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SMALL CLAIMS DIVISION

In the Provincial Court of British Columbia

(BEFORE THE HONOURABLE JUDGE RAMSAY)

No. 0673

Mackenzie, B.C.
14 June 1996

BETWEEN:

STEPHEN DAVIS

CLAIMANT

AND:

HAIDA CONSTRUCTION LTD.

and

DISTRICT OF MACKENZIE #60 CENTENNIAL

DEFENDANTS

PROCEEDINGS AT

REASONS FOR JUDGMENT

APPEARANCES:

(NO COUNSEL)	for the Claimant
J. D. COTTER, Esq.,	for District of Mackenzie #60 Centennial
M. MORRISON, Esq.,	for Haida Construction Ltd.

Scott Personnel Ltd., Vernon, B C

1 THE COURT: (ORAL) I did not mean to take that long,
2 gentlemen, however Section 2 of the Small Claims Act
3 refers to resolutions of small claims proceedings,
4 enforcement proceedings, to be concluded in a, and I
5 quote, "just, speedy, inexpensive and simple manner."
6 I had in mind delivering written judgment at a
7 later date, but on reflection, in view of the fact that
8 counsel are both from Vancouver and Mr. Davis has
9 obviously spent a great deal of time preparing for this
10 case and has taken a great deal of care in preparing
11 for this case in my view, I think it's preferable that
12 I deliver judgment now.
13 Stephen Davis claims damages against the
14 defendants, Haida Construction and the District of
15 Mackenzie. The onus in any civil proceedings is on the
16 claimant to prove on the balance of probabilities that
17 the defendants, and each of them, are negligent in this
18 case.
19 In the case of Haida Construction, the claimant
20 must prove that Haida Construction negligently
21 constructed the home. The claimant must prove the
22 following: Did Haida Construction owe a duty of care
23 to Mr. Davis who purchased the home in 1989, bearing in
24 mind that the home was built in 1968; secondly, what
25 was the duty of care owed to Mr. Davis by the
26 defendant, Haida Construction; thirdly, did Haida
27 Construction breach the duty of care by failing to
28 construct the home according to acceptable building
29 practices of 1968 and the Building Code of 1965; and
30 fourthly, did the breach by Haida Construction cause
31 damages to the roof.
32 I have no difficulty in finding that the six
33 ceiling joists examined by Mr. Cripps, the building
34 inspector, the present building inspector for the
35 District of Mackenzie, only contained two to three
36 nails and did not meet the building standards of 1968
37 or the Building Code of 1965.
38 The evidence of Mr. Froise (phonetic) does not
39 assist in determining whether the nailing pattern did
40 follow and comply with the Building Code. The evidence
41 of Stephen Davis, the photographs and the evidence of
42 Mr. Cripps in my view satisfies the burden of proof
43 that the Building Code of 1965 was breached.
44 Unfortunately, Mr. Davis knew in the summer of 1993
45 that the ridge board was cracked and someone had put a
46 two-by-four under the cracked ridge board. Mr. Davis
47 discovered a further crack.

The onus is on the claimant to establish that the cracked ridge board and subsequent damage was caused by the negligence of the defendant, Haida Construction. This may well have placed an unreasonable burden on the claimant as a home purchaser twenty-one years after the home was built.

I heard evidence relating to snow loads and the building requirements in 1968 and the building requirements under the Building Code in 1996. I heard evidence relating to the placing of a two-by-four under the cracked ridge board and the effect this would have on the weight of snow on the roof.

I heard no evidence as to when the two-by-four was placed under the ridge board or whether the ridge board was cracked at the time that the two-by-four was placed under the ridge board. It could have been placed any time between 1968 and 1993 when Mr. Davis discovered it. It would be speculation for this Court to conclude as to when that two-by-four was placed under the cracked ridge board or whether the ridge board was cracked at the time the two-by-four was placed there.

I am not satisfied in this case that the claimant has established that the nailing or fastening pattern caused the potential danger of the roof collapsing. Undoubtedly, the nailing or fastening pattern contributed to the damages and the possibility that the roof could collapse, but I am unable to decide and I'm not satisfied that the failure of the construction company, in this case Haida Construction, to follow the Building Code of 1965 directly caused the damage to the roof.

The District of Mackenzie pleads Section 754 and 755 of the Municipal Act. Section 754 reads as follows:

> "All actions against a municipality for the unlawful doing of anything purporting to have been done by the municipality under the powers conferred by an act of the legislation and which might have been lawfully done by the municipality of acting in the manner proscribed by law shall be commenced within six months after the cause of action shall have first arisen or within a further period designated by the (indiscernible) in a particular case, but not afterwards."

Section 755 reads:

"The municipality is in no case liable for damages unless notice in writing setting forth the time, place and manner in which the damage has been sustained is delivered to the clerk within two months from the date on which the damage was sustained. In the case of the death of person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried or, in the case of an appeal, the Court of Appeal believes there was reasonable excuse and the defendant has not been prejudiced by it in its defence," and I place emphasis upon the latter phrase.

It is unfortunate that Mr. Davis did not advise the municipality he was seeking compensation until November 14th, 1995. This was approximately one and a half months after the roof was torn off and eight months after Mr. Davis was in receipt of Mr. Simon Yu's (phonetic) report. This time, that is November the 14th, 1995, is more than one year after Mr. Davis discovered the cracked ridge board and the supporting two-by-four.

I am satisfied that Section 754 and Section 755 do apply to this case because the action was commenced outside the limitation period and the District of Mackenzie was prejudiced by it in its defence by the actions of the defendant in tearing the roof off without a building permit and, more importantly, not allowing the District of Mackenzie to inspect the roof, the cracked ridge board and the supporting two by-four.

In the event that I am in error, the opinion evidence of Mr. Cripps clearly established that the nailing or fastening pattern is not the responsibility of the municipality. I adopt the words of Mr. Justice La Forest in a decision, City of Vernon, in Philips v. Manalocas (phonetic), indexed as Rothfield v. Manalocas (phonetic), a report of the Supreme Court of Canada reported at British Columbia Law Reports (1989) Vol. 41, B.C.L.R. (2d), Page 374.

Mr. Justice La Forest, in which he was concurred by Chief Justice Dixon (phonetic) and Justice Gonthier,

stated at page 382:

> "It must be borne in mind that a municipality, once it has made the policy decision to inspect construction, is not bound to discover every latent defect in the given project nor every derogation from applicable standards. That would be to hold the municipality to an impossible standard. Rather, a municipality is only called upon to show reasonable care in the exercise of its powers of inspection. Accordingly, a municipality, whether the duty of care is owed to an owner, builder or a third party will only incur liability for such defects as it could reasonably be expected to have detected and to have ordered remedied. This is implicit in the decision of this Court in Kamloops v. Nielson (phonetic) which is reported at 1984, 2 S.C.R., Page 2."

This is clearly not a case where the claimant in my view is the author of his own misfortunate, although the result of this law suit is unfortunate for the claimant. But Mr. Davis, unfortunately, ought to have undertaken in my view an earlier and more thorough investigation on discovery of the cracked ridge board and the supporting two-by-four discovered in the summer of 1993.

As a result, the case against Haida Construction is dismissed, and the case against the District of Mackenzie is dismissed.

(PROCEEDINGS CONCLUDED)

22 September 1996/sah

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29 I hereby certify the foregoing to be
30 a true and accurate transcript of the
31 evidence recorded on a sound recording
32 apparatus, transcribed to the best of
33 my skill and ability.
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41 S. Houde, Transcriber
42 for Scott Personnel Ltd.
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