

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BEVERLY WARREN et al.,

Plaintiffs and Respondents,

v.

CITY OF COMPTON,

Defendant and Appellant.

B231902 (Consolidated with B231925)

(Los Angeles County Super. Ct.
Nos. TC020865 & BC389182)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

City Attorney's Office, City of Compton, Craig J. Cornwell, Anita O. Aviles and Jose R. Paz, City Attorneys, for Defendant and Appellant.

Leist Law Group and Jeffrey J. Leist for Plaintiffs and Respondents.

Defendant and appellant City of Compton appeals from a judgment in favor of plaintiffs and respondents Irene Shandell and Beverly Warren. The City contends: 1) there is no substantial evidence to support the finding that a water leak on Shandell's property caused damage to Warren's property; and 2) the judgment should be reduced to correspond to the City's percentage of fault. We affirm. Substantial evidence supports the finding that Warren's home was damaged as a result of the water leak, and the City is liable for the total amount found to be just compensation for the loss.

FACTS AND PROCEDURAL BACKGROUND

Shandell purchased her home on West Cypress Circle from the developer in 1985. Warren lives across the street. When the homes were built, the soil was not properly compacted. On the evening of October 23, 2005, Shandell found her entire backyard covered in water. Water was bubbling up in one area. She contacted a plumber, who arrived at the property the next morning. Since Shandell's water meter was not running, the plumber told her that the leak was not her responsibility and recommended that she contact the City. She called the City's water department that day. After being transferred to another department, the City promised to send someone to investigate. When no one came that day, Shandell called the City again the following day, with the same result. Shandell called a third time. Cross-connection Investigator Martin Urquhart came to investigate on October 27, 2005.

Urquhart saw a small stream of water bubbling up from the ground about an inch in height. Within 30 minutes, Urquhart traced the leak to a water pipe owned and maintained by the City. The pipe ran along the eastern side of Shandell's and Warren's properties. The City employees dug a pit through adobe clay soil to reach the pipe. They did not shut off the water, so the pit filled with water during the repair and the crew periodically pumped it out. The water leaked from a hairline fracture around the circumference of the pipe. Kambiz Eshoghi, who was the general manager of the City's Water Department, arrived after the pipe had been exposed. A clamp was placed around

the pipe to seal and repair it. The hole was filled, and mud and debris in the yard was cleaned up.

After the water leak was repaired, Shandell and Warren found cracks in the walls, foundations, and floors on the east side of their homes. Their homes tilt toward the pipe easement and the soil on the east side of the properties.

On September 5, 2006, Shandell filed an action against the City for property damage caused by negligence. The trial court granted the City's motion for judgment on the pleadings, and Shandell appealed.

On April 15, 2008, Warren and other individuals filed an action against the City to recover for property damage based on causes of action including inverse condemnation. All of the plaintiffs other than Warren were eventually dismissed from the Warren case.

On January 12, 2009, this court reversed the judgment against Shandell, finding that Shandell could amend her complaint to state causes of action for inverse condemnation and private nuisance based on the same factual allegations as the original complaint. Shandell filed an amended complaint on August 11, 2009, and a second amended complaint on October 27, 2009.

On September 27, 2010, the trial court consolidated the Shandell and the Warren cases. A bench trial commenced on October 14, 2010.

At trial, Urquhart testified that a layer of sand placed around a water main pipe during installation protects the pipe by providing a better cushion. Since Urquhart began working for the City in 1985, the City has made it a requirement that any water main pipe installed by the City must have a layer of sand surrounding the pipe. He said it was hard to tell during the repair of the pipe in this case whether there was a sand layer around the pipe, and he was not certain one way or the other whether he saw a sand layer. He would expect to see a layer of sand around a water main pipe, however, because that was the usual procedure.

Eshoghi testified that there was no sand layer around the pipe when he viewed it after the excavation.

