

Owner/Developer Was Not Responsible For Civil Damages Sustained In A Workplace Incident 20 Years Ago



Over 20 years after a workplace incident that seriously injured a worker, the Alberta Court of Queen's Bench has dismissed the worker's civil action against a developer.

The worker had been working on a rooftop of a condominium conversion project in March 1994 when he slipped on an icy roof and fell through a piece of plywood covering a hole cut through the roof for a skylight. The worker sustained serious injuries and was rendered a paraplegic. A report from Alberta OHS prepared following the incident noted several deficiencies at the work site but charges were not laid.

The worker commenced a civil action against three parties thought to be outside the workers' compensation scheme. Two of those parties were ultimately let out of the action after the Court determined that they did fall within the workers' compensation scheme. The remaining defendant was the owner of the property and the developer of the project. The worker alleged that the developer was liable for the incident on the basis of negligence in the development and supervision of the project, vicarious liability for the project manager, and breaches of the *Occupier's Liability Act*.

One of the aspects considered by the trial judge was the impact of the statutory requirements under Alberta's *Occupational Health and Safety Act* ("OHS"). The Court confirmed that while a breach of the OHS could inform on the reasonable standard of care, it could not create an enforceable duty. Further, the evidence did not establish that the OHS had been breached as it did not impose any duties on an owner/developer. The OHS in force at the time of the incident (RSA 1980) has since been amended but while many aspects of the legislation have since changed, the current OHS also does not impose any duties on an owner directly, unless the owner is considered the prime contractor.

Ultimately, the Court found that while the developer did owe a duty of care to the worker, that duty was limited in scope and was restricted to the selection of a competent project manager. The developer was not responsible for supervising safety at the work site. The court found that the developer's selection of the project manager was reasonable and satisfied its duty of care to the worker. Further, the Court determined that the project manager's relationship to the developer was that of an independent contractor such that there was no basis for a finding of vicarious liability. The Court also dismissed the worker's claim that the developer was liable

under the *Occupier's Liability Act* on the basis that the developer had exercised reasonable care and supervision of the project manager.

The Court did however proceed to find (in obiter) that the project manager was negligent on the basis that it had: failed to keep the roof clear of ice and snow and failed to ensure that an appropriate cover was designed and appropriately secured.

While the developer in this case was not found liable, this case serves as an important reminder of the importance of ensuring that the requirements under the *OHS Act* are met, and notes that in certain cases, the failure to do so may expose parties which are outside of the protection of the workers compensation scheme to damages in a civil action.

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