



Court File No. **VLC-S-S-110362**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 36 (SURREY)

PLAINTIFF

AND:

G.R. GRAHAM ARCHITECT, WSDK CONSULTING LTD. formerly
known as POMEROY ENGINEERING LTD., TRITAN CONSTRUCTION LTD.,
JOHN DOE CONTRACTORS 1 – 10 and CITY OF SURREY

DEFENDANTS

NOTICE OF CIVIL CLAIM

Name and address of Plaintiff(s):

THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 36 (SURREY)
c/o Haddock & Company
Barristers & Solicitors
200 – 1695 Marine Drive
North Vancouver, British Columbia V7P 1V1

Name and address of Defendants:

G.R. GRAHAM ARCHITECT
Address Unknown

WSDK CONSULTING LTD. formerly known
as POMEROY ENGINEERING LTD.
c/o Registered Office
700 – 401 West Georgia Street
Vancouver, British Columbia V6B 5A1

TRITAN CONSTRUCTION LTD.
c/o Registered Office
330 – 522 Seventh Street
New Westminster, BC V3M 5T5

JOHN DOE CONTRACTORS 1 – 10
Address Unknown

CITY OF SURREY
c/o City Clerk
14245 – 56th Avenue
Surrey, British Columbia V3X 3A2

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

1. The Plaintiff, The Board of Education of School District No. 36 (Surrey) (the "School District") is a body incorporated pursuant to the provisions of the *School Act*, R.S.B.C. 1996, c. 412. The School District owns and operates Colebrook Elementary School located at 5404 – 125A Street, Surrey, British Columbia (the "School").
2. The original school was constructed in or about 1919 with several additions being constructed onto the building over the years. This matter concerns the addition that was designed and constructed in or about 1987 to 1988 (the "1987 Addition") and, in particular, the design and construction of three roof canopies that were constructed as part of that addition (the "Roof Canopies").
3. The Defendant G.R. Graham Architect ("Graham"), whose current address is unknown to the Plaintiff, was, at all material times, a firm of professional architects.
4. The Defendant WSDK Consulting Ltd., formerly known as Pomeroy Engineering Ltd. ("Pomeroy") is a company incorporated pursuant to the laws of the Province of British Columbia and maintains a Registered Office at 700 – 401 West Georgia Street, Vancouver, British Columbia.
5. The Defendant Tritan Construction Ltd. ("Tritan") is a company incorporated pursuant to the laws of the Province of British Columbia and maintains a registered office at 330 – 522 Seventh Street, New Westminster, British Columbia.
6. The Defendants, John Doe Contractors 1 – 10 (the "Trades"), whose identities are currently unknown to the Plaintiff, were contractors retained by Triton and were involved in the construction of the Roof Canopies.
7. The Defendant City of Surrey (the "City") is a body incorporated pursuant to the *Local Government Act*, R.S.B.C. 1996, c. 323 and maintains an address at 14245 – 56th Avenue, Surrey, British Columbia. The City approved and inspected the design and construction of the Roof Canopies and issued permits for the construction of the Roof Canopies.

Background

8. On or about July 9, 2010 the south canopy section located on the west side of the School collapsed.

9. In the course of investigating the cause of the collapse, it was discovered that the metal straps required to anchor the top of the canopy to the wall to prevent the top of the canopy rotating away from the wall were missing.

10. Subsequent investigation confirmed that the metal straps had not been installed on either of the other two canopy sections constructed in the course of the 1987 Addition.

The Deficiencies

11. The Roof Canopies constructed in the course of the 1987 Addition were poorly designed and constructed and posed a substantial physical danger to the safety of persons occupying or using the School.

12. The Roof Canopies contained design and/or construction deficiencies attributable to the Defendants' negligent and deficient design, approval, construction, inspection and/or supervision of the construction of the Roof Canopies (the "Construction Deficiencies").

13. Particulars of the Construction Deficiencies include, but are not limited to, the following:

- (a) metal connecting plates required to anchor the top of the Roof Canopy framing to the exterior walls were not installed by the contractor, and
- (b) the framing of the Roof Canopies did not comply with the BC Building Code in force at the time of the construction.

Roles of the Defendants

14. Graham was the architect and Coordinating Registered Professional responsible for the overall design, inspection, field reviews and supervision of the construction of the 1987 Addition, including the construction of the Roof Canopies, pursuant to a contract with the School District.

