

REVERSED and RENDERED and Opinion Filed August 25, 2026



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-25-00090-CV

**SEBASTIAN CONSTRUCTION GROUP, LLC, Appellant
V.
RIZWAN CHAND AND LAURA COLHOUE, Appellees**

**On Appeal from the 116th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-22-03712**

MEMORANDUM OPINION

Before Justices Goldstein, Smith, and Clinton
Opinion by Justice Smith

Appellant Sebastian Construction Group, LLC appeals from the trial court's final judgment awarding appellees Rizwan Chand and Laura Colhouer \$1,034,724 in damages after a jury trial on their negligence claim against Sebastian in which appellees alleged Sebastian's construction activities caused their pond to lose water and kill their fish. Sebastian challenges appellees' recovery on multiple legal and factual grounds, arguing it did not owe appellees a duty, appellees could not recover on their negligence claim because such recovery was precluded under the economic loss rule, appellees did not own the water or fish in their pond, appellees' evidence

of damages was unreliable, insufficient, and not properly pleaded for, and there was insufficient evidence Sebastian proximately caused appellees' damages. Because we conclude Sebastian did not owe appellees a duty to support the water in their pond, we reverse the judgment of the trial court and render a take-nothing judgment against appellees as to their claims against Sebastian.

PROCEDURAL AND FACTUAL BACKGROUND

Appellees' home on Chatham Hill Road contains a pond that is approximately eight to ten feet deep. A limestone formation, which is part of the Austin Chalk limestone, sits underneath the road and functions as a natural dam for the pond. Appellees share the pond with their neighbors, the Sealeses, who are not parties in this case. When appellees purchased their property, several koi fish lived in the pond. Appellees stocked the pond with more koi fish, which they named and fed and cared for daily. Appellees monitored the temperature of the pond, regularly evaluated the water quality, installed aerators to circulate the water for the fish because there was no natural current, and installed a bubbler to add oxygen to the water.

Across the street from appellees' property is property owned by the BR Trust. Chatham Hill Road runs between the two properties. The parties dispute whether the properties meet in the center of the road, making them adjacent properties, or whether the properties are separated by the road, making them nonadjacent properties. A creek runs through the BR Trust property and, near the limestone dam

where the creek ends, a weir formed an impoundment of water. The area contained a walkway, footbridge, and gazebo. The impoundment is directly to the north of appellees' pond. A twelve-inch overflow pipe in appellees' pond runs under the road and through the limestone dam to the BR Trust side of the dam, and any overflow water from appellees' pond spills out and down the limestone wall into the impoundment on the BR Trust property.

The BR Trust hired Sebastian as the general contractor to build a home for the trust's beneficiaries, the Reeves family. The construction project included reconstructing the footbridge in the Reeveses' impoundment. In December 2017, the then-existing residential structures and most of the pool on the property were demolished. Subsequently the water was drained from the impoundment, and construction began in that area shortly thereafter. Draining the water from the impoundment exposed the limestone on the BR Trust side of Chatham Hill Road. According to appellees, Sebastian also excavated the limestone to vertically drill nine piers along the limestone dam, although Sebastian denied any excavation to the face of the limestone.

In April 2019, appellees noticed the water level in their pond began to decline. Appellees complained to BR Trust and notified Sebastian and the Reeveses about the water level. BR Trust investigated by hiring a hydrologist to determine whether the construction was related to the decline in the pond's water level. Appellees and the Sealeses, the co-owners of the pond, hired a construction company to repair the

pond by applying 6,000 pounds of sodium bentonite to the side of appellees' pond that bordered the road. The water flow would pull the sodium bentonite into the wall and floor of the pond, and the sodium bentonite would fill the cracks that had formed in the limestone below the roadway and then harden to prevent additional seepage. The water level returned close to normal by October 2019 and remained normal until April 2020.

According to appellees, despite knowing the excavation and drilling activities had damaged the limestone dam system and telling appellees that the heavy construction work near the limestone was complete, Sebastian did not stop work or direct alternative means for completing the work. Instead, Sebastian began drilling again in March 2020. The water level in appellees' pond dropped again and, after being notified by appellees, Sebastian and the Reeveses offered to pay for a second sodium bentonite treatment. The construction company recommended applying 8,000 pounds this round, but Sebastian and the Reeveses only paid for 6,000 pounds, the same as the first treatment. Appellees and the Sealeses paid for the remaining 2,000 pounds, as well as the labor costs.

