

Dick Byl

No. 7870  
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**PRINCE GEORGE**  
**JAN 24 1939**  
**REGISTRY**

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5 BETWEEN: )  
6 BOLYNE ENTERPRISES LTD. )  
7 PLAINTIFF )  
8 )  
9 AND: )  
10 ABE REIMER & SONS LTD., )  
11 KARL MATZHOLD, JACK CALDWELL, )  
12 DISTRICT OF VANDERHOOF, and )  
13 PAUL BLOOMFIELD )  
14 DEFENDANTS )

REASONS FOR JUDGMENT

OF

THE HONOURABLE

JUDGE PERRY

- AND -

IN THE SUPREME COURT OF BRITISH COLUMBIA

No. 6016  
Prince George Registry

15  
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19 BETWEEN: )  
20 ABE REIMER & SONS LTD. )  
21 PLAINTIFF )  
22 AND: )  
23 KARL MATZHOLD, DISTRICT OF )  
24 VANDERHOOF, JACK CALDWELL, )  
25 REGIONAL DISTRICT OF )  
26 BULKLEY-NECHAKO, and PAUL )  
27 BLOOMFIELD )  
28 DEFENDANTS )  
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4 Dick Byl, Esq.

for the Plaintiff  
Bolyne Enterprises Ltd.

5 W. Glen Parrett, Q.C.

for Abe Reimer & Sons  
Ltd.

6  
7 J. Harold Bogle, Esq.  
and Dan Marcotte, Esq.

for the defendants Karl  
Matzhold and Karl Matzhold  
Construction Ltd.

8  
9 Thomas W. Barnes, Esq.

for the defendants  
District of Vanderhoof,  
Jack Caldwell and  
Paul Bloomfield

10  
11 Date and Place of hearing:

Prince George, B. C.  
September, 21, 22, 23,  
24, 25 and December,  
10 and 11, 1987.

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15 These two actions for damages in negligence arose out  
16 of the collapse of part of the roof of a one-storey retail store  
17 building located on Stewart Street in Vanderhoof, British  
18 Columbia. They were tried together by court order.

19  
20 The roof failed during the late night or early morning  
21 of February 6 - 7, 1985, about 6 1/2 years after the building  
22 had been newly constructed in 1978.

23  
24 The Parties

25 At the time of the collapse and throughout the preceding  
26 three years Bolyne Enterprises Ltd. ("Bolyne") occupied under  
27 a lease about three-quarters of the building in which it carried  
28 on business as a retail hardware and dry goods store under the  
29 name of Macleods Family Shopping Centre by way of a franchise  
30 from the Macleods store chain. The remainder of the building

2  
3 was occupied at the time of the collapse by a specialty food  
4 store which apparently suffered no damage and is not involved  
5 in this litigation.  
6

7 The breakdown of the roof created a large hole through  
8 which beams, ceiling parts, debris and snow tumbled down to  
9 the retail shopping floor below. Fortunately no customers or  
10 employees were in the store at the time hence no resultant  
11 personal injuries. Extensive structural damage was caused to  
12 the building itself and to the contents of the store.  
13

14 The building and the land on which it was erected belonged  
15 to Abe Reimer & Sons Ltd. (the "owner" or the "Reimer Company")  
16 whose sole shareholder, director, and operating functionary  
17 was Mr. Abram Reimer. He had acquired the Macleods franchise  
18 for Vanderhoof in 1972. He conducted the business from premises  
19 on Burrard Street as a sole proprietor, until 1973 when he  
20 incorporated the Reimer Company which then assumed ownership  
21 of the business. In early 1978 he decided to erect the new  
22 building in question on Stewart Street in order to provide larger  
23 premises for his Company. The building was completed in  
24 mid-August, 1978. The Reimer Company then carried on business  
25 in the new building as owner-occupier for about three years  
26 until December, 1981, when Bolyne acquired the Macleods franchise  
27 and subleased the store premises from the Reimer Company. During  
28 the time of occupation by the owner, Reimer Company, and by  
29 Bolyne respectively nothing occurred to indicate to either  
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3 occupant the presence of problems with the roof or its support  
4 structure, the beams and trusses, or of any structural flaw  
5 in the building until the roof collapsed in February, 1985.  
6 There was no inspection of the beams between the time of Reimer's  
7 occupation and the collapse. The matter was not treated in  
8 argument as one where such inspection would be normal or  
9 practicable but as a hidden defect because a suspended T-bar  
10 ceiling had been built below the trusses and beams.  
11

12 Pragmatically the Reimer Company and Mr. Reimer were  
13 one and the same, and in my frequent references hereafter to  
14 Mr. Reimer I intend them as embracing his Company. Having decided  
15 he would put up the new building on three lots on Stewart Street  
16 which had been acquired in the name of his Company for the  
17 purpose, Mr. Reimer in early 1978 approached and consulted Mr.  
18 Karl Matzhold whom he had known for some years. Mr. Matzhold  
19 was the sole shareholder, director and operating head of Karl  
20 Matzhold Construction Ltd. (the "Matzhold Company"), a one-man  
21 Company carrying on a construction business in Vanderhoof.  
22 Throughout 1978 and for approximately five years thereafter  
23 Karl Matzhold Construction Ltd. retained its corporate status  
24 as a valid and subsisting corporate entity in good standing,  
25 but in about 1983, before the writs herein were issued, and  
26 before the roof collapsed, the Matzhold Company was struck from  
27 the register and ceased legally to exist. There is no evidence  
28 that an application had been made up to the time of trial for  
29 its restoration under the Company Act.  
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4 The local municipal authority in 1978 was the Corporation  
5 of the Village of Vanderhoof which accepted plans for the building  
6 and issued a building permit on April 3, 1978, authorizing  
7 construction to proceed. At the end of 1982, before these actions  
8 were instituted, the Village was superseded by and became known  
9 as the District of Vanderhoof, which took over its duties and  
10 liabilities, if any.  
11

12 Each plaintiff pleads that Paul Bloomfield and Jack  
13 Caldwell were building inspectors employed by the Village of  
14 Vanderhoof during the material times in 1978.  
15

16 The Defendant Jack Caldwell was admittedly employed by  
17 the Village of Vanderhoof as its building inspector but he did  
18 not assume his duties until on or about August 1, 1978. By  
19 that time the Macleod's store building was virtually completed.  
20 The posts and beams were already in place and the roof was on.  
21 He had no personal knowledge of what had gone on during  
22 construction of the building prior to his arrival. I find no  
23 negligence on his part causing or contributing to the damages  
24 sustained by reason of the collapse of the roof. Both actions  
25 against him are dismissed with costs if sought.  
26

27 The Regional District of Bulkley-Valley is named as a  
28 defendant in the second action. By notice filed on July 5,  
29 1987, the plaintiff in that action, Abe Reimer & Sons Ltd.,  
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3 discontinued against the said regional district. Accordingly  
4 I order its name removed as a party to that action.  
5

6 The Damages

7 The store premises could not be used by Bolyne following  
8 the cave-in until repairs were carried out by a contractor named  
9 Barkman engaged by Reimer who had accepted Barkman's tender  
10 to restore the building for the Reimer Company. All parties  
11 are agreed as to the quantum of damages suffered by each plaintiff  
12 as a result of the collapse of the roof.  
13

14 The plaintiff occupier, Bolyne Enterprises Ltd., sustained  
15 property damage to its inventory, fixtures and chattels and  
16 suffered business interruption loss in the admitted total amount  
17 of \$99,552.98.  
18

19 The plaintiff Abe Reimer & Sons Ltd. suffered property  
20 damage to its building and incurred costs for repairs in the  
21 total admitted amount of \$81,882.75.  
22

23 Cause Of Roof Failure

24 The bulding is of fairly simple construction. In essence  
25 it is a rectangle comprising 10,800 square feet. It was  
26 constricted from concrete block walls, and included glued-laminated  
27 Douglas fir wood roof beams, wood roof trusses, and plywood  
28 roof decking.

29 The physical cause of the collapse of the roof is not  
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3 in dispute. It was established by two engineering experts,  
4 Mr. D. C. Dennis and Mr. M. D. Tkachuk, who separately inspected  
5 the building and the wreckage in February, 1985, shortly after  
6 the event. Neither expert was called as a witness as to the  
7 cause of the collapse. Their findings are accepted by all parties  
8 and their reports were entered into evidence on consent. They  
9 determined that one of the glulam roof beams had broken at  
10 mid-span. The adjacent roof trusses which were being supported  
11 by this beam came down with it and a portion of the concrete  
12 block west bearing wall was pulled loose and pushed outward  
13 by the collapsing roof. All of the steel columns and the roof  
14 beams and trusses outside the collapsed area remained in place.

15  
16 The failed beam was located centrally on the west row  
17 of a 2-row, 3-span post and beam system. The beam had a span  
18 of 33 feet and a cross section measurement of 5 1/4 inches wide  
19 by 24 inches deep. The beam was undersized. It was not strong  
20 enough to bear the weight of the dead load of the roof area  
21 it was intended to support plus the live load of, for example,  
22 snow and ice that is normal for the Vanderhoof region during  
23 winter. All of the beams which had been incorporated into the  
24 building during its construction in 1978 were undersized. Mr.  
25 Tkachuk found that the collapsed roof area had on it three inches  
26 of loose snow on six inches of compact crystalline snow on 5  
27 to 6 inches of ice. Beams of this size were able to hold no  
28 more than a weight of approximately 35 pounds per square foot  
29 under dead load and live load of snow. This was considerably  
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3 below the acceptable level. According to the experts the beam  
4 in question collapsed while bearing only that load whereas the  
5 National Building Code of Canada in force at the time of  
6 construction required the beams to bear 47 pounds per square  
7 foot. The by-law of the Village of Vanderhoof in force at the  
8 time called for a load bearing capacity of 50 pounds per square  
9 foot. The building permit issued by the Village on April 3,  
10 1978, specified a measurement of 6 3/4 inches wide by 24 inches.  
11 No specifications for the beams were shown on the plans  
12 accompanying the application for the building permit but they  
13 were shown, as above stated, on the construction details appearing  
14 in the building permit.

15  
16 Mr. Dennis expressed the opinion in one sentence of his  
17 report that the beam size of 6 3/4 inches by 24 inches specified  
18 on the bulding permit was also not adequate to support normal  
19 design loads for the spans encountered in the building. Mr.  
20 Tkachuk, however, did not venture to pronounce such an opinion.  
21 He did not make any statement to this effect in his report.

22  
23 Reference was made during argument to the aforesaid Dennis  
24 opinion and it will be well to deal with it at this juncture.  
25 Counsel for the Reimer Company, Mr. Parrett, Q.C., made a  
26 submission arising out of that part of the opinion concerning  
27 the 6 3/4 inch beam size, during his reply to the final arguments  
28 of opposing counsel. Up to that stage it had not been mentioned.  
29 In his earlier principal argument Mr. Parrett submitted, among  
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3 other things, that Matzhold was negligent because he allegedly  
4 ordered a beam which was smaller than the size of 6 3/4 by 24  
5 inches specified on the building permit. In his argument by  
6 way of reply he contended, in effect, that negligence should  
7 also be attributable to Matzhold even if a 6 3/4 inch beam had  
8 been ordered. As I understand it the contention is that a part  
9 of the opinion of Dennis shows that the roof would have collapsed  
10 in any event with a 6 3/4 inch beam installed in the structure.  
11 In other words it is said that Matzhold was negligent not merely  
12 in ordering a 5 1/4 inch beam, as Reimer alleges, he did, but  
13 also by specifying 6 3/4 inches at the outset by writing in  
14 that specification on the bulding permit. This was an eleventh  
15 hour submission and does not reflect the way in which the parties  
16 had submitted their arguments and conducted the case up to that  
17 point. There was no dispute that the 5 1/4 inch beam was too  
18 small. The factual point of contention was as to who was  
19 responsible for ordering it. In these circumstances I think  
20 it inappropriate for the court to be called upon to decide whether  
21 or not the insertion of 6 3/4 inches on the building permit  
22 was a negligent act. In any event, it is my view that this  
23 one-sentence opinion of Mr. Dennis should be accorded little,  
24 if any weight. It seems to me that if the Reimer Company intended  
25 to rely upon this single opinion to support the contention made  
26 during its counsel's reply, the Dennis report containing it  
27 should have been shown to Mr. Tkachuk to ascertain whether or  
28 not he agreed with the opinion. There is no evidence that this  
29 was done or that the two experts exchanged reports. Additionally,  
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3 Mr. Dennis did not give in his report the factual basis for  
4 his opinion that 6 3/4 inch beams would be undersized as required  
5 by s.11(1) of the Evidence Act, R.S.B.C. 1979, C.116. I see  
6 nothing in his report, and nothing was referred to by Mr. Parrett,  
7 that provides a foundation for the opinion. Accordingly I think  
8 that the Dennis opinion on this point should be regarded as  
9 speculative and I put it aside.  
10

11 The beams that were incorporated into the building,  
12 including the failed beam, were manufactured by Coast Laminated  
13 Timbers Ltd. of Delta, B. C. There is no suggestion that any  
14 of the beams were poorly manufactured or carried any patent  
15 or latent physical defect. The only inference open on the  
16 evidence is that the manufacturer made beams of the size requested  
17 by the person who place the order for 5 1/4 inch beams. The  
18 manufacturer has not been sued in either of the two actions.  
19

20 Mr. Reimer denies that he ordered the beams. Mr. Matzhold  
21 takes the same position. Each one blames the other. The sole  
22 issue in both cases is liability. All the defendants in each  
23 case disclaim responsibility for the collapse of the roof.  
24 Broadly stated, those defendants who owed a duty of care to  
25 each plaintiff and who breached that duty are liable for the  
26 foreseeable damages resulting from their proven negligence subject  
27 to any considerations which ought to negative or limit the scope  
28 of the duty.  
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3 The first action appearing in the style of cause as No.  
4 7870 is a claim for its damages by Bolyne Enterprises Ltd.,  
5 the lessee-occupier, for damages in negligence brought by writ  
6 dated February 4, 1986, against the following five defendants  
7 jointly and severally: (1) Abe Reimer & Sons Ltd., (2) Karl  
8 Matzhold, (3) Karl Matzhold Construction Ltd., (4) District  
9 of Vanderhoof, and (5) Paul Bloomfield. In addition Bolyne  
10 claims court order interest and costs.

