

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP515/2018

CATCHWORDS

Building and Property List – Whether reasonable flow of water – source of water – s.16 *Water Act 1989*

APPLICANT	Immacolata Sinopoli
RESPONDENT	Antonino Comperatore
WHERE HELD	Melbourne
BEFORE	Robert Davis, Senior Member
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	25 January 2019
DATE OF ORIGINAL ORDER	25 January 2019
DATE OF WRITTEN REASONS	25 February 2019
CITATION	Sinopoli v Comperatore (Building and Property) [2019] VCAT 266

ORDER

The proceeding is dismissed.

Robert Davis
Senior Member

APPEARANCES:

For Applicant:	In person
For Respondent:	In person
Interpreter:	Mr Enzo Maselli

Note: These written reasons consist of an edited transcription of reasons given orally at the conclusion of the hearing.

REASONS

Reasons for decision

- 1 The applicant is the owner of 44A Riverside Avenue, Avondale Heights which I will refer to as (“no. **44A**”). The respondent is the owner of 14 Herbert Street, Avondale Heights which property is tenanted. The applicant alleges that on the 30 January 2018 and again on the 15 December 2018 there was a flow of water from the respondent’s premises to her premises and caused damaged. The applicant is seeking that the respondent pay \$500.00 for investigation by a plumber and approximately \$7,500.00 to repair a broken stormwater drain. The stormwater drain is a joint drain from both the applicant’s and the respondent’s property and there is a junction on the applicant’s property (no.44A) where it runs out into the street. I am satisfied on the evidence that there are two breaks in the stormwater drain are outside both properties, that is in the crossover of the property at 44A Herbert Street.
- 2 The rain on both the 30 January 2018 and the 15 December 2018 was extremely heavy. I have a personal recollection on the 15 December last year and it was some of the heaviest rain I have seen in Melbourne. I see from records from the Bureau of Meteorology that the rain on 30 January 2018 was also extremely heavy and quite out of the ordinary. The applicant states that as a result of the rain, water was on her garden and took a considerable amount of time for it to soak into the garden or evaporate. It is clear on the evidence that a considerable amount of the water came from the downpipe of the applicant’s premises, near her lounge room, that was overflowing. It was also clear that a considerable amount of water came from the roof of the applicant’s carport where there was a hose running onto the applicant’s garden. The applicant has stated that I should not take that into account. However what I must look at is the flow of water and it is essential for me to look at where the water actually came from.
- 3 The matters that I must decide is the source of the water and whether there has been an unreasonable flow of water. I refer to section 16 of the *Water Act 1989* subsection (1) that reads as follows:

16 Liability arising out of flow of water etc.

- (1) If—
 - (a) there is a flow of water from the land of a person onto the other land;
 - (b) the flow is not reasonable; and

- (c) the water causes injury to any other person or damage to the property whether real or personal to any other person

(2) ...

Any other person suffers economic loss the person who causes the flow of water is liable to pay the damage to the other person in respect of an injury, damage or loss.

- 4 The first question I must ask is: “where did the water come from?”. In my view, I am not satisfied that the water came from the respondent’s property. It is more probable than not that the water came from the downpipe of the applicant’s property and from the roof of the carport via a hose. I make these findings accordingly.
- 5 In any event, I am not satisfied that there has been an unreasonable flow of water. The applicant says that the water came from two breaks in the joint stormwater drain of both parties. On the plumber’s sketch which has been amplified by the respondent it seems clear to me that the break in the drains is on council property not on the respondent’s property. Therefore, even if the water flowed from the breaks in the drain it is not the respondent’s responsibility, it is that of the council. The council are in that area. It is not flowing from the respondent’s property to the applicant’s property.
- 6 Further, I note that there are three reports from a plumber who was employed by the applicant. The reports seem to be undated. The first report states “Effected a blockage jet blast stream water drain clear and inspected with camera. Found two breaks in stormwater drain in driveway of 14 Herbert Street where I marked with paint to closest to the road. I also found drain to be holding water between the middle of a paint mark and one under the carport. The stormwater drain in the combined system between 14 Herbert Street and 44A Riverside Avenue, Avondale Heights drains in 44A where overflowing due issue under the driveway of 14 Herbert Street.”
- 7 While the overflow and the break might have been in the driveway of 14 Herbert Street it nonetheless was on council property. I might have mentioned earlier that is the driveway was in 44A Riverside Avenue.
- 8 There is a further report which says any water put into the bedroom pipe does not appear on the access point below it because they are above the line that the bedroom downpipe is connected to. That militates against the flow of water coming from no.14. There is a third report which states “Effected a blockage jet blasted stormwater drain clear and inspected camera found two breaks in stormwater drain of 14 Herbert Street and stormwater drain with a combined system. Cost of clearing the drain is to be shared between the properties.”
- 9 It seems to me clear that it is unlikely that that water is coming from the breaks in the drain. Even if it is coming from the breaks in the drain it would be impracticable to order that the current stormwater drain be fixed. The cost of fixing the break in the stormwater drain is \$7,500.00 and as the respondent pointed out that would involve breaking up a driveway and

remaking which is probably another \$10,000.00. For a sum quite substantially less than that both parties could put in their own stormwater drain which would be the most practical solution.

- 10 However, that is not something that I have before me today.
- 11 What I have to decide is whether there is a reasonable flow of water from the respondent's property to the applicant's property. I am not satisfied there is. Having a lot of water in your garden on two heavy rain days is not necessarily unreasonable flow of water. In any event, I am not satisfied that the water has come from the respondent's property for the reasons I have stated. Given those circumstances I will dismiss the application.
- 12 The order is that the proceeding is dismissed.

Robert Davis
Senior Member