The second treatment was done in June 2020, but it did not repair the pond. According to appellee Colhouer, eight fish died, six of which appellees had purchased and added to the pond.

Appellees filed suit against Sebastian and the trustee of the BR Trust¹ for negligence, alleging appellees had an absolute right to lateral support from adjoining land and that BR Trust, through its construction project, eroded, removed, and altered the soil and existing natural support, causing the natural embankment of their pond to be unable to support and retain the water in the pond. Appellees alleged that the “BR Trust is strictly liable to [appellees] as landowner of the property adjacent to [appellees] for the damages arising out of its duty of lateral support.” They additionally alleged that the BR Trust owed them the common law duty not to use its property in a manner that injured the rights of other property owners and that the BR Trust and Sebastian owed them a legal duty to conduct construction in a reasonably prudent manner so as not to damage their property. According to appellees, the BR Trust and Sebastian breached these duties by engaging in construction practices that irreparably and permanently damaged their property. Appellees asserted the construction involved making significant alterations to the impoundment area, which began by draining the impoundment and bringing in drilling equipment next to the limestone, and included deconstructing a bridge, replacing the bridge, building a retaining wall, constructing nine piers, and drilling more than fifty, 400-foot-deep geothermal wells.

¹ Appellees also filed suit against Oncor Electric Delivery Company, LLC, who they later nonsuited, alleging Oncor breached its contract with appellees and was negligent in connecting the Reeveses’ electric line to their transformer, causing appellees’ injuries.

Appellees also brought a trespass claim against both the BR Trust and Sebastian and a nuisance claim against the BR Trust. The BR Trust was later dismissed from the lawsuit and is not a party to this appeal.

Sebastian answered, generally denying the claims against it. Subsequently Sebastian filed a motion to dismiss appellees' claims against it, alleging lack of duty. Specifically, Sebastian argued that its duty was to carry out its contract with BR Trust not with appellees, as it had no contractual relationship with appellees, and that appellees were improperly attempting to place BR Trust's duties as a landowner onto Sebastian. Additionally, Sebastian argued that the duty of lateral support was owed only by a landowner to the landowner of his adjoining property and only applied to soil, which had not been alleged. The trial court denied Sebastian's motion, and the case proceeded to a jury trial.

At trial, multiple witnesses were called to testify, including appellees, Sebastian's senior project manager assigned to the BR Trust project, and experts in engineering, geotechnical engineering, and hydrogeology. In sum, appellees presented evidence that Sebastian's removal of the water from the impoundment and its excavation of the face of the limestone, in order to place piers next to the limestone, increased the permeability of the limestone and allowed water to seep through from the appellees' pond at a higher rate than it had in the past. The excavation of the limestone, which was weathered and fractured, caused the cracks and fissures in the limestone to widen and "open pathways for water to flow." John

Bryant, a hydrogeologist who provided expert testimony on behalf of appellees, explained that, “when you disturb limestone, you are going to create more holes and gaps by taking limestone and rock off.” He testified Sebastian should have known, or the geotechnical engineer should have told Sebastian, that if you take rock out of the dam at that location and disturb the rock, it will “potentially caus[e] more flow, and that could impact the water body above it.” Bryant also explained that, when the impoundment was drained, the water from the impoundment was no longer pressing against the limestone and slowing down the rate of seepage through the limestone from appellees’ pond to the Reeveses’ impoundment. Once the water was returned to the impoundment, it slowed down the rate of seepage.

Brian Eubanks opined that Sebastian failed to meet the standard of care for a general contractor by failing to modify the means and methods of construction and excavation once it became aware of the issues with appellees’ pond. As part of its construction contract with the BR Trust, Sebastian was responsible for supervising all subcontractors on the project and directing the means and methods for executing the architectural and design plans provided by other professionals. Eubanks further opined that Sebastian was required, under the contract, to stop work if it encountered conditions that were unknown or could cause damage. Sebastian was then required to contact the design professionals for further instructions and to modify the means and methods of executing the plans. Eubanks explained that, although the architect and engineer could not tell Sebastian what to do, if Sebastian had sought advice from

the design professionals, they would have provided Sebastian with multiple options for Sebastian to choose from for alternative means and methods or potential design revisions. He testified he did not see any evidence that Sebastian stopped work or modified any procedures when appellees put Sebastian on notice that their pond was losing water.

