the water quality was impeccable and no filter was required.

7. The plaintiffs first became aware of the problems with the water on Monday the 14th February, 2000, when the eldest daughter, then 16 years of age, claimed that there was a strange taste from the water. The plaintiffs did not pay much attention since they had recently tested the quality of the water. The next evening another daughter, took a bath and detected a smell. The following day Nicola was sent home from school complaining of headache and pains in her stomach. The doctor prescribed medication. It was then that Mrs. Mulholland became seriously concerned. On Friday of that week "unreal fumes" were detected when a bath was drawn once more. The cold water was checked and a greasy film could be detected on the surface. The family then stopped using the water.

8. As a new pump had been installed the previous month, Mr. Mulholland contacted the installer but was reassured that the oil could not have come from the pump. On the 21st February, Mr. Mulholland learned from his next door neighbour, Mr. Murtagh, that there had been a leak from his central heating tank and that his insurers were looking after the problem.

9. For the next couple of weeks the plaintiffs had to bring in all of their drinking and washing water in containers from outside. Cooking and washing became very difficult and the family had to go to relatives in the area whenever they required a shower or a bath.

10. There followed a period when the plaintiffs sought advice. They consulted an architect, a plumber and a consultant who was a specialist in the area of water contamination. Mrs. Mulholland wanted to be sure that in selecting a solution she could be fully secure that the matter was fully resolved and that any threat to the health and safety of the family was totally eliminated. There was a suggestion that the system should be flushed out, but Mrs. Mulholland did not think that this was sufficient and did not want to take any risks. The plaintiffs decided that the only way they could get peace of mind would be to replace all of the water piping in the house and the central heating piping as well. Mrs. Mulholland stated that she did not want to do this but felt that she was compelled to do so in the circumstances. The plaintiffs had replaced the radiators in the house in the previous year and were reluctant to undertake more disruption in the house. The only reason she opted for this drastic remedy was to ensure peace of mind.

11. The replacement work commenced and inevitably it involved a great deal of disruption. The concrete floors had to be dug up and the kitchen units had to be removed and stored. During this period the family sought alternative accommodation. Mrs. Mulholland went to great lengths to secure reasonable and convenient short term lettings but since short term leases were difficult to get they booked into the Ballymascanlon Hotel and remained there from the 29th February, 2000 to the 2nd April, 2000. The family shared two interconnecting bedrooms. Living in the hotel for this period was not easy as the children had to do their homework and participate in

normal social activities at the same time. During this period Mrs. Mulholland continued to search for more suitable accommodation and eventually secured a part of a house where they stayed until the 16th June, 2000, when they returned home.

12. When it was put to her in cross-examination that the "flushing method" would have been sufficient to solve the problem, Mrs. Mulholland said that she wanted to be sure and said that when she enquired at that time, what would happen if the testing subsequent to the first flushing out exercise still indicated some oil residue, she was told that the exercise could be repeated several times. She said she had a child who had become sick and that the safest and quickest way to get a permanent solution to her satisfaction was for them to replace the whole system. She admitted that the decision was their own decision at the end of the day. The witness then gave evidence as to the various items of special damage which had been incurred as a result of the contamination and as a result of the disruption caused during the replacement operation. I propose to deal with these later in this judgment.

13. Mr. Fintan Mulholland, the first named plaintiff, corroborated his wife's evidence in respect of becoming aware of the problem and the domestic upset, stress and disruption caused in the remedial work involved in the replacement.

14. When Mr. Mulholland learned of the source of the problem on the 21st February from Mr. Murtagh, he contacted his insurance broker who arranged for an assessor to visit the house. He also engaged the services of an architect. It became clear very shortly thereafter that a new well would have to be drilled and the old well would have to be decommissioned. Mr. Mulholland's insurer's loss adjuster suggested that the entire system should be flushed out at the beginning but since no one they spoke to could guarantee them fully that this would solve the problem they were reluctant to do so. He said that the builder and the architect and the plumber all expressed preference for replacement rather than the flushing out exercise. It is to be noted that the architect and the plumber have died since and there was no direct evidence from either of them. According to Mr. Mulholland, the plumber advised Mr. Mulholland that since the plumbing was complex the flushing out might not be that effective.

