Date of Release: November 30, 1994

No. C922371
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:	
FREDERICK KRANZ	REASONS FOR JUDGMENT
PLAINTIFF	OF THE HONOURABLE
AND:	
CORPORATION OF THE CITY OF NELSON and A. D. SCHNEIDER	MR. JUSTICE OLIVER
DEFENDANTS	

Counsel for the Plaintiff:	John G. Mendes, Esq. and J. Paul Mancuso, Esq.
Counsel for the Defendants:	Brian G. Baynham, Esq. and David W. Pilley, Esq.
Date and Place of Trial:	September 12, 13, 14, 15, & 16, l994 Vancouver, B. C.

The Plaintiff claims damages against the Corporation of the City of Nelson arising from alleged negligent mis-statements made by two of its employees and against A. D. Schneider, one of the said employees. The facts, briefly stated are that in 1973 a 60 unit apartment building in Nelson, B. C. was constructed. It was then, and has long remained, Nelson's largest apartment building (the "Valhalla Apartments").

On October 28th 1979, the Plaintiff having acquired an option to purchase Valhalla Apartments from the then owners - subject to inspection and approval by him of the property - travelled to Nelson. On October 29th he visited Nelson City Hall, asked for the Building Inspector and was referred to Mr. Schneider. He advised Mr. Schneider that he had come from Vancouver to look at the Valhalla Apartments, with the intention of purchasing the building. He asked the Building Inspector what he knew about the building and whether it complied with the Building By-Laws. Mr. Schneider said that he knew the building well and that it had been built during his time as Building Inspector. He said that there were a few deficiencies to be taken care of, that the siding on the outside of the building was buckling in some places, and that a support column in the utility room needed re-enforcing but that otherwise the building was "okay". He satisfied Mr. Kranz that there would be no problems from his department. Nothing was said by Mr. Schneider about an absence of sprinklers at the Valhalla or about the fact that the building had been operated for years without an occupancy permit. This conversation was put to Mr. Schneider in cross-examination. He responded by saying that it happened a very long time ago and that it is possible that he said something like that. The Plaintiff's evidence as to the conversation with the Building Inspector stands uncontradicted.

Mr. Schneider knew very well that no occupancy permit had ever been issued. He knew very well about the safety problems arising

from the absence of a sprinkler system. He knew very well that the City's Fire Safety By-Law had been contravened for a considerable period of time and was not being enforced. He knew that the Fire Chief regarded the non-compliance to be a hazard to the occupants. He had at one time endeavoured to enforce the By-Law by withholding an occupancy permit - but was overruled by City Council. Asked why he had not sought to enforce the Building By-Law by refusing or overruling a building permit, or by issuing an Unsafe Condition Notice or by issuing a stop work order, he replied "I worked for Council and when things became difficult we would consult them and act on their advice". The Defendant Corporation of the City of Nelson (whose servant the Building Inspector was) well knew of these problems too. It had from 1974 on been repeatedly warned by its then Fire Chief of the lack of an adequate sprinkler system, and of the existence of hazardous fire safety conditions. It must have been clear to the Building Inspector that the Plaintiff was relying on him to give him accurate information. The Building Inspector was negligent in what he told Mr. Kranz and in what he failed to tell Mr. Kranz. The Building Inspector was acting in the course of his duties as a Senior Municipal Official. His negligence was the negligence of the Corporation.

The Plaintiff next proceeded to the Valhalla Apartments for a meeting with officials of the fire department.

He went to the lobby of the Valhalla and met three men: Mr. Kegan, the Resident Manager, and two men in uniform, who introduced themselves by name. One was Mr. Smith (the Fire Chief), the other whose name the Plaintiff could not recall was Mr. Sommerville, the Deputy Fire Chief. The Plaintiff recalls only that he thought this person had what he thought was a "German sounding name". Mr. Kranz introduced himself and asked them (the Fire Officers) if the building complied with the By-Laws. One of them said "lets go and take a look". They invited the Plaintiff to accompany them on their inspection tour. They visited various parts of the building including the mechanical room and the garage area and each of the floors of the building and the stairways, and the Fire Officers inspected the lighting and the fire extinguishers and the hose reels and found some deficiencies. They remarked on the compressor of the partial sprinkler system which was installed, and were satisfied that a battery needing attention on an earlier inspection had been attended to. On the fourth floor they objected to a leaking sprinkler head in one of the public areas which needed to be repaired. The Plaintiff recalls no other objections. When they returned to the lobby, the Plaintiff asked them whether everything was okay with the building and was told that with the exception of the things they had pointed out, everything was satisfactory. Nothing was said by the Fire Officers about the lack of sprinklers in the residential units themselves or of any non-compliance with any By-Laws, Regulations, Fire Orders or Statutory Requirements.