11  
12 There is no suggestion of negligence on the part of Bolyne  
13 causing or contributing to the damage and loss it admittedly  
14 sustained as a result of the breaking of the beam. Bolyne had  
15 not been involved in construction of the building. When it  
16 entered into occupation of the store premises, about 3 1/2 years  
17 after the building had been erected, Bolyne knew that the Reimer  
18 Company had been occupying and using the premises as a retail  
19 store for approximately three years.

20  
21 By its amended statement of claim Bolyne alleges that  
22 the first, second, and third defendants or a combination of  
23 them defectively constructed the store building in 1978 and  
24 in so doing they were negligent. Particulars of their alleged  
25 negligence as pleaded are: (1) In using inferior and unsuitable  
26 building materials in particular for the roof; (2) In selecting  
27 glue-laminated wood beams which were incapable of carrying the  
28 design loads as required by the National Building Code of Canada;  
29 (3) In failing to secure the services of an architect or engineer  
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3 to prepare plans or to supervise the construction of the building  
4 and in particular the roof; (4) In failing to comply with the  
5 requirements of the National Building Code and the by-laws.  
6

7         The first, second and third defendants deny liability.  
8 The first defendant, The Reimer Company, defends the Bolyne  
9 action on the ground that no negligence on its part has been  
10 proven against Mr. Reimer so as to make his company directly  
11 liable to Bolyne; that he employed Karl Matzhold Construction  
12 Ltd. as an independent contractor whose work was done by its  
13 employee Karl Matzhold, whose negligence was the effective cause  
14 of the collapse of the roof, and that the Reimer Company is  
15 not vicariously responsible for the negligence of the independent  
16 contractor. The Reimer Company says that the collapse occurred  
17 solely as a result of the negligence of the defenddant Karl  
18 Matzhold or alternatively as a result of the combined negligence  
19 of Karl Matzhold, Karl Matzhold Construction Ltd., District  
20 of Vanderhoof and its employee Paul Bloomfield and other employees  
21 carrying out the functions assigned or normally assigned to  
22 a building inspector. Essentially the basis of the Reimer  
23 Company's denial is that Matzhold was the person responsible  
24 for construction and he, not Reimer, ordered the beams.  
25

26         The second and third defendants deny that the Matzhold  
27 Company was engaged by Reimer as the general contractor. They  
28 say that Reimer was his own general contractor; that under a  
29 contract in writing made between the two companies on April  
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3 4, 1978, the Reimer Company assumed responsibility for materials  
4 and pursuant thereto Reimer ordered the undersized beams and  
5 delivered them, including the failed beam in question to the  
6 building site; that among other things, by way of preparatory  
7 work, Reimer ordered posts containing saddles of a size made  
8 to fit a beam measuring 5 1/4 inches. These defendants further  
9 say that Bolyne has failed to prove any negligence on the part  
10 of Mr. Matzhold personally; that if any negligence causing damage  
11 to Bolyne by Matzhold or his Company is proven which is denied,  
12 any such liability should be attributed to the Matzhold Company  
13 and not to Karl Matzhold.  
14

15 As against the fourth and fifth defendants, District  
16 of Vanderhoof and its building inspector Paul Bloomfield, the  
17 plaintiff Bolyne alleges negligence in: (1) Inspection of  
18 the beams by Bloomfield and his failure to measure the beams;  
19 (2) Approval by the Village of inadequate plans which did  
20 not comply with the requirements of the Village by-law in force  
21 at the time; (3) Issuing a building permit on the basis of  
22 inadequate plans; (4) Failing to maintain proper records.  
23

24 The municipal authority defends the Bolyne action on  
25 the following grounds. Firstly it says that although Mr.  
26 Bloomfield commenced to carry out certain functions on behalf  
27 of the municipality as its part-time building inspector on April  
28 20, 1978, and continued to do so for about 3 1/2 months until  
29 he was replaced by Mr. Caldwell as full-time inspector, he was  
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3 not the municipality's building inspector at any time because  
4 he was not formally appointed to the position by resolution  
5 of the Municipal Council in accordance with the provisions of  
6 s. 4 Part 2 of the Village By-Law No. 201. The submission is  
7 that because the Council did not by resolution take the policy  
8 decision to impose upon the Village the statutory duties which  
9 are placed upon a building inspector, the Village owed no duty  
10 of care to any of the parties. Secondly, and in the alternative,  
11 if Bloomfield was negligent in failing adequately to inspect  
12 the beam, which is denied or if there was any lack of care in  
13 the approval of the plans in issuing the building permit by  
14 the Village, all of which is denied, a valid issue admittedly  
15 arises as to the duty of care owed by the Village to Bolyne,  
16 but not in respect of the Reimer Company which was a defaulting  
17 and negligent owner-builder, the source of its own loss; thirdly,  
18 neither inadequate record keeping by the Village nor the approval  
19 of the plans caused or contributed to the loss suffered by either  
20 plaintiff.

21  
22 In the second of the above-noted actions, No. 6016, the  
23 plaintiff Abe Reimer and Sons Ltd. seeks recovery of its damages  
24 in negligence against Karl Matzhold, District of Vanderhoof  
25 and Paul Bloomfield jointly and severally. Its allegations  
26 parallel those raised by the Reimer Company in its defence of  
27 the allegations made in the Bolyne action. Essentially Reimer's  
28 position is that he engaged Matzhold not merely as a labourer  
29 in charge solely of his own labour force but as a competent  
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3 contractor to construct the building, to make the construction  
4 decisions, and to supply the materials; that Matzhold was  
5 negligent in the performance of his duty to the Reimer Company,  
6 particularly in ordering and installing undersized beams and  
7 that such negligence was the effective cause of the collapse  
8 of the roof.  
9

10 The Reimer Company says, in effect, that there was no  
11 negligence on its part or any factor which negatives or reduces  
12 the duty of care owed to it by the municipality. The Reimer  
13 Company had acted reasonably in engaging a competent builder  
14 to carry out the work. Bloomfield was an employee of the Village  
15 for whose negligence in inspecting the beams and in failing  
16 to review the plans the Village is liable. The Village was  
17 additionally negligent in: (1) Failing to exercise care in  
18 issuing the building permit; (2) Failing to review the plans  
19 before approving them; (3) Failing to maintain proper records.  
20

21 The following third party proceedings have been taken  
22 in the first action brought by Bolyne Enterprises Ltd.: (1)  
23 The defendant Abe Reimer and Sons Ltd. alleging negligence in  
24 the same terms as the alleged negligence set forth in its  
25 pleadings, issued a third party notice against Karl Matzhold,  
26 Karl Matzhold Construction Ltd., District of Vanderhoof, and  
27 Paul Bloomfield claiming indemnity from them in the event that  
28 Abe Reimer and Sons Ltd. is held liable to Bolyne Enterprises  
29 Ltd.; (2) District of Vanderhoof third partied Abe Reimer and  
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3 Sons Ltd., Karl Matzhold Co. Ltd., and Karl Matzhold for indemnity  
4 for any liability to Bolyne Enterprises Ltd. found against them;  
5 (3) Karl Matzhold and Karl Matzhold Co. Ltd. by its third party  
6 notice claims indemnity from Abe Reimer & Sons Ltd., District  
7 of Vanderhoof and Paul Bloomfield.  
8

9 In both the actions all the defendants seek an  
10 apportionment of liability pursuant to s. 4 of the Negligence  
11 Act, R.S.B.C. 1979, C. 298 in the event of the Court finding  
12 shared liability.  
13

14 Facts

15 After leaving school at grade 7 Mr. Reimer worked in  
16 farming, logging and sawmill work and later as a truck driver  
17 until he went into the hardware-cum drygoods business in 1972.  
18 When he decided in 1978 to erect the new building he had settled  
19 in his own mind the type and size of structure he wanted to  
20 put up, which was to occupy as large an area as his Company's  
21 three lots would accommodate. He had been provided by Macleods  
22 with an undetailed sketch portraying their conception of the  
23 appearance of the building upon completion similar to others  
24 of their franchise stores. It was to be a one-storey flat-roofed  
25 structure measuring 90 feet by 120 feet having concrete block  
26 walls, a tar and gravel roof, and no basement. Mr. Reimer  
27 participated to some undefined extent in the preparation of  
28 the sketch.  
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3 In February or March, 1978, Mr. Reimer approached Mr.  
4 Matzhold whom he had known for some years. Matzhold was in  
5 fact working on a commercial building in Vanderhoof at the time  
6 Reimer first approached him. Matzhold Construction Ltd. had  
7 a reputation in Vanderhoof as a competent and experienced building  
8 contractor with experience in constructing commercial buildings.  
9 Mr. Matzhold was himself known as a reliable and competent  
10 builder. Reimer testified in chief that he was not a builder  
11 himself and had never before been involved in building. This  
12 is not entirely accurate. The evidence shows that he was not  
13 altogether unfamiliar with building for he had in the past  
14 demonstrated some aptitude as a carpenter or helper by  
15 participating in the building of one or more houses and a barn.  
16 Reimer also testified that he had no knowledge of materials  
17 that would be required for a building of the type he had in  
18 mind and did not know how to draw or read plans or blueprints.  
19 On cross-examination by Mr. Marcotte, however, he acknowledged  
20 that he did have some experience in ordering materials for  
21 commercial and non-commercial buildings as the owner of a hardware  
22 store but did not deal in or sell plywood, trusses or beams.  
23 And the evidence shows that he ordered materials for his new  
24 building and paid for all the materials.

25  
26 I am satisfied, however, that although possessed of  
27 somewhat more knowledge and experience of materials than he  
28 professed to have, he did need the assistance of such a man  
29 as Matzhold at this preliminary stage. In the first place he  
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3 intended to finance the project by borrowing the money and for  
4 that purpose he had to have a cost analysis prepared for  
5 submission to a financial institution. The overall cost of  
6 the job would mainly be made up of the labour and materials  
7 costs. Reimer testified that he consulted Matzhold for the  
8 purpose of preparing the cost analysis. Secondly, Mr. Reimer  
9 obviously knew that plans had to be prepared. He had no capacity  
10 in this field of expertise, so he asked Mr. Matzhold to draw  
11 the plans for the building described by Reimer and as shown  
12 on the sketch which Macleods had provided. I accept Matzhold's  
13 evidence that Reimer said that it would cost him too much to  
14 engage an architect to do a floor plan for him. As Matzhold  
15 testified, it was a fairly simple structure. Matzhold told  
16 Reimer that he was experienced in plan drawing and could draw  
17 plans for the building Reimer had in mind.

18  
19 In 1978 Vanderhoof was a small community having a  
20 population of about 3000. There is evidence showing that it  
21 was not the practice or policy of the Village authorities to  
22 require the owner to engage an architect to draw or submit plans  
23 to the Village for proposed buildings that were not large,  
24 complex, or multi-storeyed. Based upon his experience as a  
25 building contractor in Vanderhoof since 1967 who had built at  
26 least five commercial buildings, Matzhold was obviously aware  
27 of the practice. There is no evidence that any architect or  
28 engineer was located in Vanderhoof. There is evidence as well  
29 to support the conclusion that in accepting Reimer's invitation  
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3 to draw the plans Matzhold had regard to Reimer's concern to  
4 save expense in this matter. It appears in fact that Matzhold  
5 did not receive any specific sum of money allocated to the drawing  
6 of the plans.  
7

8 Finally, at this preliminary stage, there was the matter  
9 of the building permit. Reimer's evidence as to his knowledge  
10 at the time of the requirement that the owner or his agent must  
11 apply for and obtain a building permit was evasive. I cannot  
12 take seriously his testimony that he does not now remember whether  
13 or not, in 1978, he knew that it was necessary to apply for  
14 and obtain a building permit before construction could begin.  
15 I am satisfied that he knew that it was necessary for him or  
16 his agent to make an application, with accompanying plans, for  
17 a permit, and that he could not himself make the application  
18 as it would be known to the issuing authority that he was not  
19 in the building business and on that account the name of a general  
20 contractor would have to be shown on the application form.  
21

22 For approximately two months after Reimer first approached  
23 Matzhold in February, 1978, the two men had frequent discussions  
24 concerning the project. It seems clear to me that their purpose  
25 was to enable Matzhold to get from Reimer the information Matzhold  
26 needed in order to compile the cost analysis and prepare the  
27 plans. During these discussions Reimer provided Matzhold with  
28 information as to various details of what he wanted, including  
29 such things as the number, location and size of rooms, the floor  
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3 layout, jobs to be done, and the like. As Reimer expressed  
4 it on cross-examination by Mr. Barnes: "Me and Karl got together  
5 on the budget."  
6