15. Pomeroy was the structural engineer for the construction of the 1987 Addition, including the construction of the Roof Canopies, pursuant to a contract with Graham or, alternately, the School District and was responsible for the structural design, inspection and field reviews and supervision of the construction of the structural aspects of the Roof Canopies.

16. Tritan was retained as the general contractor for the construction of the 1987 Addition, including the construction of the Roof Canopies, pursuant to a contract with the School District.

17. The Trades were retained by Tritan to assist with the construction of the 1987 Addition, including the construction of the Roof Canopies.

Damages

18. As a result of the breach of contract, negligence, breach of duty of care and/or failure to warn, as the case may be, of the Defendants and each of them, the Roof Canopies contain defects and deficiencies which led to the collapse of one of the Roof Canopies, causing loss, damage and expense to the School District.

Part 2: RELIEF SOUGHT

1. The School District claims against each of the Defendants, jointly and severally, for damages due to the Construction Deficiencies which were caused or contributed to by the Defendants' breach of contract, negligence, breach of duty of care and/or failure to warn. Particulars of the damages include, but are not limited to:

- (a) inspection and investigation costs;
- (b) professional advice concerning the Construction Deficiencies and the effects therefrom;
- (c) temporary and urgent repairs to the School as a result of the Construction Deficiencies;
- (d) permanent repairs to the School as a result of the Construction Deficiencies;
- (e) consequential losses and damage to other parts of the School as a result of the Construction Deficiencies;

- (f) consulting, engineering and related costs;
- (g) such further damages as may be proven at trial.

2. The Plaintiff claims for:

- (a) general damages;
- (b) special damages;
- (c) costs;
- (d) interest pursuant to the *Court Order Interest Act*;
- (e) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

G.R. Graham Architect

1. It was an express and/or implied term of the agreement between the School District and Graham that would:

- (a) design and prepare drawings and specifications for the construction of the 1987 Addition, including the Roof Canopies, in accordance with all applicable building codes, regulations, bylaws and other regulatory requirements, and all architectural, engineering and construction standards, and in such a manner that the 1987 Addition, including the Roof Canopies, would be properly constructed in all respects, be appropriate for its intended purpose and be free of deficiencies, including the Construction Deficiencies;
- (b) ensure that no defective or inappropriate materials or methods were used in the construction of the 1987 Addition and/or Roof Canopies;
- (c) conduct sufficient field reviews to properly supervise and inspect the progress of construction throughout to ensure that the work was performed in accordance with the drawings and specifications and otherwise with good construction practice;
- (d) issue letters of assurance to the City for the architectural design of the 1987 Addition including the Roof Canopies, and provide reviews with respect to the same.

2. Graham owed an independent duty of care to the School District to:
- (a) exercise all reasonable skill, care, diligence and competence as a licensed professional architect in the preparation of the drawings and specifications required for the construction of the Roof Canopies and to ensure that the Roof Canopies were constructed in accordance with the said specifications and drawings;
 - (b) design and prepare drawings and specifications in accordance with all applicable building codes, regulations, bylaws and other regulatory requirements, and generally accepted architectural standards in such a manner that the Roof Canopies would be constructed free of deficiencies, including the Construction Deficiencies;
 - (c) ensure that the best available methods were used in the construction of the 1987 Addition such that the Roof Canopies would be free of deficiencies, including the Construction Deficiencies;
 - (d) ensure that the construction of the Roof Canopies was carried out by the General Contractor and Trades in a good and workmanlike manner and in accordance with the drawings and specifications and all applicable building codes, regulations, bylaws and other regulatory requirements, and industry standards;
 - (e) carry out adequate field reviews and inspections of the work performed by the General Contractor and Trades;
 - (f) specify or exercise reasonable care in designing and providing details for the construction of the Roof Canopies;
 - (g) ensure that the design of the architectural and structural components of the Roof Canopies conformed with the drawings and specifications, the architectural and structural requirements of the applicable building codes, regulations, bylaws and other regulatory requirements before issuing letters of assurance with respect to the same;
 - (h) ensure that the construction of the Roof Canopies conformed with the drawings and specifications and all applicable building codes, regulations, bylaws and other regulatory requirements before issuing letters of assurance with respect to the same;
 - (i) coordinate the other consultants in such a manner so as to insure that the construction of the structural aspects of the Roof Canopies conformed with the applicable building codes, regulations, bylaws and other regulatory requirements, and structural and construction standards such that the Roof Canopies would be free of deficiencies, including the Construction Deficiencies;

- (j) properly coordinate, supervise and inspect the design and construction of the structural aspects of the Roof Canopies to ensure that they were constructed in a good and workmanlike manner and would be free of deficiencies, including the Construction Deficiencies;
- (k) remedy any defects or deficiencies in the design of the Roof Canopies including, without limitation, the Construction Deficiencies;
- (l) such further and other particulars as become known to the Plaintiff or are proven at trial.

