

COPY

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Docket: 25355
Registry: Kamloops

IN THE SUPREME COURT OF BRITISH COLUMBIA

(IN CHAMBERS)

Oral Reasons for Judgment
Mr. Justice Cole
December 4, 1998

BETWEEN:

JIM WIEWIOR and
LYNN BRAGAGNOLO

PLAINTIFFS

AND:

NORMAN PATTYSON,
OPERATING AS N & P CONTRACTING,
N & P CONTRACTING
and THE CITY OF KAMLOOPS

DEFENDANTS

Counsel for the Plaintiffs:
Counsel for the Defendant, the City
Of Kamloops:
Counsel for the Defendants, Norman
Pattyson and N & P Contracting:

Andrew S. Berna
Jeffrey W. Locke
Gary Woitas

[1] THE COURT: This is an application for summary trial under Rule 18(a) by the City of Kamloops to have the Plaintiffs' claim dismissed. The Plaintiff commenced this action asking for damages against the Defendants, The City of Kamloops and the contractor, alleging that water damage

occurred to the home because no permit was obtained or perimeter drain tile installed in the construction of the home.

[2] The building code enforced by the City Building Inspection Department was the 1985 *British Columbia Building Code* and the relevant section is 9.14.2.1 which states:

Unless it can be shown to be unnecessary, the bottom of every exterior foundation wall shall be drained by drainage tile or pipe laid around the exterior of the foundation in conformance with subsections 4.1, 4.3, or by a layer of gravel or crushed rock in conformance with section 9.14.4.

[3] The Plaintiffs' home is located in an area called the Coach Hill Subdivision, Phase 4. Stanley Associates Engineers Ltd. made an application to the City on behalf of the developer for approval of the subdivision, and in response to the application the City required that the developer provide a written report prepared by a professional engineer which analyzed the subsurface geology for the presence of groundwater and its potential impact on building structures. The requested report was also to make recommendations regarding the provisions of perimeter drainage tile and connections to the storm main.

[4] The City received from Stanley a copy of a geotechnical engineer's report that was prepared by Hardy

B.B.T. Ltd., Consulting Engineers (the "Hardy Report").

The purpose of the Hardy Report was to determine the soils and groundwater conditions at the site with respect to the geotechnical design recommendations and a particular need for permanent foundation drains. The Hardy Report concludes:

Results of our geotechnical investigation indicates the groundwater is at depth and confined within the bedrock. As this is a groundwater recharge area and the local soils and bedrock have low permeability, most recharge water will be dispersed as surface runoff and minimum soil filtration, although seasonal fluctuations can be expected. Based on these conditions, permanent foundation drains are not required for residential homes completed in Phase 2 and 3 of the development.

Stanley also advised the City that perimeter drains would not be required and it would not be necessary to instal sewer storm connections.

[5] The developer sought approval for Phase 4 and the City requested additional advice and recommendations from the developer concerning the soils and groundwater conditions in respect of Phase 4. By a letter dated the 21st of August 1989, Hardy advised Stanley that the conclusions and recommendations made regarding Phase 2 also applied to Phase 4, as test holes had been dug across the entire site. That letter was forwarded to the City by Stanley and received by the City on the 22nd of August, 1989.

[6] The City was familiar with Hardy and considered them to be a firm of engineers who had the necessary expertise and experience to make recommendations regarding any perimeter foundation drains.

[7] The City relied upon and accepted the conclusions and recommendations made in the Hardy Report and was satisfied that the installation of the perimeter drain tiles had not been shown to be necessary in the construction of the Plaintiffs' residence. Accordingly, the City did not require the perimeter drain to be installed during the construction of the Plaintiffs' residence.

[8] The Plaintiffs' home was completed and possession was obtained in February, 1990. Subsequently, the Plaintiffs suffered damage to their home because of water seepage.

[9] Did the City meet the standard of care required in these circumstances? In the case of *City of Vernon v. Manolakos* (1989), 46 M.P.L.R. 217, (S.C.C.), La Forest J. at p. 224 states:

It must be borne in mind that a municipality, once it has made the policy decision to inspect construction, is not bound to discover every latent defect in a given project, nor every derogation from applicable standards. That would be to hold the municipality to an impossible standard. Rather, a municipality is only called upon to show reasonable care in the exercise of its powers of inspection. Accordingly, a municipality, whether the duty of care is owed to an owner, builder or a third party, will only incur liability for such defects as it could reasonably be

expected to have detected and to have ordered remedied.

[10] The Plaintiffs have filed an expert report that gives the opinion that the perimeter drain tile is required in this particular area. The Plaintiffs' position is that it is unreasonable for the City to rely upon the reports of Stanley and Hardy in view of the Plaintiffs' engineering reports and in view of the fact that the Plaintiffs' home has been subject to flooding.

[11] This particular point, however, I am satisfied was covered by Lambert J.A. in the *Gallen v. Allstate Grain Co. Ltd.* (1984), 9 D.L.R. (4th) 496, (B.C.C.A.). In that case a Mr. Nunweiler had assured the Plaintiffs that in planting buckwheat, the crop would grow and cover the field like an umbrella, smothering all weeds. In fact, the weeds grew and smothered the buckwheat crop. The Plaintiffs sued for negligent misrepresentation. Lambert J.A. at page 505 states:

Mr. Justice Paris also considered the claim for negligent misrepresentation. He did not decide whether a duty of care existed because, assuming that it did exist, Mr. Nunweiler had complied with a reasonable standard of care. Mr. Nunweiler had relied on his expertise in Saskatchewan. He had relied on an expert in buckwheat and he had relied on government publications. They all turned out to be wrong. Mr. Nunweiler was not negligent when he relied on them and assured the Plaintiffs that the buckwheat would smother the weeds.

[12] I am satisfied that it was reasonable for the City to rely upon the engineering reports of Hardy and Stanley. I do not find that the City was negligent. I dismiss the claim against the City. Costs will follow on Scale 3.