15. Mr. Mulholland did not relish the upheaval involved in the replacement option but felt that he had little choice in the matter. It was an option that caused him a lot of difficulty since he had to take a lot of time off from his own business and he had to finance the replacement himself. Furthermore, they had to move out while the work was being done. Mr. Mulholland also gave evidence of the various headings of special damage claimed. I need not dwell on these at this stage. Suffice to say, that as the defendant agreed that the old well had to be abandoned and a new well had to be opened on the plaintiffs' property to provide a new supply of water to the plaintiffs' house, the cost associated with this were accepted as being the defendant's responsibility. Accordingly, the defendant agreed to pay a bill of €3,332.69 to Dunne's Drilling Services Ltd in respect of work associated with the drilling of the new well; a bill of €247.60 to Ivason Environmental Consultants for the water test report; a bill of €1,048.19 to Phillip Farrelly and Co. for a preliminary environmental investigation provided at the request of the plaintiff on the 22nd March, 2000; a bill of €1,328.15 for the supply and fitting of a pump; the sum of €43.17 for a steam iron which had become contaminated, and the sum of €2,416.73 to S.M. Bennett and Co. Ltd., Hydrological and Environmental Engineers, for investigation and reports. A further sum of €5,590.21 was claimed for travel expenses and meals incurred by the plaintiffs during this disruption. The defendant acknowledged that something was due under this heading, but disputed the amount.

16. All other special damages claimed by the plaintiffs are in dispute since in the view of the defendant they relate to costs unnecessarily incurred because the plaintiffs decided to replace all of the water piping to the house as well as the central heating.

17. Whether the plaintiffs were justified in taking the decision to replace all the piping and the central heating when they decided to do so on the 27th March, 2000, is the question which the Court must resolve. Clearly, if the Court comes to the conclusion that the plaintiffs were entitled to take this course of action, the costs incurred in such an exercise would be legitimate damage which they can recover from the defendants. If on the other hand, the plaintiffs were not entitled in law to embark on this more expensive course of action instead of the "flushing out" alternative then they cannot visit those costs and expenses on the defendant.

18. Where the defendant through his wrongdoing causes damage to the plaintiffs' property it is clear law that he must compensate the plaintiffs for such damage. In many cases the damage will be clear and obvious and will not be a matter for dispute. In some cases however, such as we have here, the extent of the damage is not immediately clear or obvious and in this case an investigation would have to be undertaken to determine this. If the parties addressed this problem quickly an early agreement might be expected. If, however, there is a delay, problems may arise because of the inconvenience and danger which the damage has caused to the plaintiffs. In such cases, the plaintiff may be forced to unilaterally take action either to minimise his loss or to make reasonable adjustments because of the difficulties he finds himself in. In taking such unilateral action, however, the plaintiff must be careful because there is a danger that the defendants will later complain that this action was either unnecessary or unreasonable in the circumstances and may dispute its liability to pay for such remedial action. In the present case, therefore, the Court must consider the plaintiffs' response in deciding to replace the entire water and central heating piping in their home instead of the less expense alternative of flushing out the system. It is only if their decision in this regard is reasonable that they can claim these remedial expenses from the defendant. Further, the Court must judge their decision, not with the benefit of hindsight, but in the light of the knowledge and advice available to the plaintiffs when they made their decision and bearing in mind that they were not experts. The context and the circumstances of the case at that time are of course very relevant in assessing the reasonableness of their conduct. It should also be stated that the plaintiffs' conduct must be viewed from an objective point of view. The question is, given the knowledge which the plaintiffs had available to them and the circumstances in which they found themselves, was their decision reasonable from an objective point of view.

19. I have already indicated the inconvenience, disturbance, the anxiety and the stress which the interruption to the plaintiffs' water supply caused the plaintiffs and their family. Nicola became ill and had to be medicated. All water had to be brought into the house for both washing and cooking. Members of the family had to visit relatives to shower and bath and no laundry could be done. So difficult were the conditions that the plaintiffs and their family had to move out and take up residence initially in a nearby hotel and later in rented accommodation. All the time the three teenagers had to attend school, do their homework and try to continue normal social activities while living out of a suitcase. Mrs. Mulholland in particular was very anxious to ensure the safety and health of the family and required a resolution which would fully guarantee a definitive resolution to the problem. Mr. Mulholland had to absent himself from his business in his efforts to address the problem. In addition to assisting on the domestic front he had to engage with builders, plumbers and other professionals to resolve the crisis. The children had to continue with their schooling and keep up their extracurricular and social activities. Finally, the youngest child was preparing for her confirmation which also involved further commitments and obligations.

