

Construction

Date: 20010330
Docket: 1016
Registry: Mackenzie

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(CIVIL DIVISION)

BETWEEN:

SEAN R. THOMAS

CLAIMANT(S)

AND:

DISTRICT OF MACKENZIE

DEFENDANT(S)

AND:

THIRD PARTY(IES)_

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE D.W. RAMSAY

Counsel for the Claimant(s):	Self.
Counsel for the Defendant(s):	J.H. Grover
Counsel for the Third Party(ies):	
Place of Hearing:	Mackenzie, BC
Date of Hearing:	March 29 & 30, 2001

COPY

1 THE COURT: (Oral) The claimant claims damages for negligence
2 arising from the inspection and approval of a renovation by
3 the District of Mackenzie. The claimant undertook
4 renovations to install a ~~bow~~^{bay} window in his home in 1998.
5 The claimant had purchased the home that had been built in
6 approximately 1971. He contracted with Campion Homes
7 Construction to install a new bow window.

8 On July 21st, 1998 the claimant applied for a building
9 permit to the District of Mackenzie to install a new bow
10 window. The market value of the work was stated as
11 \$2,200.00. Mr. Thomas was quoted \$3,300.00. Mr. Thomas
12 eventually paid over \$10,000.00 for the work done by Campion
13 Construction. On July 21st, 1998 permission was granted by
14 the District of Mackenzie to do the work as described in
15 accordance with the plans and specifications approved for
16 construction by the District of Mackenzie. The work began
17 and the District of Mackenzie, and in particular the
18 building inspector, approved the footings on August 5th,
19 1998. The building inspector approved the framing, as per
20 the drawing, on August 19th, 1998. The building inspector
21 approved the insulation barrier on August 31st, 1998. At
22 that time the District of Mackenzie, and the building
23 inspector, required a call for a final inspection. The
24 final inspection was never completed for reasons that are
25 not clear except that the possible discovery of structural
26 problems in 1999, the fact that the contractor disappeared
27 after receiving his money, and the homeowner thought the
28 work of the bow window was not complete, may explain, in
29 part, the delay in applying for the final inspection.

30 The winter of 1998 to 1999 was noted for the amount of
31 snowfall Mackenzie received that year. In January, 1999 the
32 District of Mackenzie published notices to homeowners
33 advising them to use caution in shovelling roofs, and
34 advising homeowners to consider consulting a structural
35 engineer if they felt the snow load was causing structural
36 problems with the roof.

37 Mr. Thomas experienced leaking water into his house in
38 February, 1999 causing damage in the bedrooms and living
39 room. On February 19th, 1999 Mr. Thomas contacted his
40 insurance company. He was told to clear his roof of snow
41 and ice. On February 11th, 1999 Mr. Thomas was told that the
42 insurance company would repair the damage and Mr. Thomas was
43 required to get quotes for the work to be done. Two
44 contractors came to the house to inspect. The building
45 inspector from the District of Mackenzie came to the house.
46 There was general agreement at that time that an engineer
47 was required to inspect the house. On May 17th, 1999 Mr.

1 Simon Yu, a qualified structural engineer, attended and
2 provided a written report to the insurance company, who in
3 turn provided that report to Mr. Thomas. Mr. Yu concluded:
4

- 5 1. The roof structure of area in question has been
6 severely weakened by "the renovation" in terms of long
7 term structural stability with respect to the snow
8 load.
- 9 2. The overall rafter connections are structurally
10 inadequate to satisfy today's building code
11 requirements, proper MGA wood connectors or equivalent
12 should have been used.
- 13 3. The ridge beam and valley beams are under designed
14 according to today's Mackenzie snow loading code
15 requirements.
- 16 4. The load bearing wall and the current lantil system in
17 the living room, after the renovation, lacks a
18 recognizable loading path to transfer the roof loads,
19 pressure from the rafter, directly to the foundation.
- 20 5. The ground heaving at the rear of the carport has
21 damaged the carport structure.

