

Case Name:
McMillan v. Canada Mortgage and Housing Corp.

Alan McMillan, Linda Hepner
v.
Canada Mortgage and Housing Corporation

[2009] S.C.C.A. No. 49

[2009] C.S.C.R. no 49

File No.: 33017

Supreme Court of Canada

Record created: February 12, 2009.

Record updated: April 30, 2009.

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Status:

Application for leave to appeal dismissed with costs (without reasons) April 30, 2009.

Catchwords:

Civil procedure -- Class actions -- Applicants commencing action seeking damages for alleged negligence on the part of CMHC regarding physical damage to their condominiums -- Applicants' application to certify action as class proceeding dismissed -- Whether a duty of care arises in circumstances where the ability to ameliorate risk through the dissemination of acquired knowledge is manifest -- On a preliminary application to strike a claim, should a court consider stage 2 of the Anns/Cooper analysis -- Whether there are issues of public importance raised.

Case Summary:

The Applicants purchased a condominium unit in a condominium development in White Rock, British Columbia, constructed in 1994. In 2000 it was determined that the building was suffering from premature building envelope deterioration. A contractor was hired to repair the structural damage and the Applicants were assessed a substantial sum to effect the repairs. The Applicants contend CMHC conducted extensive research into building science and wall assembly and construction in the early 1980s and 1990s. CMHC focussed its research on wall assembly construction and water ingress related envelope failures. The Applicants allege that CMHC's negligence caused physical damage to their property. The claim rests on the proposition that CMHC had a duty to warn the Applicants (or those constructing Villa Positano) about problems with the envelope design being used, or to take reasonable

steps to ensure that residential premises using that design were not built on the west coast of Canada, and failed to do so. The Applicants applied to certify the action as a class action. CMHC successfully brought a motion for summary judgment. An appeal was dismissed.

Counsel:

John R. Singleton, Q.C. (Singleton Urquhart), for the motion.

D. Ross Clark (Davis & Company), contra.

Chronology:

1. Application for leave to appeal:

FILED: February 12, 2009. S.C.C. Bulletin, 2009, p. 249.
SUBMITTED TO THE COURT: March 30, 2009. S.C.C. Bulletin, 2009, p. 406.
DISMISSED WITH COSTS: April 30, 2009 (without reasons).
S.C.C. Bulletin, 2009, p. 603.
Before: McLachlin C.J., Abella and Rothstein JJ.

Procedural History:

Judgment at first instance: Respondent's motion for summary judgment allowed; Applicants' application to certify this action as a class proceeding dismissed.

Supreme Court of British Columbia, Smith J., October 1, 2007.

Neutral citation: 2007 BCSC 1475.

Judgment on appeal: Appeal and application for leave to amend the pleadings dismissed.

Court of Appeal for British Columbia (Vancouver), Finch C.J. and Saunders and Kirkpatrick JJ.A., December 19, 2008.

Neutral citation: 2008 BCCA 543; [2008] B.C.J. No. 2574.

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