20. When Mr. Mulholland was informed by the defendant that the contamination was caused by a leak of kerosene from the central heating tank he set about addressing the problem. He contacted a builder, a plumber and a person who carried on the business of a well driller. He engaged the services of an architect. When he notified his insurer's loss adjuster, S. Bennett and Company Ltd., a Hydrogeologist consultant was appointed to investigate and report. He received a report from Bennett and Co. Ltd. on the 6th March, 2000. In this report Dr. Gallazzi, a Contaminant Engineer from Bennett and Co. Ltd., made several recommendations one of which

suggested the following course of action:-

> "Decontamination of the domestic plumbing system may be necessary. A local plumber can carry out a sterilisation process, based on flushing the system with hot water and detergent using our instruction. Further tap water sampling and analysis should be carried out before utilisation of tap water for human consumption."

21. This was an important report because of the expertise of Dr. Gallazzi and because of the unequivocal recommendation. Further investigations were also recommended.

22. Dissatisfied with the recommendations of Dr. Gallazzi the plaintiffs engaged the services of Phillip Farrelly and Co., Environmental Consultants, who reported to him on the 22nd March, 2000. This report was not agreed or admitted by the defendant and there was no one from Phillip Farrelly and Co. who gave evidence to the court. Moreover, both the architect and plumber, who Mr. Mulholland said advocated replacement, were dead at the time of the trial and the builder although in attendance on the first day of the hearing was not available to give evidence when eventually called on the second day of the trial. In opting for the more drastic solution, Mr. Mulholland, in addition, justified his decision by saying that no one could guarantee to him that the flushing out system would work. He also said that Margaret was very upset especially because of Nicola's illness. In her evidence Mrs. Mulholland at the end of the day said the decision to replace was "our own eventually".

23. There were two other reports in existence prior to the plaintiffs' decision to replace all the pipes in his house on the 27th March, 2000, one of these was dated the 14th March, and was compiled by Environs and co-authored by Dr. Tonra who gave evidence to the court. The second was compiled by K.T Cullen and Company Ltd. and was dated 20th March, 2000. Cullen and Co. Ltd. were Environmental Consultants engaged by loss adjusters for the defendant's insurance company. Both of these reports strongly recommended that the flushing out method was the appropriate remedial action to be taken in the circumstances.

The Law

24. In the present case the plaintiffs say they were under a duty of care to mitigate their loss and therefore they claim that they should be entitled to the costs they incurred in replacing the whole pipe work in the house including the central heating pipe work. The defendant argues, however, that although it must pay the plaintiff the expenses incurred in closing up the existing well, drilling for and opening up a new well elsewhere on the plaintiffs' property and certain additional expenses ancillary to this work, such as the reasonable cost of alternative accommodation, etc. when this work is being done, it is not liable for more. Specifically, the defendant refuse to pay the cost of replacing the whole pipe work in the house, arguing that all that was required to compensate for the wrong he did, having conceded the cost of opening the new well, was to "flush out" the existing pipe work which carried the water on the plaintiffs' property.

25. The duty to mitigate does not mean that the plaintiff owes a duty to the defendant, the breach of which will render him liable to the defendant. What is meant by the concept is that the plaintiffs cannot recover damages for loss that they ought reasonably to have avoided. Pearson L.J. in *Darbishire v. Warran* [1963] 1 W.L.R. 1067 explains the principle clearly at p.1075:-

> "… it is important to appreciate the true nature of the so called 'duty to mitigate the loss' or 'duty to minimise the damage'. The plaintiff is not under any actual obligation to adopt the cheaper method: if he wishes to adopt the more expensive method, he is at liberty to do so and by doing so he commits no wrong against the defendant or anyone else. The true meaning is that the plaintiff is not entitled to charge the defendant by way of damages with any greater sum than that which he reasonably needs to expend for the purpose of making good the loss. In short, he is fully entitled to be as extravagant as he pleases but not at the expense of the defendant."

