## IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STANZETTA BIBBS and RYAN BIBBS,	)	
Plaintiffs,	)	
v.	) C.A. No.: CPU4-10-00169	52
ROMAN OIL COMPANY	) ) )	
Defendant.	)	

Submitted: December 23, 2011 Decided: April 2, 2012

Douglas A. Shachtman, Esquire The Shachtman Law Firm 1200 Pennsylvania Ave, Suite 302 Wilmington, DE 19806 Attorney for Plaintiffs John V. Work, Esquire Law Office of John V. Work 800 North King Street, Suite 303 Wilmington, DE 19801 Attorney for Defendant

## **DECISION AFTER TRIAL**

Stanzetta Bibbs (hereinafter "Mrs. Bibbs") on March 11, 2010 proceeding pro se, brought this action to recover for alleged damages sustained to her residence on December 3, 2009 as a result of an oil spill. On April 26, 2010, proceeding pro se, Roman Oil Company (hereinafter "Roman") filed an answer denying liability. On May 20, 2010, Mrs. Bibbs filed a pro se motion to amend her complaint to increase the amount of damages demanded to \$40,735.08. This motion was granted on June 4, 2010, and the Court ordered Mrs. Bibbs to file an amended complaint and serve it on Roman Oil. On October 26, 2010, Mrs. Bibbs filed the amended complaint, seeking damages of \$40,735.08.

On November 11, 2010, Roman Oil Company, through counsel, filed an answer to the amended complaint and raised several affirmative defenses, brought a counterclaim, and filed a third-party complaint against Ryan Bibbs (hereinafter "Mr. Bibbs"). On or about December 1, 2010, Mr. Bibbs and Mrs. Bibbs filed a response to the counterclaim and affirmative defenses. A stipulation to amend the complaint was granted Court on June 3, 2011.

## **FACTS**

Mr. Bibbs testified that they presently live and have resided at 26 Landers Lane, New Castle, Delaware for the past sixteen years. The house is heated by oil, which from 2007 until December 2009, they purchased from Burns and McBride Oil Company. The oil tank, with a two-hundred fifty (250) gallon capacity, is located in the basement. Mrs. Bibbs testified that on December 2, 2009 she checked the oil gauge and it was about one-quarter full. She called Roman to purchase oil because of their lower price. Mrs. Bibbs testified some time before December 2, 2009, she cancelled oil deliveries from Burns and McBride. She stated that after the incident, she learned Burns and McBride delivered oil to her house on December 2, 2003, but she was unaware of the delivery. Mrs. Bibbs testified she had no reason to know this delivery was made because she and her husband work during the day when deliveries are made.

Mrs. Bibbs stated she spoke with a Roman Oil Company representative on the phone and placed an order for 200 gallons of oil. She was informed that delivery would be made on December 3, 2009, and she made arrangements to leave the check for payment in the mail box. She first learned of the oil spill when she received a telephone call at work from her husband.

Mr. Bibbs testified that at approximately 12:00 p.m., he came home for lunch and saw various materials on the driveway and after he entered the house he smelled oil. He went downstairs to the basement and saw the entire floor covered with approximately one-half to one inch of oil. He then called Mrs. Bibbs and stated that "whoever delivered the oil burst the tank." She called him back a few minutes later and said someone from Roman would be there at 2:00 p.m. He returned his employer vehicle to his place of employment and returned home approximately 1:15 p.m.

Mrs. Bibbs testified that after speaking to her husband she called Roman and the representative she spoke with told her a clean up crew would come at approximately 2:00 p.m. When she arrived home, Roman representatives were not there, she observed approximately five gallons of spilled oil on the driveway and near the oil fill connection on the house exterior. When she entered the house, she immediately smelled oil, went to the basement and observed oil "everywhere." Mrs. Bibbs testified the oil covered most of the basement floor.

Mrs. Bibbs testified the first Roman representatives to begin the actual clean up David Roman, John Finch ("Finch"), James Rider, and Jabaar Rider ("Rider") arrived approximately 4:00 p.m. Mrs. Bibbs testified that Finch apologized for the spill and stated he should have been standing next to the house while the oil was pumping, but was dealing with family issues, so he stood next to the oil truck. She further testified that James Rider told her that he was a part of the oil delivery team, and that Finch should have been standing next to the house when the oil was being pumped, but instead he stood next to the truck. Mrs. Bibbs testified that Rider told her that on December 3, 2009, he knew that Finch was having issues with his father, so earlier in the day he told Finch to "get his head on straight"

so that he did not cause an accident. Mrs. Bibbs also testified that she overheard Rider tell Finch that the Roman representatives were "fixing your mistake."