7 During this period of time Matzhold drew the plans (exs.  
8 2, 3, and 4) and proceeded upon and carried out his employment  
9 as preparer of the cost analysis, in concert to some degree  
10 with Reimer. Reimer saw the plans when they were completed  
11 and made copies of them.  
12

13 Neither Reimer nor Matzhold clearly recollects what was  
14 said during the course of their many discussions and meetings  
15 during this pre-construction period. They made no notes or  
16 other record of their discussions. To an appreciable extent  
17 both of them in giving evidence made assertions as to what each  
18 assumed or thought concerning their relationship. It is common  
19 ground that Matzhold had agreed to draw the plans and to prepare  
20 the cost analysis, but as to the enlargement of his engagement  
21 to the status of general contractor when the time came for  
22 construction to get underway, the matter is obscure in regard  
23 to this preliminary period of time. At the outset Matzhold  
24 appears to have assumed that Reimer would be his own general  
25 contractor but later believed that he would be invited to take  
26 that role. For his part Reimer testified at one point that  
27 he did not know what a general contractor was. I do not believe  
28 this. In his examination for discovery of October 30, 1985,  
29 he asserted that he did know. He also testified that after  
30

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3 he looked at the plans, with which he was content, he was  
4 satisfied that Matzhold would supervise and look after the  
5 construction of the building. Much of Reimer's testimony is  
6 of that character, being in the form of conclusions or assumptions  
7 without supporting evidence. The Court cannot treat  
8 uncommunicated assumptions or thoughts as legal evidence.  
9

10 Matzhold completed the cost project at about the end  
11 of March, 1978. He forecast the cost of the project to be  
12 \$208,000. This represented a heavy financial commitment for  
13 the Reimer Company. Mr. Reimer testified that it was the largest  
14 financial undertaking he had ever made in his life. He borrowed  
15 the money from a bank. It remained only to obtain a building  
16 permit to get the project under way.  
17

18 This was the time for him to call for tenders if he  
19 intended to do so. But he did not then or at any time issue  
20 a general invitation to contractors to tender a price at which  
21 they would be willing to carry out the project. These facts  
22 impel the inference that he would invite Matzhold to tender  
23 or that they would negotiate for a lump sum price or that he  
24 intended to be his own general contractor. Matzhold never did  
25 quote a lump sum price for which he would do the job.  
26

27 The pre-construction planning and cost analysis services  
28 rendered by Matzhold in February and March were not covered  
29 by any formal contract. When those services were carried out,  
30

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3 apparently to Reimer's satisfaction, he did not then or at any  
4 previous time invite Matzhold to construct the building for  
5 reward. There is no evidence of the making of an oral contract  
6 between them whereby by express words Reimer asked Matzhold  
7 to be the general contractor, or that Matzhold offered to act  
8 in that capacity. The cost analysis and plan drawing stage  
9 was a different phase of the project than the work of actual  
10 construction, but it seems probable, as Matzhold testified that  
11 he believed he would be asked to be the general contractor when  
12 the time came for construction to begin. Matzhold knew that  
13 Reimer had not called for tenders.  
14

15 During cross-examination by Mr. Barnes, counsel for the  
16 Village of Vanderhoof, Reimer testified that he did not call  
17 for tenders generally or offer Matzhold a construction contract  
18 at a lump sum contract price because by refraining from taking  
19 either of these courses he could save himself money by personally  
20 participating in the project by "running around" as he termed  
21 it.  
22

23 In general the scheme and purport of a building contract  
24 is to place responsibility for its execution on one person,  
25 namely, the main contractor. The essence of a building contract  
26 is a promise by the contractor to carry out work and supply  
27 materials in consideration of a promise by the building owner  
28 to pay for it: see Hudson's Building & Engineering Contracts,  
29 10th. ed. at p. 244. This statement supports the submission  
30

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3 of Mr. Bogle, counsel for Matzhold, that there can be only one  
4 general contractor. Matzhold was well aware that a general  
5 contractor is one who fits the above description. In answering  
6 Mr. Barnes, Reimer did not express any ignorance on his part  
7 as to the essence of a building contract. I am satisfied that  
8 he knew what was required if he intended to engage a general  
9 contractor.

10  
11 On April 3, 1978, Mr. Matzhold attended at the Village  
12 office to apply for a building permit. In his evidence he said  
13 that he did so at the request of Mr. Reimer. Reimer's evidence  
14 is that he does not recall telling Matzhold to get the permit  
15 nor does he recall even discussing the matter with him. I accept  
16 Matzhold's assertion against Reimer's lack of recall on this  
17 point.

18  
19 The application form is a pre-printed document provided  
20 by the Village which serves as the permit when signed by the  
21 approving official. Mr. Matzhold inserted, in his handwriting,  
22 in the appropriate boxes on the form the following pertinent  
23 information: "owner - Abe Reimer Sons Ltd.; Contractor - Karl  
24 Matzhold Cons. Ltd., Box 723, Vanderhoof."

25  
26 In the spaces provided in box under the heading  
27 "Construction Details" the printed word BEAMS appears. Opposite  
28 this word Matzhold inserted "6 3/4" x 24" - 34 ft." in his  
29 handwriting and to the right of the word POSTS in the box below,  
30

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3 he wrote "5" x 3/8 - 10 ft." and opposite the words JOISTS he  
4 wrote "Trusses @ 24".  
5

6 Mr. Matzhold signed his name and inserted his Company  
7 name as applicant for the permit. Reimer paid the fee to the  
8 Village for the permit. The signature of John H. King appears  
9 opposite words "Permit Granted." Mr. King was the clerk-treasurer  
10 of the Village of Vanderhoof, which did not have a building  
11 inspector at that time. It was not until April 15, 1978, that  
12 Paul Bloomfield became involved to fill the role of part-time  
13 interim buiding inspector.  
14

15 The permit having been granted authorising construction  
16 to proceed, Mr. Matzhold approached Mr. Reimer with a view to  
17 reaching an agreement to govern their relations thenceforth  
18 and to reduce it to writing. Mr. Reimer assented. For this  
19 reason I do not think that the mere insertion by Matzhold of  
20 his Company's name on the building permit application tends  
21 to show, as submitted by Reimer's counsel, that the Matzhold  
22 Company was then in fact the contractor. It did not amount  
23 to an acknowledgment to Reimer of such status. In my view,  
24 as earlier mentioned, the naming of a contractor on the  
25 application form was necessary, and was an accommodation to  
26 Reimer. It additionally tends to show that at that time Matzhold  
27 probably expected to be nominated as the general contractor.  
28

29 On the evidence of Mr. Alton Myers I infer that Matzhold  
30



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3 and Reimer entered into negotiations probably on April 3, 1978,  
4 following issuance of the permit. The evidence is silent as  
5 to what they said. But on the next day, April 4, 1978, they  
6 attended together at the office of Mr. Myers in Vanderhoof.  
7 He is now retired but at the time in question he carried on  
8 business as a bookkeeper. Matzhold was one of his clients.  
9 He did the Matzhold Company's accounts and kept its records  
10 and documents, among which were pre-prepared tender forms, in  
11 blank, except for the pre-printed words which appear in the  
12 reproduction of the form below. The first discussion between  
13 Reimer and Matzhold in Myers' presence lasted about 20 minutes  
14 to 1/2 hour. Myers does not recall the words they used, but  
15 only the gist of the conversation. According to Myers the gist  
16 of it was that Matzhold was to provide two things, firstly,  
17 supervision of the subtrades and materials; secondly, he was  
18 to provide two workmen and a working supervisor and to assume  
19 all their payroll costs for the sum of \$15 per hour per man.  
20 On cross-examination by Mr. Parrett in reference to the first  
21 meeting the following statement was elicited. "Q. Mr. Reimer  
22 was going to pay for the material and buy the material and do  
23 the running around and Matzhold would build the building and  
24 provide the supervision necessary to do so? A. Correct".

25  
26 According to my notes Myers was not asked whether or  
27 not this was included as part of the gist of the discussion  
28 that Myers recalls. In my view the question sought an opinion  
29 from Myers as to his interpretation of what was said in regard  
30

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3 to Matzhold building the building and should be disregarded.  
4 Reimer says he does not recall anything that was said in any  
5 of the discussions in Myers' office. Nothing was elicited from  
6 Matzhold in his evidence as to his recollection of the words  
7 used. Myers had with him a tender document. It was in this  
8 form with all the words added to the blank form being in his  
9 handwriting.  
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CONTRACTORS

MATZHOLD CONSTRUCTION LTD  
Phone 567-4311 - P.O. Box 723  
Vanderhoof, B. C.  
V0J 3A0

QUOTATION-TENDER

Date

To:

Dear Sirs:

Re:

We hereby offer to supply all labour and material for the above according to plans and specifications for the sum of:

\_\_\_\_\_ and shall include all of the following:

Payments shall be made as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Kindly signify your acceptance of this tender by signing and returning the attached copy.

Yours very truly  
KARL MATZHOLD CONSTRUCTION

We hereby accept the above tender

per:

AUTHORIZED SIGNATURE

1.  
2  
3  
4 At the conclusion of the negotiating discussion Mr. Myers  
5 then filled in the form in words representing the agreement  
6 which the two parties had then reached. He inserted in his  
7 handwriting in ink, in the blank spaces, the words of their  
8 agreement. His evidence that what he wrote on the form was  
9 their agreement at that time was not challenged. It was not  
10 an agreement for labour and materials.

11 That document (ex. 39) after being filled in as I have  
12 described is in the following form:  
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CONTRACTORS

MATZHOLD CONSTRUCTION LTD.  
PHONE 567-4311 - P.O. BOX 723  
VANDERHOOF, B. C.  
V0J 3A0

QUOTATION-TENDER

Date Apr. 5, 1978

TO: Mr. Abe Reimer  
Vanderhoof, B. C.

Dear Sirs:

RE: Construction your new MACLEODS store  
building on Stewart Street

We hereby offer to supply the above according  
to plans and specifications

          x      x      x      x      x          

and shall include all of the following: to completion

- (1) Supervision; which will include supervision and approval of all subs and materials to your best interests.
- (2) Labour: provide a capable and proficient work crew consisting of a working supervisor and two workmen. Payment shall be at the rate of fifteen dollars (\$15) per each man-hour worked and shall include all costs of labour including all employees' benefits, W.C.B. coverage, and pay-roll accounting.

Payment shall be made as follows:

Semi-monthly on presentation of invoicing.

Kindly signify your acceptance of this tender by signing and returning the attached copy.

Yours very truly  
KARL MATZHOLD CONSTRUCTION  
LTD.

We hereby accept  
the above tender

Per \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED SIGNATURE

1  
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3  
4 Mr. Myers gave that document (ex. 39) bearing his  
5 handwriting to his secretary to type in the parts he had written.  
6 The difference between the original form and ex. 39 is that  
7 the words "all labour and materials" and "for the sum of" are  
8 crossed out and deleted in the sentence: "We hereby offer to  
9 supply all labour and material for the above according to plans  
10 and specification."

11  
12 After the secretary typed ex. 39 those words were X-d  
13 out by the typewriter.

14  
15 The typed document (ex. 28) was a reproduction of ex.39  
16 except that the paragraph above-mentioned then read: "We hereby  
17 offer to supply the above according to plans an specifications;"  
18 and clauses 1 and 2 read:

19 "1. Supervision: which shall include supervision  
20 and approval of all sub-trades and materials;  
keeping always in mind your best interests."

21 "2. Labour: supply and provide a capable and  
22 proficient work-crew consisting of a working  
supervisor and two workmen. Payment shall  
23 be at the rate of fifteen dollars (\$15.00)  
per each man-hour worked and which shall  
24 include all costs of said labour including  
all employee benefits, W.C.B. coverage and  
25 pay-roll accounting."

26  
27 This document (ex. 28) was presented by Myers to the  
28 two men. Mr. Reimer declined to sign it. The reason given by  
29 Reimer in his evidence is, as he said: "I did not want to sign  
30

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3 a contract where I would have no input as to who worked on my  
4 building" and "I did not want a contract like that where something  
5 would bind me to having no control over who would be working  
6 on my building."  
7

8         After a short lapse of time there was a second discussion,  
9 probably on the same day, according to Mr. Myers. Apparently  
10 during the interval, Reimer and Matzhold had again discussed  
11 the matter. Myers says that when they again appeared before  
12 him the gist of the conversation was that Reimer said he wished  
13 the clause numbered 1 under the heading "Supervision" and the  
14 words "and shall include all of the following to completion"  
15 deleted. Matzhold made no comment. Myers made the deletions  
16 by running lines through them with a pen. Matzhold and Reimer  
17 then initialled the changes and both of them signed the document  
18 (ex. 5). In its final amended and executed form the accepted  
19 tender, which thereby became the formal written contract between  
20 the parties, reads as follows, omitting the portions crossed  
21 out and intitalled:  
22  
23  
24  
25  
26  
27  
28  
29  
30

## CONTRACTORS

KARL MATZHOLD CONSTRUCTION LTD.  
PHONE 567-4311 - P. O. BOX 723  
VANDERHOOF, B. C.  
V0J 3A0

## QUOTATION-TENDER

Date April 4, 1978

TO: Mr. Abe Reimer  
Vanderhoof, B. C.

Dear Sirs:

Re: Construction of your new MACLEODS store building being built on Stewart Street in Vanderhoof, B. C.

We hereby offer to supply the above according to plans and specifications.

2. Labour: supply and provide a capable and proficient work-crew consisting of a working supervisor and two workmen. Payment shall be at rate of fifteen dollars \$15.00 per each man-hour worked, and which shall include all costs of said labour including all employee benefits, WCB coverage and pay-roll accounting.