Appellees' experts acknowledged on cross-examination that Sebastian was not responsible for the design of the project and that the BR Trust had hired an architect and engineer to create the plans and specifications for the project, had a geotechnical investigation of the property performed, and successfully obtained the required permits for the construction work, including one from the U.S. Army Corps of Engineers, which permitted them to dam up the active creek connected to the Reeveses' impoundment. However, according to Bryant, although the geotechnical report found fissures in the rock on the Reeveses' property, it did not give any kind of excavation caution or consider whether the construction work would have an impact on the appellees' pond. Appellees' experts also acknowledged that some seepage of water through the limestone was occurring before Sebastian started construction, as seepage through fractured rock, such as limestone, cannot be prevented. There was also some seepage coming from the bedding plane of the pond. None of appellees' experts testified that Sebastian or any of its subcontractors failed to comply with the architectural design or the geotechnical engineer's plans and specifications for the project. And Eubanks testified that he did not have any

specific criticism of the structural engineer's plans for the project, nor was he opining that the plans were inadequate or deficient. Additionally, Eubanks would not answer, when asked on cross examination, as to what different methods the architect or engineer might have suggested had Sebastian asked for further guidance.

Appellee Colhouer testified that, even at the time of trial, the water level was down fifteen and one-half inches. To ensure that the water from appellees' pond would not continue seeping through the widened fissures, or begin seeping through at a faster rate again, Bryant recommended a slurry wall, or cutoff wall, be installed on appellees' side of the dam in front of the concrete headwall, which was next to the road. Another expert opined that the wall would be 100 to 120 feet long, would cost \$1 million to construct, and its installation would require draining at least a portion of appellees' pond and excavating fifteen feet into the bed of the pond, as well as into the limestone.

After appellees rested, Sebastian moved for a directed verdict on appellees' claim of negligence, maintaining it did not owe a duty to appellees because no contract existed between the parties and the duty of lateral support did not apply. Sebastian also argued appellees failed to present any evidence that Sebastian proximately caused their damages because the alleged drilling was performed by a subcontractor, not by Sebastian. The trial court denied Sebastian's directed verdict.

Ryan Galaska, Sebastian's senior project manager who oversaw the project for the BR Trust, testified that Sebastian contracted out the work on the project to

subcontractors and that each subcontractor retained control of the means and methods of how the construction would be done. Sebastian retained control from a safety standpoint and retained control of the general flow or sequencing of activities on the construction site. Galaska testified that neither Sebastian nor its subcontractors excavated the vertical face of the limestone wall separating the two properties. Galaska also testified that the geotechnical report listed water seepage from the limestone as a common occurrence and not at all unusual in nature.

At the conclusion of trial, the jury answered the following relevant questions:

1. Did the negligence, if any, of Sebastian Construction proximately cause injury to the Chand Pond? The jury answered, “Yes.”
2. What sum of money, if any, if paid now in cash, would fairly and reasonably compensate [appellees] for damages, if any, resulting from the injury in question? The jury answered, “1,000,000” for the cost to repair the pond; “25,000” for the loss of the koi fish; “7,100” for the second treatment of sodium bentonite, and “2624” for the flashboard riser.²

Question 1 defined “[n]egligence” as the “failure to use ordinary care, that is, failing to do that which a contractor of ordinary prudence would have done under the same or similar circumstances or doing that which a contractor of ordinary prudence would not have done under the same or similar circumstances.”

Appellees filed a motion to enter judgment on the jury’s verdict, and Sebastian filed a motion to disregard the jury findings and enter judgment notwithstanding the

² The flashboard riser is a frame with wooden slats that appellees installed in 2019 in front of the overflow pipe so that the fish would not swim out of the pond through the pipe and end up in the Reeveses’ impoundment, which at the time, had been drained and had no water.

verdict. In its motion, Sebastian maintained its position that it owed no duty to appellees, including no duty to refrain from taking appellees' water. Sebastian also argued appellees presented no evidence Sebastian breached a duty owed to appellees or proximately caused appellees' damages, no evidence appellees' real property was damaged, no evidence the co-owners of the pond or the city would allow appellees to drain the pond and build a \$1 million slurry wall, and no evidence that the koi fish died because of the decrease in water. Additionally, Sebastian argued the State of Texas owned the water and fish in the pond and, thus, appellees did not have standing to recover damages. After appellees responded to Sebastian's motion and Sebastian replied to appellees' response, the trial court implicitly denied Sebastian's motion and, based on the jury's verdict, rendered judgment in favor of appellees for \$1,034,724, plus prejudgment interest, postjudgment interest, and costs. Sebastian filed a motion for new trial urging the same arguments it had previously presented to the trial court. The motion was denied by operation of law, and this appeal ensued.

