Ontario Court: Municipalities have an ongoing duty to monitor open building permit files

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In the recent *Huether v. Sharpe*, 2024 ONSC 1987 decision, the Ontario Superior Court found that a municipality has a duty to continuously monitor building permit files until all necessary inspections to enforce the Ontario Building Code (OBC) are completed.

Background

The defendant Township issued a building permit in May of 1986 in response to an application for a building permit to construct a house on a property. Following some construction, the Township completed an inspection on July 24, 1986 and noted five deficiencies. On Aug. 8, 1986, the Township issued an Order to Comply, citing the previously noted violations. The Order required that the construction be brought to compliance by the end of the month. A subsequent handwritten noted indicated “all complied with.” However, there was no evidence that a final inspection for occupancy ever took place.

In February of 1988, the Township issued a Treasurer's Certificate indicating that there were no outstanding work orders against the property. The Township subsequently relied on this Certificate in support of its argument that the building permit had closed; however, the Court found that the Treasurer does not have the authority to determine whether a permit is closed, and therefore the building permit could not have been closed.

The property changed hands multiple times over the years; the plaintiffs purchased the property in October of 2021.

Upon discovering construction defects at the property, the plaintiffs issued an action against the Township in February of 2022, alleging negligence in enforcing building code standards. The Township brought a summary judgment motion claiming that the alleged negligence on its part had occurred over 36 years ago, rendering the claim statute-barred as the ultimate 15-year limitation period had expired.

Decision

The Township argued that its duty to inspect with respect to construction arises and ends within a defined time period, as the tort of negligence cannot be continuous. The Township argued that its duty to inspect and monitor ceased once construction on the property ended.

However, the plaintiffs contended that the Township had a statutory duty to enforce and comply with the OBC, which did not expire within the timeline of an ultimate limitation period. The plaintiffs argued that the Township's duty to inspect extended beyond the completion of construction. It had ongoing inspection obligations and powers even after the permit was closed, and ought to have ensured that the building met OBC standards for occupation.

The Court found that the Township's duty to inspect did not end when construction ended. The Court acknowledged that the OBC explicitly notes that new builds are not to occupied "until notice of the date of completion of the building…is given to the chief official". The Court did not accept the Township's argument and distinguished between "end of construction" and "completion of the building" as end points to the Township's duty to inspect. The Court noted that a builder could end construction before a building was completed and ready for occupancy, in contravention to the OBC.

In this case, the property was initially sold when the building had not met the conditions for occupancy and when the permit was still open. The property was subsequently bought and sold several times, while the permit remained open.

Until final inspections were carried out to determine the completion of the building, the Township's duty of care was to continuously monitor its open permit file and to monitor the state of construction. Its duty to monitor continued until the Chief Building Official determined that the building was substantially complete and that it satisfied the conditions for occupancy. In this case, the Township did not provide any evidence that it had completed inspections after noting deficiencies and issuing an Order to Comply and had therefore failed to carry out its duties.

Takeaway

The case underscores that municipalities have an ongoing duty to monitor permit files and enforce building codes. This ongoing duty extends beyond the initial completion of construction, potentially affecting the ultimate limitation period for building claims against municipalities.

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