26. From this it is clear that the plaintiffs will be entitled to recover such sums as they might reasonably expend to make good the loss, but no more. In determining what is reasonable the courts may give the plaintiffs some latitude, since it was the defendant's wrong that put the plaintiffs in the position in which they find themselves and an over exacting standard might in such circumstance be unfair. (See McGregor, *McGregor on Damages* 17th Ed. (London, 2003) at para. 7-064; Butterworths Common Law Series, *The Law of Tor*t, (London, 2002) at para. 6.9.) Nevertheless, the standard is an objective one at the end of the day and the plaintiff cannot expect such indulgence where his conduct is clearly unreasonable and excessive. Perhaps the best way of putting it is to say that the plaintiff can recover as damages what a reasonable person would spend on repairs given the circumstances in which the plaintiff finds himself. This is a question of fact in each case. Underlying this rule is the fundamental principle that the defendant is liable only for the damage which has been caused by his wrongful act. (See K*och Marine Inc. v. D'Amico Societa Di Navigazione A.R.L. (The "Elena D'Amico")* [1980] 1 Lloyd's Rep. 75, at p.88, col. 2)

27. One of the facts in the present case that must be considered relevant is that the plaintiffs wanted the repairs to be carried out as quickly as possible, given the inconvenience.

28. Another factor to be borne in mind was the illness which Nicola suffered as a result of ingesting the contaminated water and the natural fear and apprehension which the parents had as result of this. Mrs. Mulholland in particular was very upset about this and not unnaturally, sought a remedy which would guarantee absolutely a safe domestic zone for the family and the children in particular. It must also be acknowledged that the stress, upset and anxiety which Mrs. Mulholland in particular felt is understandable to an extent. In human terms one can appreciate Mrs. Mulholland's position: her water supply was contaminated, the home was invaded by smells and fumes (for a short period in any event), there was serious disruption to the domestic schedule and one of her children had suffered intestinal problems. Understandably, this caused Mrs. Mulholland a sense of insecurity.

29. Nevertheless, in deciding what remedies the plaintiffs were entitled to take at the expense of the defendant, a balance must be struck. The plaintiffs can only take reasonable steps to remedy the damage at the defendant's expense. If the plaintiffs wish to do more, to satisfy Mrs. Mulholland's understandable anxieties (understandable, that is, from a human point of view), and such remedial measures exceed what is reasonable in the objective sense, they may have to pick up the extra costs themselves. That is the law as I understand it.

30. The question then arises as to what information and advice had the plaintiffs when they decided to replace all the pipes on the 27th March, 2000. First, by the time the plaintiffs had established the cause and the extent of the spillage and the source of the contamination, 800 litres or thereabouts of kerosene had leaked from the defendant's central heating tank. By then the problem had been addressed by the defendant and there was little likelihood of a reoccurrence from that source. Moreover, it appeared that the oil when it escaped followed the natural gradient of the ground and found its way by gravity alone, away from the houses and down to the well in question. In these circumstances it was unlikely that there would be lateral seepage between the two houses. The decision to decommission the old well and drill for a new one higher up on the site was eminently reasonable in the circumstances. With regard to the contamination to the pipe works and the central heating system the position was as follows.

31. The central heating system was a closed system which, the experts explained, meant that once it was filled at the outset, did not take in any further water. The water in the system, when heated, circulated to the radiators throughout the house without the introduction of any additional water. The supply was sealed, it is only if a leak occurred that more water would be introduced. From this it is clear that any contaminated water from the defendant's oil spill could not enter the sealed central heating system in the plaintiffs' house. The evidence given by the plaintiffs that there was a smell of fumes when the central heating came on, may be explained by the fact that the central heating boiler was located in the house at the time. It is highly unlikely that contaminated water entered the central heating system in my view, and there was no need to replace the central heating pipes for this reason. In this connection, it should be noted that the plaintiffs had replaced the radiators in the house in the previous year, because of inadequate heating output, and there was no problem with these up to the time of the spillage. Moreover, the plaintiffs retained these radiators even after they replaced the underground piping, something that I find difficult to understand if they were concerned that the closed heating system had become contaminated. In these circumstances I cannot say it was reasonable to have replaced the central heating piping.