On appeal, Sebastian presents the following seven issues:

1. Whether a non-landowner general contractor owes a duty of lateral support to property owners across the street, a non-adjointing landowner.
2. Whether a general contractor owes a duty to refrain from causing water to seep from neighboring property where Texas law provides that a landowner owes no such duty.
3. Whether the economic loss rule precludes a homeowner's recovery in tort for damages that are the subject of their neighbor's construction contract.

4. Whether appellees can recover damages for a loss of water and fish in a pond where the State of Texas owns the water in the pond.
5. Whether appellees' evidence of damages is unreliable and insufficient.
6. Whether appellees can recover cost of repair damages where they pleaded only permanent injury to property, not temporary injury.
7. Whether there is sufficient evidence that Sebastian proximately caused appellees' damages.

ANALYSIS

A defendant in a negligence claim is liable only to the extent it owes the plaintiff a legal duty. *Gen. Elec. Co. v. Moritz*, 257 S.W.3d 211, 217 (Tex. 2008). Whether a duty exists is a question of law for the court to decide. *Id.* Here, appellees argue that Sebastian owed them several duties: (1) to perform its own contractual duties with due care, (2) to stop construction work when it became aware the work was damaging the limestone dam and pond, and (3) to prevent the work it retained contractual control over from (a) violating appellees' right to maintain their property in its natural condition or (b) removing lateral support to their property. The trial court did not specify on which basis it believed a duty was owed in this case. We consolidate the four possible duties into two—a common law duty regarding its construction work and the duty of lateral support—and address each in turn, beginning with the duty of lateral support.

1. The Duty of Lateral Support

We first note that, in their live pleading, appellees alleged “BR Trust is strictly liable to [appellees] as landowner of the property adjacent to [appellees] for the damages arising out of its duty of lateral support.” Appellees did not allege that Sebastian was liable under a duty of lateral support, and the trial court granted summary judgment in favor of BR Trust on appellees’ claim of lateral support. Sebastian continuously objected, before, during, and after trial, to appellees pursuing a claim against it under the duty of lateral support. In response to Sebastian’s motion for directed verdict, appellees’ counsel argued that “Mr. Eubanks testified that they had a duty to stop work when they became on notice that it was damaging a neighboring party, not just ask for more information, but just stop the work.” Appellees did not address Sebastian’s argument in its motion for directed verdict that it had no duty of lateral support. The jury was also not asked whether Sebastian’s excavation or construction activities resulted in a loss of lateral support to appellees’ property. However, because the parties continue to dispute whether the duty of lateral support applies and treat it as though it was subsumed within the negligence question to the jury, we will address the issue here.

On appeal, Sebastian provides the following summary of the argument regarding lateral support and the taking of water, which pertain to Sebastian’s first two issues:

Texas law does not recognize a duty of lateral support by a non-landowner. Further, the duty of lateral support applies to adjoining landowners, but Appellees and the BR Trust are not adjoining landowners. Lastly, the duty of lateral support applies to soil but does not apply to water. Additionally, there is no duty under Texas law to refrain from taking water from adjoining land. The BR Trust had the right to instruct [Sebastian] to excavate and drill on its property, even if it resulted in draining water from Appellees['] property. [Sebastian] owed no duty to refrain from taking water from Appellees['] property.

“[E]ach of two adjoining landowners is entitled to the lateral support of the other’s land.” *Williams v. Thompson*, 256 S.W.2d 399, 403 (Tex. 1953). The doctrine of lateral support imposes an absolute duty on landowners to provide support to adjoining land. *Scott v. West*, 594 S.W.3d 397, 404–05 (Tex. App.—Fort Worth 2019, pet. denied); *see also Salazar v. Sanders*, 440 S.W.3d 863, 871 (Tex. App.—El Paso 2013, pet. denied); *Simon v. Nance*, 100 S.W. 1038, 1040 (Tex. Civ. App.—Austin 1907, no writ). “In other words, if soil on a tract of land requires the existing natural support to stay in place, and the owner of an adjoining tract removes that support, the landowner who removed the support is strictly liable for any resulting soil subsidence.” *Scott*, 594 S.W.3d at 406. In short, a landowner has the right to keep his land intact. *See id.* at 406 n.14; *see also id.* at 413 (concluding the purpose of the right of lateral support “is to protect landowners’ absolute right to *their own soil*”).