3. Graham breached its duties to the School District in:

- (a) failing to exercise all reasonable skill, care, diligence and competence as licensed professional architects in the preparation of the drawings and specifications required for the construction of the Roof Canopies and to ensure that the Roof Canopies were constructed in accordance with the said specifications and drawings;
- (b) failing to design and prepare drawings and specifications in accordance with all applicable building codes, regulations, bylaws and other regulatory requirements, and generally accepted architectural standards in such a manner that the Roof Canopies would be constructed free of deficiencies, including the Construction Deficiencies;
- (c) failing to ensure that the best available methods were used in the construction of the Roof Canopies such that the Roof Canopies would be free of deficiencies, including the Construction Deficiencies;
- (d) failing to ensure that the construction of the Roof Canopies was carried out by the General Contractor and Trades in a good and workmanlike manner and in accordance with the drawings and specifications and all applicable building codes, regulations, bylaws and other regulatory requirements, and industry standards;
- (e) failing to carry out adequate field reviews and inspections of the work performed by the General Contractor and Trades;
- (f) failing to specify or exercise reasonable care in designing and providing details for the construction of the Roof Canopies;
- (g) failing to ensure that the design of the architectural and structural components of the Roof Canopies conformed with the drawings and specifications, the architectural and structural requirements of the applicable building codes, regulations, bylaws and other regulatory requirements before issuing letters of assurance with respect to the same;

- (h) failing to ensure that the construction of the Roof Canopies conformed with the drawings and specifications and all applicable building codes, regulations, bylaws and other regulatory requirements before issuing letters of assurance with respect to the same;
- (i) failing to coordinate the other consultants in such a manner so as to insure that the construction of the structural aspects of the Roof Canopies conformed with the applicable building codes, regulations, bylaws and other regulatory requirements, and structural and construction standards such that the Roof Canopies would be free of deficiencies, including the Construction Deficiencies;
- (j) failing to properly coordinate, supervise and inspect the design and construction of the structural aspects of the Roof Canopies to ensure that they were constructed in a good and workmanlike manner and would be free of deficiencies, including the Constructions Deficiencies;
- (k) failing to remedy any defects or deficiencies in the design of the Roof Canopies including, without limitation, the Construction Deficiencies;
- (l) such further and other particulars as become known to the Plaintiff or are proven at trial.

WSDK Consulting Ltd., formerly Pomeroy Engineering Ltd.

4. Pomeroy owed a contractual duty and/or a duty of care to the School District to exercise all reasonable care, skill, diligence and competence as structural engineers to:

- (a) ensure that the design, plans and specifications for the structural aspects of the Roof Canopies satisfied all applicable building codes, regulations, bylaws and local and industry standards;
- (b) ensure that the construction and installation of the Roof Canopies was carried out in accordance with all applicable building codes, regulations, bylaws and local and industry standards;
- (c) ensure that the construction and installation of the Roof Canopies was carried out in a good and workmanlike manner;
- (d) ensure that it properly supervised the construction and installation of the Roof Canopies;
- (e) ensure that proper field reviews were conducted during the construction and installation of the Roof Canopies;

- (f) ensure that any design deficiencies relating to the Roof Canopies of which Pomeroy became aware were brought to the attention of the School District;
 - (g) such further and other particulars as become known to the Plaintiff or are proven at trial.
5. Pomeroy breached its duties to the School District in:
- (a) failing to ensure that the design, plans and specifications for the structural aspects of the Roof Canopies satisfied all applicable building codes, regulations, bylaws and local and industry standards;
 - (b) failing to ensure that the construction and installation of the Roof Canopies was carried out in accordance with all applicable building codes, regulations, bylaws and local and industry standards;
 - (c) failing to ensure that the construction and installation of the Roof Canopies was carried out in a good and workmanlike manner;
 - (d) failing to ensure that it properly supervised the construction and installation of the Roof Canopies;
 - (e) failing to ensure that proper field reviews were conducted during the construction and installation of the Roof Canopies;
 - (f) failing to ensure that any design deficiencies relating to the Roof Canopies of which Pomeroy became aware were brought to the attention of the School District;
 - (g) such further and other particulars as become known to the Plaintiff or are proven at trial

Tritan Construction Ltd.

