SHORES JARDINE LLP

BREAKING CASE LAW

Swift v Tomecek Roney Little & Associates Ltd., 2014 ABCA 49

THE LIABILITY OF ARCHITCETS AND ENGINEERS UNDER ARCHITECTURAL CONTRACTS

Swift v Tomecek, Roney Little & Associates Ltd.,
2014 ABCA 49 (Leave to appeal to the Supreme Court of Canada was denied)

This case is about the liability of architects and engineers under architectural contracts.

Mr. Swift signed a contract with an architectural company to design a new home. Mrs. Swift was a joint tenant on the certificate of title, but did not sign the contract. The contract contained a clause limiting the liability of the architects to $500,000.00 for anything arising solely and directly out of their duties and responsibilities.

The architects subcontracted all structural engineering to Tomecek Roney Little & Associates Ltd. As construction proceeded, it became clear that the home was not engineered to the correct standard. The engineering firm undertook re-engineering. Mr. Tomocek, the engineer, then told Mr. Swift that all of the re-engineering work had been or would be done. Mr. Swift relied on this representation and completed construction of the home. Following completion, the home required significant structural and seismic remediation to comply with the applicable standards. The engineering remediation cost significantly more to do following completion than it would have done at the point in time when Mr. Tomecek assured Mr. Swift that is was already done or would be done. The trial judge found that the Swifts suffered losses totaling approximately $1.9 million.

This case is important for two reasons. First, it considered whether Mr. Swift was acting as the agent for Mrs. Swift when he signed the architectural contract. The Court found that the fact that Mrs. Swift was a property owner as joint tenant, the spouse of Mr. Swift, aware of the contract and was "on board" was insufficient evidence to establish an implied agency relationship. Since Mrs. Swift did not sign the contract she was not subject to the limited liability provision in the contract. Second, the Court found that the negligent misrepresentation by the engineer was separate and distinct from the claim for negligent engineering work. While the negligent engineering work arose "solely and directly" out of the architects' duties and responsibilities pursuant to the contract, Mr. Tomecek's negligent misrepresentations that the re-engineering work was complete, did not.

In short, the architects were held liable in contract for the negligent work of the engineer but not the additional damages caused by the engineer's negligent assurances that the re-engineering work was done.

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