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Full Disclosure of Problems in Remediation: Responsibility of Owners and Managers

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November 2002

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Owners and managers of a condominium must ensure that they provide full disclosure of problems that are being remediated or they may be held partly responsible for problems associated with the remediation.

The plaintiffs, the Owners, Strata Plan No. N83 and Intrawest Corporation (collectively the “Owners”), were the owners and managers of condominiums located in Whistler, British Columbia. Due to problems with leaking roofs, the Owners engaged the defendant, Kendyl Hart doing business as Assured Roofing (“Assured”), to perform repairs to the roofs. The repairs failed to correct the problems associated with the water leakage, and the Owners brought an action against the defendant for breach of contract, breach of warranty, and negligence.

The Supreme Court of British Columbia found against Assured with respect to the Owners’ allegations. Specifically, Assured was liable for breach of contract because: 1) the non-perforated felt applied to the roof did not meet B.C. Building Code requirements; 2) Assured did not install new metal flashings; and 3) Assured did not provide adequate cross-ventilation and rooftop ventilation. Additionally, Assured was liable for breach of warranty because it failed “to provide roofs that were fit for the purpose for which they were intended, that is, to provide a waterproof cover.” Furthermore, Assured was negligent in its performance of its contract in failing to: 1) make adequate inquiries as to the nature of the construction of the buildings prior to submitting its bids; 2) to install the lower course of non-perforated felt according to code; 3) to provide adequate ventilation; and 4) to make itself aware of



the qualities of the glass laminate shingles that were specified by the Owners.

Importantly, however, the Court also found that the Owners themselves “contributed in a real and measurable way” to Assured’s breaches by withholding critical information about the cause and extent of the leakage problem. As such, the Court concluded that the Owners were equally responsible for breaches. The Court held that the defence of contributory negligence was available either through common law or through the operation of the *Negligence Act*.

In determining that the Owners were contributorily negligent and reducing the damages payable by Assured by 50% (from \$353,520 to \$176,760), the Supreme Court noted:

... fairness dictates that the plaintiffs not be entitled to full recovery of their damages in contract because of their contributory negligence in failing to advise Assured of the Pacific Interior report and of the extent of the ice damming problem, either prior to entering into the contracts, or upon receiving Assured’s recommendations to improve the ventilation and insulation before commencement of the work.

Finally, it is evident, in hindsight, that the glass laminate shingles were not fit for the purpose for which they were intended given that they provided a lower value of insulation and given that they were applied to the roofs without the remedial work first having been carried out. In my view, the responsibility for using that glass laminate shingles cannot be laid at the feet of Assured because it was a product specified by the Owners and Intrawest.

This decision should serve as a warning to owners and managers about the importance of complete disclosure of information when engaging the services of contractors.