The right to lateral support applies only to soil in its natural state. *Id.* at 407. It is when the adjoining landowner “constructs a ditch or other excavation in such a manner as causes the soil of the complainant to cave in, slough off, or wash away

[that] such adjoining [landowner] is liable for damages.” *Simon*, 100 S.W. at 1040. “Because the absolute duty to maintain lateral support requires only the support needed by the soil itself, if pressure on the soil from improvements increases the amount of support the soil needs to stay in place, adjoining landowners are not required to provide that additional lateral support.” *Scott*, 594 S.W.3d at 408.

Here, appellees did not allege that Sebastian’s construction activities caused their soil to subside but instead their water to seep out of their pond at a faster rate than it once did. For two reasons, we conclude such allegation does not invoke the duty of lateral support. First, appellees’ pond and the limestone dam are no longer in their natural state. The evidence at trial showed that a road had been built on top of the limestone dam, which separated the two properties, and that a sewer line ran through the middle of the limestone under the road. As for appellees’ pond, the evidence showed a concrete headwall and an overflow pipe had been installed at some point, and the overflow pipe ran through the limestone and out on the BR Trust side of the limestone dam. Thus, the limestone dam and the pond were no longer in their natural states.

Second, we agree with Sebastian that the duty of lateral support does not apply to the loss of water. Appellees, mainly relying on *Comanche Duke Oil Co. v. Tex. Pac. Coal & Oil Co.*, 298 S.W. 554 (Tex. Comm’n App. 1927), contend that, while the right to lateral support is generally couched in terms of “soil,” soil is simply a shorthand and refers to the natural state of land, including components like ponds.

In *Comanche Duke*, the jury found that the defendant negligently shot its well with 600 quarts of nitroglycerin, which was unreasonable under the circumstances, and the resulting explosion proximately caused salt water to come into plaintiff's well and damage it. 298 S.W. at 559. The Commission of Appeals did not review the case as one of strict liability for the loss of lateral support, which it noted applied only to land in its natural state, but instead reviewed the case under the elements for negligence, which is used when the loss of lateral support causes damages to improvements on adjacent land. *Id.* at 559–60. Appellees argue that, because the explosion in *Comanche Duke* caused a barrier between the properties to break and allow the salt water to pass from the defendant's property into plaintiff's well, *Comanche Duke* supports applying the doctrine of lateral support when the migration of water causes damage. *Id.* at 565. But here it is not the migration of water *into* appellees' property that appellees allege caused damage, it is the loss of water *from* appellees' property.

Appellees do not cite, and we have not found, a single Texas court opinion that involves the loss of water in a lateral support case. Furthermore, the Restatement of Torts defines subsidence as any movement "in any direction," including a "shifting, falling, slipping, seeping or oozing" of "surface or subsurface soil." RESTATEMENT (SECOND) OF TORTS § 817 cmt. h (A.L.I. 1979). The Restatement further provides, "The outflow of water, oil or gas is *not* itself a subsidence . . . but may produce a subsidence." *Id.* (emphasis added).

Here, appellees' real property was not damaged. The pond itself was not damaged, and the limestone on appellees' side of the road was not damaged. When Bryant was asked whether the damage was on the appellees' side, he opined, "I doubt it would have extended that far back," and "No, that's too far away." He believed the damage done to the Reeveses' side of the limestone only went in two to four feet.

Recognizing a duty of lateral support under the facts and circumstances of this case would mean landowners have a right to a constant water level in bodies of water on their property just as they have a right to keep their land intact. We have found no such right or corresponding duty under Texas law and decline to create one today.

2. Common Law Duty

Appellees assert that even if the duty of lateral support did not apply, Sebastian owed them a common law duty to comply with its contract and duty of ordinary care. Appellees argue that Sebastian was responsible for the construction, directed the work, and its excavation activities caused damage to the limestone, which allowed the water to seep out of their pond at a faster rate. But even if all those things are true, those assertions do not address whether Sebastian owed a duty to appellees to support the water in their pond.