Payment shall be made as follows:

Semi-monthly on presentation of invoicing.

Kindly signify your acceptance of this tender by signing and returning the attached copy.

Yours very truly  
KARL MATZHOLD CONSTRUCTION  
LTD.  
per 'Karl Matzhold'

We hereby accept the  
above tender  
'A. W. Reimer'  
AUTHORIZED SIGNATURE



1  
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3  
4 The Court must endeavour to ascertain the true meaning  
5 of this document. The object is to discover the intention of  
6 the parties at the time of its execution. The initial question  
7 raised under the arguments of counsel is whether the intention  
8 can be gathered from the written instrument standing alone or  
9 whether it should be read in the light of extrinsic evidence,  
10 subsequent conduct, and the surrounding circumstances.

11  
12 It must first be noticed that the lack of precision and  
13 care taken in the drafting of this rather rudimentary document  
14 is illustrated by the fact that the offer is addressed to Mr.  
15 Abe Reimer and accepted by him and not his Company. No point  
16 has been made of this, however. It is common ground that both  
17 men were representing their respective companies at the time  
18 and that the intention was that the parties to the agreement  
19 are Karl Matzhold Construction Ltd. and Abe Reimer & Sons Ltd.

20  
21 Mr. Parrett, counsel for the Reimer Company and Mr. Bogle,  
22 counsel for the Matzhold Company and Mr. Matzhold, both say  
23 that the document is clear and unambiguous on its face, but  
24 disagree as to its meaning. Mr. Parrett submits that it states  
25 that the Matzhold Company offered to supply "the above", namely,  
26 construction of the described store building to be built according  
27 to plans and specifications. Counsel says that this phrase  
28 means that the intention to be gathered from the offer made  
29 in those terms by the Matzhold Company, and accepted by Reimer,  
30 for his Company, clearly means that the Matzhold Company was

1-  
2  
3 to be responsible as builder. Counsel's use of the word  
4 "responsible" seems to me to indicate that in essence the  
5 submission is that the Matzhold Company was to be the general  
6 contractor who agreed to build the structure according to the  
7 plans and specifications, the latter being found, as Mr. Parrett  
8 rightly says, in the bulding permit. This interpretation appears  
9 to reflect, in part at least, the allegation pleaded by the  
10 Reimer Company in its amended statement of claim in action No.  
11 6016, as follows:

12 "7. That in or about the month of March or  
13 April, 1978, the plaintiff entered into  
14 an oral agreement, or alternatively,  
15 partially in writing and partially oral  
16 with Karl Matzhold Construction Ltd. whereby  
17 Karl Matzhold Construction Ltd. agreed  
18 to construct a building (Macleods store)  
19 on property owned by the plaintiff whereby  
20 the plaintiff agreed to pay Karl Matzhold  
21 Construction Ltd. for such construction."  
22  
23  
24  
25  
26  
27  
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30

By paras. 8, 9, and 10, the plaintiff goes on to aver  
that the defendant Karl Matzhold at all material times was  
employed by and was chief operating officer of Karl Matzhold  
Construction Ltd.; that he owed a duty of care to the plaintiff  
in carrying out the construction of the Macleods store. The  
plaintiff Reimer Company then sets out particulars of Karl  
Matzhold's alleged negligence, the chief allegation being that  
he carried out defective construction on the store by using  
inferior and unsuitable materials, in particular by, inter alia,  
selecting and installing glue-laminated wood beams that were  
incapable of carrying the design loads required under the National  
Building Code of Canada. Additionally, Reimer's defence to

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3 the Bolyne action is that his Company employed an independent  
4 contractor.

5  
6 The rule of construction is that the instrument must  
7 be construed as a whole in order to ascertain the true meaning  
8 of its several clauses and the words of each clause must be  
9 interpreted to bring them into harmony with the other provisions  
10 of the instrument, if that interpretation does no violence to  
11 the meaning of which they are naturally susceptible. One part  
12 should expound the other, and so to make all parts agree: see  
13 12 Hals. 4th ed. para. 1469.

14  
15 In putting forward his view as to the meaning of the  
16 agreement Mr. Parrett did not refer to, or essay to expound,  
17 the meaning of the remaining part of it, namely, clause 2, or  
18 suggest how that part bears upon the first part upon which he  
19 relies.

20  
21 For his part, Mr. Bogle says in effect that the phrase  
22 "Re Construction of your new Macleods store building" etc. is  
23 merely descriptive of the project in question and the words  
24 that follow "we hereby offer to supply" are not apt or  
25 sufficiently clear or complete to describe an offer to construct  
26 the building and to be paid for such construction as though  
27 he were a general contractor. The first part is clearly limited  
28 in its scope by clause 2 which is the operative part whose meaning  
29 is that the Matzhold Company offered to supply and provide labour  
30

1.  
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3 services consisting of a work crew of two men and a supervisor  
4 for such crew, and nothing more, in return for which it would  
5 be paid at a specified hourly rate of pay. The submission seems  
6 to me to be, in effect, that it was a "labour only" contract.  
7

8 Despite these submissions both counsel referred at length  
9 to the subsequent acts and conduct of Reimer and Matzhold and  
10 the surrounding circumstances in aid of their respective  
11 interpretations of the agreement. As well, an issue was raised  
12 in argument as to the admissibility of parol evidence.  
13

14 The parol evidence rule is that subject to certain  
15 exceptions, when a transaction has been reduced to writing by  
16 agreement of the parties who have apparently set down all its  
17 terms in a document, evidence, oral or written, outside the  
18 written agreement, is not admissible to add to, subtract from,  
19 vary, or contradict the terms of the document. One of the  
20 exceptions to the rule is that evidence is admissible to dispel  
21 ambiguities: see Gallen v. Butterley (1984) 53 B.C.L.R. 38  
22 at p. 49 (B.C.C.A.) It is admissible on this basis to ascertain  
23 the intent of the parties where their written agreement is  
24 ambiguous: Hashman v. Angulin Farms Ltd., [1973] S.C.R. 268,  
25 [1973] 2 W.W.R. 361, 31 D.L.R. (3d) 490 (S.C.C.). This includes  
26 evidence of the surrounding circumstances.  
27

28 Additionally a rule of construction is available as pointed  
29 out by Chief Justice McEachern in Fraser v. Van Nuys, (1983)  
30

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3 45 B.C.L.R. 44 (B.C.S.C.) where he said: "The law in Canada  
4 seems to be that if there are alternative reasonable  
5 interpretations, then other evidence, including the subsequent  
6 conduct of the parties may be considered to help determine which  
7 alternative is the correct one: C.N.R. v. C.P. Ltd., [1979]  
8 1 W.W.R. 358, 95 D.L.R. (3d) 242, affirmed [1979] 2 S.C.R. 668,  
9 (1979) 6 W.W.R. 96, 105 D.L.R. (3d) 170, particularly the  
10 language of Lambert J. A. at pp. 372-73:

11 "In the case of evidence of subsequent  
12 conduct the evidence is likely to be the  
13 most cogent where the parties to the agreement  
14 are individuals, the acts considered are  
15 the acts of both parties, the acts can relate  
16 only to the agreement, the acts are  
17 intentional and the acts are consistent  
18 only with one of the alternative  
19 interpretations!"

20  
21 I first wish to revert to paras, 7, 8, 9, and 10 of the  
22 Reimer Company's pleading reproduced above. In effect it alleges  
23 that in or about the month of March or April, 1978, the parties  
24 entered into an oral agreement, or partly oral and partly written,  
25 whereby the Matzhold Company agreed to construct the building  
26 and that the Reimer Company agreed to pay the Matzhold Company  
27 for such construction. As I have earlier indicated, the plaintiff  
28 has not proved the existence of any oral agreement in March,  
29 1978, whereby Matzhold agreed to construct the building, and  
30 there is no evidence of any written agreement at that time.  
The oral agreement in February or March was that Matzhold would  
draw the plans and prepare a cost analysis. That was a phase

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3 of the relationship that ended when those tasks were completed.  
4 Additionally, Reimer says that during that time they agreed  
5 that Matzhold would be paid \$15 per hour for labour. After  
6 the building permit was issued they entered into oral negotiations  
7 but when they went to Myers' office on April 4th the result  
8 of their discussions was put into writing in the form of the  
9 first document (ex. 28). Neither Reimer nor Matzhold recalled  
10 the content of the discussions they held before they went to  
11 see Myers or in his presence. In my view no oral agreement  
12 has been established involving the construction of the building.  
13

14 I find that the words of the agreement (ex. 5) are in  
15 themselves somewhat ambiguous. I accordingly turn to the  
16 surrounding circumstances and the subsequent conduct of the  
17 parties (but not their subsequent declarations) as an aid to  
18 discovering the intention of the parties at the time of the  
19 execution of the agreement.  
20

21 Quickly following the execution of the contract work  
22 got under way on April 5, 1978. The date for completion  
23 prescribed by Macleods was August 15, 1978. The first work  
24 to be performed was excavation of the site. This was undertaken  
25 entirely by Mr. Reimer who made direct contact with and hired  
26 his son-in-law who owned a backhoe. This man did the work and  
27 was paid by Reimer. In evidence Reimer said that it was not  
28 Matzhold's job to hire the excavator. Reimer himself worked  
29 on the excavating by operating a cat which he owned. From that  
30

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3 time onward until completion of the building in August, 1978,  
4 Reimer was on the job site almost every day not as a spectator  
5 or an interested owner-developer but as an active participant.  
6 The evidence shows that his major role was in ordering and  
7 delivering or arranging delivery of materials to the site.  
8

9 Mr. Reimer contracted with and paid all the subcontractors.  
10 In some instances Matzhold put him in touch with them or made  
11 recommendations to Reimer as to his view of their competence,  
12 but Reimer formally engaged them in the contractual sense whether  
13 formally or not. Each subcontractor whom Reimer engaged such  
14 as the electrical, plumbing, roofing and painting subcontractors,  
15 was a specialist in his own right. None was in a contractual  
16 relationship with Matzhold. The result of this was that in  
17 fact Reimer was relying on the skill and judgment of each  
18 individual subcontractor.  
19

20 At trial Reimer testified that he does not recall giving  
21 copies of the plans to the various subcontractors but on his  
22 examination for discovery on October 30 and 31, 1985, he said  
23 that he remembered that during the time of construction different  
24 subcontractors were wanting copies of the plans. He said on  
25 discovery that when the roof collapsed he couldn't find any  
26 copies so he assumed that he must have given out the last  
27 available copy. There is no evidence that the subcontractors  
28 asked Matzhold for plans. Reimer also hired help to work on  
29 the project without reference to Matzhold, and according to  
30

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3 his evidence he had the right to disapprove of any man who was  
4 hired. I infer that he assumed that right was included in respect  
5 of any man hired by Matzhold for his small working crew referred  
6 to in clause 2 of the agreement. Reimer hired a number of  
7 labourers directly without reference to Matzhold. He paid a  
8 whole series of cheques to such labourers. Exhibits 34 and  
9 35 are examples of cheques he paid to a workman, David Salter  
10 whom he hired. On April 14, he signed an agreement with the  
11 Village of Vanderhoof for the storm sewer service and on the  
12 same date he applied for the water service connection in his  
13 Company's name. He supplied the nails for the project. He  
14 paid for all materials that were incorporated into the building,  
15 including the plywood, trusses, cement, and a list of other  
16 materials. In some cases Matzhold put him in touch with materials  
17 suppliers and obtained quotations with a view to getting the  
18 best prices. As well, discounts were available to Matzhold  
19 as he was in the contracting business. But in these instances,  
20 in my view, Matzhold was in the role of Reimer's agent. During  
21 cross-examination by Mr. Barnes, Reimer testified that "we would  
22 get quotations addressed to the Matzhold Company and Matzhold  
23 would turn them over to me. I would make up my mind whether  
24 I wanted to accept the quotation. I paid all the bills even  
25 though an invoice was sent to Matzhold."

26  
27 He paid on an hourly rate. He agreed that he could have  
28 engaged Matzhold as general contractor and paid him \$208,000,  
29 as suggested by Mr. Barnes, but he decided not to do so because  
30



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3 by "running around and getting materials he could save money."  
4 "I wanted to get my money's worth. My object was to get as  
5 reasonable a price as possible without sacrificing safety" he  
6 said. In my opinion this conduct on Reimer's part of personally  
7 dealing with materialmen was an aspect of his desire to save  
8 money, understandable though it may be. This was also probably  
9 his prime reason for personally taking part in the actual work  
10 of construction. In that regard, the evidence shows that he  
11 was one of the men who took part in putting in the plywood,  
12 the trusses, and in removing scaffolding.