32. With regard to the water piping, the plaintiffs had advice from its own expert, who was engaged shortly after the problem arose, that the proper remedial approach was to flush out the system. This would involve the introduction of a recognised degreasing detergent and running hot water through the system with some force. Dr. Gallazzi, from Bennett and Company Ltd., Hydrogeological and Environmental Engineers, advised that this would solve the problem. This advice was given to the plaintiffs on the 6th March, 2000. Other expert witnesses, who subsequently gave evidence to the court, were strongly of the view also that not only was the "flushing out" system the appropriate way to treat the problem but that in their extensive experience it had always succeeded in this type of case. Mr. Cunningham, an expert called by the defendant, and a very well respected expert in this area, with a lot of experience, was very strong in his evidence in this regard, declaring that replacing the water piping was wholly unnecessary in this type of case. Mr. Cunningham was involved from the outset on behalf of the defendant and he indicated his recommendation to the plaintiffs long before the 27th March, 2000, when the plaintiffs commenced removing all the piping.

33. The plaintiffs, however, and Mrs. Mulholland in particular, were not happy with this solution. Mr. Mulholland said his builder and his plumber thought that the surest way of solving the problem was to replace all the pipe work. Moreover, the plaintiffs' architect apparently also took a similar view. Unfortunately, at the date of trial both the architect and plumber were dead for some years, and the builder who was in court on the 1st day of the trial, was unavailable when called later. For these reasons no direct evidence was forthcoming from these sources. Dissatisfied with the Bennett report of the 6th March, 2000, the plaintiffs then instructed another environmental consultant (Phillip Farrelly and Co.) to recommend a solution. This report was not admitted without proof and for this reason was not before the Court.

34. It is significant to note that when the flushing system was explained to the plaintiffs, Mrs. Mulholland asked what would happen if the flushing system did not work and she was told that the exercise would then be repeated; and repeated as often as was required. Apparently, Mrs. Mulholland interpreted this as suggesting that it was an inferior method of treating the problem and unsafe; one that would not give her an absolute guarantee. More probably, this explanation was given to indicate that the process could be repeated as often as was required until a satisfactory result was achieved, and was advanced not to cast doubt on the efficiency of the first flushing, but by way of reassurance.

35. It is also relevant to note that the flushing out method could be done in one working day and involved very little disruption to the household. Certainly there would be no digging up of the floors while it was being carried out.

36. It is difficult to understand why, given the limited disruption involved in the flushing method, the speed at which it could be done, and the recommendation of their own expert Dr. Gallazzi, why the plaintiffs did not take this option or at the very least give it a try. If, after such a trial an acceptable result was not achieved and the plaintiffs remained dissatisfied, the more drastic remedy of taking up all the piping was still available to the plaintiffs. In acting as they did, the plaintiffs in my view acted precipitously and in an unreasonable way.

37. At the trial, evidence was given for the plaintiffs by Mr. Bennett, who was the principal in the firm of S.M. Bennett and Company Ltd., the firm engaged at the outset to give advice to the plaintiffs and the first report of which dated the 6th March, 2000, was compiled by Dr. Gallazzi. I have already referred to this report as having expressed preference for the flushing method. At the trial Mr. Bennett gave evidence that he would have reviewed Dr. Gallazzi's work relating to the site and he would have seen that report before it went out, and presumably approved of it. At the trial he said that at the time, in addressing problems like this, there were two approaches possible. Replacement was pretty normal, but his company had devised an effective way of flushing which although not an absolute guarantee was an acceptable alternative especially when one took into account the disruption and the costs involved. Such a solution depended also on the complexity of the plumbing and the wishes of the family. As already noted there was no evidence before the court of any serious complexity in the plumbing of the plaintiffs' house and Mr. Bennett never met the plumber or inspected the plumbing in the house. With regard to the latter consideration Mr. Bennett said he had to be aware that he was, in such circumstances, dealing with a very sensitive situation where the parties would be very upset and anxious. He accepted that when engaged in situations such as faced him with the Mulhollands he would at the end of the day do what his clients wished, having given them the appropriate advice.

38. My view of Mr. Bennett's evidence was that although he gave evidence that what the plaintiffs did was reasonable, he was being very deferential to the views of the family. They were very upset, they wanted a fully guaranteed and permanent solution, they were prepared to move out of their home and tolerate the disruption and the cost apparently did not feature. He stated in his evidence that although his company's preferred option would be to flush out the system first, he must, when dealing with lay persons take into account their fears, their feelings and their apprehensions.

39. In my view when he gave evidence at the trial that the plaintiffs acted reasonably Mr. Bennett, clearly a humane man, was really saying no more than that he understood their preference, in view ,in particular, of Mrs. Mulholland's anxiety, at the time.

