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Oral Reasons for Judgment

*To Doreen to  
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binder.*

Date: 20000215  
Docket: 36939  
Registry: Kelowna

IN THE SUPREME COURT OF BRITISH COLUMBIA  
(IN CHAMBERS)

Oral Reasons for Judgment  
Mr. Justice Wilkinson  
February 15, 2000

BETWEEN:

WAYNE SWITYK and YVONNE SWITYK

PLAINTIFFS

AND:

ESTATE OF FLEMMING THOLL, by his Executrix  
KRISTEN DOROTHEA THOMA, WILLIAM HEDBERG and  
STATESMEN REALTY CORPORATION doing business as  
REALTY EXECUTIVES OF KELOWNA

DEFENDANTS

Counsel for the Plaintiffs:

Chris A. Fraser

Counsel for the Defendants:

Thomas W. Barnes

[1] THE COURT: This is an application under Rule 18A to  
dismiss the plaintiff's claim against the defendant  
Regional District, based upon limitation defences set out  
in Sections 285 and 286 of the **Municipal Act**. It is clear  
on the facts that neither notices or substantial

limitations were met.

[2] The first issue is the application for adjournment by the plaintiffs, who say they need more time to prepare for and consider the application. On that issue, I am satisfied, and, indeed, it is not denied, that the defendant has been fair from the beginning in advising the plaintiffs that limitations were a substantial issue. They requested a reply on the issue, without response. They have conducted examinations for discovery on limitations issues, including unpleaded reply issues such as lack of knowledge or lack of advice. There has been proper notice of this application. The plaintiffs, although advised of this application, chose not to attend their lawyer's office until yesterday.

[3] Despite all that, I would likely have granted an adjournment if counsel were able to advise us of anything that would indicate a ground for relief from the operation of the limitation provisions whether under Section 6 of the **Limitation Act** or otherwise. Unfortunately, he cannot. That being the case, I have listened to the facts recited by counsel for the defendant Regional District dealing with the purchase of the house, the build-up of knowledge, including expert reports concerning the problems with the wall, the issue of the writ, in June, 1997, and ultimately the addition of the Regional District

in March 1999. I am satisfied that this is a case where the limitation defences must prevail and costs must follow the event.

[4] Thank you both.