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Big win for B.C. condo owners

City of Delta ordered to pay damages for leaky units

After years of grief and waiting, a group of owners of leaky condominiums in Delta, B.C. has finally had its first big win. Late last month, Judge William Grist of the B.C. Supreme Court put provincial municipalities on notice that they may be liable for damages suffered in the leaky condo fiasco. He ordered the city of Delta to pay damages of \$3.15 million to the owners of 85 condominiums at the Riverwest Estates project.

All three buildings comprising the Riverwest development were constructed in 1990 and fully occupied by the fall of 1991. Their design incorporated terraced decks, balconies, a flat roof, and stucco walls. The buildings are wood frame construction and the suites have exterior windows and doors opening onto the decks and balconies.

The developer, general contractor, structural engineer and building design company were named as defendants when the owners began their lawsuit five years ago. By the time it got to trial, the case involved only the condominium owners and the municipality of Delta. The allegations against Delta were that it was negligent in approving the application for the building permit, in inspecting the construction, and in the final act of issuing the occupancy permit.

Shortly after the first owners moved in, they began to complain about the construction of the decks and balconies. Improper slopes in their design resulted in water pooling on the surfaces. Due to the defective design as well as repeated attempts at repairs over the years, water began to leak into the interior and exterior walls, window surfaces and ceilings.

Water leaking into the exterior walls caused significant wood rot which began to destroy the structural beams of the buildings. When repairs were eventually begun, it was discovered that the joists were not adequate to support the decks and balconies because they were not properly fixed onto supporting beams. To make matters worse, the chimneys were not resting on the foundation footings.

Total repair costs were more than \$3 million, or between \$40,000 and \$60,000 per unit.

After an extensive analysis, Judge Grist ordered Delta to pay \$3.15 million plus five years of interest on that sum, and costs. In reaching his decision, the judge relied heavily on the Supreme Court of Canada decision in the Toronto case of *Ingles vs. Tutkaluk* (see the column *City takes hit for shoddy reno*, June 23, 2001).

That case involved a house on Macpherson Ave. in Toronto. Owner James Ingles hired a contractor to lower the basement floor by underpinning the basement walls with new, deeper foundations. Toronto building officials inspected the job during construction and signed off on it.

The basement began to flood after the job was complete, and Ingles had to pay another contractor \$57,000 in repair costs. The country's highest court upheld the decision of trial judge Roger Conant, who awarded Ingles damages for repairs, interest and costs. Toronto's final bill for its negligent inspections came to \$185,000.

In the Delta leaky condo case, the B.C. court quoted extensively from the Ingles decision, and endorsed the rule of law that a regulatory body is responsible in damages resulting from its negligent acts. Quoting Justice Bastarache of the Supreme Court of Canada in the Ingles case, the B.C. court said, "Once a government agency makes a policy decision to inspect, in certain circumstances, it owes a duty of care to all who may be injured by the negligent implementation of that policy."

The decision in *Strata Plan NW 3341 vs. Canlan Ice Sports Corp.* will no doubt be the harbinger of numerous similar cases against cities and towns all over British Columbia. Some, like Coquitlam and Port Moody, are covered by insurance, but others could face bankruptcy.

John Grasty, representing the Coalition of Leaky Condo Owners (COLCO) estimates that there are about 1,100 leaky condo buildings in British Columbia. If each building costs an average of \$2 million to repair, provincial municipalities could get hit with \$2.2 billion in damages. Even the government has admitted that the repair costs for 65,000 defective units could exceed \$1.5 billion. COLCO has asked the B.C. government to declare the situation a national emergency.

The tragic toll in human suffering cannot be expressed simply. Tens of thousands of B.C. families continue to suffer emotionally, financially and physically. They have been living for years with leaks, rot and mould in their homes, and at last count, 7,500 of them had declared bankruptcy. If each building starts only one lawsuit, the B.C. court system could be tied up for years.

A commission chaired by former premier Dave Barrett was critical of the bankrupt New Home Warranty of British Columbia Inc., which had assets of about \$22 million but faces claims from leaky-home owners totalling \$128 million or more, depending on who's counting. No money has been paid to NHWBC's creditors, and its bankruptcy trustee is starting a government-funded review that could lead to lawsuits against its former officers and directors.

The Barrett Commission said that NHWBC directors - most of them builders - may have been in a conflict of interest as the program wound down. Its final report said that NHWBC did not have adequate reserves, did not charge premiums that were high enough to cover the risk, and allowed money to flow from NHWBC coffers to fund another industry organization.

Advocacy groups like COLCO have echoed the Barrett Commission's call for a police investigation and a forensic audit, but the local RCMP commercial crime unit stated that there were no grounds to launch a criminal investigation.

One would hope that the decision in the *Strata Plan NW 3341* case will increase pressure on the provincial and federal governments to come up with a fair and complete compensation package for the negligence of governments and industry. The homeowners of B.C. deserve no less.

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