The clean up involved removing the items which were soaked with oil and cleaning up the remaining oil with "oil dry" and cotton pads. The clean up included: ripping up and removing the carpet, removing most of the furniture, and removing home appliances and personal belongings from the basement. Mrs. Bibbs testified that the following items were damaged and had to be removed from the basement: a 32-inch television set, a queen-sized bed and mattress, two plastic wardrobe closets, an oil heater, a lovescat, a television stand, a cedar chest, two dressers, two night stands, audio speakers, a large amount of her son and father's clothing, and a dehumidifier. Mrs. Bibbs testified Roman Oil Company's clean-up crew's work caused further damage to the house and contents. Mrs. Bibbs testified that the clean-up crew used a bedspread to soak up oil and placed oil soaked items on a queen-sized mattress that had not previously been damaged during the oil spill.<sup>1</sup>

Mrs. Bibbs testified Roman representatives arrived sometime after 2:00 p.m., but the clean up did not begin until 4:00 p.m., and they remained until around 9:30 p.m. on December 3, 2009. They did not return on the morning of December 4, 2009, and she called the Delaware Environmental Protection Agency ("DEPA"). They inspected the property and told her that some wood paneling in the basement needed to be removed. However, they concluded the house was "livable" if the windows were kept open. She called Roman and asked them to remove the paneling. Both Mr. Bibbs and Mrs. Bibbs testified that the clean-up crew came to remove the paneling at approximately 5:00 p.m., but

<sup>&</sup>lt;sup>1</sup> Plaintiff's Exhibit #1, Tab #37.

did not finish. James Rider returned on December 5, 2009 and finished removing the wood paneling. Mr. Bibbs testified that some of the clean-up crew returned a third time.

Mrs. Bibbs testified they could not afford to replace the ruptured oil tank immediately, so they continued to use the ruptured tank filling with small quantities to avoid further leaking. Because of where the rupture occurred, the tank could only hold about twenty-five or thirty gallons of oil at a time without leaking, and they paid \$255.76 to purchase oil using this procedure. In support of this expense, the Bibbs' introduced bank statements showing several purchases of small quantities of fuel between December 24, 2009 and March 26, 2009.

Mrs. Bibbs testified that the following items were damaged, valued as follows:

ITEMS DAMAGED	ORIGINAL COST	VALUE AT TIME OF DAMAGE
a) Mattress <sup>2</sup>	\$1,149.00	\$ 736.00
b) Two Dressers 1) Dresser <sup>3</sup> 2) Dresser <sup>4</sup>	\$ 211.99 \$ 264.99	\$ 148.00 \$ 184.00
c) Two Night Stands 1) Night Stand <sup>5</sup> 2) Night Stand <sup>6</sup>	\$ 99.99 \$ 99.99	\$ 69.99 69.99
d) Loveseat <sup>7</sup>	\$ 849.00	\$ 595.00
e) Television <sup>8</sup> (Repair cost)		\$ 449.00
f) Cedar Chest <sup>9</sup>	\$ 681.00	\$ 409.00
g) Two Speakers <sup>10</sup> (each at)	\$ 99.99 x 2	\$ 69.99 x 2
h) Clothing (Son and Father) <sup>11</sup>		\$1,867.00
i) Shoes – o ther footwear <sup>12</sup>		\$ 633.00
j) Portable wardrobes(2) <sup>13</sup>		\$ 110.00
k) Portable Heater <sup>14</sup>		\$ 50.68 \$ 104.99
m) Replace Carpet <sup>16</sup>		\$1,865.00
n) Construction/Carpentry <sup>17</sup> (wall studs, drywall, paint, etc.)		\$ 8,500.00
o) Replace oil tank outside 18 t) Cost to purchase oil in small quantities TOTAL		\$ 1,500.00 255.76 <b>\$17,687.39</b>

<sup>&</sup>lt;sup>2</sup> Plaintiff's Exhibit #1, Tab #25.

<sup>&</sup>lt;sup>3</sup> Plaintiff's Exhibit #1, Tab #10.

<sup>&</sup>lt;sup>4</sup> Plaintiff's Exhibit #1, Tabs #11, 34, 38.