Mr. Kranz in his evidence says that he thought it was Mr. Smith, the Fire Chief, who did most of the talking. Mr. Smith in his evidence says it was not, and that it was Sommerville's inspection. Smith testified that he had only just been appointed Fire Chief and had arrived within the past two weeks from Vancouver Island and was unfamiliar with any of the buildings within his area of jurisdiction and welcomed this opportunity of being able to accompany Mr. Sommerville (who was the Deputy Chief and had during the interregnum been acting Chief) on an inspection of the biggest apartment complex in the City. Mr. Smith says that had Mr. Kranz's questions been directed to him, he would have told Mr. Kranz to put his inquiry in writing and that a written response would be sent to him. This had been Mr. Smith's practice in his previous posting. Mr. Sommerville in his evidence says that he does not remember carrying out an inspection of the Valhalla in October, 1979 but that maybe he did and says that he swore a recent affidavit saying that he did.

Counsel for the City of Nelson argues that this meeting and conversation did not take place as testified to by Mr. Kranz. I am satisfied that Mr. Kranz is mistaken in his recollection that at this meeting some fifteen years ago it was Mr. Smith who did most of the talking. I accept as reasonable Mr. Smith's recollection that this was Sommerville's inspection and that he, Smith, had come along mainly as an interested spectator. I am, however, satisfied that the meeting took place, that Mr. Kranz accompanied Smith and

Sommerville and the Building Manager on the tour of inspection, that Kranz asked the questions he says he asked and that the responses were mainly made by Deputy Chief Sommerville.

I am satisfied that Mr. Sommerville well knew at the time of the inspection and had known for several years before that, that the individual suites in the building had no sprinkler system. He regarded this at the time as a hazard. He was aware of the fact at the time of the inspection that the building did not comply with the fire by-law. In providing the answers I find Mr. Sommerville gave to the Plaintiff, he was acting in the course of his employment. In what he told the Plaintiff in answer to his questions (and in what he failed to tell him) he was negligent. That negligence was the negligence of his employer the Defendant Corporation of the City of Nelson, which had for years been aware of the buildings non-compliance with the fire by-law and the National Building Code of Canada.

As set out above, I find on the facts that the Defendant Corporation was negligent. Can it be found liable to the Plaintiff for damages arising from its negligence?

The Plaintiff sought to have the Court find the Defendants liable for their violation of their general duty to enforce the City's By-Laws. I am of the view that such a finding is not necessary. Rather, the principles to be applied in finding

liability for the tort of negligence in these circumstances are taken from Hedley Byrne & Co. v. Heller & Partners Ltd. , [1964] A.C. 465, [1963] 2 All E.R. 575, [1963] 3 W.W.R. 101 (H.L.) and amplified in our Court of Appeal in Windsor Motors Ltd. v. Corp. of Powell River (1969), 68 W.W.R. 173 (B.C.C.A.) and in Kingu v. Walmar Ventures Ltd. (1986), 10 B.C.L.R. (2d) 15, 38 C.C.L.T. 51 (B.C.C.A.).

Branca J.A. stated in Windsor Motors, supra, at 177:

> In the Hedley Byrne & Co. case it was held that, quite apart from a contractual or fiduciary relationship, a negligent though honest misrepresentation, whether verbal or in writing, might form the basis of an action for damages for financial loss, as the law implies a duty of care when and where a party seeking information from one possessed of special skills trusted that person to exercise due care and the party who makes the representations knew or should have known that reliance was being placed on his skill and his judgment.