Appellees cite *Gilbert Texas Construction, L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118 (Tex. 2010), for the proposition that the Supreme Court has recognized a cause of action for negligent performance of a contract that damages adjacent property. In *Gilbert*, part of the contract between Gilbert and

DART required it to protect “all structures . . . on or adjacent to the work site” and “repair any damage to those facilities . . . from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work.” *Id.* at 122. The supreme court noted, without citing any authority, that “[i]ndependent of its contractual obligations, Gilbert owed [adjacent property owner] the duty to comply with law and to conduct its operations with ordinary care so as not to damage [the adjacent property], and absent its immunity it could be liable for damages it caused by breaching its duty.” *Id.* at 127. This statement, however, was dicta because whether Gilbert owed a common law duty was not at issue in the case. *See id.* at 126 (“the only liability theory remaining at the time Gilbert settled arose from Gilbert’s contract with DART and Gilbert does not claim there are facts that could result in its being liable under some theory besides breach of contract”). Appellees have not cited, and we have not found, a case since *Gilbert* that has relied on it for that proposition. Instead, *Gilbert* and the cases that follow it deal with coverage disputes in commercial general liability insurance policies. *See id.* at 121. Furthermore, the supreme court concluded that Gilbert’s agreement in the contract to repair or to pay for any damage it caused to a third party’s property due to its failure to comply with the contract extended Gilbert’s obligations under general law. *Id.* at 127.

The only provision in the contract that could arguably impose a duty on Sebastian with regards to appellees is section 2.6, “Concealed or Unknown Condition,” which provides in relevant part:

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions.

However, the testimony throughout trial, by multiple experts, indicates water naturally seeps through limestone and that Sebastian was aware of such natural occurrence before it began construction. Additionally, Eubanks did not testify that Sebastian should have stopped work as soon as it saw water seeping through the limestone. Eubanks opined Sebastian should have stopped work after appellees notified it that their pond was losing water. But that is true only if such condition “differ[ed] materially” from the plans or if Sebastian owed appellees a duty to protect their pond from losing water.

The other cases appellees rely on in their response brief are also inapposite. While we agree there is a general duty for a contractor to perform its contract with care and skill, the common law duty recognized in the cases cited by appellees is to the person receiving the contractor’s services, *see, e.g., Chapman Custom Homes, Inc. v. Dallas Plumbing Co.*, 445 S.W.3d 716, 717–18 (Tex. 2014) (per curiam);

Ewing Constr, Co. v. Amerisure Ins. Co., 420 S.W.3d 30, 31, 34–36 (Tex. 2014)
Montgomery Ward & Co. v. Scharrenbeck, 204 S.W.2d 508, 510–11 (Tex. 1947),
not an adjacent landowner to the land on which the contractor is working.
Furthermore, the contract here provided that Sebastian “shall not be responsible for
the adequacy of the performance or design criteria required by the Contract
Documents.”

Moreover, there is no evidence that Sebastian failed to perform the contract
with skill and care, no evidence that it did not follow the specifications of the
contract, no evidence that the architectural and design plans were inaccurate or
deficient, and no evidence Sebastian did not consult with the Reeveses when
everyone became aware of appellees’ complaints. In fact, the evidence shows that
the Reeveses were working with appellees to remedy the problem and that Sebastian
paid for a portion of the second sodium bentonite treatment.

Without finding any duty recognized by law that a contractor must support
and protect water from seeping out of an adjacent pond through a porous rock such
as limestone, we conclude Sebastian was not liable to appellees and appellees cannot
recover damages from appellees for its loss of water and fish. To be clear, had
Sebastian damaged appellees’ physical property, or the limestone structure on their
side of the road, such as by excavating the limestone wall in that area in its entirety,
a different disposition might be in order. But that is not the evidence that was
presented in this case. We sustain Sebastian’s first issue.

Because we have sustained Sebastian's first issue, which is dispositive of its appeal, we do not reach its remaining issues. *See* TEX. R. APP. P. 47.1.

CONCLUSION

Having sustained appellees' first issue and concluded as a matter of law that Sebastian did not owe a duty to appellees to support the water level in their pond, we reverse the judgment of the trial court and render judgment that appellees take nothing on their claims against Sebastian.

/Craig Smith/

CRAIG SMITH
JUSTICE