22
23 Mr. Yu concluded that the cumulative effect of these
24 deficiencies, and most importantly, items one and four, is
25 the cause of the permanent downward deflection of the roof
26 rafter around the living room area. He also concluded that
27 this particular roof structural problem could have been
28 prevented with some fundamental structural practice during
29 last year's renovation.

30 In his testimony Mr. Yu suggested that the damages
31 occurred cumulatively over many years, and the renovation in
32 1998 exacerbated the problems. By changing the structure
33 from the renovations undertaken in 1998, the problems became
34 more noticeable. These problems did not develop overnight,
35 and the structure would have sustained damage in any event.
36 He referred to Mr. Thomas' carpenter as incompetent, as any
37 reasonable carpenter would have seen the potential problems.
38 It was also Mr. Yu's opinion that there was nothing wrong
39 with the application for the building permit.

40 In August, 1999 Mr. Thomas settled with the insurance
41 company for \$12,572.00. The signed proof of loss states
42 that the loss occurred on February 9th, 1999, caused by snow
43 load collapse of roof rafters. Mr. Thomas states that this
44 claim only settled the damage to the interior of the house,
45 and did not address the repair or replacement of the roof.
46 After receipt of the monies from the insurance company, Mr.
47 Thomas contracted with Dunbar Enterprises to replace the

1 roof and roof structure of the house and carport. The total
2 cost is expected to be \$25,500.00. The roof has been
3 replaced with a gable end roof that also covers the carport.
4 The interior work and some exterior work has not yet been
5 completed.

6 The claimant gave written notice of his claim to the
7 District of Mackenzie on February 17th, 2000. The action
8 against the District of Mackenzie was commenced on July 18th,
9 2000. The District alleges that failure to give two months
10 notice of the claim is required by s.286 of the Local
11 Government Act, and the failure to commence the action
12 within six months, has prejudiced the defendant by such
13 delay and the action is barred for that reason.

14 As early as February 18th, 1999 the defendant was aware
15 there was a problem with the roof when it began to leak. On
16 February 11th, 1999 the claimant was advised that an
17 engineer's opinion was required. This was confirmed a few
18 days later by the building inspector from the District of
19 Mackenzie, and by Panther Roofing. This was confirmed
20 further a few months later on May 17th, 1999 when Simon Yu, a
21 professional structural engineer confirmed that the roof had
22 to be replaced or repaired by the fall of 1999.

23 The leading case regarding compliance of s.286 of the
24 Local Government Act is **Rewall & Rewall v. The District of**
25 **Saanich**, (1989) 38 B.C.L.R. (2nd) p.250. At p.256 the court
26 stated:

27
28 *The first thing to be noticed about s.755 [as it then*
29 *was] is that it does not limit the time within which*
30 *an action is to be brought, but the section has the*
31 *same draconian effect as a limitation period because*
32 *it bars recovery if notice has not been given, and if*
33 *the salient provisions, based upon reasonable excuse*
34 *and no prejudice, are not met.*

35 *Secondly, s.755 is not confined to giving notice that*
36 *damage has been sustained, but also the notice must*
37 *provide information of "the time, place and manner in*
38 *which the damage is sustained". The object of the*
39 *section, like the provisions contained in s.23(2) of*
40 *the Insurance Motor Vehicle Act is to provide an early*
41 *opportunity for the municipality to examine the place*
42 *where the damage has occurred, to interview witnesses,*
43 *and to consider whether to settle or contest the*
44 *matter. In order for the section to fulfil its*
45 *apparent purpose, a claimant must be in a position*
46 *to know what, and who, has probably caused or*
47 *contributed to the damage which has been sustained.*

1 *The duty to give notice to the municipality of a*
2 *possible claim does not arise merely from the*
3 *discovery of the damage, the complainant must be*
4 *able to give particulars of the time, place and*
5 *manner of the damages. Furthermore, the complainant*
6 *must be in a position to know that the municipality*
7 *has committed some act, or has omitted to do something*
8 *which may make it liable in whole or in part for the*
9 *damage sustained by the complainant before that duty*
10 *to give notice can arise.*