<sup>&</sup>lt;sup>5</sup> Plaintiff's Exhibit #1, Tab #12.

<sup>&</sup>lt;sup>6</sup> Plaintiff's Exhibit #1, Tab #20.

<sup>&</sup>lt;sup>7</sup> Plaintiff's Exhibit #1, Tabs #4, 13, 36.

<sup>&</sup>lt;sup>8</sup> Plaintiff's Exhibit #1, Tab #14.

<sup>9</sup> Defendant's Exhibit #17

<sup>&</sup>lt;sup>10</sup> Plaintiff's Exhibit #1, Tab #15.

<sup>11</sup> Plaintiff's Exhibit #1, Tab #17.

<sup>&</sup>lt;sup>12</sup> Plaintiff's Exhibit #1, Tabs #28, 29.

<sup>&</sup>lt;sup>13</sup> Plaintiff's Exhibit #1, Tabs #28, 29.

<sup>&</sup>lt;sup>14</sup> Plaintiff's Exhibit #1, Tab #16.

<sup>&</sup>lt;sup>15</sup> Plaintiff's Exhibit #1, Tab #19.

<sup>&</sup>lt;sup>16</sup> Plaintiff's Exhibit #1, Tab #18

<sup>&</sup>lt;sup>17</sup> Defendant's Exhibits #16, #18.

<sup>&</sup>lt;sup>18</sup> Plaintiff's Exhibit #1, Tab #22.

On cross examination when Mrs. Bibbs was shown a photograph of the oil tank taken after the clean up, 19 she was unable to identify where the oil gauge was located on the oil tank. She explained that before the oil spill, the oil tank was enclosed with a window near the top of the tank to view the oil gauge. She testified that during clean up, Roman removed the enclosure and the gauge. Mrs. Bibbs admitted that the ruptured oil tank was the same tank that was installed in the house when she moved into the home sixteen (16) years ago. Mrs. Bibbs admitted that there were scratches and dents on the tank in pictures that were taken after the enclosure was removed.<sup>20</sup>

Roman David ("Mr. Roman") testified he was the owner of Roman Oil Company for approximately six years, and prior to owning Roman Oil Company, he worked as a heating oil deliveryman for fifteen (15) years with Cochran and Best oil companies. Mr. Roman testified regarding Roman procedure for receiving, processing, and filling orders for first-time customers. He stated when a first-time order is received a Roman representative visits the house to locate and inspect the tank. Mr. Roman testified that when the deliveryman is filling up the tank, he will hear a "vent alarm" as long as the oil tank is not full. This vent alarm is a whistle on all oil tanks that creates a sound when oil is going into the tank, and that when the whistle stops, the deliveryman should stop the flow to prevent accidents. On cross examination, Mr. Roman admitted that he was not sure whether a Roman representative visited the Bibbs' house prior to the incident in question to inspect the oil tank. Mr. Roman acknowledged that the Bibbs were first-time customers.

<sup>19</sup> Plaintiff's Exhibit #1, Tab #23.

<sup>&</sup>lt;sup>20</sup> Defendant's Exhibit #1, Tab #21, 26.

Mr. Roman testified that Roman Oil Company takes extra precautions during its deliveries in order to prevent problems he experienced as an employee with prior companies. Mr. Roman testified that unlike those companies, Roman staffs each delivery truck with two employees, the driver, and a helper who is responsible for connecting the fill hose to the house. He stated most houses have two outlets, the fill connection and vent alarm. The fill connection is where the oil is pumped into the tank. Mr. Roman testified that the helper/co-driver attaches the oil hose nozzle to the connection, and then signals to the driver that it is safe to begin pumping. As soon as the driver engages the pump, the helper/co-driver can open the valve on the hose, and oil begins flowing into the tank. Mr. Roman specifically testified that the purpose of the whistle is to "allow the co-driver to know when to stop," however; the oil flow can be stopped at either the connection or at the truck. When oil is pumped into the tank through the fill connection, the air inside the tank is forced out through the vent which creates a whistling sound. The whistle stops blowing when the tank is full, therefore, the driver or helper should immediately stop pumping oil.

Mr. Roman testified that the co-driver/helper should never walk away from the connection while oil is pumping, because if the pumping is not stopped within seconds of when the whistle stops, the tank could rupture. Mr. Roman explained that Roman Oil Company, and the other oil companies that he has been employed by never completely fill an oil tank to allow room for expansion based on changes in temperature. He admitted that even if an oil company tried to fill an oil tank that was already "full," there would be at least some whistling sound initially.

