

Burns' precautionary request for the grade change cannot be construed into "consent" to this agreement. That Sloan did not act independently on Burns' request is obvious - he stopped and talked with Dawkins, and obtained Dawkins' approval. It must not be presumed that our statute was designed as a tool for entrapping the diligent into liability on the basis of "consent" when no real consent exists.

EASLEY'S CLAIM

Easley Heating and Plumbing, Inc. (Easley), the mechanical contractor on the project, entered into written agreements (Exhibits #6 and #7) with Dawkins for this phase of the work. When Easley's employees began laying a sewer line from a manhole on the landowner's unleased property, Burns required that the line be six inch cast iron pipe rather than a four inch terra cotta line which was being installed. The testimony is clear that when the matter came up, Brewer (Easley's president) had an agreement with Dawkins concerning the change in the pipe size, and later billed Dawkins for the extra size pipe (Deposition, p. 24).

A plat of the property (Exhibit #15) shows that two catch basins were to be placed on the leased property. The testimony of Easley's witness, Whitfield, indicates that one of the catch basins was erroneously placed, and was moved back from the landowner's property to the leased site at the request of Burns. There was no testimony that Burns supervised the correctional change. Burns brought up the matter of the location, and Brewer (Easley's president) sent word "that it had to be moved" (Testimony, p. 32).

It is clear that Burns, as the owner of the property adjoining the Lil' Farmer site, was well aware that the improvements were being made. He was working on a wall very close to the building site and on several occasions went onto the building site and had general conversations and spent "loafing" time with Dawkins' overseer, Houston. Burns requested a change in the sewer line on his own property, and requested that a catch basin be moved from his property to its proper location on the leased property. These requests involved Burns'