

COURT FILE NUMBER 1806-00555  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE Lethbridge  
PLAINTIFF Andrzej Jan Gradziel and Susan Mary Gradziel  
*Click to select and indicate if Applicant/Respondent*  
DEFENDANT Town of Coalhurst et al  
*Click to select and indicate if Applicant/Respondent*  
DOCUMENT **CHAMBERS**



#### ENDORSEMENT

- Order Granted**
- Information Required**
- Order Rejected**
- Unable to Complete – see Comments/Reasons for further information**

#### Comments/Reasons:

The Town of Coalhurst applies to summarily dismiss the claim made against it by the plaintiffs (the Gradziels).

The Gradziels purchased a new home in Coalhurst. It suffers from construction deficiencies such as foundation issues and water intrusion issues. In addition to suing the builder and others, the Gradziels sued Coalhurst alleging that, had it exercised reasonable care then they would have not suffered damages.

Coalhurst defends, and applies to strike. It asserts that (1) it does not owe a duty of care towards the Gradziels (2) it was not an 'accredited municipality' and thus not responsible for permits and inspections under the Safety Codes Act (3) liability is excluded under various provisions of the Municipal Government Act.

Coalhurst acknowledges that it issued a development permit for the house in question on May 15, 2009 but says that this permit only dealt with whether the proposed use (housing) complied with Coalhurst's land use bylaw. Coalhurst's evidence is that it only became an 'accredited municipality' under the Safety Codes Act on 2016, more than six years after the Gradziels purchased the property.

Instead, Coalhurst says that the builder applied for a building permit through Alberta Permit Pro, and that the permit was issued for the house by Alberta Municipal Affairs (“AMA”).

It was AMA who issued a building permit on June 23, 2009. Again, it was AMA who issued a building permit report on January 8, 2010 which stated that “work complies with the intent of the Safety Codes Act and applicable regulations”.

Coalhurst was not involved in and bears no responsibility for the issuance of a building permit or inspections to ensure that construction was conducted in accordance with the building permit or the Alberta Safety Code. The Gradziels generalized assertions to the contrary, made without specific particulars of pre-purchase conversations, letters, meeting etc are self-serving assertions of no evidentiary value.

The only possible avenue of liability for Coalhurst would be from the issuance of a development permit, which allowed the land in question to be developed for housing.

If the Gradziels had evidence that the land could not be safely used for housing, perhaps there would have been a triable issue, but no such evidence is found on the record.

It is one thing to say that the land in question had a high water table. It is quite another thing to say that this high water table could not have been handled by appropriate design and construction methods, and therefore the land was incapable of being used for residential housing.

In my view, Coalhurst has met the test of showing that a just result can be made on the basis of the record before the Court, and accordingly I allow Coalhurst’s application for summary dismissal.

If the parties cannot agree on a costs outcome they may make written submissions to me in that regard.

**DATE OF DECISION: 2020-07-17**

Signed:   
MASTER J. T. PROWSE QC