Mr. Roman testified on cross examination that James Lecomb ("James") was the driver who made the delivery to 26 Landers Lane, and Finch was the co-driver/helper.

Sharon Johnson ("Johnson") is the Roman dispatch clerk who took Mrs. Bibbs order on December 2, 2009, and she testified that Mrs. Bibbs gave her the location of the fill connection, her phone number, and payment information. She did not ask Mrs. Bibbs whether she was a new customer and testified "at the time it didn't make a difference to me." Johnson further testified that Roman does not send representatives to new customers' houses to locate and inspect the oil tank prior to making deliveries.

James testified that he was the delivery driver on December 3, 2009 and that Finch was the helper. They arrived at the house between 10:00 a.m. or 11:00 a.m. and parked the truck on the street, front of the house. Finch exited the vehicle and took the hose to the fill connection. James testified that he saw Finch connect the hose, and he turned on the oil pump and got back inside the truck to set the truck GPS system for the next delivery location. He watched Finch turn on the pump at the connection. Even though he was inside the truck, he heard the vent whistle begin to blow. James testified that fifteen or twenty seconds later, Finch ran up to the truck and told James that there was a problem. James ran to the fill connection and saw oil on the driveway. The hose was still connected, but the lever was in the off position.

They attempted to "contain" the spill using "socks" and "oil dry," which is a substance similar to "kitty litter" used to soak up spilled oil. James testified that he and Finch used one case of socks and three large bags of oil dry. James testified that after the spill in the driveway was contained, he and Finch tried to get inside the house, but nobody was home, so they called the office to get a customer contact number. Johnson testified that Finch and James contacted the office after the delivery and said that "there was a problem."

James testified when they placed the receipt for the delivery inside the mailbox, they found a receipt inside the mailbox from Burns and McBride Oil Company dated December 2, 2009. Johnson testified that on December 4, 2009, Mrs. Bibbs called Roman Oil Company and apologized because "she was on auto delivery with Burns and McBride and did not see the delivery ticket in the mailbox" when she put the check to pay Roman Oil Company in the mailbox on the morning of December 3, 2009.

Mr. Roman testified that the oil tank was inside an enclosure built with two-by-fours, wood paneling and drywall, with a small window at the top. He tore down the enclosure, and after it was removed, he was able to observe the oil tank. In contrast with Mrs. Bibbs, Mr. Roman testified that the tank ruptured on the back side on the corner closest to the basement wall.<sup>21</sup> He believed that the tank ruptured at this location because he saw oil leaking out of the tank at that location.<sup>22</sup> Also, that the dark markings that Mrs. Bibbs was unable to explain during her testimony were oil stains.<sup>23</sup>

Mr. Roman testified that after he removed the enclosure and examined the tank, he saw approximately between fifty and one hundred gallons of oil in the tank. He asked Mr. Bibbs if he could pump all of this oil out of the tank so that oil would not continue to leak in the basement. However, Mr. Bibbs refused because he wanted to use the oil for heating. Mr. Roman testified that as a result, oil continued to leak out of the tank for hours.

Mr. Roman testified Roman incurred costs for cleaning the spill, employee work hours and supplies. Mr. Roman never testified specifically regarding which employees were present during the cleanup, the amount of hours that each of these employees were required

<sup>&</sup>lt;sup>21</sup> Defendant's Exhibit # 15.

<sup>&</sup>lt;sup>22</sup> Defendant's Exhibit # 15.

<sup>&</sup>lt;sup>23</sup> Defendant's Exhibit # 18.

to work or the compensation paid. He did, however, state he calculated the value of the cleanup work at \$50.00 per hour,<sup>24</sup> based on the hourly wages of all the employees which participated in the cleanup, taxes, insurance, supplies, industry standards, and administrative support.<sup>25</sup> On cross examination, Mr. Roman was unable to recall any of his employees' hourly wage rates, and he never sent the Bibbs' a written bill for the cleanup until after this action commenced. Moreover, Mr. Roman explained at trial he instructed his employees to perform the cleanup work even though he knew he did not have a contract and had not demanded payment from the Bibbs because: "I did what I had to do to mitigate the damage that I did."

