

Supreme Court of Canada backs B.C. leaky-condo owners

Thousands may now be entitled to coverage under general contractors' insurance

BY NEAL HALL, VANCOUVER SUN NOVEMBER 24, 2010



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Photograph by: File, Vancouver Sun

VANCOUVER — The Supreme Court of Canada has made a precedent-setting decision that will affect thousands of leaky-condo owners in B.C., a lawyer involved in the appeal said Tuesday.

Canada's top court unanimously ruled that an insurance company had a duty to defend legal actions for claims of water damage to suites in four Metro Vancouver housing co-ops: West Coast Community Homes, Burlington Heights, Hyland Park and Terra Nova Housing.

It opens the possibility that, for the first time, general contractors' insurance companies will have to pay for faulty work done by subcontractors.

"This is a landmark decision," Vancouver lawyer Gordon Hilliker said. "This has been the most watched insurance case for many, many years."

He said an estimated 30,000 leaky condo units have been repaired in B.C. and another 40,000 are

expected to need repair in the future.

The ruling will mean that people with leaky condos will be able to go after the general's contractor's insurance policy in legal actions to try to recoup some of the cost of damages caused by defective construction by subcontractors.

"A lot of these leaky-condo cases, people settle out for pennies on the dollar," Hilliker said.

"For people that have already settled, that's too bad," he added. "But for people who haven't settled, [the Supreme Court decision is] good news."

He said if an owner of a leaky condo was hit with a \$75,000 assessment by the strata council to pay for repairs to fix defective work that caused leaks, the condo owner could now have some of the repair costs paid by the contractors' insurance policy.

But James Balderson of the Vancouver-based Coalition of Leaky Condo Owners remained skeptical that the ruling will translate into more money to compensate leaky condo owners.

"I don't know what the real implications will be," Balderson said. "It may or may not produce any more money for leaky-condo owners."

Most leaky-condo suits are settled out of court, he said, and many contractors have gone out of business rather than fight the lawsuits, leaving condo owners holding the bag for repairs.

The Supreme Court of Canada ruling overturned previous rulings by the B.C. Court of Appeal and the B.C. Supreme Court, which found the insurance company in question, Lombard General Insurance Co. of Canada, did not have to defend actions of breach of contract and negligence against the general contractor, Progressive Homes Ltd.

The top court also ordered Lombard to pay Progressive's legal costs "in this court and the courts below." Progressive always took the position that the defective work done by subcontractors should be covered by its insurance policies.

The decision confirmed the view taken in courts in Ontario, which found that insurance policies provided coverage for claims against the general contractor for errors arising from the work of subcontractors.

The latest decision means Lombard now is obligated to defend the contractor, Progressive, which built four affordable housing co-op buildings for B.C. Housing. The buildings were completed in 2004 and 2005.

When the buildings leaked, B.C. Housing filed four lawsuits against Progressive, claiming various construction defects in framing, windows, flashing, stucco, venting and roofs, which allegedly caused water to leak into suites. Most of the work was done by subcontractors.

Progressive asked Lombard to defend the legal actions, but Lombard claimed it did not have a duty to

defend because the claims were not covered by the insurance policies.

Progressive initially filed a petition in 2006 to have a B.C. Supreme Court judge declare that Lombard had a duty to defend the contractor in the legal actions under general liability provisions in the contractor's insurance policies.

B.C. Supreme Court Justice Bruce Cohen upheld Lombard's position that it had no duty to defend, based on an earlier decision known as Swagger.

Progressive appealed to the B.C. Court of Appeal, which upheld the lower court decision in a split 2-1 ruling.

Progressive appealed again and finally won in the Supreme Court of Canada.

The cases now will go back to determining liability and the amount of damages.

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