No. 7870
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

PRINCE GEORGE
MAR 17 1989
COURT REGISTRY

BETWEEN:

BOLYNE ENTERPRISES LTD.

PLAINTIFF

AND:

ABE REIMER & SONS LTD.,
KARL MATZHOLD, JACK CALDWELL,
DISTRICT OF VANDERHOOF, and
PAUL BLOOMFIELD

DEFENDANTS

AND BETWEEN:

ABE REIMER & SONS LTD.

PLAINTIFF

AND:

KARL MATZHOLD, DISTRICT OF
VANDERHOOF, JACK CALDWELL,
REGIONAL DISTRICT OF
BULKLEY-NECHAKO, and PAUL
BLOOMFIELD

DEFENDANTS

CORRECTIONS TO

REASONS FOR JUDGMENT

OF

THE HONOURABLE

JUDGE PERRY

CORRIGENDA TO REASONS FOR JUDGMENT ISSUED JANUARY 24, 1989

TO: The Registry, Prince George, B. C.
The Trial Division
Dick Byl, Esq.
W. Glen Parrett, Q.C.
J. Harold Bogle, Esq.
Dan Marcotte, Esq.
Thomas W. Barnes, Esq.

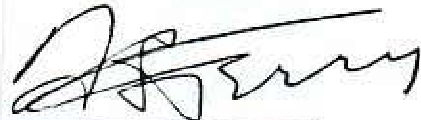
Page 10 line 17- For "place" substitute "placed."

Page 13 line12- For "artributed" substitute "attributed".

Page 50 line 8- After "[1937] 2 D.L.R. 153 subsitute period for a comma and "wherein" for "where in." So as to read: ". . . [1937] 2 D.L.R. 153, wherein Rowell, C.J.O. . . ."

Page 50 line 16- substitute "and" for "an", so as to read: "and he applied for and got the building permit."

Page 73 line 29- Two words have been omitted from the reasons, namely "building owner" following the word "negligent". The sentence should read: "but not of course to a negligent building owner, the source of his own loss."



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

Prince George, B. C.
March 15, 1989

Mr. Dennis did not give in his report the factual basis for his opinion that 6 3/4 inch beams would be undersized as required by s.11(1) of the Evidence Act, R.S.B.C. 1979, C.116. I see nothing in his report, and nothing was referred to by Mr. Parrett, that provides a foundation for the opinion. Accordingly I think that the Dennis opinion on this point should be regarded as speculative and I put it aside.

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

Mr. Reimer denies that he ordered the beams. Mr. Matzhold takes the same position. Each one blames the other. The sole issue in both cases is liability. All the defendants in each case disclaim responsibility for the collapse of the roof. Broadly stated, those defendants who owed a duty of care to each plaintiff and who breached that duty are liable for the foreseeable damages resulting from their proven negligence subject to any considerations which ought to negative or limit the scope of the duty.

4, 1978, the Reimer Company assumed responsibility for materials and pursuant thereto Reimer ordered the undersized beams and delivered them, including the failed beam in question to the building site; that among other things, by way of preparatory work, Reimer ordered posts containing saddles of a size made to fit a beam measuring 5 1/4 inches. These defendants further say that Bolyne has failed to prove any negligence on the part of Mr. Matzhold personally; that if any negligence causing damage to Bolyne by Matzhold or his Company is proven which is denied, any such liability should be attributed to the Matzhold Company and not to Karl Matzhold.

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

The municipal authority defends the Bolyne action on the following grounds. Firstly it says that although Mr. Bloomfield commenced to carry out certain functions on behalf of the municipality as its part-time building inspector on April 20, 1978, and continued to do so for about 3 1/2 months until he was replaced by Mr. Caldwell as full-time inspector, he was

A general definition of an independent contractor is found in the decision of the Supreme Court of Canada in T. G. Bright & Company Ltd. v. Kerr, (1939) S.C.R. 63; [1939] 1 D.L.R. 93 affirming on appeal the judgment of the Ontario Court of Appeal [1937] O.R. 205; [1937] 2 D.L.R. 153, wherein Rowell, C.J. O. adopted the following definition found in Halsbury, 2nd ed., vol. 1, p. 193, as follows:

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

In the pre-construction stage Matzhold undertook to draw plans and do a cost analysis, and he applied for and got the building permit. Immediately thereafter Matzhold requested that their relationship be defined in a written agreement. The form of contract that was first produced from the Matzhold Company's stock of blank forms and which was first filled in embodied terms which in my view were arguably sufficient to characterize the Matzhold Company as the general contractor. According to Myers' handwriting on exhibit 39 it was an offer by the Matzhold Company to supply for "the above" certain things, excluding, however, even at that stage, "all labour and material." It was to include supervision and approval of all subtrades (ex. 28, as typed) and materials, and a capable and proficient work crew. This was not signed. We then find duties being

building owner, the source of his own loss. In Peabody Donation Fund (Gov.) v. Sir Lindsay Parkinson & Co., [1985] A.C. 210, [1984] 3 All E.R. 529, [1984] 3 W.L.R. 953, Lord Keith, after commenting on the passage from the speech of Lord Wilberforce from which the above extract is taken said, in part at p. 353 (All E.R.): "The question whether a building owner's negligence is the sole cause of his loss raises a question of causation, not liability." Later Lord Keith expressed himself to be in agreement with what Slade, L. J. said in his judgment in the court below [1983] 3 All E.R. 417 at 427, reading thus:

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

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

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.