6. Tritan owed a duty of care to the School District to:
- (a) construct the Roof Canopies in accordance with the drawings and specifications and in such a manner that the Roof Canopies would be properly constructed in all respects, be appropriate for their intended purpose and be free of deficiencies, including the Construction Deficiencies;
 - (b) ensure that no defective or inappropriate materials or methods were used in the construction of the Roof Canopies;

- (c) properly supervise its employees and the Trades to ensure that all work on the Roof Canopies was performed in a good and workmanlike matter and in accordance with the drawings and specifications and all applicable building codes, regulations, bylaws and other regulatory requirements, and industry standards;
- (d) ensure that the best available methods were used in the construction of the Roof Canopies such that the Roof Canopies would be free of deficiencies, including the construction deficiencies;
- (e) remedy any deficiencies, including the Construction Deficiencies, in the construction of the Roof Canopies, in its work or the work of the Trades;
- (f) such further and other particulars as become known to the Plaintiff or are proven at trial.

7. Tritan was negligent and/or breached its duties to the School District in:

- (a) failing to construct the Roof Canopies in accordance with the drawings and specifications and in such a manner that the Roof Canopies would be properly constructed in all respects, be appropriate for their intended purpose and be free of deficiencies, including the Construction Deficiencies;
- (b) failing to ensure that no defective or inappropriate materials or methods were used in the construction of the Roof Canopies;
- (c) failing to properly supervise its employees and the Trades to ensure that all work on the Roof Canopies was performed in a good and workmanlike matter and in accordance with the drawings and specifications and all applicable building codes, regulations, bylaws and other regulatory requirements, and industry standards;
- (d) failing to ensure that the best available methods were used in the construction of the Roof Canopies such that the Roof Canopies would be free of deficiencies, including the construction deficiencies;
- (e) failing to remedy any deficiencies, including the Construction Deficiencies, in the construction of the Roof Canopies, in its work or the work of the Trades;
- (f) such further and other particulars as become known to the Plaintiff or are proven at trial.

John Doe Contractors 1 - 10

8. The Trades, and each of them, owed a duty of care to the School District to:
 - (a) ensure that their work on the Roof Canopies was carried out in a good and workmanlike manner in accordance with the drawings and specifications, all applicable building codes, bylaws and other regulatory requirements including local and industry standards;
 - (b) supervise the work of their employees to ensure that their work on the Roof Canopies was performed in a good and workmanlike manner and in accordance with the design plans and specifications, all applicable building codes, bylaws and other regulatory requirements including local and industry standards;
 - (c) ensure that any deficiencies of which they became aware during the course of the construction of the Roof Canopies were brought to the attention of the School District in a timely manner;
 - (d) such further and other particulars as become known to the Plaintiff or are proven at trial.

9. The Trades, and each of them, breached their duties to the School District in:
 - (a) failing to ensure that their work on the Roof Canopies was carried out in a good and workmanlike manner in accordance with the drawings and specifications, all applicable building codes, bylaws and other regulatory requirements including local and industry standards;
 - (b) failing to supervise the work of their employees to ensure that their work on the Roof Canopies was performed in a good and workmanlike manner and in accordance with the design plans and specifications, all applicable building codes, bylaws and other regulatory requirements including local and industry standards;
 - (c) failing to ensure that any deficiencies of which they became aware during the course of the construction of the Roof Canopies were brought to the attention of the School District in a timely manner;
 - (d) such further and other particulars as become known to the Plaintiff or are proven at trial.

City of Surrey

10. The City owed a duty of care to the School District to use all reasonable care, skill, diligence and competence as the municipal authority and inspector in its review, inspection and approval of the design, specifications and construction of the 1987 Addition, including the construction of the Roof Canopies, to ensure that it was designed and constructed without deficiencies, including the Construction Deficiencies, particulars of which include, but are not limited to:

