

Citation:

Date: SCD 852
File No: Lillooet
Registry:

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(CIVIL)**

PROVINCIAL COURT
OF BRITISH COLUMBIA

DEC 21 2000

BETWEEN:

TOM CARMICHAEL

LILLOOET
BRITISH COLUMBIA
CLAIMANT

AND:

DISTRICT OF LILLOOET

DEFENDANT

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE J. AUXIER**

Appearing in person:

T. Carmichael

Counsel for the Defendant:

J. Johnston

Place of Hearing:

Lillooet, B.C.

Date of Hearing:

November 8, 2000

Date of Judgment:

December 18, 2000

[1] Mr. Carmichael (the Claimant) seeks damages against the District of Lillooet (the District) for expenses and loss of rental income totalling \$9,352.29 which he claims to have incurred as a result of the "maliciously applied decision" of the District.

[2] The District seeks an Order dismissing this claim on the basis that:

1. The claim does not support a cause of action, and
2. The claim is statute barred

Facts:

[3] Briefly, the facts are as follows:

[4] Wayne Blohm, the Building Inspector for the District, denied the Claimant a business licence for a building the Claimant owns located at 553 Main Street in Lillooet. Mr. Blohm understood there had been a change of use of the premises and under the B.C. Building Code 1998, a change of use is considered a change of occupancy. Where there's a change of occupancy, the Code requires that the building be made accessible to persons with disabilities. Thus Mr. Blohm's decision required the Claimant to make these changes before the licence would be granted.

[5] The Claimant successfully appealed this decision to the B.C. Building Code Appeal Board. The Board found that there had not been a change of use and since occupancy of the building wasn't changing, the Code provisions regarding accessibility did not apply to the Licence.

[6] Mr. Johnson, counsel for the District, asserts his client's decision was based on what the District honestly believed to be a reasonable interpretation of the provisions of

the Code and there is no evidence to support the Claimant's contention of bad faith.

Mr. Carmichael's response to that submission is that he **does** have ample evidence of bad faith but unless given his day in court, has no opportunity to demonstrate that.

[7] For the purposes of this application, I will assume that the Claimant has evidence to support his allegation that the District acted "maliciously".

[8] That brings me to the second submission by the District - that this claim is statute barred.

[9] The submission is based on two sections of the *Local Government Act*, RSBC 1996, c. 323 - sections 285 and 286.

[10] Section 286 states that the municipality is not liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained is delivered to the municipality within 2 months from the date on which the damage was sustained. The District asserts they had no notice until they received a demand letter from the Claimant dated June 12, 2000, approximately 7 months after the Decision.

[11] Mr. Carmichael's response is two fold:

1. He states he has correspondence and evidence of other communication with the District, which makes it clear, they were aware of his claim from the outset. His letter of June 12, 2000 was written only after his efforts to come to some resolution of the matter failed.

2. Further, he asserts that his situation comes within section 286(3). That section states that failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court believes there was reasonable excuse and the defendant has not been prejudiced in its defence by the failure or insufficiency.

[12] A trial would be necessary to determine whether Mr. Carmichael's "defences" to this submission are valid. So again, for the purposes of this application, I will assume he is able to overcome this hurdle.

[13] That leaves me with the other section of the Act which the District relies on - section 285. It requires all actions against a municipality for the unlawful doing of anything that is purported to have been done by the municipality under the powers conferred by an Act to be commenced within 6 months after the cause of action first arose.

[14] Mr. Carmichael asserts the cause of action in this matter arose on the date the British Columbia Building Code Appeal Board allowed his appeal. This date was March 15, 2000, according to the Claimant, or February 15, 2000, according to the Defendant. The Notice of Claim was filed on August 9, 2000, so would be within the limitation period regardless of which of those dates is the correct one. But the District asserts the cause of action arose on November 17, 1999, the date of Mr. Blohm's decision. If they are correct, then the claim was out of time, having been filed nine months past that date.

[15] And if they are correct, then that is the end of the matter. Because section 285 does not contain a provision similar to section 286 which would give discretion to the judge to extend the time limitation. In Gringmuth v. Corporation of the District of North Vancouver, 2000 BCJ 1043, May 24, 2000, Harvey, J. referred to section 286 and stated:

There is established case law dealing with possible reasonable excuses persons may have for failing to give notice in a timely manner, and being lulled into a false sense of security by the opposing party is one of those reasons... There are, however, no similar exceptions provided in section 285.

[16] Mr. Carmichael relies, in part, on the statement in the B.C.C.A. decision of Grewal v. District of Saanich, 60 DLR (4th) 583 that the claimant must be in a position to know that the municipality has committed some act or has omitted to do something which may make it liable for the damage sustained before the duty to give notice can arise. His argument, as I understand it, is that it wasn't until he was successful on his appeal that he was aware of the fact that the District had "erred". But that passage from the Grewal case, and other cases cited by Mr. Carmichael, were discussing what is now section 286. As was stated in Grewal, the object of that section is to provide an early opportunity for the municipality to examine the place where the damage has occurred, to interview witnesses, and to consider whether to settle or contest the matter. The case law sees that section applied in cases where the municipality was negligent in issuing a building permit resulting in a house settling and developing cracks, where a municipality improperly maintained a road thereby contributing to the plaintiff's injuries, where the municipality did work which caused flooding, etc.

[17] Section 285 addresses quite a different situation. It's intended to apply to actions of the municipality that purport to be done pursuant to an enactment but that fails to comply with the requirements of the enactment. That is really what Mr. Carmichael is alleging here. He's saying that the District was purporting to act within its powers in interpreting and applying the 1998 B.C. Building Code and the By-laws of the District but failed to comply with the requirements of the enactment.

[18] The District's action complained of was Mr. Blohm's decision of November 17, 1999. That's the date the cause of action arose. And accordingly, the action was commenced beyond the 6-month limitation period and must be dismissed.

[19] As my brother Judge Shupe stated in Lotay v. City of Kamloops, (1997) BCJ 2440, another case dealing with the time limitation mandated in section 285:

I recognize that the Claimant likely views the regulatory maze to which he has been subjected with bewilderment and frustration. But he, as with every citizen, was bound to comply with the law, which governed the time within which he was required to commence his action against the City. ... He did not comply with that law and hence I have no choice but to dismiss his claim with costs.

[20] I reach the same conclusion in this matter. The claim is dismissed. The claimant will be required to pay the defendant costs of \$50.00, being the cost of filing the reply.



J. Auxier
Provincial Court Judge