11
12 Although the claimant knew there was a problem in February,
13 1999 it is reasonable to expect a delay until an engineer's
14 report was prepared. I note that the building inspector,
15 Yvon Girard, looked at the damage in February, 1999 and it
16 was his view that an engineer was required. The engineer's
17 report clearly identifies the structural problems, although
18 when Mr. Yu, the structural engineer, was asked if he saw
19 anything wrong with the application, it was his view there
20 was nothing wrong with the application. Mr. Yu placed some
21 emphasis on the fact that Mr. Thomas had hired an
22 incompetent carpenter.

23 I find that on May 17th, 1999 the claimant had
24 knowledge that he had sustained damages, and further, that
25 he was able to give particulars of the time, place and
26 manner of the damages. The claimant bases his claim on the
27 inspections in August, 1998 that were undertaken by the
28 District as a result of the application for a building
29 permit and resulting renovation. The claimant states the
30 District of Mackenzie was negligent when the framing was
31 inspected on August 19th, 1998, and it was this inspection
32 that should not have been approved. If the District of
33 Mackenzie had not approved the framing, the work would not
34 have proceeded and any defects would have been remedied. I
35 note that the inspection report approved the "framing as per
36 drawing". There is evidence that there was nothing
37 inherently wrong with the proposed plans and the inspection
38 appears to state that the construction was done in
39 accordance with the plans submitted.

40 The claimant settled with the insurance company in
41 August, 1999 and knew at that time that on February 9th, 1999
42 he sustained damages caused by the snow load collapse of
43 roof rafters. The claimant signed a release stating the
44 total loss of damage under the contract of insurance was
45 \$14,353.56. The claimant began work to replace the roof
46 structure and roof in September, 1999. The invoice from
47 Dunbar Enterprises is dated September 30th, 1999.

1 I conclude from the evidence that the work was
2 completed during the first week of October of 1999. The
3 District of Mackenzie was not given notice until February
4 17th, 2000, which is eight months after the claimant received
5 the report of the structural engineer, Simon Yu. This is
6 eight months after the claimant knew there was damage and
7 knew the time, place and manner in which the damage was
8 caused. The District was not given notice until February
9 17th, 2000, which is approximately four and a half months
10 after Mr. Thomas had the roof structure, and the roof,
11 replaced.

12 I find that the municipality as a result was deprived
13 of the opportunity of having the carpentry work done by
14 Champion Contracting inspected by their engineer, or any
15 other person of the defendant's choice having some expertise
16 in construction or carpentry. The claimant did not have the
17 carpentry work performed by Champion Construction pass a
18 final inspection, and as a result, the work performed by
19 Champion Construction has not yet passed final inspection. I
20 find that the claimant did not take the steps required of
21 him in a timely fashion, even though he was aware of the
22 damage complained of with the result that the inspector's
23 approval of the plans and framing.

24 The claimant is not represented by counsel, and it is
25 for that reason there may be a reasonable excuse. However,
26 the defendant may have been prejudiced by the failure to
27 provide written notice as the defendant District of
28 Mackenzie was unable to inspect the work done by Mr. Champion
29 after the work performed by Mr. Champion was completed. The
30 defendant was also unable to inspect the work done by Mr.
31 Champion as a result of the new roof structure and the
32 installation of the new roof.

33 As a result, I find that failure to give the notice is
34 a bar to the maintenance of the action.

35 The second issue is the limitation period set out in
36 s.285. The claimant began the action on July 14th, 2000.
37 That is fourteen months after Mr. Yu's report and
38 approximately nine months after the roof structure and roof
39 had been replaced. Having not provided notice, and having
40 not commenced an action within the time limits set out in
41 the Local Government Act, I find the claimant is not able to
42 maintain his action against the municipality.

