

VERDICTS & SETTLEMENTS

FRIDAY, APRIL 4, 2025



Scott E. Radcliffe

BENCH DECISION — DEFENSE —

TORTS

NUISANCE Negligence

BENCH DECISION: Defense

CASE/NUMBER: Elizabeth Quinn, as an individual and a trustee of the Ayres Quinn Family Living Trust; Caroline Ayres, as an individual and a trustee of the Ayres Quinn Family Living Trust; Greg Gruszynski; Derrlyn Tom v. Mary R. Coulton; Elysa Stein; Neil Straghalis, and Does 1-50, inclusive / CGC-23-606844

COURT/DATE: San Francisco Superior / Oct. 29, 2024

JUDGE: Braden C. Woods

ATTORNEYS:
Plaintiff – Steven A. Blum, Chia Heng Ho (Blum, Collins & Ho LLP)

Defendant – Scott E. Radcliffe (Alves Radcliffe LLP)

FACTS:
On May 30, 2023, plaintiffs, owners of two homes located in San Francisco, sued their two downhill neighbors after the parties' 10 foot by 80-foot concrete retaining wall failed after a record 100-year rain storm dropped 5.5 inches of rainfall in 24 hours. The 80-year-old retaining wall separated the properties' rear yards and ultimately fell downhill

into Defendants' backyards, causing 15 feet of Plaintiffs' rear yards to subside.

Plaintiffs alleged claims of negligence, nuisance and loss of lateral and adjacent support based on Civil Code Section 832 against both downhill owners. Plaintiffs sought more than \$1.8 million for replacing the wall, lost use of property and emotional distress.

Defendants denied any liability and disputed plaintiffs' alleged damages. Defendant represented one of the two downhill owners. The other downhill owner settled prior to trial for \$500,000. The downhill owners retained separate counsel to sue the uphill owners and those claims were settled before trial. The only remaining claims at trial were the two uphill owners versus defendant.

PLAINTIFF'S CONTENTIONS:
Plaintiffs contended that defendants were strictly liable for the wall failure based on Civil Code Section 832 and a claim of negligence per se. Plaintiffs contended that Civil Code Section 832 provided plaintiffs with an absolute right to lateral support from defendant as the downhill owner. Plaintiffs further alleged defendants negligently maintained the wall claiming they should have known the wall needed repair. Plaintiffs contended the cost to repair

the wall was \$1.2 million and sought an additional \$600,000 for emotional distress and loss of use of portions of their rear yards.

DEFENDANT'S CONTENTIONS:
Defendants contended that Civil Code Section 832 and negligence per se did not apply. Defendant argued the statute pertains to matters involving excavation and there were no allegations of excavation involved in the case. Defendant further contended it was not the proximate cause of the failure as the record rain storm was an Act of God. Further, defendant contended there was no basis for her to believe the wall needed repair prior to the failure.

Defendant disputed plaintiffs' scope and cost of repair arguing the actual cost was approximately \$330,000 and that the wall was a common wall subject to Civil Code 841 requiring the parties to split the costs to rebuild. Lastly, defendant argued that it was entitled to a \$500,000 set off of the other downhill owner's pre-trial settlement and therefore there were no recoverable damages even if defendant was liable for a portion of the wall.

DAMAGES:
The Court granted Defendant her costs in the amount of \$74,044.55. Defendant

beat her C.C.P. Section 998 Offers of \$5,000 per property and was awarded her expert fees in the amount of \$37,460.15. Plaintiffs have appealed the Court's ruling on costs.

SETTLEMENT DISCUSSIONS:
Plaintiffs' last settlement offer was \$1.8 million. Defendant's last offer was \$25,000.

RESULT:
Judgment was entered in favor of defendant.

Minutes prior to trial, plaintiffs dismissed their claims for negligence and nuisance. Plaintiffs requested the Court rule, before trial, on defendant's Motion in Limine No. 16 which sought an evidentiary order to exclude plaintiffs' claims for strict liability or negligence per se based on Civil Code Section 832. The court granted defendant's Motion In Limine No. 16 finding that Civil Code Section 832 did not apply.

OTHER INFORMATION:
Prior to trial, Plaintiffs unsuccessfully attempted to disqualify Judge Braden C. Woods. The day of trial, Plaintiffs unsuccessfully attempted to avoid a jury trial and requested a court trial.

FILING DATE: May 30, 2023