

4. At all relevant times, defendant DAVID MACMILLAN, with an office at 50 W. Kellogg Boulevard - Suite 560W, St. Paul, MN 55102, was an Assistant Ramsey County Attorney, was the attorney for the defendants in *Lam v. Ramsey County* and signed the Agreement and Release on behalf of the defendants therein.

5. At all relevant times, defendant OFFICE OF THE RAMSEY COUNTY ATTORNEY, with an office at 50 W. Kellogg Boulevard, St. Paul, MN 55102, was the employer of defendant MacMillan.

6. The Agreement and Release executed in *Lam v. Ramsey County* provided at paragraphs 1, 2, 3, and 5:

1. The County of Ramsey will, either with its own forces or through contracts with third parties, and at its sole cost and at no cost to Plaintiff, design and construct a catch basin and underground pipe which will drain surface water from Lake Johanna Boulevard and discharge it into park land owned by the County on the north side of Lake Johanna Boulevard, no later than October 31, 2005. The catch basin will be constructed to lie within the paved portion of Lake Johanna Boulevard. The purpose of this catch basin and drain pipe is to prevent surface water from ordinary rains and snow melt from draining off Lake Johanna Boulevard and across Plaintiff's property. To accomplish the construction of this drainage system, the County, or its contractors, may find it necessary to disturb the landscaping Plaintiff has placed adjacent to the road. The County shall restore all such disturbed landscaping to its original condition.

2. The County, with its forces or independent contractors, shall extend the existing bituminous curb to the western edge of Plaintiff's property

3. Plaintiff will be permitted to maintain his existing landscaping within the public highway right-of-way. Nothing in this agreement shall operate as or be deemed a waiver or surrender by Defendants of any of its public highway easement interest.

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5. Defendants will dismiss all counterclaims it has made against Plaintiff in this matter, with prejudice, including their counterclaims for a prescriptive drainage easement and injunctive relief.

7. On November 1, 2005, defendant MacMillan was informed that the drain

system had not been installed by October 31, 2005.

8. Upon being informed that the drain system and the bituminous curb had not been installed by October 31, 2005, defendant MacMillan claimed to have been unaware that the new drain system and bituminous curb had not been installed nor why it had not been installed and said that he had learned that the new drain system would be constructed in about a week.

9. Utility locations were not marked on the pavement and on plaintiff's property until about November 4, 2005.

10. A new drain system was constructed on or about November 8, 2005, but was not constructed so as to locate the catch basin and drain grate within the paved portion of the roadway. Instead, the catch basin and drain grate have been located on plaintiff's property.

11. The bituminous curb has not been extended to the western edge of plaintiff's property, and, because the drain grate has been located on plaintiff's property, an uninterrupted extension of the bituminous curb to the western edge of plaintiff's property is impossible.

12. On information and belief, defendants MacMillan and Schacht agreed to the terms set out in paragraph nos. 1, 2, and 3 of the Agreement and Release without an intention to comply with those terms.

13. On information and belief, defendants MacMillan and Schacht intentionally failed to assure that defendant Ramsey County and its agents understood the terms set out in paragraph nos. 1, 2, 3, and 5 of the Agreement and Release in deliberate disregard for plaintiff's rights as embodied in the Agreement and Release

14. On information and belief, defendants intentionally constructed the drain system so as to locate the drain grate on plaintiff's property rather than within the paved roadway in deliberate disregard for plaintiff's rights as embodied in paragraph no. 1 of the Agreement and Release.

15. On information and belief, defendants intentionally failed to extend the

bituminous curb to the western edge of plaintiff's property in deliberate disregard for plaintiff's rights as embodied in paragraph nos. 2 and 5 of the Agreement and Release.

16. As a result of defendants' intentional installation of the drain grate on plaintiff's property without legal justification, defendants damaged plaintiff's property and failed to restore plaintiff's landscaping to its original condition.

17. As a result of defendants' intentional failure to extend the bituminous curb to the western edge of plaintiff's property without legal justification, defendants damaged plaintiff's property and failed to restore plaintiff's landscaping to its original condition.

CAUSES OF ACTION

Count I Breach Of Contract

18. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 17 with the same force and effect as if more fully set forth herein at length

19. As a direct and proximate result of defendants' willful breach of the Agreement and Release, plaintiff has been damaged in an amount in excess of \$50,000.

Count II Intentional Perpetuation Of Nuisance

20. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 19 with the same force and effect as if more fully set forth herein at length.

21. As a direct and proximate result of defendants' intentional perpetuation of a nuisance in the form of the drainage of surface water from ordinary rains and snow melt across plaintiffs property, plaintiff's property and plaintiff's enjoyment of the property have been and will be damaged in an amount in excess of \$50,000.

JURY DEMAND

22. Plaintiff demands a trial on all issues triable to a jury.

NOTICE OF INTENTION TO SEEK PUNITIVE DAMAGES

23. A claim for punitive damages may be added by motion as required by Minn. Stat. § 549.191.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Dr. Ba Lam prays that this court:

1. As to Count I Breach of Contract, award plaintiff monetary damages in excess of \$50,000 against all defendants, jointly and severally.
2. As to Count II Intentional Perpetuation Of Nuisance, award plaintiff monetary damages in excess of \$50,000 against all defendants, jointly and severally.
3. Award to plaintiff his costs and disbursements.
4. Grant such other and further relief as this court may deem just and proper under the circumstances.

STANBURY LAW FIRM P.A.

DATED: December 13, 2005.

Alfred Stanbury
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(612) 789-5060
ATTORNEY FOR PLAINTIFF

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded should this pleading be found in violation of Minn. Stat. § 549.211, subd. 2.

DATED: December 13, 2005.

Alfred Stanbury