COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Parsons v. Finch,***
2006 BCCA 513

Date: 20061110
Docket: CA033671

Between:

Lynda Parsons and Don Parsons

Appellants
(Plaintiffs)

And

Trevor Finch and City of Richmond

Respondents
(Defendants)

And

Trevor Finch and Digs Consultants Corporation

Third Parties
(Third Parties)

Before: The Honourable Madam Justice Huddart
The Honourable Mr. Justice Hall
The Honourable Mr. Justice Lowry

Oral Reasons for Judgment

Appellants appearing In Person

D. McKnight
K. Zimmer
Counsel for the Respondent City of Richmond

Place and Date of Hearing: Vancouver, British Columbia
9 November 2006

Place and Date of Judgment Vancouver, British Columbia
10 November 2006

[1] **LOWRY, J.A.**: This appeal is taken from the judgment of Mr. Justice Ralph who dismissed a claim for negligence in issuing a building permit brought by Don and Lynda Parsons against the City of Richmond (2005 BCSC 1733). They purchased a lot on which they built a house after obtaining the required building permit from the City. Much of the construction was done by Mr. Parsons who is an experienced carpenter. The house settled unevenly because the subsoil of the property, which contains substantial volumes of peat, was not adequately prepared. The remedial work necessary to maintain the habitability of the house would be in excess of $300,000. The judge determined that no case in negligence had been made out given what he concluded to be the limited extent of the duty of care which the City owed to the Parsons and the standard of care that it met in issuing the building permit. The Parsons contend that he failed to address the case they sought to make out.

[2] In accordance with its building by-law (No. 5882) enacted under the ***Municipal Act,*** R.S.B.C.1979, 290 (now the ***Local Government Act,*** S.B.C. 1996, c. 323), the City required the Parsons to provide a geotechnical report with the plans for the structure under the seal of a qualified engineer as well as a field report once the site was prepared together with assurances certifying compliance with the ***British Columbia Building Code*** (the "***Code***") before the building permit was issued. The Parsons engaged an engineer who provided a report containing his recommendations for the excavation and preparation of the site. He signed the plans of the structure and of the foundations as modified by him. In so doing, he certified the structural and geotechnical components of the plans and supporting

documents to be in compliance with the ***Code***. He also provided a field report of his inspection when the preparation of the site had been completed giving his assurance that he had conducted a subsurface investigation and that the soils affected by the building had been prepared in accordance with his recommendations. The Parsons recorded their acknowledgment that they had been advised in writing by the City that it would rely on such in issuing the permit and the City undertook no geotechnical inspection of its own.

[3] The Parsons engaged a second engineer to conduct an inspection after the settling had become apparent. He determined that the extent of the removal of the peat had been variable and that both the initial investigation of the site and the field inspections where inadequate.

[4] The judge stated the allegations of negligence made against the City as follows:

> [3] Central to the action is Mr. and Mrs. Parsons' claim that the City of Richmond ("the City") was negligent in failing to carry out proper inspections of the property, in relying on the certification of an independent engineer, Mr. Finch, and in not ensuring compliance with the building code and related statutes and by-laws.

[5] Upon reviewing the provision of the ***Act*** and the City's by-laws and discussing some of the authorities, the judge concluded as follows:

> [47] In issuing building permits, the City owes a duty of care to those who are constructing or purchasing buildings. The duty extends to the reasonable inspection of plans and building sites to provide "for the health, safety and protection of persons and property" (***Municipal Act,*** R.S.B.C. 1979, c.290, s. 734). In my view, the decision of the City to utilize a "professional design" process expressed in Bylaw No. 5882

> when structural components of buildings fall within Part 4 of the Building Code and where the building inspector determines that a subsurface investigation is warranted was a true policy decision. Because utilization of the "professional design" scheme constituted a true policy decision, the City is therefore immune from negligence liability in failing to inspect the soils preparation.

He then went on to also conclude:

> [52] At the operational implementation level of this policy, I conclude that an appropriate standard of care was met by the City. In the present case, Mr. Woo, while not a geotechnical engineer, ensured that a soils report was prepared and provided, that information concerning the bearing capacity of the footings was present on the drawings and that the necessary letters of assurance of work being carried out, including field reviews, were provided by Mr. Finch in conformity with the building bylaw. While cursory, Mr. Woo's review in many respects sought to ensure compliance with the bylaw's requirements. In addition, the standard of care applied by the City reviewing the plans was in line with that in place in other local governments in British Columbia.

[6] Thus the judge determined that the City was not negligent in relying on the geotechnical reports and assurances it received in issuing the building permit rather than conducting its own inspection of the subsoil preparation. We have not been shown any reviewable error in that regard. But the Parsons contend that the judge failed to address their allegation that the City was negligent in issuing the building permit when the plans (i.e., the plans for the foundations of the house) did not conform to the ***Code***.

[7] They point to provisions of the ***Code*** that contain information they say was required to be on the plans submitted for the construction of the house but was not supplied and in particular information about the bearing capacity of the soil that they say was not properly addressed.