13  
14 The evidence concerning Matzhold's activity in regard  
15 the project, in addition to drawing the plans and doing the  
16 cost analysis, dealt with his actual physical work and his role  
17 which is described in clause 2 of the agreement (ex. 5) as  
18 "working supervisor". As to his physical labour the evidence  
19 shows that he put in the foundation, helped to put up the concrete  
20 blocks and the trusses, nailed the plywood on top of the roof  
21 in the course of making the roof ready for the roofing contractor.  
22 He spent 8 to 12 hours a day working on the job. In what he  
23 regarded as his working supervisor capacity he inspected the  
24 work being done by his own men to ensure that it was properly  
25 done. He checked the quality of the work being done by some  
26 of the subtrades for the same purpose and this included inspection  
27 of materials being incorporated into the building. Such time  
28 as he spent in that role, as distinct from his own physical  
29 labour was included on his time sheets for payment under his  
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3 hourly pay rate arrangement.  
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5           In dealing with Matzhold's role in this project counsel  
6 for Reimer laid considerable stress upon the evidence of Eugene  
7 Devauld and Paul Bloomfield. Mr. Devauld was called as a witness  
8 by counsel for Matzhold. Devauld was employed by Matzhold as  
9 one of his crew. Devauld's evidence concerned a discussion  
10 he heard between Matzhold and Reimer regarding the posts which  
11 held up the roof beams. I will later refer to the whole of  
12 the evidence concerning this crucial matter. The conversation  
13 to which Devauld referred in his evidence occurred at the stage  
14 when the roof was on the building. In essence Matzhold conveyed  
15 to Reimer his concern as to the location and quantity of the  
16 original posts that had been put in place to support the beams.  
17 Matzhold wanted more posts put in at mid span on the beams.  
18 Reimer objected to this suggestion on the ground that additional  
19 posts would affect the floor layout design of the store because  
20 additional posts would create too much obstruction in the store.  
21 Heavier posts were in fact put in on the week-end. Mr. Parrett,  
22 submits that this evidence supports Reimer's proposition that  
23 Matzhold was more than a labour foreman supervising his work  
24 crew, but was the person responsible for construction. It would  
25 appear, however, that Reimer's view prevailed in regard to putting  
26 in additional posts. It seems to me that it is open on this  
27 evidence to draw the inference that Reimer, rather than Matzhold,  
28 was in charge of this important phase of the construction.  
29 If Matzhold was in charge he could simply have ordered additional  
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3 posts without referring the matter at all to Reimer. I am  
4 satisfied on evidence to be shortly mentioned that heavier posts  
5 were put in on the week-end in response to Matzhold's complaint  
6 that the original posts, which had been ordered by Reimer, and  
7 which were in place when Devauld heard the discussion, were  
8 unsafe, in Matzhold's opinion.  
9

10 Secondly, Mr. Parrett forcefully complains that in leading  
11 evidence from Devauld, Matzhold's associate counsel, Mr. Marcotte,  
12 failed to ask Devauld any questions concerning Mr. Matzhold's  
13 role in the entire project in the areas of supervision or control  
14 of the work force or in regard to materials. It seems to me  
15 that the short answer to this submission is that it was open  
16 to Matzhold's counsel to cross-examine Devauld on these points,  
17 but he did not do so.  
18

19 The evidence of Mr. Bloomfield, the acting building  
20 inspector, is to my mind too flimsy to provide guidance as to  
21 the conduct of Matzhold in relation to the intention of the  
22 parties when they made their agreement on April 4th. Though  
23 he was an acting building inspector, he produced no notes covering  
24 his evidence upon which counsel for Reimer relies. He delivered  
25 himself of a number of sweeping generalizations to the effect  
26 that every time he visited the site to inspect the quality of  
27 the work and the materials, he worked mainly with Karl Mathzold  
28 who, according to Bloomfield, was the general foreman in regard  
29 to technical and construction matters and made the decisions  
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3 as to the project. Matzhold firmly disagreed with this evidence.  
4 Bloomfield did not condescend to relate a single specific instance  
5 of any meeting with Matzhold at which Matzhold made a decision  
6 on anything in Bloomfield's presence. He was asked by Mr. Parrett  
7 whether he recalled a specific instance of his asking that a  
8 change be made in the work. In reply, he said that he questioned  
9 whether "they" were putting mesh in every fifth row of concrete  
10 blocks, but he could not recall to whom he had spoken about  
11 this matter. He said that it may have been a subcontractor.  
12 I asked him whether he had a specific recollection of any  
13 discussion with either Reimer or Matzhold or both regarding  
14 any particular phase of the construction. His reply was "no".  
15 I attach no weight to Bloomfield's evidence so far as it purports  
16 to prove or indicate that Matzhold was in sole charge of the  
17 project. It does not indicate any specific acts or conduct  
18 which helps to cast light on the meaning of the contract.  
19

20 On April 25, 1978, Mr. Reimer went to a firm in Prince  
21 George called Prince George Salvage, where he purchased six  
22 metal posts and a quantity of other material. As its name  
23 implies, the firm is a salvage or scrap yard which apparently  
24 also sells new, as well as used material. Reimer bought used  
25 posts, advancing in evidence as his explanation that if a piece  
26 of metal is rusted you can't tell if it is new or old. The  
27 function of metal posts is to support the beams in the buiding.  
28 When Reimer bought them they were not fitted with saddles.  
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3 A saddle is a U-shaped object fabricated out of 3/8 inch  
4 steel. Three pieces are welded together to form a U-shape called  
5 a saddle or bucket which fits on a post and is welded to it  
6 so as to form a receptacle into which the beam snugly fits.  
7 The saddles have to be the same dimensions as the beams so as  
8 to fit the beams. Reimer must have known enough about this  
9 phase of building whereby a post and glulam beam structure  
10 supporting the roof is planned. He knew that it was necessary  
11 for him to get saddles fitted on to the metal posts. To  
12 accomplish this he hired a firm called P. & H. Supplies which  
13 was operated by his son-in-law, Gary Friesen.

14  
15 The posts are installed before the beams are in place.  
16 The locations of these posts in the building are shown on the  
17 plans but not their sizes.

18  
19 In his evidence and on examination for discovery, put  
20 to him on cross-examination by Mr. Marcotte, he testified that  
21 before going to buy the posts he checked with Matzhold as to  
22 what size he should get. He did not say what size Matzhold  
23 indicated to him. He testified that he does not recall the  
24 conversation. Matzhold denies that Reimer sought any such  
25 information from him or that he gave him any, or that he approved  
26 the posts that Reimer brought to the site. Matzhold's evidence  
27 is that when he saw the posts he expressed to Reimer his  
28 disapproval of them. Matzhold testified that they were old  
29 "pipes" three inches in diameter and in his view the welding  
30

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3 was also inadequate. He concluded that they were not strong  
4 enough to support the beams. He told Reimer this, and asked  
5 him to get six inch posts. Reimer protested. He wanted to  
6 retain the old posts, taking the position that they were  
7 satisfactory. Both men were persistent. They argued, not  
8 because, as I find, that Matzhold had approved of or endorsed  
9 this size of post, as suggested by Reimer's counsel, but because  
10 of the safety factor. Matzhold finally told Reimer that he  
11 would not work another day if the old posts remained. This  
12 threat convinced Reimer that he had better get larger and sturdier  
13 posts, which he did. I accept Matzhold's version of this event.  
14

15 I find that the saddles that were made by P. & H. Supplies  
16 and fitted to the posts were exactly wide enough to receive  
17 and hold beams of five inches. In his examination-in-chief  
18 Reimer did not describe the circumstances surrounding the  
19 placement of the saddles. Mr. Byl asked Reimer on  
20 cross-examination who had given Gary Friesen the measurements  
21 for the saddles. Reimer's answer was that he believed it was  
22 Karl. Belief as a state of mind does not rank with knowledge.  
23 Then Reimer purported to deny that he went to Friesen and asked  
24 him to make up six 5-inch sets of saddles by saying: "I don't  
25 recall that's what happened."  
26

27 Matzhold denies that he gave any such instructions to  
28 Friesen. Abe Reimer & Sons Ltd. paid the P. & H. Supplies invoice  
29 dated April 26, 1978, for \$449.28 by a cheque signed by Mr.  
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3 Reimer which bears the handwritten notation "steel posts" thereon.  
4 I have no hesitation in rejecting Reimer's evidence concerning  
5 this matter.  
6

7 Reimer then purchased six acceptable new posts from a  
8 steel company in Prince George. Saddles were fitted to these  
9 posts but they were the same size 5 inch saddles as he had  
10 instructed be put on the old posts.  
11

12 When the old posts were taken out at the buidling site  
13 and replaced by the new ones the job was essentially handled  
14 by the operator of a Hiab, or crane, who was hired and paid  
15 by Reimer. Matzhold, Reimer, and another man also took part  
16 in the operation. Reimer testified that this work was supervised  
17 by Matzhold. Given the fact that it was a job requiring a crane  
18 operator, in my view, Reimer should have given the court details  
19 of Matzhold's alleged supervision which permitted him to reach  
20 his conclusion.  
21

22 I find that Reimer ordered the old posts and gave the  
23 instructions for the size of the saddles for both the old and  
24 new posts without reference to or communication with Matzhold,  
25 thereby permitting me to find as well that Reimer was not relying  
26 upon Matzhold in this important phase of construction.  
27

28 The position taken on behalf of Reimer in regard to these  
29 events is that they show that Matzhold was making the construction  
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3 decisions. I do not agree. Matzhold's desire to have the old  
4 posts removed was based upon his concern for the safety of people  
5 working on the job, not least his own safety. His threat to  
6 walk off the job finally influenced Reimer to make the decision  
7 to get new posts. This view of the matter is not affected by  
8 the fact that Matzhold did say on discovery that he rejected  
9 the posts because they were substandard and were in place and  
10 he made a decision that they had to go. When the word "decision"  
11 is interpreted in context I think it means that Matzhold had  
12 made, in his mind, a judgment, or "decision" as to the adequacy  
13 of the posts and successfully brought home his point of view  
14 to Reimer who acted upon it. I find that Matzhold made no  
15 decision about the measurement of the saddles. That decision  
16 was taken solely by Reimer.

17  
18 There is no cogent evidence that Matzhold was coordinating  
19 the jobs being done by the various subcontractors. There is  
20 no evidence that they reported to him. They were Reimer's  
21 subcontractors.

22  
23 The parol evidence rule does not prevent the court from  
24 considering what was said between the parties, and to assign  
25 such weight to it as it deserves. In this case, this consists  
26 in the main, of what Mr. Myers describes as the gist of their  
27 conversation during the making of the written contract.  
28 Additionally it does not appear to be in dispute that the  
29 surrounding circumstances and the subsequent conduct of the  
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3 parties is admissible in aid of interpreting the contract.  
4

5 By the Reimer's Company's pleading which I have before  
6 set out, it is alleged that by a combination of an oral and  
7 a written contract made between the Reimer Company and the  
8 Matzhold Company, the latter agreed to construct the building  
9 whereby its duty of care to the Reimer Company arose. In support  
10 of this pleading counsel for the Reimer Company, in describing  
11 his conception of the duties and conduct of Matzhold, said that:  
12 Matzhold obligated himself to be "responsible for construction",  
13 that he was "hired to put up the building and to make the  
14 construction decisions". Mr. Parrett contends that in carrying  
15 out the role to which Matzhold was committed under the contract,  
16 his subsequent conduct shows that he "was making the construction  
17 decisions"; that "the materials were determined by Matzhold  
18 during the time he was making the cost analysis or when he got  
19 the building permit"; that he (Matzhold) "decided on material  
20 and all Reimer did with respect to them was to phone suppliers  
21 to get a good price and to pick them up". To put it colloquially,  
22 it seems to me that in this regard the suggestion is that Reimer  
23 was a mere "gofer" for Matzhold. Counsel contended that Matzhold  
24 was an employee of the Matzhold Company in control; that "he  
25 took upon himself the construction of this store without the  
26 supervision of an architect or engineer." And, as before  
27 mentioned, counsel conceded that the Reimer Company's position  
28 is that the Matzhold Company was engaged as an independent  
29 contractor.  
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4 A general definition of an independent contractor is  
5 found in the decision of the Supreme Court of Canada in T. G.  
6 Bright & Company Ltd. v. Kerr, (1939) S.C.R. 63; [1939] 1 D.L.R.  
7 93 affirming on appeal the judgment of the Ontario Court of  
8 Appeal [1937] O.R. 205; [1937] 2 D.L.R. 153. Where in Rowell  
9 C.J. O. adopted the following definition found in Halsbury,  
10 2nd ed., vol. 1, p. 193, as follows:

11 ". . . An independent contractor is entirely  
12 independent of any control or interference,  
13 and merely undertakes to produce a specified  
14 result, employing his own means to produce  
15 that result."

16 In the pre-construction stage Matzhold undertook to draw  
17 plans and do a cost analysis, and he applied for and got the  
18 building permit. Immediately thereafter Matzhold requested  
19 that their relationship be defined in a written agreement.  
20 The form of contract that was first produced from the Matzhold  
21 Company's stock of blank forms and which was first filled in  
22 embodied terms which in my view were arguably sufficient to  
23 characterize the Matzhold Company as the general contractor.  
24 According to Myers' handwriting on exhibit 39 it was an offer  
25 by the Matzhold Company to supply for "the above" certain things,  
26 excluding, however, even at that stage, "all labour and material."  
27 It was to include supervision and approval of all subtrades  
28 (ex. 28, as typed) and materials, and a capable and proficient  
29 work crew. This was not signed. We then find duties being  
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3 eliminated by Reimer because he wanted to retain control of  
4 work personnel. Work, which is performed by people, is a main  
5 component, along with materials, of the building of a structure.  
6 The effect of the submission on behalf of Reimer is that the  
7 words "we hereby offer to supply the above, namely, construction  
8 of the store building, according to plans and specification",  
9 amounts to the express undertaking by Matzhold to produce a  
10 specified result, that is, a fully constructed building. The  
11 document then, however, goes on to delete clause 1 and it deletes  
12 from the passage describing the offer, the words "all labour  
13 and materials". It seems to me that the effect is that Reimer  
14 is saying to Matzhold: "We have agreed that you will produce  
15 the specified result of constructing the building but you shall  
16 do so without supplying labour and material; you will not engage  
17 sub-trades or supply material and you will have nothing to do  
18 with supervision or approval of sub-trades or material, qualified,  
19 however, by clause 2 that you will produce this result by  
20 supplying a capable work crew of two men and a working supervisor  
21 who will supervise that two-man work crew; I will pay you \$15  
22 per hour for each man-hour worked, and out of this you will  
23 pay your work crew and all costs of said labour." On this basis  
24 it appears that the words following "Re:" are repugnant to the  
25 body of the document in clause 2.