43 Even if I am incorrect in this finding, I am satisfied
44 that the claimant's case must fail for the following
45 reasons: Although the renovation weakened the long term
46 structural stability, the claimant has failed to prove that
47 the District of Mackenzie had a duty to inspect the entire

1 roof structure in approving the application to install a bow
2 window. It was the opinion of the structural engineer that
3 the overall rafter connections to the roof were inadequate
4 to satisfy today's building code requirements. It was also
5 the opinion of the structural engineer, that the ridge beam
6 and valley beams were under designed according to today's
7 Mackenzie snow load code requirements. It was the building
8 inspector's, Yvon Girard's, opinion that the proposed
9 renovation, and the renovation itself, were separate and
10 apart from the main roof structure. The building inspector
11 stated that in his opinion, the proposed renovations and the
12 construction met the guidelines in part 9 of the building
13 code. It was not necessary in this case to consider part 4
14 of the building code, and the building inspector's
15 jurisdiction to deal with part 4 of the building code was
16 limited in any event.

17 In order to succeed in this claim, the claimant must
18 establish the District of Mackenzie had a duty to inspect
19 and approve the entire roof structure according to the
20 present day standards. This would require the District to
21 have a structural engineer inspect and approve all roofs
22 when renovations involving doors, windows, and other
23 openings in residential buildings fewer than 600 square
24 metres were proposed. Although the claimant now states he
25 relied on the inspector to ensure the home was structurally
26 sound, in my view the inspector was not required to inspect
27 the roof under existing legislation or the by-laws. In my
28 view the actions of the building inspector in approving the
29 plans and approving the framing, were those of a reasonably
30 prudent building inspector.

31 As a result, the claim is dismissed.

32
33 (SUBMISSIONS WITH REGARD TO COSTS)

34
35 THE COURT: I am not convinced that this is an appropriate case to
36 impose such a penalty, so the only thing you are faced with
37 is an order that you pay the filing fees incurred by the
38 District of Mackenzie, which I think is about \$50.00, or it
39 may be as much as a hundred, but it is approximately that,
40 and the service fees. Usually costs and expenses follow the
41 event, and it is usual to order that, and I think that is
42 reasonable, and I do so order that. I would like to hear
43 from you, Mr. Thomas, with respect to the expense of
44 reimbursing the costs of Mr. Girard to have to attend.

45
46 (DISCUSSION BETWEEN THE COURT AND MR. THOMAS)

47

1 THE COURT: I think that I should say to Mr. Grover that under the
 2 circumstances, and I find that Mr. Thomas has, both in his
 3 presentation, obviously spent many, many, many hours in
 4 preparing for this and I think Mr. Thomas is probably, and I
 5 may be just guessing here, has probably lived this lawsuit
 6 since he commenced it, and for him now to --- I'm not saying
 7 the District of Mackenzie is a municipality that has deep
 8 pockets, but Mr. Thomas lives here and I think he has put a
 9 lot of effort. Is the District prepared to abandon?

10 MR. GROVER: Yes we are.

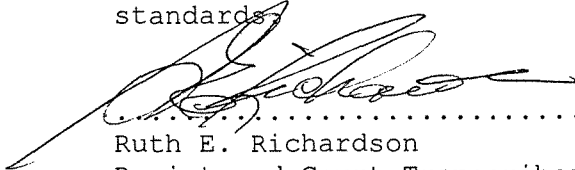
11 THE COURT: Okay, so I don't have to hear from you. Are you
 12 prepared to abandon your claim for the filing fees too?

13 MR. GROVER: Yes we are.

14 THE COURT: Okay. So the judgment is dismissed, but you need not
 15 --- we are sort of not adding insult to injury by an order
 16 that you pay any of the costs.
 17

18
 19 (CONCLUDED)
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I hereby certify that this is a true
 and accurate transcript of the
 evidence recorded on a sound
 recording apparatus, transcribed to
 the best of my skill and ability, and
 in accordance with applicable
 standards.



 Ruth E. Richardson
 Registered Court Transcriber

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