
ERR ... THERE'S A FLY IN ... MY WATER

Reported case: Mustapha v. Culligan of Canada Ltd.

Citation: 2008 SCC 27

At Issue: Could a manufacturer of bottled water have reasonably foreseen that a customer would suffer nervous shock as a result of seeing a dead fly in his water?

The Court: Supreme Court of Canada

Judgment Rendered: May 22, 2008

Factual Summary: The plaintiff and his wife saw a dead fly and later a half of another dead fly, in an unopened bottle of drinking water supplied by the defendant. The plaintiff suffered depression, anxiety, phobias and obsessive thoughts as a result of the sight of the dead flies. He sought compensation for his psychological damages from Culligan.

Disposition by Lower Court: The trial judge for the Ontario Superior Court of Justice found that the psychiatric effect of the incident was due to the plaintiff's particular sensibilities. He applied a subjective standard however, and found that the psychiatric injury from the incident was foreseeable. Culligan's knowledge that the nature of its product dictated a concern for purity and cleanliness. The plaintiff was awarded over \$340,000 plus interest and costs.

Appellate Decision: The Ontario Court of Appeal allowed Culligan's appeal finding that the trial judge had erred in failing to consider an objective test when determining whether Culligan owed a duty to the plaintiff. They felt the trial judge also erred when he considered whether the psychiatric harm to the plaintiff was possible rather than probable. The Court found that the test for the existence of a duty of care towards primary or secondary victims in cases of psychiatric harm was whether it was reasonably foreseeable that a person of normal fortitude or sensibility is likely to suffer some type of psychiatric harm as a consequence of the defendant's conduct.

Supreme Court of Canada Decision: Appeal by the plaintiff dismissed. The court found that Culligan, a manufacturer of consumable goods, owed a duty of care to the plaintiff, an ultimate consumer of that good. The court also found that Culligan breached the standard of care by providing the plaintiff with contaminated water. The court accepted that the plaintiff had sustained damage.

On the question of whether the plaintiff's damages were caused by Culligan's breach however, the court agreed with the Court of Appeal, and found that the plaintiff failed to show it was foreseeable that a person of ordinary fortitude would suffer the serious injury he did from seeing the flies in the bottle of water. They summarized their finding by stating: "unusual or extreme reactions to events caused by negligence are imaginable but not reasonably foreseeable."