26  
27 The conduct of the parties and the surrounding  
28 circumstances including the parol evidence of Myers fails to  
29 show that at the time of the execution of the agreement the  
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3 parties contemplated or had a common intention that the  
4 obligations of Matzhold were to extend beyond my above-described  
5 conception of what the agreement means. It falls far short  
6 of the nomination of the Matzhold Company as general contractor.  
7 The limited scope of the control vested in Matzhold would make  
8 it virtually impossible for a general contractor to construct  
9 the building. I find that the Matzhold Company was not the  
10 general contractor. In the absence of some third person occupying  
11 that role I find that the Reimer Company was its own general  
12 contractor. In particular I find that the contract did not  
13 cast upon the Matzhold Company or upon Karl Matzhold personally  
14 a duty to the Reimer Company to provide or supply materials  
15 and that he did not assume that duty in the course of the project.  
16

#### 17 Ordering of the Beams

18 I turn now to the crucial matter of the beams. The Reimer  
19 Company's contention is that Matzhold ordered them. Matzhold  
20 denies this. In the course of doing the cost projection Matzhold  
21 necessarily had to make inquiries of materials suppliers among  
22 whom were glulam beam manufacturers. Telephone calls were made  
23 to three different manufacturers, two at the coast, one in  
24 Kelowna. Matzhold had been a contractor for other buildings  
25 in which glulam beams were installed but he was not, and did  
26 not profess to be, an expert in regard to the size of beams  
27 in relation to stress. The practice was to give to the  
28 manufacturer the dimensions of the building. On the basis of  
29 this information the manufacturer made up beams of the required  
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3 size and strength. The telephone calls were made from Reimer's  
4 office in his Burrard Street Macleod's store. Reimer does not  
5 recall what was said but as I understand his evidence he contends  
6 that Matzhold put in the order for the beams at that time.  
7 In his evidence he said: "I vaguely recall him ordering the  
8 beams but I don't recall what he said." Matzhold cannot now  
9 recall whether he called during construction or before  
10 construction. The external evidence tends to show that the  
11 calls were made before construction began, because Matzhold  
12 wrote the beam size of 6 3/4 inches on the building permit  
13 application on April 3, 1978, and because of the date on a  
14 quotation to be later mentioned.

15  
16 In my view the telephone calls made by Matzhold at that  
17 time were not part of an ordering process, but rather an exercise  
18 in gathering information. Coast Laminated Timbers Ltd. was  
19 selected to be invited to manufacture the beams. Matzhold  
20 informed whomever he spoke to at that firm of the measurements  
21 of the projected building, namely, the length and the width.  
22 There is no evidence that this was inadequate information or  
23 careless. At the time of trial Matzhold could not remember  
24 how it came about that he specified 6 3/4 " x 24" - 34 ft.  
25 on the building permit. In my opinion one reasonable inference  
26 is that all three of the manufacturers to whom Matzhold gave  
27 the measurements, in Reimer's presence, told him the proper  
28 beam size, or at least, that Coast Laminated Timbers Ltd. did  
29 so. No person from that firm was called as witness and no  
30

explanation was offered to account for this.

A document sent by Coast Laminated Timbers Ltd. dated March 28, 1978, called "Quotation" addressed to Karl Matzhold Construction Ltd. Box 723 Vanderhoof, B. C. V0J 3A0 under job name "Matzhold Beam Location, Vanderhoof, B. C." was received in the mail from Delta, B. C., near Vancouver, by Karl Matzhold Construction Ltd. The body of this document (ex. 23 and Ex. 12 Tab M) reads as follows:

QUOTATION

Gentlemen: We are pleased to offer the following for the price below FOB our Plant.

	Basic	Alternate
Price	\$2,350.00	\$3,130.00
7% S.S. Tax	164.50	219.10
Delivery	405.50	510.90 (Truck job site if required)
TOTAL	<u>\$2,920.00</u>	<u>\$3,860.00</u>

Basic Price 6 Coastlam  
5" x 24" x 34'

Alternate Price 6 Coastlam Beams  
6-3/4" x 24" x 34'

NOTE: If beams are required to be Paint appearance grade and wrapped add to our total prices as follows: Basic \$267.50 Alternate \$363.80.

Specifications

Casein Glue (Interior Service) Industrial

1  
2  
3 appearance 1 coat moisture sealer no wrapping  
4 End Trim Fabrication Only Alternate Paint & Wrapped  
5 Designed by: Other  
6 Delivery Date: To Be Arranged

7 As this quotation is dated March 28, 1978, in the absence  
8 of a date-received stamp on it, it is probable that Matzhold  
9 received it before he applied for the building permit and that  
10 he specified 6 3/4 inch beams thereon by choosing what would  
11 appear to be the best grade. In any event, the fact is that  
12 he specified 6 3/4 inch beams on the building permit application  
13 form in writing to be seen and read. The copy of the building  
14 permit application exhibited at trial is the Inspector's copy  
15 and was obtained from the Village records. An owner's copy  
16 must have been available for Reimer to inspect.

17 On his examination for discovery on October 30-31, 1985,  
18 Reimer affirmed that he never had discussions with anyone at  
19 Coast Laminated Timbers Ltd. He did not say that he did not  
20 recall such conversations but made the above positive assertion.  
21 Later, during the same discovery he said that he had no idea  
22 whatsoever as to the size of the intended glue-laminated beams  
23 and that he had no discussions with Mr. Matzhold about their  
24 size or with anyone. On this trial, however, he admitted that  
25 he received the Coast Laminated quotation (ex. 23) from Karl  
26 Matzhold but does not recall the date this occurred. Nor does  
27 Mathzold. In my opinion Matzhold gave it to him shortly after  
28 the written agreement (ex.5) was executed. Matzhold had received  
29 it on or about March 28. The agreement was signed on April  
30 4, 1978. It appears that the date stamp of April 5, 1978, seen

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3 on Ex. 39, was an error, according to Myers. In his evidence  
4 Matzhold said, in effect, that as the quotation was a matter  
5 dealing with material he turned it over to Reimer because under  
6 the contract the supplying of materials was not his, Matzhold's,  
7 responsibility but was that of Reimer. I consider it more  
8 probable than not that he turned it over to him soon after their  
9 contract was executed.  
10

11 The Coast Laminated quotation (ex. 23) contains notes  
12 and dates on its front and back admitted by Mr. Reimer to be  
13 in his handwriting. The effect of and my findings as to these  
14 notations, combined with the evidence of Reimer on  
15 cross-examination, may be summarized as follows: Reimer had  
16 in his possession the quotation on which he saw or should have  
17 seen that it quoted two different sizes of beams, the first  
18 of 5 inches available at the basic price of \$2,920 and the second  
19 of 6 3/4 inches costing the alternate price of \$3,860. The  
20 fact that it came to Matzhold as a quotation shows, in my view,  
21 that Matzhold had not ordered the beams. Mr. Reimer was driven  
22 to resile from his positive statement on discovery by saying  
23 at trial that his answer on the earlier occasion meant that  
24 he never talked to anyone at Coast Laminated to order beams.  
25 This strikes me as feeble and undermines his credibility. I  
26 will add that I formed a very unfavourable impression of Reimer's  
27 credibility. I take into account that memories will falter  
28 after such a long period of time, but I must declare that on  
29 the whole, in respect of important matters, and having observed  
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3 the demeanour of the witnesses, I prefer the testimony of Mr.  
4 Mathzold to that of Mr. Reimer wherever serious conflict exists  
5 between them. Mr. Reimer telephoned some unidentified person  
6 at Coast Laminated, not in the presence of Mr. Matzhold or anyone  
7 else. He asserts that he never discussed the quotation with  
8 Matzhold. This means that he did not seek his advice or rely  
9 upon him concerning these two options, and I so find. He was  
10 not asked whether he identified himself to Coast laminated as  
11 Mr. Reimer or what was said, if anything, in light of the fact  
12 that Coast Laminated had addressed the quotation to Matzhold  
13 Construction Ltd. All quotations of all suppliers which were  
14 received by Matzhold were turned over by him to Reimer. That  
15 was their practice. On cross-examination by Mr. Barnes, Reimer  
16 said: "We would get quotation for materials addressed to Matzhold  
17 and he would turn them over to me, and I would make up my mind  
18 whether I wanted to accept the quotation. I paid all the bills."  
19 And further on cross-examination by Mr. Barnes - "Q: If you  
20 thought your could acquire beams for \$2900 and not \$3800 you  
21 would? A: Yes"

22  
23 On cross-examination, Mr. Bogle, upon interpreting the  
24 notes Reimer wrote on the quotation, put it to Reimer that they  
25 meant that he had telephoned to Coast Laminated Timbers at some  
26 time before May 10, 1978, to inquire when his beams would be  
27 manufactured. Reimer agreed. This means that up to that time  
28 Matzhold had not given an order to the manufacturing company  
29 to make up any particular size of beam. He further agreed that  
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3 the note "glu" and "Ready on May 11 or 12th," meant that he  
4 wrote that down as the response to his question as to when the  
5 beams would be ready. It seems logical that as the quotation  
6 contained 2 options he must have had some discussion during  
7 the telephone call about this. In reply to Mr. Bogle, who put  
8 it to him that he must have had some knowledge or input from  
9 the manufacturer as to the two available options, Reimer said  
10 he does not remember and did not remember that the document  
11 contained two different quotations. I do not believe that he  
12 has no memory of such a discussion or of the options. I think  
13 the discussion must have occurred. It is for Reimer to explain  
14 what was said, to lead to the result that the manufacturer sent  
15 5 inch beams. He did not do so. There are other notes on the  
16 back of the document which mean that he telephoned to some freight  
17 companies to get their hauling charges to transport the beams.  
18 In evidence he said that he was concerned about the total costs  
19 of shipping the beams, thereby demonstrating no loss of memory  
20 in that regard. In the end, the beams were shipped to him via  
21 B. C. Rail from the coast to Prince George. Reimer paid the  
22 delivery costs of \$450. On May 25, 1978, he personally drove  
23 a truck with a 20-foot long trailer from Vanderhoof to Prince  
24 George, took delivery of the beams and delivered them to his  
25 building site. At no time did he measure the beams.

26  
27 A statement in writing was taken from Mr. Matzhold by  
28 an insurance adjuster, Mr. Fraser on February 11, 1987. It  
29 was signed by Matzhold. It is in Fraser's handwriting. I have  
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3 carefully read and considered it. I will deal with it briefly  
4 because I have been unable to find that it was referred to or  
5 relied upon in the submissions of counsel. It was taken by  
6 the adjuster seven years after the event when the matter was  
7 far from fresh in Matzhold's mind. I think it is fair to say  
8 that it is an exculpatory statement, save for two remarks which  
9 were dealt with in cross-examination of Matzhold by Mr. Parrett.  
10 In the last sentence, Mr. Matzhold is reported as saying: "I  
11 can't remember who I talked to at Coast Laminated Timbers Ltd.  
12 when I ordered. I believe I phoned 3 outfits for beams. I  
13 wanted the cheapest price for Abe." I am satisfied that the  
14 word "ordering" is controlled by what he had earlier said in  
15 the statement, namely: "For the glulam beams I called Coast  
16 Laminated Timbers Ltd. at the coast. I gave them details of  
17 the size of the building, length of (illegible) etc. and they  
18 told me what was needed for glulam beams." The statement-taker  
19 did not ask him to distinguish between "ordering" in the sense  
20 of making a deal to purchase something, and the giving of the  
21 measurements. In my view the word should rightly bear the latter  
22 meaning. It is not inconsistent with his evidence. He also  
23 said: "I was hired by Abe Reimer of A.W. Reimer & Sons Ltd.  
24 to act as his building superintendent to build a new store.  
25 I was paid by the hour. I was not acting as a general  
26 contractor." It seems to me that this remark is of little  
27 assistance. Whether his conclusion as to his status be it  
28 building superintendent to build a store, building superintendent  
29 simpliciter, or a general contractor is a matter that depends  
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3 upon the interpretation of the contract and the circumstances  
4 with which I have earlier treated. When this passage was referred  
5 to Matzhold on cross-examination, Mr. Parrett summed it up by  
6 putting it to Matzhold that he did some things and not others,  
7 and Mathzold agreed.  
8

9       Having assessed the relative weight of the testimony  
10 of the two principal witnesses, and all of the other evidence  
11 on this question, and the probabilities, I find, as a fact that  
12 the 5 inch beams, including the faulty beam, was material which  
13 was selected and ordered by Abram Reimer and not by the defendant  
14 Karl Matzhold.  
15

16       The beams were lying on the ground at the site for a  
17 few days after Reimer delivered them. At some unspecified time  
18 Mr. Bloomfield saw them, about 1 or 2 weeks before the roof  
19 went on. He made no written record of the matter. His purpose  
20 was to carry out an inspection as acting building inspector.  
21 In his examination he directed his attention, not to the beams  
22 themselves but to a clear plastic package in which were sheets  
23 of paper. In giving evidence-in-chief he said that on the end  
24 or side of one of the beams there was what he called an envelope  
25 encased in plastic attached to the beams which gave the  
26 specifications of the beam and the span. He said that the  
27 engineer's seal of approval was on the bottom in the right hand  
28 corner, he thought. He said that he could read through the  
29 plastic envelope or casing. He said that although he was unable  
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3 to repeat it verbatim the text would read something to the effect  
4 that the beams were built for Macleod's store. The date would  
5 be on them and the name of the manufacturer.  
6

