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IN THE SUPREME COURT OF BRITISH COLUMBIA

FILE NO. C912917
VANCOUVER REGISTRY

Vancouver, B.C.,
October 29, 1993

BETWEEN:

THE OFFICIAL ADMINISTRATOR FOR
THE PROVINCE OF BRITISH COLUMBIA,
as administrator of the estate of
LYABETH JEAN MARIE BOVINGDON

PLAINTIFF

AND:

THE CORPORATION OF THE DISTRICT
OF MISSION and DOUGLAS OLUND

DEFENDANTS

)
)
)
) REASONS FOR
) JUDGMENT OF THE
) HONOURABLE MR.
) JUSTICE MACDONELL

P. M. WILLCOCK, ESQ. and
MS. D. MARKS

APPEARING FOR THE PLAINTIFF

J. SINGLETON, ESQ. and
J. HAND, ESQ.

APPEARING FOR THE DEFENDANTS

THE COURT: (ORAL)

This action against the defendants is for damages arising out of a fire that destroyed the house of Mrs. Bovingdon who, unfortunately, died in the fire.

The fire occurred on 8 March, 1990, in the middle of the night. The basis of the cause of action, which is taken by the Official Administrator against the Fire Department of Mission, is for the damages for the value of the house

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1 and not for loss of life. The plaintiff's case is that
2 the Fire Department was negligent in not doing an in-
3 spection following a complaint of a chimney fire earlier
4 in the day. The plaintiff argues, although it isn't clear
5 from the pleadings, that the second fire, which happened
6 in the middle of the night, resulted from the first
7 fire.

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9 The evidence was from a number of experts, who are
10 fire chiefs in the Valley and who were familiar with each
11 other's practices which, it seems, are similar. As well,
12 an expert from the United States, Mr. Philbin, testified,
13 whose opinion was contrary to that of almost everyone
14 else as to the cause of the fire.

15 What happened was that, in the mid-afternoon or later
16 afternoon, Mrs. Friesen was driving by the Bovingdon resid-
17 ence and saw what appeared to be a chimney fire. She saw
18 some flames shoot from the chimney of Mrs. Bovingdon's house.
19 She went around the block and the fire had subsided or, at
20 least, the flames had subsided. She had a neighbour call
21 the Fire Department, and they were dispatched and arrived
22 shortly thereafter. She was at the scene when they arrived.

23 All the firemen testified on arrival that they
24 found the site of the fire not by any outward appearance
25 of fire but by the residential address. When they got to
26 the Bovingdon house, I think there was a slight amount of
27 smoke, of dark smoke coming from the chimney, certainly

1 none of any consequence and none coming from the house it-
2 self. The amount of smoke coming from the chimney was
3 compared to that in the neighbourhood and it appeared to
4 be about the same.

5 The Fire Department officers, Chief Macdonald and
6 Captain Oland, went to the door and knocked and there wasn't
7 any response at first. Captain Oland went up in the place
8 of Chief Macdonald, knocked, and as he was going downstairs
9 again the door was opened slightly and Mrs. Bovington put
10 her head out to inquire what they wanted, and they said
11 there was a report of a fire, and she denied there was a
12 fire, a chimney fire. She was told that there was a reported
13 fire and she said no, there was no fire. They asked permission to
14 enter to inspect and she said there was no fire. She
15 refused entry. She was then asked again, with the same
16 result, and was asked if they could go on the roof to inspect
17 the chimney and her response again was no, there was no
18 fire and that she had been burning out her chimney as
19 she had done on many occasions.

20 The officer was faced with the refusal of the owner
21 to let him in, and left. Nothing further happened for
22 the rest of the day. When they were there, there was no
23 evidence whatsoever of a fire in existence, there were no
24 flames, no smoke coming from the house, and all they had
25 was a report and nothing else to support the presence of
26 a fire in the premises.

27 The argument from the plaintiff is that, notwithstanding

1 where there is no overt apparent fire in the building and
2 an explanation is given for it by the owner, they have no right
3 to enter, and not only that but that it is reasonable for
4 them, in the circumstances, not to pursue the matter any
5 further because there is no reason, in my view, for them
6 to take a contrary view and force themselves into a house
7 where the owner doesn't want them.

8 It is my view that the practice that all of them ad-
9 hered to, in the circumstances of this case, and to leave
10 when rebuffed in the way in which they were, was an ap-
11 propriate response. Accordingly, I conclude that there
12 was no right of entry under the by-law and that there was no
13 act of negligence on the part of the Fire Department in not
14 forcing themselves into the house.

15
16 The next part of the claim advanced is that I should
17 find, had I reached a contrary conclusion on the by-law
18 and the Act governing it, that they should have found a nexus
19 between the chimney fire and the fire 12 hours later that
20 destroyed the house. The evidence is equivocal as to the
21 cause of the fire. Philbin gave one explanation, Aikens
22 gives another. There may be other explanations for it. No
23 one was able to tell me where the fire started. There is no
24 evidence from which I can conclude, on the balance of
25 probabilities, that the first fire had anything to do with
26 the second or that there was any residual fire after the Fire
27 Department left the residence of Mrs. Bovingdon. In my

1 view, there has to be evidence of a nexus for me to conclude
2 that. It is not good enough to speculate that this may have
3 been the cause, when any number of other things may have
4 happened as to the cause of the second fire. Of course,
5 in the diary of Mrs. Bovingdon she said she burned some
6 pork chops and poured the grease into the stove, and that
7 may explain the flames or flame seen by Mrs. Friesen,
8 maybe not, but that is another explanation for what was
9 seen and I can't, in all the circumstances, conclude that
10 there was any continuing fire in this chimney after the
11 Fire Department left. Accordingly, the plaintiff has
12 failed to prove its case on the balance of probabilities
13 and the action is dismissed, with costs. Anything further?
14 MR. SINGLETON: Nothing further, My Lord.