40. One further point should be recorded in relation to the circumstances that prevailed on the ground in late February and early March, 2000. When the difficulties first arose in February, the defendant offered to link up the plaintiffs' water supply to his own while the plaintiffs' pipes were being flushed out. This would have meant that the plaintiffs would have an independent and clean water supply while their supply was being attended to. The plaintiffs refused this offer saying that they found that such a connection might put the defendant's supply at risk. From the evidence, however, it appears that this offer was first made in correspondence dated the 29th March, 2000, that is two days after the plaintiffs had commenced work in replacing all the pipe work in the house. It does show, however, that in spite of the spillage the plaintiffs and the defendant had remained on good terms and indeed the plaintiff, Mr. Mulholland, gave evidence that the parties were still on good terms at the time of the trial. Nevertheless it does indicate that relations between the parties were not such as to prevent reasonable discussions and negotiations at all times.

41. In cross examination Mr. Bennett confirmed that it would have been reasonable to flush the system first before carrying out major works of replacement. He also confirmed that Dr. Gallazzi's recommendation on the 6th March was a sensible suggestion. Clearly he made a distinction between what was reasonable from a professional point of view and what was reasonable from the home owner's position. Finally he confirmed that his preferred suggestion was to flush out first but bearing in mind the family's reluctance he could sympathise with their preference.

42. Finally, Dr. Conor Tonra from Environs (Knowledge Innovation Solutions) also gave evidence. Dr. Tonra took his Ph.D. from Dublin City University in 1992. He has been an environmental consultant since that year and a director of Environs up to 2001. Dr. Tonra visited the site on the 2nd March, 2000, and reported on the 14th March, confirming some contamination in the plaintiffs' supply. His recommendation was that the entire plumbing and water pumping system should be cleaned and decontaminated by a suitably qualified professional and that the well should be purged of up to five times its volume before being decontaminated by a suitably qualified professional. In his evidence Dr. Tonra indicated that this was his original recommendation at the time and remained his opinion at the trial.

43. Mr. Peter Johnson, a mechanical and manufacturing engineer, furnished the report dated the 1st February, 2007, as a result of a visit to the plaintiffs' site on the 13th November, 2006. Mr. Johnson gave evidence as to the closed nature of the central heating system and that it was very unlikely to have been be contaminated by the leak. Even if it were by some strange reason contaminated, the central heating system could also be flushed out and this would be a proper solution. Mr. Johnson also gave evidence that in his opinion the road which had to be laid to open up the second new well was necessary and appropriate in the circumstances. Finally Mr. Johnson said that in his opinion there was no essential improvement to the house as a result of the extensive replacement of piping. The value of the property had not been enhanced by these works.

44. Having made my determination on the above issue it now remains for me to assess damages under the respective headings

(a) Special damages

(b) General damages

Special Damages

45. The defendants in meeting this case have conceded that they are liable for headings 1, 2, 6, 10, 12 and 17 which total €8,416.53. I also find that headings 12 and 13, €67.23 and €272.36, respectively, for replacement of bed linen contaminated in the wash are recoverable by the plaintiffs. Heading number 8 is a bill supplied by the builder Anthony Duffy Limited, in total amounting to €51,424.39. Because the defendants have agreed that the plaintiffs were obliged to close up the old well and drill for and open and new well, they are also liable for reasonable costs in respect of this work as well as the cost of laying a road up to facilitate the works on the second well. I also find it reasonable in the circumstances that the cost of them moving the boiler from the house to a new location should be borne by the defendant. The cost of replacing all the pipes however is not to be laid at the defendant's door and for this reason the plaintiffs cannot recover for these works. Unfortunately, because the builder was not in attendance and his bill was a composite bill and not broken down into subheadings, the Court is faced with a difficult problem in allocating exactly for what the defendant is liable and what the plaintiff must bear themselves. Doing the best I can I will award the plaintiffs €27,000 in respect of the works in question.

46. With regard to the other headings claimed as special damages I award the following sums: -

- a sum for cleaning up and redecorating; €600

- a sum for architect's advices; €3,500

- a sum in respect of rent and accommodation; €1,000

- a sum in respect of travel expenses, extra meals and miscellaneous expenses; €1,000

47. Totalling all of these special damages I arrive at a figure of €41,856.12.

48. Under the heading of General Damages I award the sum of €30,000 which brings my total award in favour of the plaintiffs to €71,856.12.