7 On the basis of that evidence I gained the impression  
8 that he had actually seen the specifications through the plastic  
9 casing, and did not find it necessary to take the contents out  
10 of the envelope. On cross-examination by Mr. Byl he first swore  
11 that he could definitely see the specifications. Asked by counsel  
12 if there was anything else he could read on the form he said  
13 "there would have been the engineer's signature and his stamped  
14 seal over his signature." On further questioning, by Mr. Byl  
15 and Mr. Parrett, and their references to his evidence on  
16 discovery, it emerged, however, and I find, that his testimony  
17 in chief was a reconstruction based on what he usually does  
18 and that he did not remove the certificate to look at it and  
19 does not now know what was on the certificate and that he did  
20 not actually see an engineer's signature. It would have been  
21 better if he had frankly admitted at the outset that he was  
22 unable to recall the specifics nine years after the event.  
23 I must regard him as an unreliable witness. I conclude that  
24 he saw no more than a plastic casing affixed to a beam, and  
25 did not measure the beams. Indeed, he said that merely by looking  
26 at the beams themselves he would be able to ascertain whether  
27 they were 5 or 6 3/4 inches wide. He had not looked at the  
28 building permit and had no knowledge of what size was specified  
29 for the beams. Neither Mr. Reimer nor Mr. Matzhold measured  
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3 the beams. According to Mr. Reimer that plastic casing with  
4 its contents disappeared from the beam apparently a day after  
5 he had seen it. There is no evidence to shed any light on this  
6 mystery. It has not been located and was not, of course, produced  
7 at trial. The beams were installed by a group of people,  
8 including the crane operator and Reimer and Matzhold.  
9

#### 10 The Appointment of the Building Inspector

11 By s. 714 of the Municipal Act, R.S.B.C. 1960, C.255,  
12 as amended, to R.S.B.C. 1979, C.290 the Legislature empowered  
13 the municipality to enact building regulations, for the health,  
14 safety, and protection of persons and property.  
15

16 The Council of the Village of Vanderhoof exercised the  
17 power thereby granted to it by passing Building By-Law No. 201  
18 on July 16, 1962. According to the preamble, the by-law was  
19 enacted to provide regulations for the erection, maintenance,  
20 and safety of buildings and structures in the Village.  
21

22 Part 2 section 4 provides for the appointment of a building  
23 inspector in the following terms:

24 4. The Council may by resolution appoint  
25 a person to be Building Inspector, whose  
26 duty it shall be to carry out and enforce  
27 the provisions of this By-law.

28 Part 1 states that the Building Inspector shall mean  
29 the Building Inspector of the Village appointed pursuant to  
30 the provisions of the By-Law.

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4 Section 48 of Part 8 of the By-Law sets out mandatory  
5 requirements regulating construction. The section reads:

6 48. No person shall undertake, nor cause  
7 to be undertaken, a project within the meaning  
8 of this By-Law which does not comply with  
9 the requirements of this or any other By-law  
10 relative thereto.

11 The By-Law provides means where by the Building Inspector  
12 is empowered to compel compliance. Section 6, Part 2 reads  
13 thus:

14 6. It shall be the duty of the Building  
15 Inspector, and he is hereby authorized and  
16 empowered to inspect, compel, and require  
17 that all the regulations and provisions  
18 prescribed in this By-Law and any such  
19 regulations and provisions which may be  
20 appended to this By-Law, shall be carried  
21 out.

22 It is the initial contention of the defendant District  
23 of Vanderhoof that the source of any duty of care which the  
24 local authority owes to the plaintiffs in both actions is Building  
25 By-Law No. 501. It is said that the Council did not take the  
26 policy decision to impose upon themselves the duty of care set  
27 out in their by-law because the Village did not appoint Mr.  
28 Bloomfield by resolution. It is submitted that the resolution  
29 attracts the duty of care. Thus they took no steps to appoint  
30 a person to inspect or to enforce. It is said that the Village  
Council made this bona fide policy decision because they did  
not have the resources to appoint a Building Inspector. I am

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3 able to dispose of this aspect of the contention at once. It  
4 must be rejected as there is no evidence that the Village made  
5 a policy decision to refrain from formally appointing a building  
6 inspector because they lacked the resources. I am satisfied  
7 that they simply overlooked the formality probably because  
8 Bloomfields appointment was intended to be an interim stop-gap  
9 measure.  
10

11 The facts concerning this matter are as follows. On  
12 April 3, 1978, when the plans were approved and the building  
13 permit was issued and from October, 1975, Mr. John King was  
14 clerk-treasurer of the Village of Vanderhoof. There was no  
15 building inspector or staff at the time. Mr. John Christensen  
16 had been building inspector. They wanted him to take on some  
17 additional duties. He declined and quit the job on March 14,  
18 1978. Mr. King took over the duties of building inspector.  
19 He had no qualifications for the job. There is no evidence  
20 that the Council appointed him by resolution. He signed the  
21 building permit and approved the plans for the Reimer project.  
22 Section 26 of Part 3 of the By-law provides that the building  
23 inspector shall require that applications be accompanied by  
24 drawings and specifications and shall be fully dimensioned,  
25 accurately figured, explicit, and complete. The drawings  
26 submitted by Matzhold on Reimer's behalf did not conform to  
27 this requirement, yet Mr. King approved. The evidence of Mr.  
28 Caldwell, an experienced building inspector was that he would  
29 not have issued a permit based on those plans. Mr. King in  
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3 evidence said that he assumed he signed the permit because the  
4 Village did not have a building inspector and because he assumed  
5 the municipal council didn't want to stop construction completely.  
6 Construction was going on in Vanderhoof at the time.  
7

8 They realized that they would have to put an interim  
9 measure in place. I find that the Village fully intended to  
10 appoint a qualified person to fill the position who would carry  
11 out a building inspector's powers and duties.  
12

13 The Council contacted Mr. Bloomfield through an agent.  
14 He was at that time employed as the part-time building inspector  
15 in Fort St. James, about 40 miles from Vanderhoof, having at  
16 the time a population of about 2300 people, where he carried  
17 on the normal duties of a building inspector.  
18

19 On April 11, 1978, upon request, he attended a meeting  
20 with some of the elected members of the Village of Vanderhoof  
21 council and Mr. King, the clerk-treasurer. The Mayor, Mr.  
22 Grantham, was present at the meeting and at least two members  
23 of the Village council. There may have been three aldermen  
24 there in addition to the Mayor, according to Mr. Bloomfield.  
25 He testified that he understood them to be and knew them to  
26 be the majority of the elected members of the Council of the  
27 Village of Vanderhoof.  
28

29 At this meeting particulars of his employment including  
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3 hours of work and rate of pay were discussed. Mr. Bloomfield  
4 accepted their offer to take the position. It was decided at  
5 the meeting that he would work as building inspector in the  
6 Vanderhoof jurisdiction one day per week, every Thursday, and  
7 on special occasions when he might be needed. It was agreed  
8 that he would be paid for his services by the Village of  
9 Vanderhoof at the rate of \$20 per hour. He assumed the position  
10 and began work on or about April 15, 1978, and from that time  
11 until he was replaced by Mr. Caldwell he presented himself once  
12 each week to the public as the Vanderhoof building inspector.  
13 He filed a report to the Village Council. He was paid for his  
14 services from the public funds of the Village.

15  
16 The authority relied upon by Mr. Barnes in support of  
17 his submission is the decision of the Supreme Court of Canada  
18 in Silver's Garage Ltd. v. Town of Bridgewater, (1970) 17 D.L.R.  
19 (3d) 1. (S.C.C.). The facts in that case were so different  
20 from those in the present case that I do not think it is  
21 applicable. It involved a dispute between the local authority  
22 and the plaintiff as to the validity of an alleged contract  
23 to buy snow-blowing equipment. It was not an attempt, as here  
24 by a municipality to avoid a claim in negligence brought by  
25 an innocent third party by relying on its own neglect to pass  
26 a resolution to formalize the appointment of a man who was their  
27 de facto employee. Very briefly, the facts were that the  
28 plaintiff sued the Town of Bridgewater for the price of the  
29 equipment which he claimed the Town had bought from him. He  
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3 had had no dealings with the Town of Bridgewater as such but  
4 had acted from the outset as the result of conversations with  
5 one or two individual councillors, the engineer and the street  
6 superintendent, none of whom either had any authority from the  
7 town or purported to exercise it. The claim was defeated because  
8 his alleged contract was made with individuals, not through  
9 the collective action of an established quorum of council.  
10 In the present case the unchallenged evidence is that Bloomfield  
11 regarded the group at the meeting to be acting collectively  
12 and to be composed of a majority of the elected members of the  
13 Village Council. This conception of the makeup of this hiring  
14 body has not been disputed.

15  
16 The evidence shows that there was brisk construction  
17 activity in Vanderhoof at this time. During his tenure of office  
18 Mr. Bloomfield visited all the construction sites in the course  
19 of his duties. I have no difficulty in inferring that in that  
20 small town that in discharging his duties openly and apparently  
21 as of right he had the reputation of being the Village of  
22 Vanderhoof's building inspector. While the Village and Mr.  
23 Bloomfield as between themselves may be affected by the absence  
24 of procedural formalities such is not the case for innocent  
25 third parties.

26  
27 The principle that the Court will assume that a person  
28 occupying a municipal office and openly discharging his duties  
29 has been regularly appointed thereto, and his acts will bind  
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3 the municipal corporation even although not written, proof is  
4 or can be adduced of his appointment: Per Proudfoot V. C. in  
5 Hamilton School Trustees v. Neil (1881) 28 Gr. 408 at 412.  
6 The rule was applied by Fisher, J. in Cudmore v. The Corporation  
7 of the District of Salmon Arm, (1936) 50 B.C.R. 280 (B.C.S.C.)  
8 where he said at p. 283, that the de facto rule applies where  
9 the appointments were nullities. The ground of the doctrine,  
10 was set out in Gunter v. Prince William School District Trustees,  
11 [1934] 3 D.L.R. 439, at p. 442 the Court said:

12 It seems unnecessary to elaborate upon  
13 the de facto doctrine. Its value is  
14 recognized and its application is very  
15 general. Many authorities were cited by  
16 counsel for defendants. I need refer to  
17 only a few.

18 "The de facto doctrine is a rule or  
19 principle of law which . . . imparts validity  
20 to the official acts of persons who, under  
21 colour of right or authority . . . exercise  
22 lawfully existing offices of whatever nature,  
23 in which the public or third persons are  
24 interested, where the performance of such  
25 official acts is for the benefit of the  
26 public or third persons, and not for their  
27 own personal advantage. The doctrine is  
28 grounded upon consideration of public policy,  
29 justice, and necessity, and is designed  
30 to protect and shield from injury the  
community at large or private individuals,  
who, innocently or through coercion, submit  
to, acknowledge, or invoke the authority  
assumed by . . . officers, above mentioned":  
Constantineau on the De Facto Doctrine,  
1910, pp. 3-4.

25 In this case the defendant municipality held out Mr.  
26 Bloomfield as their building inspector, and he carried out the  
27 part-time duties of that office within the jurisdiction of the  
28 Village of Vanderhoof and was recognized by the public as the  
29  
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3 holder of that office. He was paid by the Village Corporation.  
4 No objection was raised to his activity by the Village Council.  
5 In these circumstances the failure of the Village to formally  
6 pass a resolution appointing him has no legal effect by itself  
7 on the plaintiff Bolyne or on the plaintiff the Reimer Company.  
8

9 The plaintiffs submits that Vanderhoof is liable for  
10 the negligence of James King in issuing the building permit  
11 and passing the plans, and for the negligence of Bloomfield  
12 in reviewing them.  
13

14 Part III, s. 26(4) of the by-law requires that all drawings  
15 submitted shall be drawn to a defined scale and shall be fully  
16 dimensioned, accurately figured, explicit and complete. The  
17 plans filed by Matzhold and accepted by King were drawn to scale  
18 but they did not meet the second requirement. Mr. King was  
19 the clerk-treasurer but no issue has been raised concerning  
20 the validity of his placement as temporary building inspector  
21 to pass on plans, for which he had no qualifications, and to  
22 issue building permits.  
23

24 The Village for some years had assumed a casual and airy  
25 regard for formalities. In particular, the evidence shows  
26 non-compliance with the statutory duty of its building inspector  
27 to maintain and keep records for all work undertaken in connection  
28 with the inspection of building operations. The records were  
29 in a marked state of disorder. There were no separate files  
30

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3 for projects. Since 1927 documents had been shoved helter skelter  
4 into an office drawer in no order whatever.

5  
6 Putting aside for the moment the alleged negligent  
7 inspection of the beam by Bloomfield, I agree that the above-noted  
8 conduct by the Village and its employees was careless in each  
9 instance.

10  
11 In treating with this topic it is first of all necessary  
12 to note that there is a difference between the relative situations  
13 of the innocent subsequent occupier Bolyne and the  
14 owner-developer, Reimer.

