



## **Georgia Court Confirms Measurement of Damages from Construction Stormwater Runoff onto Adjacent Property**

Brooke F. Dickerson

The Georgia Court of Appeals recently upheld the assessment of damages against a property owner for the damage caused to a neighboring pond by erosion and sedimentation resulting from grading and construction in *Ridley v. Turner*, A15A0769, 2015 WL 6988611 (Ga. Ct. App. Nov. 12, 2015), reconsideration denied (Dec. 4, 2015). While the defendant violated the Georgia Water Quality Act and the Georgia Erosion and Sedimentation Control Act, those statutes do not provide a mechanism for private parties to bring suit for failure to comply with a permit or to install and maintain best management practices. Instead, a plaintiff must bring a tort claim, as did the plaintiff in this case, for trespass and/or nuisance.

The court determined that damages can be assessed based on the cost to restore the pond and not the diminution of market value for the entire property, even though the cost to repair, \$90,000, was very close to the price the Plaintiff paid for the property, \$100,000, and likely far exceeded the diminution in value. It is also likely that the \$90,000 damages far exceeded the cost that would have been incurred to install and maintain the proper erosion controls needed to avoid discharging the sedimentation into the pond.

The court confirmed that under Georgia law, cost of repair and diminution of value are alternative measures of damages in trespass cases. As long as restoration would not be an “absurd undertaking”, the cost to repair may be used to measure damages even if they exceed the diminution in value. The cost to repair may not exceed the value of the property, however, and must bear some proportion to the injury sustained.

In this case, the pond was to be used for recreational fishing and as a natural feature in developing the plaintiff’s remaining 40 acres as a residential subdivision. The court found that restoring the pond was the most accurate and equitable measure of damages to place the plaintiff in the same position it would have been in if the injury had never occurred.

## Authors and Contributors

---

**Brooke F. Dickerson**  
Of Counsel, Atlanta Office  
404.873.8632  
brooke.dickerson@agg.com

not *if*, but *how*.<sup>®</sup>

## About Arnall Golden Gregory LLP

---

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit [www.agg.com](http://www.agg.com).

**Atlanta Office**  
171 17th Street, NW  
Suite 2100  
Atlanta, GA 30363

**Washington, DC Office**  
1775 Pennsylvania Avenue, NW  
Suite 1000  
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2015. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.