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Case Comment: Leaky Condo Actions
The Owners, Strata Plan NW 3341 v. Canlan Ice Sports Corp. Et
Al. 2001 BCSC 1214 (“Riverwest”)

C.W. Eagles
October 1, 2001

This decision is extremely important for being one of the first “leaky condo” actions to go to trial and result in judgment.

Riverwest is an 85 unit condominium project located on the Fraser River in the Municipality of Delta, BC. The project, built in 1990, employed a wood framed face sealed design. Within one year of completion, a number of the owners started complaining of water ponding on the balconies and decks and of water leaking into their units. In 1996, some of the owners noticed rot developing. To recover the costs of remediation, the Strata Corporation commenced action against the Municipality of Delta, the developer, the contractor and the architects involved in the design and construction of Riverwest.

Municipality of Delta

The Court held that having made a policy decision to adopt the BC Building Code, the Municipality had an obligation to ensure that it was implemented in a reasonable manner. The decision by the municipal building department not to inspect Part 5 (“building envelope” issues) and not to require a certificate of compliance from an architect or professional engineer was not reasonable, and was a causative factor in the damage to Riverwest. On that basis, the Court held the Municipality jointly and severally liable for approximately \$3,000,000.00 in repairs required by Riverwest. The Court assessed Delta’s contribution at 20%.



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Architect

The Court concluded that the architecture firm that prepared the drawings failed to meet industry standards by failing to “adequately show size, shape, location, and methods of construction of the various elements” in the drawings. More importantly, the Court agreed with an expert’s report that “a professional designer, giving proper weight to the risk factors, would have avoided a face-seal design.”

Conclusion

While it is likely that this decision will be appealed, if it stands it may have major implications with respect to the liability of Municipalities* which, according to the evidence led by Delta, did not inspect Part 5 issues at the time Riverwest was constructed, and also for those Architects who designed face-sealed structures.

* It should be noted that the City of Vancouver will likely be shielded from liability in this type of litigation by virtue of the Vancouver Charter.