15  
16 Part III, section 27(2) of the Vanderhoof by-law states:

17 Responsibility of Owner or Agent

18 The approval of drawings and  
19 specifications for the issuance of a permit  
20 for the erection alterations, or repair  
21 of a building and any inspections thereof  
22 shall not in any way relieve the owner or  
23 his assisyants (sic) from full responsibility  
24 for the carrying out of the work in accordance  
25 with the provisions of this By-law.

26  
27 The sole cause of the collapse of the roof was the ordering  
28 and incorporation into the building of an undersized roof beam  
29 relative to the span of distance it covered in the structure.  
30 Mr. Parrett says that the issuing of the building permit  
contemporaneously with the approval of the plans and Bloomfield's  
failure to review them were breaches from which the damages  
flowed. The facts are however that it was Mr. Reimer, the owner-

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3 builder, who, as I have found, committed the intervening act  
4 of ordering the beam and delivering it to his building site  
5 without looking at the building permit which was not only a  
6 public document by statutory definition, but was one of a set  
7 which clearly includes an owner's copy which contained the correct  
8 beam specification. It is true that the plans did not bear  
9 the specifications for the beams. The careless acts of King  
10 in approving the plans and issuing the building certificate  
11 were not causative factors in bringing about the damage because  
12 Mr. Reimer did not rely on the building permit or the plans  
13 in ordering the beams or at all. As he employed no architect,  
14 it must be taken that he relied upon Matzhold to design the  
15 building, not the Village. The only omission from the plans  
16 that relates to the cause of the collapse was the failure to  
17 specify the beam size. But again, in ordering the beam Reimer  
18 did not rely on the plans. He had looked at them, along with  
19 Matzhold, when they were completed. He saw or should have seen  
20 that they carried no beam specifications. Whether or not he  
21 had the ability to read plans, or remembered, or thought about,  
22 the question of whether they bore specifications, he did not  
23 in fact rely upon them in ordering the beams. These are  
24 circumstances which distinguish this case from the decision  
25 by the Court of Appeal in Rothfield and Burtch v. Manolakas  
26 et al, (1988) 20 B.C.L.R. 85 (B.C.C.A.) where the majority held  
27 firstly, that the building owner was relying upon the city's  
28 building inspector, Reade, to ensure that the design of the  
29 proposed building wall was adequate, and made known his concern  
30

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3 directly to Reade who must have known in the special facts of  
4 the case that the owner was relying on the city; secondly, that  
5 the city, by the conduct of Phillips, another city building  
6 inspector, had established its own duty of care toward the owner  
7 Manolakas arising out of its conduct in connection with an  
8 essential pre-pour on-site concrete inspection. There are no  
9 facts in the present case to lead to the conclusion that the  
10 city created its own duty, and no such suggestion has been made.  
11

12 It was the owner, Mr. Reimer, who set in train this  
13 building project. It was he who decided to dispense with the  
14 services of an architect because, as I believe, he wanted to  
15 save money.

16 In summary in regard to this phase of the matter I hold  
17 that the careless record keeping by Vanderhoof and the conduct  
18 of the Village and its servants, King and Bloomfield in regard  
19 to the plans and the issuance of the building permit did not  
20 cause the loss and damaged suffered by Abe Reimer & Sons Ltd.,  
21 nor did Mr. Abe Reimer rely upon the Village in relation to  
22 those things.  
23

24 I now turn to consider the conduct of Bloomfield in  
25 carrying out the operational duty of inspecting the beams at  
26 the site which he undertook on his own volition. If Bloomfield  
27 did not act with reasonable care in performing this function  
28 this does not avail the Reimer Company. Mr. Reimer had selected  
29 the 5 inch beams from a quotation from Coast Laminated Timbers  
30



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3 Ltd. which contained the two choices for the buyer to select,  
4 at a time when the beams had not yet been manufactured. He  
5 selected the smaller and cheaper beams. On looking at the cheaper  
6 choice he could not but know that it was for the smaller size.  
7 He made no inquiries of any person involved in this litigation  
8 to enlighten him as to why the quotation contained two choices.  
9 He must have, or should have known that the choice of beam was  
10 of extreme importance to the health and safety of the public  
11 and employees who would occupy his retail store building. He  
12 had the ultimate responsibility under the by-law for construction  
13 and in my view he should have made inquiries. He did not  
14 communicate with Matzhold or look at the building permit which  
15 stipulated the larger size. I suspect he must have had some  
16 conversation with a person at Coast Laminated about these choices  
17 when he had this quotation in his hand, but this was not disclosed  
18 to the Court. Of all the three people, himself, Matzhold, and  
19 Bloomfield, who saw it on the site, and of those who took part  
20 in installing it, he was the only one who knew, or should have  
21 known precisely what size those beams actually were.

22  
23 In the leading case of Anns v. Merton London Borough  
24 Council, [1978] A.C. 728, [1977] 2 All E.R. 492 (H.L) followed  
25 and applied by the Supreme Court of Canada in Kamloops v. Nielsen,  
26 [1984] 2 S.C.R. 2, 66 B.C.L.R. 273, [1984] 5 W.W.R. 1, 29 C.C.L.T.  
27 97, 8 C.L.R. 1, 10 D.L.R. (4th) 641, 54 N.R. 1 Lord Wilberforce  
28 said that the duty of the municipality and its inspector is  
29 owed to owners or occupiers, but not of course to a negligent  
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3 the source of his own loss. In Peabody Donation Fund (Gov.)  
4 v. Sir Lindsay Parkinson & Co., [1985] A.C. 210, [1984] 3 All  
5 E.R. 529, [1984] 3 W.L.R. 953, Lord Keith, after commenting  
6 on the passage from the speech of Lord Wilberforce from which  
7 the above extract is taken said, in part at p. 353 (All E.R.):  
8 "The question whether a building owner's negligence is the sole  
9 cause of his loss raises a question of causation, not liability."  
10 Later Lord Keith expressed himself to be in agreement with what  
11 Slade, L. J. said in his judgment in the court below [1983]  
12 3 All E.R. 417 at 427, reading thus:

13 "Can it have been the intention of  
14 the legislature, in conferring on a borough  
15 council power to enforce against a defaulting  
16 site-owner requirements made by it in  
17 accordance with para. 13 of Part III of  
18 Sch. 9, to protect such owner against damage  
19 which he himself might suffer through his  
20 own fault to comply with such requirements?  
21 In my opinion, this question can only be  
22 answered in the negative. This particular  
23 power exists for the protection of other  
24 persons, not for that of the person in  
25 default. . ."

26 In Peabody the charitable organization which was building  
27 the townhouses in that case failed to recover, even though there  
28 was an architect and an engineer whom they had hired and relied  
29 upon.  
30

Mr. Reimer was the source or cause of his own loss hence  
the Village of Vanderhoof owed him no duty of care which is  
alleged to have arisen from the negligence of its employees.

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3 The action No. 6016 brought by Abe Reimer & Sons Ltd. against  
4 the District of Vanderhoof and Paul Bloomfield is dismissed.  
5

6 I now deal with the claim in negligence by the Reimer  
7 Company against Karl Matzhold. According to the pleadings the  
8 plaintiff contends that Karl Matzhold individually committed  
9 the tort of negligence in carrying out the contract entered  
10 into between the Reimer Company and the Matzhold Company. The  
11 submission was that Matzhold was employed as the contractor  
12 to construct the building and that he expressly agreed to do  
13 so according to the plans and specifications. The essential  
14 claim made against him is that he ordered the faulty beam and  
15 installed it in the plaintiff's building. I have rejected these  
16 two allegations. In light of the contention that Matzhold was  
17 the general contractor it is not surprising that there was no  
18 submission that Matzhold was negligent in failing to warn Reimer  
19 about anything.  
20

21 The contract did not impose a duty on Matzhold in regard  
22 to materials. The beams were materials. Since this obligation  
23 to supply materials was eliminated from Matzhold's  
24 responsibilities the only other person who could be responsible  
25 for materials was Reimer. There can be no negligence without  
26 the imposition of a duty. That apart there was sufficient  
27 proximity between Matzhold and Reimer to provide the foundation  
28 for a claim in negligence in carrying out the contract which  
29 brought proximity. But the faulty beam was the sole cause of  
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3 the damage. It was selected, ordered, and delivered by Reimer.  
4 As for alleged fault on the part of Reimer in connection with  
5 its installation, there was no evidence of bad workmanship.  
6 Anything to do with workmanship per se must be traced back to  
7 the beam which was ordered by Reimer. The Reimer Company has  
8 failed to prove to the degree required that Matzhold was guilty  
9 of negligence causing the loss and damage to Reimer. It is  
10 accordingly not necessary to enter into the legal question of  
11 the extent to which the duties stipulated in the contract bear  
12 upon negligent acts. In any event, this matter was not discussed  
13 during argument. The claim brought by Abe Reimer & Sons Ltd.  
14 in its action against the defendant Karl Matzhold is dismissed.

15  
16 The Bolyne Action

17 Different considerations apply to this action. Mr. Barnes  
18 relied upon the lack of a resolution appointing its inspector  
19 Paul Bloomfield as the foundation for a contention that no private  
20 law duty was owed to Bolyne Enterprise Ltd. by the defendants  
21 District of Vanderhoof and Bloomfield, and this position has  
22 not been accepted by the Court. That aside, the question whether  
23 Vanderhoof owed a duty of care to Bolyne was but faintly argued.  
24 There is no doubt on the authorities that the municipality and  
25 Bloomfield owed to Bolyne a duty of care. The allegations of  
26 Bolyne in regard to the faulty record keeping, issuance of the  
27 permit, and accepting the plans have already been found to be  
28 non causative factors. It remains only to consider whether  
29 Bloomfield was negligent in inspecting the beams. I agree that  
30

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3 as a building inspector, Bloomfield should not be faulted for  
4 checking the beams for structural accuracy. In general a building  
5 inspector is entitled to rely upon various forms of written  
6 assurance by way of letters and signed certificates from design  
7 specialists. Inspectors are not usually qualified in this field.  
8 Mr. Bloomfield had no such expertise. He said that he followed  
9 his usual practice in this case which, in his view, is adequate  
10 to assure himself that an engineer has certified that the material  
11 is suitable for the use for which it is intended. That practice  
12 presumably is that he simply satisfies himself that there is  
13 a certificate attached to the material. I venture to say that  
14 if that is his usual way of proceeding it is a poor practice.  
15 Surely it is necessary to open the plastic packet and examine  
16 it. If a building inspector gets an envelope bearing an  
17 engineer's logo with a letter or certificate inside he would  
18 be expected to open the envelope and read the letter. Even  
19 if there was in this case a certificate inside the clear plastic  
20 container Bloomfield did not trouble to find out what it said  
21 or who made the certification. I hold that his failure in this  
22 respect was unreasonable and negligent. The District of  
23 Vanderhoof is responsible for his negligence. Mr. Byl, counsel  
24 for Bolyne, informed me that the plaintiff does not seek judgment  
25 against Paul Bloomfield personally.

26  
27 The defendant Reimer & Sons Ltd. contended that there  
28 was no direct negligence on the part of Mr. Reimer and that  
29 as he had employed an independent contractor, Matzhold, he was  
30

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3 not vicariously liable for Matzhold's negligence which was the  
4 sole and exclusive cause of the collapse of the roof and the  
5 resulting damage.  
6

7 It is clear that the Reimer Company owed a duty of care  
8 to the plaintiff Bolyne Enterprises Ltd. under the principle  
9 laid down in the Anns and Kamloops cases.  
10

11 I have found that Matzhold was not an independent  
12 contractor. In any event an employer cannot invoke the  
13 independent contractor doctrine where the employer participates  
14 in the work which the independent contractor was employed to  
15 do, as pointed out by Gow, J. in Savoy v. Roddier and O'Neill  
16 No. 852586 Victoria Registry, March 27, 1987 (not yet reported).  
17 Here Reimer was his own general contractor.  
18

19 In any event, as in the Savoy case, whether or not Matzhold  
20 was an independent contractor the evidence shows that Reimer's  
21 personal and direct negligence caused the damage. He avowed  
22 that he had little or no experience in construction or in building  
23 materials, yet under his contract he took upon himself the  
24 responsibility of supplying and ordering materials and pursuant  
25 thereto, or, in any event he selected, ordered, and delivered  
26 to the site undersized beams and permitted the beams to be  
27 installed without making any adequate inquiry or seeking advice.  
28

29 As between Abe Reimer & Sons Ltd. and the District of  
30

1  
2  
3 Vanderhoof I apportion 75% fault to Abe Reimer & Sons ltd. and  
4 25% fault to the District of Vanderhoof.  
5

6 Damages in the sum of \$99,552.98 are awarded to the  
7 plaintiff Bolyne Enterprises Ltd. in the first action against  
8 Abe Reimer & Sons Ltd. and District of Vanderhoof. Under an  
9 indemnity instrument appearing in the building permit signed  
10 by Matzhold as agent of the owner, Abe Reimer & Sons Ltd. I  
11 adjudge and order that District of Vanderhoof is entitled to  
12 be indemnified by Abe Reimer & Sons Ltd. for the damages hereby  
13 awarded against Bolyne. No submissions were made on behalf  
14 of the Reimer Company in opposition to this claim for indemnity.  
15 In the result the third party claim by Bolyne against the Reimer  
16 Company is allowed. The remaining third party claims are  
17 dismissed. Unless there are submissions by counsel with respect  
18 to costs or court order interest, costs will follow the event  
19 in each case and court order interest should run from February  
20 7, 1985, at the Registrars prevailing rates from time to time.  
21

22   
23 F. S. Perry, L.J.S.C.

24 Prince George, B. C.  
25 January 23, 1989  
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