- (a) exercise reasonable care, skill and diligence in inspecting the 1987 Addition, including the Roof Canopies, during the course of construction;
- (b) exercise reasonable care, skill and diligence in issuing the Building and Occupancy Permits for the 1987 Addition;
- (c) ensure that the drawings and specifications were designed and prepared according to the building codes, applicable building bylaws and other regulatory requirements, all architectural, engineering and construction standards and in such a manner that the 1987 Addition would be constructed in all respects for its intended purpose and be free of deficiencies, including the Construction Deficiencies;
- (d) ensure that no defective or inappropriate materials or methods were used in construction;
- (e) properly and adequately inspect the progress of the construction throughout to ensure that the work was performed in accordance with the drawings, specifications, building codes, applicable building bylaws and other regulatory requirements and all architectural, engineering and construction standards;
- (f) ensure that appropriate letters of assurance for the architectural, structural and civil design and field reviews with respect to the same were issued and properly performed;
- (g) ensure that the 1987 Addition was free from deficiencies, including the Construction Deficiencies, before issuing the Occupancy Permit;
- (h) warn the Architects or others responsible for the design and construction about any deficiencies in the design or construction of the 1987 Addition and/or Roof Canopies, including the Construction Deficiencies;
- (i) such further and other particulars as may become known to the Plaintiff or are proven at trial.

11. The City breached its duties to the School District in:
- (a) failing to exercise reasonable care, skill and diligence in inspecting the 1987 Addition, including the Roof Canopies, during the course of construction;
 - (b) failing to exercise reasonable care, skill and diligence in issuing the Building and Occupancy Permits for the 1987 Addition;
 - (c) failing to ensure that the drawings and specifications were designed and prepared according to the building codes, applicable building bylaws and other regulatory requirements, all architectural, engineering and construction standards and in such a manner that the 1987 Addition would be constructed in all respects for its intended purpose and be free of deficiencies, including the Construction Deficiencies;
 - (d) failing to ensure that no defective or inappropriate materials or methods were used in construction;
 - (e) failing to properly and adequately inspect the progress of the construction throughout to ensure that the work was performed in accordance with the drawings, specifications, building codes, applicable building bylaws and other regulatory requirements and all architectural, engineering and construction standards;
 - (f) failing to ensure that appropriate letters of assurance for the architectural, structural and civil design and field reviews with respect to the same were issued and properly performed;
 - (g) failing to ensure that the 1987 Addition was free from deficiencies, including the Construction Deficiencies, before issuing the Occupancy Permit;
 - (h) failing to warn the Architects or others responsible for the design and construction about any deficiencies in the design or construction of the 1987 Addition and/or Roof Canopies, including the Construction Deficiencies;
 - (i) such further and other particulars as may become known to the Plaintiff or are proven at trial.

Duty to Warn

12. The Defendants, and each of them, owed a duty to the School District to warn of any defects or deficiencies in the design and/or construction of the Roof Canopies which would or could render the Roof Canopies dangerous, including the existence of, or potential for, the Construction Deficiencies. The Defendants, and each of them, breached their duties of care by

failing to warn the School District causing the School District to suffer loss, damage and expense.

Negligence

13. The School District pleads and relies upon the provisions of the Negligence Act, R.S.B.C. 1996, c. 333, as amended and the provisions of the building codes in existence at the time of construction of the 1987 Addition.

Plaintiff's address for service: Haddock & Company
Barristers & Solicitors
200 – 1695 Marine Drive
North Vancouver, BC V7P 1V1
Attention: Steven F. Lee

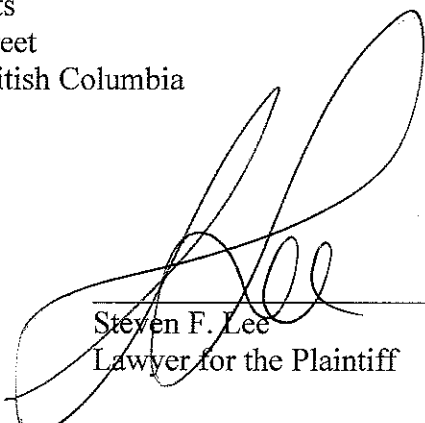
Fax number for service (if any): 604-983-6607

E-mail address for service (if any): None

Place of Trial: Vancouver, British Columbia

The address of the Registry is: The Law Courts
800 Smithe Street
Vancouver, British Columbia

DATE: January 20 2011



Steven F. Lee
Lawyer for the Plaintiff

Rule 7-1(1) of the Supreme Court Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.
-

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for damages arising from construction deficiencies caused or contributed to by the Defendants' breach of contract, negligence, breach of duty of care and/or failure to warn.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS:

[If an enactment is being relied on, specify. Do not list more than 3 enactments]

1. *Court Order Interest Act, R.S.B.C. 1996, c.79*
2. *Negligence Act, R.S.B.C. 1996, c. 333*