Communications With The Public: Issues Arising from

Muir v. 403570 B.C. Ltd. v. City of Penticton and Ian Stout

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COMMUNICATIONS WITH THE PUBLIC: ISSUES ARISING FROM *Muir* v. *403570 B.C. Ltd.* v. *City of Penticton and Ian Stout*

INTRODUCTION:

Recently the Supreme Court of British Columbia dismissed a counterclaim brought by the Defendant, 403570 B.C. Ltd. ("the Developer") for damages for injurious falsehood alleged against Mr. Stout, a municipal public officer employed by the City of Penticton.

FACTS:

1. On April 22, 1991 the Developer applied to the City of Penticton for *Condominium Act* approval to convert the Shoreline Motel into 45 strata units.

2. The property was zoned commercial/tourist, which included motel use.

3. On May 10, 1991 Council of the City of Penticton resolved to approve the strata conversion.

4. On June 17, 1991 the Developer filed a disclosure statement with the Superintendent of Real Estate. Under intended use the Developer declared that "the development will be utilized as a motel and/or for residential use."

5. On July 12, 1991 Mr. Stout wrote to the Developer advising that the disclosure statement was misleading. City Council had not changed the zoning of the property by approving the strata conversion. Mr. Stout sent a copy of the letter to the Superintendent of Real Estate.

6. Subsequently the Superintendent of Real Estate requested that the Developer file an amended disclosure statement. The Developer refused to do so and eventually gave an undertaking to the Superintendent that it would cease marketing the sale of any further units.

7. Subsequently purchasers of the units sued the Developer claiming that they were misled as they interpreted the clause "motel and/or for residential use" to include permanent residential use.

8. The Developer then sued Penticton and Mr. Stout claiming that the purchasers relied on Mr. Stout's letter in forming their opinion that they had been misled by the Developer.

LAW

9. The tort of injurious falsehood is the malicious publication of falsehoods concerning a

party's property, products or business to third persons, who are induced by these falsehoods to act in a manner which causes the person actual damage. To establish a cause of action for damages for injurious falsehood the following elements must be proved:

(a) publication of a false statement or statements concerning the persons property, products or business to a third party or parties;

(b) malice;

(c) actual damage.

10. Examples of injurious falsehood claims can be traced to the 16th century:

(a) In *Bliss* v. *Stafford* (1573) a person's title to land was challenged causing a delay in selling it. The person was entitled to damages;

(b) In *Sheperd* v. *Wakeman* (1662) a woman falsely told a man's fiancée that the man was already married to her, resulting in the break-up of the relationship;

(c) In *Riding* v. *Smith* (1876) a person falsely published that an employee of another person's business suffered from an infectious disease, causing that person a loss of business. That person was entitled to damages;

(d) In *Ratcliffe* v. *Evans* (1892) a person falsely published a statement that another person had ceased carrying on business causing that person a loss of business;

(e) In *Procor Ltd.* v. *U.S.W.A.* (1989) a person falsely reported to Customs authorities that a Company had engaged in deliberate and long standing customs fraud. The Company was entitled to damages for this malicious falsehood.

PENTICTON AND MR STOUT'S POSITION

11. The position taken by Mr. Stout and the City of Penticton in the litigation was that the letter written by Mr. Stout dated July 12, 1991 was accurate in every respect. Consequently, we had to support the validity and interpretation of the Zoning Bylaw; deal with the issue of non conforming use; and establish that the Developer's disclosure statement "motel and/or for residential use" was misleading.

12. Mr. Stout and the City of Penticton's alternative position was that even if the letter contained falsehoods that Mr. Stout had acted in good faith and therefore without malice.

THE COURT'S DECISION

13. The Supreme Court did not deal with the issue of malice. The Court agreed with our submission that Mr. Stout's letter of July 12, 1991 was accurate in every respect.