

IN THE SUPREME COURT OF BRITISH COLUMBIA

Prince George, B.C.

May 16, 1989

BETWEEN:

EDMA HOLDINGS LTD. and  
QUINTETTE COAL LIMITED

PLAINTIFFS

AND:

MUSTANG ENGINEERING AND  
CONSTRUCTION LIMITED INC.,  
LORNE KENNIE and KEN KENNIE  
carrying on business as  
PROJECT MECHANICAL, LORNE  
KENNIE, KEN KENNIE and  
JOHN DOE

DEFENDANTS

REASONS FOR JUDGMENT

OF THE HONOURABLE

JUDGE CURTIS L.J.S.C.

T.P. MATTE, Esq.

appearing for the Plaintiffs

D. BYL, Esq.

appearing for the Defendant,  
Mustang Engineering and  
Construction Limited Inc.

THE COURT: (Oral) The issue in this case is whether or  
not a pipe separation, which resulted in extensive  
water damage to one of the Plaintiffs' houses was  
caused by faulty workmanship.

The Defendant, Mustang Engineering and  
Construction Limited was the general contractor for a  
large number of houses being constructed for Quintette  
Coal Limited at Tumbler Ridge. Mustang agreed to be  
contractually liable for the workmanship of its  
subcontractors.

1           The house in question was completed and turned  
2 over to the Plaintiffs October 7th, 1983. The water  
3 was left on and the house was heated, however, it  
4 remained vacant. On the 17th of February, 1984, the  
5 heating was changed over from propane to natural gas.  
6 On the 28th of February it was discovered that the  
7 furnace had been off for at least two days and it was  
8 relit. On the 27th of March the water leak was  
9 discovered. It is agreed that the damage caused by  
10 the leak amounts to \$15,348.

11           The leak occurred under a bathroom sink on the  
12 upper floor of the house in the cold water line  
13 leading to the sink. A brass valve was found to have  
14 come off the pipe leading from the interior wall at a  
15 point where a compression joint joined the valve to  
16 the half inch copper pipe. The plumber that attended  
17 also testified that he found a transverse fracture in  
18 the polybutylene pipe above the fitting approximately  
19 eight inches from the valve.

20           The two possible causes of failure suggested by  
21 the evidence are improper fastening to the compression  
22 fitting or alternatively freezing of the pipes. There  
23 is no evidence to suggest any other cause.

24           I find that the probable cause of failure was  
25 improper tightening of the compression fitting. My  
26 reasons for so finding are as follows:

- 27           1) Both experts gave evidence that a properly

1 tightened compression fitting should not  
2 come off. The edges of a properly tightened  
3 compression fitting should dig into the  
4 copper pipe. I am sure this is so even if  
5 the copper pipe is of the harder variety such  
6 as used in this case.

- 7 2) When Mr. Wood tested a similar fitting,  
8 freezing did not cause the valve to separate  
9 from the copper pipe. In his test, in  
10 fact the compression ring fit so tightly on  
11 the copper pipe he had to saw it off.
- 12 3) While the furnace was found to be off on the  
13 27th of March, the evidence indicates that  
14 water leaking into the furnace was the  
15 probable cause for it not working. There was  
16 no other evidence in the house that there had  
17 been interior freezing at any time.
- 18 4) Mr. Wood's opinion that freezing was the cause  
19 was premised on the assumption that the  
20 transverse fracture in the polybutylene pipe  
21 had occurred at the same time as the valve  
22 separation. His test however did not produce  
23 a fracture into the polybutylene pipe, nor did  
24 he find in the fittings any of the common  
25 evidence of freezing such as longitudinal  
26 fractures. In Mr. Wood's extensive experience  
27 with pipe freezing cases, he could not recall

1 one involving a fracture of a plastic pipe.

2 While I am not certain how the damage to the  
3 polybutylene pipe was caused, I very much  
4 doubt that it was caused by freezing.

5 I find that it is probable that the compression  
6 fitting was insufficiently tightened with the result  
7 that the forces relating to water surges discussed in  
8 Mr. Kashyup's report gradually pushed the fitting off  
9 the pipe.

10 It is argued that the Plaintiffs were negligent  
11 in leaving the water on and in not inspecting the  
12 house regularly. Even if the Plaintiffs had rigidly  
13 followed their inspection schedule, it is unlikely the  
14 water damage would have been prevented, as the leak  
15 appears to have been sudden in nature. It is also  
16 suggested that leaving water on in a vacant house is  
17 negligent. I see no reason for that to be so. Houses  
18 are commonly left with water on for days or weeks at a  
19 time.

20 The Plaintiff shall recover the sum of \$15,348  
21 from the Defendant, Mustang Engineering and  
22 Construction Incorporated, together with prejudgment  
23 interest at the rate allowed from time to time on  
24 default judgments.

25 Is there any submission as to cost?

26 (SUBMISSIONS BY COUNSEL)  
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