

House Construction: The Duties of Contractors and Municipal Building Inspectors

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After moving into a newly renovated or constructed home, the last thing people want is to have deal with the hassles and headaches of problems with their home. People greatly rely on construction contractors and building inspectors to do a proper job.

In [*White v. The Corporation of The Town of Bracebridge*](#), 2020 ONSC 3060, the court examined the obligations of contractors who design and construct houses, as well as the duty of care owed by municipal building inspectors.

Facts

In March 2012, the plaintiff purchased a house from the defendant, Grand. At the time of the purchase, Grand was in the process of renovating the property and adding a two storey addition.

Some of the construction was being conducted pursuant to a building permit issued by the Town of Bracebridge, while other parts of construction were not. The construction passed inspections by the Town's building department.

In March 2014, the plaintiff noticed watermarks on the wall and landing area around the stairs of the house. In April 2014, upon further investigation by a contractor, the plaintiff was advised that the water was entering the house through the ceiling in the new addition.

Additional investigations revealed a number of construction deficiencies and infractions of the *Ontario Building Code* associated with Grand's construction activities that the Town failed to identify during its building inspections.

The matter proceeded to a six day trial. Grand did not participate in the trial.

Negligent Construction

Justice DiTomaso stated that contractors who design and construct a building owe a duty of care to subsequent purchasers for foreseeable failures that would lead to defects that pose a danger to the health and safety of the occupants.

It is reasonably foreseeable that negligent construction resulting in latent defects may cause injury or damage to other property owners when those defects manifest themselves. Justice DiTomaso held that Grand owed the plaintiff a duty of care.

Regarding the standard of care, Justice DiTomaso noted that the *Ontario Building Code* provides minimum standards for construction so that owners of houses will be safe from poor construction. His Honour held that the applicable standard of care for construction contractors is, at a minimum, the *Ontario Building Code's* requirements.

Grand breached the standard of care. There were a significant number of deficiencies which contravened the *Ontario Building Code*.

Breach of Contract

Justice DiTomaso indicated that a construction contract includes an implied term that the contract will be performed in a good and workmanlike manner, if the property owner relies on the knowledge and expertise of the contractor.

When the plaintiff entered into the Agreement of Purchase and Sale for the house, it was conditional upon the completion of the construction work. The plaintiff's expectation was that Grand would not only comply with the *Ontario Building Code*, but would complete the construction in a good and workmanlike manner.

Justice DiTomaso found Grand liable for breach of contract.

Negligent Building Inspection

A "reasonable" building inspection will vary depending on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of the harm, and the burden or cost that would be incurred to prevent the injury.

Municipalities are not held to a standard where they are required to act as insurers or guarantors for renovation work. A municipality does not have to discover every latent defect or every deviation from the *Ontario Building Code* where inspections are carried out according to an inspection scheme based on good faith policy decisions.

A municipality does not have an obligation to ensure that the building is completed exactly in accordance with the development specifications set out by the owner.

In addition, municipal building inspectors do not have to continuously monitor the construction. They have a duty to detect defects that are apparent on visual inspection during the staged inspections and to order that the defects be remedied. As indicated, perfection is not expected.

The Town conceded that certain aspects of the construction contained *Ontario Building Code* deficiencies which should have been caught on inspection.

However, for the most part, the Town acted reasonably. Justice DiTomaso held that there was nothing unusual during the Town's staged inspections that raised red flags and warranted an increased standard of care.

Contributory Negligence

The Town argued that the plaintiff should be held contributorily negligent for failing to conduct due diligence before purchasing the property. Justice DiTomaso disagreed.

His Honour held that the plaintiff was very diligent in his pre-purchase review of the property. He ensured that there would be a final inspection from the municipality confirming *Ontario Building Code* compliance. He also had two friends who had experience in construction and real estate inspect the property.

Moreover, the Town did not lead evidence on the standard of care or level of due diligence required by the plaintiff, nor did it elicit any objective or other evidence of a failure of the plaintiff to meet that undefined standard.

Private Insurance Exception

The Town argued that it should be allowed to deduct a certain portion of the damages to account for amounts received by the plaintiff from his home insurer. The Town submitted that the plaintiff cannot recover the same damages twice.

Justice DiTomaso held that the private insurance exception should apply, thereby prohibiting a deduction. His Honour stated that it would be unfair and inappropriate to allow the defendants to benefit from the plaintiff's foresight and sacrifice in obtaining home insurance.

Damages

Grand was found solely liable for damages of over \$96,000. The Town and Grand were found jointly and severally liable for damages of just over \$71,000. This includes general damages of \$5,000, on the basis of the plaintiff suffering inconvenience, distress, and a loss of enjoyment of his house for a prolonged period of time.

The Town's crossclaim against Grand was granted in the amount of just over \$71,000.

Summary

Contractors who construct houses owe a duty to subsequent purchasers in regards to foreseeable failures that will lead to defects which pose a danger to the health and safety of the occupants of the house.

At a minimum, contractors must comply with the *Ontario Building Code*. Further, it is an implied term of a construction contract that the work will be performed in a good and workmanlike manner, if the property owner relies on the knowledge and expertise of the contractor. Therefore, in many cases, contractors may have an obligation to exceed *Ontario Building Code* requirements.

Municipal building inspectors have to conduct "reasonable" inspections. They are not expected to be perfect or ensure exact compliance with construction specifications. The requirements vary and depend on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of the harm, and the burden or cost which would be incurred to prevent the injury.