Expert Civil and Geotechnical Engineer Glen Raad visited the Shandell and the Warren properties several times. He observed a test pit dug by the City around a water main in the middle of Cypress Circle that was installed by the developer around the same time as the pipe that runs across Shandell's and Warren's properties. The water main in the middle of Cypress Circle was surrounded by sand. Raad explained that it is typical to place pipes with sand around them and there is no reason to believe that the developer would have used any different construction technique for the water pipe next to the Shandell and the Warren properties than for the water pipe running down Cypress Circle. Raad's expectation was that the pipe between the Shandell and the Warren properties would have the same construction as the water main line running down Cypress Circle.

Raad dug two test pits on Shandell's property, one close to the pipe that leaked and one on the other side of the property. He also dug two test pits on Warren's property. None of the test pits excavated or exposed the pipe that had leaked. All of the test pits showed silty clay soil and none had significant amounts of sand. Although the drainage around both homes was good, the moisture content of the soil exceeded the optimum amount and was higher than would be expected from rainfall or landscape maintenance. In Raad's opinion, the excess moisture was due to the water that leaked from the broken pipe.

Raad opined that the water escaping from the pipe leak on Shandell's property traveled to Warren's property through a permeable sand layer around the pipe that acted as a conduit for the water to move from one property to the other. In Raad's opinion, the timing, proximity, and mode of the damage to Shandell's and Warren's homes were consistent with soil settlement resulting from the pipe leak and the poorly compacted fill along the east side of the properties. Raad testified that the water leak and the settlement of poorly compacted fill contributed equally to cause the damage.

On January 27, 2011, the trial court entered judgment in favor of Shandell in the amount of \$286,450, plus prejudgment interest of \$37,852.06 and in favor of Warren in the amount of \$256,276, plus prejudgment interest of \$12,793.48. The City filed a timely notice of appeal.

DISCUSSION

Standard of Review

“When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court.” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) We review questions of law de novo. (*Bostean v. Los Angeles Unified School Dist.* (1998) 63 Cal.App.4th 95, 107-108.)

Damage to Warren’s Property

The City contends the finding that Warren’s property was damaged as a result of the leaking water pipe on Shandell’s property is not supported by substantial evidence. We disagree.

Although Warren’s home was built on improperly compacted soil, the damage in this case did not appear until after the water leak on Shandell’s property decades later. The moisture content of the soil at Warren’s home was higher than could be attributed to rainfall or landscape maintenance. The water caused the soil subsidence that damaged Warren’s property. Raad explained that a layer of sand around the pipe could have helped the water travel more quickly and easily to the neighbor’s home. The water main pipe in the middle of the street was installed over a layer of sand, and the pipe across Shandell’s and Warren’s properties, which was installed by the same developer at the same time, would be expected to have been installed in the same manner. Based on the evidence, a trier of fact could reasonably infer that the damage to Warren’s home was caused by the water leak on Shandell’s property.

Inverse Condemnation Liability

The City contends that its liability for the plaintiffs' damages should be reduced to correspond to its fault. This is incorrect.

Under the California Constitution, an owner of real property is entitled to receive just compensation when a public improvement is a substantial cause of physical injury to the property, even when there are several concurrent causes. (*Bunch v. Coachella Valley Water Dist.* (1997) 15 Cal.4th 432, 440 (*Bunch*)). The usual measure of just compensation is the fair market value of the property taken. (*People ex rel. Department of Public Works v. Lynbar, Inc.* (1967) 253 Cal.App.2d 870, 880.) A public entity is strictly liable for inverse condemnation damages. (*Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596, 610 (*Pacific Bell*)).

The cases that the City relies upon, *Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, 372, and *Bunch*, are inapplicable. *Locklin* and *Bunch* concern a historical exception to the strict liability inverse condemnation rule that is peculiar to water law with respect to the rules governing damage to downstream property from surface water runoff and public flood control projects. (*Bunch, supra*, 15 Cal. 4th at p. 440-447.) Ordinary rules of inverse condemnation strict liability for damages caused by public improvements apply to the failure of the City's water delivery system. (*Pacific Bell, supra*, 81 Cal.App.4th at p. 615.)

DISPOSITION

The judgment is affirmed. Respondents Irene Shandell and Beverly Warren are awarded their costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.