With respect to supplies used in the cleanup, Mr. Roman admitted on cross-examination that his damages calculation was in part based on supplies purchased more than ten months before December 3, 2009.26 Also, Roman Oil Company maintains a cleanup truck, stocked with oil spill cleanup supplies so it can quickly respond to spills. Mr. Roman explained that the reason he included supplies purchased both before and after the accident in his damages calculation was because the cleanup crew used supplies that were purchased both before and after the accident. However, Mr. Roman admitted on cross examination he did not specifically record the amount of supplies that were used in the cleanup at issue in this case.

Mrs. Bibbs testified in rebuttal that she did not know that Burns and McBride delivered oil on December 2, 2009 until sometime during the night of December 3, 2009. Further, that Mr. Roman never asked her anything about pumping the oil out of the tank in

<sup>&</sup>lt;sup>24</sup> Defendant's Exhibit # 20.

<sup>&</sup>lt;sup>25</sup> Defendant's Exhibit # 20.

<sup>&</sup>lt;sup>26</sup> Defendant's Exhibit # 7.

order to prevent further spilling, and if he had asked her for permission to pump the oil out of the tank she would have agreed because doing so "would have mitigated the damage."

## **DISCUSSION**

The claims of the Bibbs are set forth in narrative form and do not clearly articulate their theory for which they seek recovery. The narrative does state "the delivery person started to pump the oil and went and got back into the truck." It further alleges, "The helper should have stayed at the site and does not know why he came back to the truck." Thirdly, it alleges the clean-up crew stated the delivery guy (Jerry) was having some problems . . . and wasn't thinking clearly. Thus, the language of the original complaint and the amended complaint is sufficient to make a claim based upon negligence. Further, prior to trial, the Bibbs notified the Court on November 22, 2011 that plaintiff will rely upon the legal doctrine of *res ipsa loquitur* to establish liability.

In order to prevail on a claim for negligence, the proponent of the claim must establish by a preponderance of the evidence that the defendant owed the plaintiff a duty of care, that defendant breached that duty of care, and that defendant's breach of the duty of care was the proximate cause of the defendant's injury.<sup>27</sup>

Res ipsa loquitur translates to "the thing speaks for itself." The doctrine of res ipsa loquitur is a rule of circumstantial evidence that permits, but does not require the Court to draw an inference of negligence from the manner in which an accident occurred, provided

<sup>&</sup>lt;sup>27</sup> New Haverford P'Ship v. Stroot, 772 A.2d 792, 798 (Del. 2001).

<sup>&</sup>lt;sup>28</sup> Carrow v. Slaughter, C.A. No. U408-05-062, \*17 (Del. Com. Pl. Dec. 2, 2010).

that certain required elements are established.<sup>29</sup> The Delaware Supreme Court has explained that:

[w]hile negligence is never presumed from the mere fact of an injury, if the particular manner in which the plaintiff shows the injury to have occurred is so unaccountable that the only fair inference of the cause was the negligence of the defendant, or, stated another way, if the manner in which the injury occurred would lead reasonable persons to conclude that it would not have happened in the absence of some negligence on the part of the defendant, then the doctrine of res ipsa loquitur is properly applicable to establish the negligence of the defendant.<sup>30</sup>

The Delaware Supreme Court has further held that in order to so prove negligence by circumstantial evidence: "it is necessary that the conclusion of negligence be the only inference possible from the admitted circumstances. If, therefore, the proven circumstances are as consistent with the absence of negligence as with the existence of negligence, neither conclusion can be said to have been established by legitimate proof."<sup>31</sup> In other words, in order for the inference of negligence contemplated by the doctrine of *res ipsa loquitur* to apply, the Court must be satisfied that the elements of the doctrine are met, and that the "greater probability of negligence lies at the defendant's door."<sup>32</sup>

The elements required for this inference of negligence to apply are codified in the Delaware Rules of Evidence ("D.R.E."), Rule 304(b) as follows:

- (1) The accident must be such as, in the ordinary course of events, does not happen if those who have management and control use proper care; and
- (2) The facts are such as to warrant an inference of negligence of such force as to call for an explanation or rebuttal from the defendant; and

<sup>&</sup>lt;sup>29</sup> D.R.E. Rule 304(a)(1).

<sup>&</sup>lt;sup>30</sup> General Motors Corp. v. Dillon, 367 A.2d 1020, 1023 (Del. 1976) (citations omitted).

<sup>&</sup>lt;sup>31</sup> Ciociola v. Delaware Coca-Cola Bottling Co., 172 A.2d 252, 257 (Del. 1961). See also, Nat'l Fire Ins. Co. of Hartford v. Pennsylvania R.R. Co., 220 A.2d 217, 220 (Del. Super. 1966).