[8] However, even if there was a failure on the part of the City to ensure that the plans conformed to the ***Code***, and that its failure could be said to have amounted to negligence that was in some way causative of the loss the Parsons have suffered as a result of the settling of their house, which on the evidence appears less than clear to me, I do not see any basis on which the Parsons can overcome the complete defence available to the City under the provisions of the ***Act*** that were in force at the time their building permit was issued:

> 755.4 If a municipality issues a building permit for a development that does not comply with the Provincial building code or other applicable enactments respecting safety, the municipality must not be held liable, directly or indirectly or vicariously, for any damage, loss or expense caused or contributed to by an error, omission or other neglect in relation to its approval of the plans submitted with the application for permit if:
>
> (a) A person representing himself or herself as a professional engineer or architect registered as such under Provincial legislation certified, as or on behalf of the applicant for the permit, that the plans or aspects of the plans to which the non-compliance relates complied with the then current building code or other applicable enactment to which the non-compliance relates, and
>
> (b) The municipality, in issuing the building permit, indicated in writing to the applicant for the permit that it relied on the certification referred to in paragraph (a).

[9] The engineer did certify on behalf of the Parsons who applied for the building permit that the plans for the construction of the house on the property complied with the ***Code*** and the Parsons acknowledged that they had been advised in writing that the City was relying on the engineer's certification.

[10] The Parsons say that the following section of the ***Act*** precludes the City from relying on the defence:

> s.734(7) Where a municipality, in issuing a building permit, indicates in accordance with section 755.4(1)(b) that it is relying on a certification of compliance referred to in that subsection, the municipality shall reduce the fee for the permit to reflect the costs of the work that would otherwise be done by a building inspector to determine whether the plans or that aspects of the plans that were certified to comply do in fact comply with the Provincial building code and other applicable enactments respecting safety.

[11] They say that there was no reduction in the fee they paid and that such is required if the City intends to rely on s. 755.4. But I do not consider that to be the case. Section 755.4 contains no reference to s. 734(7) and there is no provision that the City's immunity is in any way conditional upon a reduction in the fee.

[12] The Parsons cite ***Dha v. Ozdoba*** (1990), 39 C.L.R. 248 (S.C.). That was a case where in similar circumstances that occurred in 1986 the City was held liable for issuing a building permit after approving deficient plans for the foundations of a house that settled in much the same way and for much the same reason as the Parson's house settled. The plans were deficient because it was readily apparent that the information provided was insufficient to make a determination as to whether the design was adequate or appropriate for the soil conditions. But the City's policy as reflected in its by-law was materially different in 1986 from what it was in 1993 when the Parsons applied for their building permit and more importantly s. 755.4 of the ***Act*** had not been enacted. That did not occur until 1990.

[13] I conclude that the immunity from liability the legislature of this Province has seen fit to afford the City under s. 755.4 of the ***Act*** defeats the Parsons' claim for negligence in relation to the issuance of the building permit if the plans they submitted did not conform to the ***Code***.

[14] The Parsons press a further claim for negligence here as they did at trial based on what they say was a misrepresentation by the City of facts and information that was significant to the preparation of the subsoil for the foundations of their house. The Parsons say that the City informed them that the foundation of their house should be at 0.9 metres geodesic datum or 50 millimetres above the elevation of the centre of the road adjacent to their property when the City Council had adopted a policy as part of its Floodplain Management Plan that would provide for a building elevation of 3.0 metres. The Parsons say that, had they known of the plan, they would have constructed their foundations accordingly and had they done so the foundations of their house would have been better supported.

[15] The requirement is not, however, a legal requirement and, on the evidence, the policy was not applicable to their house in any event. The judge disposed of this aspect of the Parsons' claim as follows:

> [60] At the time the building permit was issued to Mr. and Mrs. Parsons, however, the City's Bylaw No. 3720 set the applicable elevation requirements at 0.90 metres geodesic datum. The policy objective of Policy 7000 relating to building floor elevations was not and is still not a legal requirement and the information provided by the City to Mr. and Mrs Parsons was not untrue or inaccurate. While the City owed a duty of care to Mr. and Mrs. Parsons, virtually no evidence was led to demonstrate that the City acted negligently in failing to inform Mr. and Mrs. Parsons about Policy 7000 and there is insufficient proof of damages resulting to Mr. and Mrs. Parsons from the City's

> failure to inform them of the implications of the Policy 7000 (see ***Queen v. Cognos Inc.,*** [1993] 1 S.C.R. 87). I am not satisfied that this claim has been proven.

[16] I am unable to see any basis for interfering with this conclusion. The Parsons were properly informed of the legal requirements pertaining to the elevation of the foundations of their house which apparently was what they sought.

[17] On this appeal the Parsons seek to introduce fresh evidence, however, none of it would alter my conclusion with respect to the disposition of the appeal and I would accordingly not admit the evidence.

[18] I would dismiss the appeal.

[19] **HUDDART, J.A.**: I agree.

[20] **HALL, J.A.**: I agree.

[21] **HUDDART, J.A.**: The appeal is dismissed.

The Honourable Mr. Justice Lowry