The requirements to found liability in tort were set out by McLachlin J.A. (as she then was) in Kingu, supra, at 23:

> The question then is whether the requirements of tort liability on the basis of Hedley Byrne are satisfied in the case at bar. Those requirements may be summarized as follows:
>
> (1) A false statement negligently made;
>
> (2) A duty of care on the person making the statement to the recipient. A duty of care does not arise unless;
>
> (a) the person making the statement is possessed of special skill or knowledge on the matter in question, and

(b) the circumstances establish that a reasonable person making that statement would know that the recipient is relying upon his skill and judgment;

(3) Reasonable reliance on the statement by its recipient;

(4) Loss suffered as a consequence of the reliance.

I will deal with each of these requirements in turn.

There is no question that false statements were negligently made to the Plaintiff. Mr. Schneider, the Building Inspector, told the Plaintiff that other than a few minor deficiencies, the building was otherwise "o.k.". The Fire Officers or one of them similarly informed the Plaintiff that with the exception of the things they had pointed out, everything was satisfactory. These statements were made by these individuals to the Plaintiff when they had the knowledge that a serious problem existed regarding the absence of a satisfactory sprinkler system in the building.

Did these representatives of the City owe a duty of care to the Plaintiff? It cannot be disputed that a Building Inspector and Fire Officers have the special skill or knowledge referred to in the above requirements. Clearly, these are the very individuals on whom others routinely reasonably rely to provide accurate and complete information which forms part of their specialized knowledge. In addition, I accept as a fact that the Defendants knew the Plaintiff was relying on the information they provided in making his decision to purchase the building. The Plaintiff told

them he was considering purchasing the building and he wanted their assessment as to the building's structural and safety status.

As to the third requirement, it is difficult to imagine on whom a prospective purchaser is to reasonably rely for such information as that requested by the Plaintiff here, if not the Building Inspector and the Fire Officers. Based upon the assessments given to him by these individuals, the Plaintiff went ahead and purchased the building thinking everything was fine.

Some years later, he was required to install an appropriate sprinkler system in order to comply with the building and safety codes and regulations. His losses were substantial.

In my opinion, the proper measure of damages in this case is the cost to the plaintiff of the repairs. To attempt to reconstruct the events of the purchase negotiations of late 1979 would be to gaze into the proverbial crystal ball, something this Court is not willing to do. Suffice to say that complete disclosure to the Plaintiff at the time of his purchase would likely have altered the terms of the purchase in some fashion. I do not propose to speculate on how the negotiations would have been altered and neither do I propose to base the measure of damages on such speculation.

I find support for this position in the cases of Kamloops v. Nielsen, [1984] 2 S.C.R. 2 and Petrie v. Groome (unreported) 5 April 1991, Vancouver C892379, which applied Nielsen. In those cases the measure of damages was determined to be the cost of repairs.

As shown in the documentation, the Plaintiff here is out of pocket $225,000.00 for the repairs to the building which the City of Nelson has assured him now provide full compliance with all codes, regulations, and by-laws. I therefore hold that the City of Nelson is liable to the Plaintiff for that sum.

In so holding, I am mindful of Section 755.1 of the Municipal Act, R.S.B.C. 1979, c. 290 which states as follows:

> 755.1(1) No action for damages lies or shall be instituted against a municipal public officer or former municipal public officer for anything said or done or omitted to be said or done by him in the performance or intended performance of his duty or the exercise of his power or for any alleged neglect or default in the performance or intended performance of his duty or exercise of his power.
>
> (2) In this section "municipal public officer" means ...
>
> (i) an officer or employee of a municipality,
> ...
>
> (3) Subsection (1) does not provide a defence where
>
> (a) the municipal public officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct ...

In my opinion, the other named Defendant in this action, Mr. Schneider, the Building Inspector, was negligent but he was not grossly negligent or malicious or wilful and therefore, in accordance with s.755.1 of the Municipal Act, in the absence of such egregious conduct, the liability here rests entirely with the Corporation.

The appropriate Court Order Interest will be added to this $225,000.00 award on behalf of the Plaintiff, and he shall have his costs on scale 3.

I make no Order as to costs in respect of the proceedings against the second Defendant.

"Oliver, J."

Oliver J.

Dated at the City of Vancouver
This 28th day of October, A.D. 1994