

New Westminster Registry
No. S91-0934

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
HOLDEN AT NEW WESTMINSTER

BETWEEN:

HENRY UNRAU AND LORNA UNRAU)	
)	
CLAIMANTS)	
)	REASONS FOR JUDGEMENT
AND:)	
)	OF HIS HONOUR
JOSEPH JAKUBEC, THE)	
DISTRICT OF COQUITLAM AND)	JUDGE K. D. PAGE
OREST JAKUBEC)	
)	
DEFENDANTS)	

Henry Unrau and Lorna Unrau	Appearing personally
James Antifay	For defendant: Joseph Jakubec
Stephen E. Geddes	For defendant: The District of Coquitlam
Orest Jakubec	Appearing personally

In January of 1987 the claimants bought a home from the defendant, Joseph Jakubec. This home was built by the defendant, Orest Jakubec, in 1985, and its various stages of construction were inspected by a building inspector employed by the defendant, District of Coquitlam. In February 1991, a copper pipe laid into the concrete slab base of the house fractured, causing flooding and

damage. It has been proved to my satisfaction that the pipe fractured as a result of the concrete slab settling. The reason for this settling is in issue. Most of the damage was repaired by the claimants' insurer and this claim involves expenses incurred by the claimants which were not covered by the insurance. They claim the sum of \$6,993.23 broken down as follows:

Labour and materials:	\$2,806.63
Lime pump services to repair the settled slab:	1,600.00
Cost of an engineer's report:	192.60
Lost revenue from claimants recreational cabin:	2,400.00

The following are the issues to be decided:

1. The liability of Joseph Jakubec as vendor.
2. The liability of Orest Jakubec as builder.
3. The liability of the defendant, District of Coquitlam, for approval of the slab base.

LIABILITY OF JOSEPH JAKUBEC

This defendant was the vendor of the property. The evidence established that he never lived in the home, did not build it nor did he arrange to have it built. He has testified that he was never aware of any settlement problems with respect to the concrete slab. The contract between him and the claimants is to be found in the Interim Agreement for sale of the property dated January 25, 1987, together with an addendum to that agreement dated February 16, 1987. The addendum relates to the fact that a final occupancy permit for the home had never been issued and the vendor was responsible for completing certain items and obtaining a final occupancy permit. This was done and after inspection the permit was issued. It is to be noted that the Interim Agreement provides

that there are no representations, warranties, guarantees, promises or agreements other than those contained herein. The agreement contains no representations with respect to the concrete slab. The evidence has further established that Mr. Jakubec never had any discussions with the claimants either before the Interim Agreement or following it with respect to settlement problems. The claimants have failed to establish liability on the part of Joseph Jakubec in either Tort or Contract and the claim against him is dismissed.

LIABILITY OF OREST JAKUBEC

In order to establish liability on the part of this defendant, the builder of the home, the claimants must establish on a balance of probabilities that he was negligent with respect to the construction of the home, and specifically regarding the base for the slab. In this regard they sought the opinion of S.C. Maplethorpe, a Professional Engineer, who inspected the property on February 19, 1991. He gave his professional opinion that the settlement in this case was the result of the concrete slab being poured over a significant depth of uncompacted fill. He did not, in arriving at his opinion, do any soil compacting testing. He agreed in cross-examination that there are other possible causes for such settling such as a deposit of peat underneath the property or water seepage. The testimony of Orest Jakubec is that he was personally present when the fill for the slab was placed. He testified that the fill was properly compacted, sand fill done in levels and compacted as each level was placed. He said that the fill sat for a period of two to three weeks while the plumbing was installed and then it was compacted

again before the slab was poured. Prior to the slab being poured, of course, it was inspected by the defendant, District of Coquitlam, and was approved. It is clear that the slab settled as a result of subsidence of the material used in the slab base. What is not clear is whether the fill subsided due to poor soil compaction, which would constitute negligence on the part of the builder, or whether it was caused by other factors such as a peat deposit beneath the property, or water seepage. I did not find the opinion given by Mr. Maplethorpe to be conclusive in this regard.

On the whole of the evidence as it relates to preparation of the slab base, I find that negligence on the part of Orest Jakubec in placing the fill has not been established on a balance of probabilities, and accordingly the claim against him is dismissed.

LIABILITY OF THE DISTRICT OF COQUITLAM FOR APPROVAL OF THE SLAB BASE

Petrie et al v. Groome et al 4 M.P.L.R. (2d), a decision of the Supreme Court, is authority for the proposition that a municipality may be held liable to subsequent home purchasers if found to be negligent in its inspection of the home's construction. The issue respecting the liability of this defendant is whether negligence has been proved.

James Henderson was the building inspector who conducted the required inspections of the subject home. His evidence is that he inspected the slab base prior to the cement being poured. He did this by "walking" the site to ensure that the ground was adequately

compacted. He did not request an engineering report on ground stability since he found no evidence to indicate that the ground was unstable. Following his inspection he found the slab base to be adequately prepared for the pouring of the slab floor and gave his approval.

Dennis Webber, also a building inspector for the defendant District, testified that "walking" inspections of slab bases is accepted industry practice, not only in the District of Coquitlam but also in other municipalities.

In the Petrie decision, Collver J. appeared to find the "walking" method of inspection as employed in the District of North Vancouver a reasonable practice.

On the whole of the evidence I find that negligence on the part of the defendant District has not been proved on a balance of probabilities and the claim against this defendant is dismissed.

Dated at New Westminster this 14th day of May, 1993.

K.D. Page, Judge
Provincial Court of British Columbia.

*pretty thin edge
Reasons!*