

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act for the relief of Robert A. Slis and Victoria R. Slis.

[S 822]

Approved

Whereas, Robert A. Slis and Victoria R. Slis reside in Banner Plantation subdivision in Spotsylvania County; and

Whereas, the Slises' residence was built in 1991 by the subdivision's developer, Banner Homes, Inc., with supervisory assistance from Globe USA, Inc.; and

Whereas, Jenkins Plumbing and Heating ("Jenkins") was hired in May 1991 to install an onsite sewage disposal system for the residence; and

Whereas, at that time neither Banner Homes nor Jenkins was a licensed contractor; and

Whereas, the sewage disposal system construction permit for the lot required that the system contain trenches with a width of three feet and a total drainfield area of 1,440 square feet; and

Whereas, Jenkins installed the sewage disposal system with trenches with a width of two feet and a total drainfield area of 780 square feet; and

Whereas, Jenkins filed a completion certificate with the Spotsylvania County Health Department stating that the sewage disposal system was installed correctly; and

Whereas, due to the wooded nature of the lot and the desire to preserve trees while reducing the cost of moving dirt during construction, the Health Department granted the contractor permission to backfill the trenches as dug, a practice which is no longer allowed; and

Whereas, the sewage disposal system was inspected and approved by an employee of the Health Department on May 24, 1991; and

Whereas, the Health Department inspector negligently failed to notice the gross disparities between the work done by Jenkins and the requirements of the construction permit; and

Whereas, based on either the negligent inspection of the system or an unjustified reliance on Jenkins' completion certificate, the Health Department issued a 600-gallon-per-day operations permit for a four-bedroom residence on June 19, 1991; and

Whereas, on August 14, 1991, the Slises contracted to purchase the residence, and they acquired their home on September 24, 1991; and

Whereas, in late 1995 the Slises noticed seepage in the lower part of their back yard, which they attempted to address by filling with dirt; and

Whereas, when the seepage continued, the Slises began to suspect a septic system leak, and contacted two contractors to determine the nature of the problem; and

Whereas, the contractors unsuccessfully attempted to fix the problem by balancing the system's distribution box; and

Whereas, the Slises reported the system failure to the Spotsylvania County Health Department on May 14, 1996; and

Whereas, a Health Department inspector inspected the site and, on May 21, 1996, issued a repair permit for the system requiring the installation of a pump and other work estimated to cost over \$7,900; and

Whereas, in order to alleviate the leakage, the Slises were directed by the Health Department to disconnect their water treatment system from the septic system; and

Whereas, when the Health Department was not able to provide an as-built drawing of the system, Mr. Slis contracted to have the drainfield measured; and

Whereas, the measurement of the drainfield revealed that the trenches were two feet wide rather than the required three feet wide, and that the area of the drainfield was 780 square feet rather than 1,440 square feet; and

Whereas, in June 1996 Jenkins admitted to the Health Department and Mr. Slis that the system was not installed in accordance with the terms of the sewage disposal system construction permit; and

Whereas, in August 1996 the Slises received an offer for the purchase of their residence, but the sale was not concluded because of the failure of the sewage disposal system; and

Whereas, on August 21, 1996, the Slises filed a claim with the Division of Risk Management under the Virginia Tort Claims Act seeking the cost of the system repairs, based on the Health Department's negligent inspection of the sewage disposal system; and

Whereas, the Slises' claim was denied on August 23, 1996, on grounds that the one-year period for filing the claim commenced to run when they purchased the residence in September 1991, and was thus

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barred by the statute of limitations; and

Whereas, on September 24, 1996, the Slises filed a complaint with the Department of Professional and Occupational Regulation seeking payment from the Contractor Transaction Recovery Fund for the cost of repairing their sewage disposal system; and

Whereas, the Contractor Transaction Recovery Fund can be accessed only to satisfy judgments against a licensed contractor for improper and dishonest conduct; and

Whereas, the Department of Professional and Occupational Regulation determined that it did not have jurisdiction in this matter because the Slises had not obtained a judgment against Jenkins or the builder and, though Jenkins obtained a contractor's license in January 1995, neither Jenkins nor the builder was a licensed contractor when the work was performed; and

Whereas, though Jenkins' failure to obtain a contractor's license was punishable as a misdemeanor, the one-year statute of limitations for prosecuting the misdemeanor had lapsed; and

Whereas, the implied warranty on newly constructed dwellings established by § 55-70.1 of the Code of Virginia does not cover this situation because the defects in the sewage disposal system were not discovered within one year following the Slises' purchase of their residence; and

Whereas, while the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01 of the Code of Virginia provides relief to property owners whose sewage disposal system fails as the result of negligence of the Department of Health, the Fund cannot be accessed in this case because the failure did not occur within three years after construction; and

Whereas, efforts by the Slises to negotiate a solution to this situation with Jenkins, Banner Homes, and Globe USA, Inc., during 1997 failed when Jenkins announced he was scheduled to have surgery for a brain tumor and would not participate in any compromise solution; and

Whereas, the period of limitations for the Slises to bring any legal or administrative proceeding against any of the parties responsible for the improper installation of the sewage disposal system has expired; and

Whereas, on September 15, 1997, the Health Department issued a second repair permit for repairs to the Slises' sewage disposal system which, by using additional gravity-fed lines and eliminating the requirement for installation of a pump, reduced the estimated cost of repairing the system to \$5,500; and

Whereas, in February 1998 the Health Department conducted a hearing to determine if further action should be taken regarding the operations permit for the Slises' sewage disposal system, at which it concluded that that (i) since the disconnection of the water treatment system from the septic system and the reduction in water use by the Slises, the system has not shown further signs of malfunction; (ii) the installed system is inadequate for the four-bedroom, 600-gallon-per-day water usage permitted; and (iii) the installed system is sufficient only for a two-bedroom permit; and

Whereas, on February 11, 1998, the Health Department revoked the operations permit for the Slises' sewage disposal system and issued a replacement permit reducing permitted usage from 600 gallons per day to 300 gallons per day; and

Whereas, the Slises may re-obtain a four-bedroom, 600-gallon-per-day operations permit if they repair the sewage disposal system in accordance with the repair permit issued September 15, 1997; and

Whereas, the value of the Slises' residence is substantially reduced by the revocation of the original operations permit and issuance of the replacement permit allowing occupancy only with a 300-gallon-per-day discharge capacity; and

Whereas, in addition to the \$5,500 needed to perform the repairs to their sewage disposal system, the Slises have spent \$325 to balance the system's distribution box and measure and locate the drainfield; and

Whereas, Robert A. Slis and Victoria R. Slis have no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *That there is hereby allocated from the Onsite Sewage Indemnification Fund the sum of \$5,825 for the relief of Robert A. Slis and Victoria R. Slis, to be paid by check issued by the State Treasurer on warrant of the Comptroller to Robert A. Slis and Victoria R. Slis, upon execution by Robert A. Slis and Victoria R. Slis of a release of all claims they may have against the Commonwealth or any of its political subdivisions or their officers, employees, or agents in connection with the aforesaid occurrence.*