<sup>32</sup> Nat'l Fire Ins. Co. of Hartford, 220 A.2d at 220.

- (3) The thing or instrumentality which caused the injury must have been under the management or control (not necessarily exclusive) of the defendant or his servants at the time the negligence likely occurred; and
- (4) Where the injured person participated in the events leading up to the accident, the evidence must exclude his own conduct as a responsible cause.

The Bibbs argue that they had used the oil tank for sixteen years without error, that the whistle blew momentarily when James and Finch were filling the tank, and that Finch and James were negligent in failing to close the oil valve when the vent alarm stopped blowing. Mrs. Bibbs testified that Finch and James told her that Finch did not stand next to the fill connection when he was filling the oil tank, supporting a conclusion that Roman was responsible for the oil spill. Further, Roman testified that his company policy requires the employee to remain at the fill connection when the oil is being pumped. The testimony supports that the Roman employee failed to exercise care when pumping the oil, and as a result of the failure, the tank was ruptured and the oil spill occurred.

However, the above does not conclude the inquiry. Mrs. Bibbs testified that she cancelled oil deliveries with Burns and McBride, but the facts establish that on December 2, 2009, Burns and McBride made an oil delivery to 26 Landers Lane. Mrs. Bibbs testified that she placed a check made out to Roman Oil Company in her mailbox on December 3, 2009. Lecomb testified that after he cleaned up the spill in the driveway, he put a receipt for the delivery in the Bibbs' mailbox, and saw a receipt from Burns and McBride indicating that they filled the tank on December 2, 2009. Johnson testified that on December 4, 2009, Mrs. Bibbs admitted that on December 3, 2009 "she was on auto delivery with Burns and McBride and did not see the delivery ticket in the mailbox."

The facts establish that the Bibbs are not free of some responsibility for the events which occurred as a result of the Roman Oil delivery. However, the primary reason the spill occurred and the damages were sustained is because Roman employees failed to remain at the fill connection when the oil was being pumped. If Finch had remained at the fill connection, he would have been in a position to hear the whistle stop and discontinue the oil flow.

Under the provisions of 10 *Del. C.* § 8132 Comparative Negligence, "in all actions brought to recover damages for negligence which results in . . . injury to property, the fact that the plaintiff may have been contributorily negligent, shall not bar recovery by the plaintiff, where such negligence was not greater than the negligence of the defendant . . ." Thus, while the Bibbs were in part responsible for the accidental spill, their acts are not such that will completely bar all recovery, because their negligence is not greater than that of Roman. Roman was in a position to prevent the spill if its employees had followed Company policy and exercised care when filling the oil tank.

Roman brings a counter claim for the cost he incurred to clean up the oil spill. This claim is based upon materials used and employees' time devoted to the clean up. At trial, Roman was unable to state with particularity what employees participated in the cleanup, the amount of working hours each employee spent cleaning up the basement, or the employees' respective hourly wage rate. Moreover, the testimony of the Roman Oil Company employees who participated in the cleanup varied wildly. Mr. Roman testified he worked in the basement on five separate days, but did not indicate how long he was at the house each day. James testified that he was at the home on three separate days with Isaias, Jabaar, and Kevin. Jabaar testified, however, that he was only at the house on December 3, 2009, with

Isaias, Bobby, James, Tyron Rider, Edward, and Kevin. Mr. Roman did not testify regarding the amount of money spent on the supplies used in the cleanup. Finally, Mr. Roman specifically testified that he directed the cleanup because: "I did what I had to do to mitigate the damage that I did."

The record is devoid of any meaningful, documented, or consistent evidence establishing the cost of the cleanup. Therefore, even assuming, *arguendo* that Roman Oil Company could have established a basis for his claim, there is no basis for the Court to calculate damages. Therefore, on the counterclaim, I find for the Bibbs.

Further, I conclude Roman's negligence was the primary cause of the spill resulting in damages to the Bibbs real and personal property. In comparing the relative parties' responsibilities, I find Roman 60% negligent; therefore, the Bibbs are entitled to recover 60% of the \$17,687.39 claim in the amount of \$10,612.24. Accordingly, judgment is entered in favor of the Bibbs in the amount of \$10,612.24, costs and post-judgment interest at the legal rate until paid.

IT IS SO ORDERED

Alex J. Smalls

Chief Judge

Bibbs-OP March 201