

DISTRICT COURT

PUBLIC DUTY DOCTRINE applicable to city building inspection ... applicants agreed to ultimate responsibility for code compliance ... Day.

On 10/5/01 Roy Rieger applied with Miles City for a building permit so he and his wife could move their house onto a lot within the city limits. They hired contractor/certified building Inspector Dennis Hirsch to provide plans for and construct a basement, breezeway, and garage. City Building Inspector Rick Willson approved the permit. On 12/13 he inspected the footing at Hirsch's request, and also inspected the foundation. He inspected again 1/9/02 when he drove by and saw that work had been done. No other inspections were done until 8/02, well after the project was completed, because neither Hirsch nor Riegers had called for any and no other permits had been taken out. In 8/02 Roy Rieger asked Willson to informally look at the home and advise as to any violations. Riegers had previously had no contact with Willson throughout the construction. They sued Hirsch alleging negligent construction, UBC alleging invalid lien, and the City alleging negligent inspection. They request summary judgment as to the City alleging that it had a statutory duty to inspect construction and order correction, governmental entities are liable for torts committed by government employees, and the public duty doctrine exception to government tort liability for administrative acts does not apply to building code enforcement. The City responds that it owed no individual duty to Riegers to inspect their home in order to protect their property interests, or that Riegers as the permit applicants, bear ultimate responsibility to ensure code compliance.

Whether the public duty doctrine should be extended to a municipal building inspector is of first impression in Montana. Masee (Mont. 2004) stated that "the public duty doctrine provides that a governmental entity cannot be held liable for an individual plaintiff's injury resulting from a governmental officer's breach of a duty owed to the general public rather than to the individual plaintiff." From this broad language it is clear that the Supreme Court contemplates that the doctrine is not necessarily limited to law enforcement, but may apply to any "public person" or "governmental officer." The Court finds that a municipal building inspector is such a person or officer to whom the public duty doctrine applies.

Riegers counter that the public duty doctrine is tantamount to resurrecting sovereign immunity which was abrogated by Art. 11 §18. However, Montana has continued to recognize the doctrine since abrogation of sovereign immunity. Masee; Nelson (Mont. 1999), as have other jurisdictions. Moreover, they are fundamentally different concepts. The public duty doctrine is not based on immunity from otherwise existing liability, but on tort law, specifically on absence of any duty in the first instance. Unlike sovereign immunity, the public duty doctrine applies to individuals as well as the public entities which employ them.

Nor do Riegers meet the Nelson special relationship tests. There are no statutes intended to protect a specific class of which they are members in order to protect their individual property rights. The City's actions were for protection of the public, not Riegers. And they have not established that they were induced to detrimental reliance on Willson. Although they contend that they generally relied on the inspection, they testified that they had no personal assurances from the City.

Alternatively, the City is entitled to summary judgment because, in addition to the general rule that the burden of complying with codes and regulations remains with the applicant, Roy Rieger, who signed the permit application, agreed to language stating that: "The Applicant/Owner has complete control over the construction process and is wholly responsible for the project's ultimate compliance with the applicable Codes and Ordinances as they pertain to the erection, construction, or alteration of buildings in the City of Miles City." While Rieger may not be an expert in building codes, he hired Hirsch to provide that expertise. Summary judgment for the City.

Rieger v. Hirsch, UBC, and Miles City, Custer DV 02-174, 8/23/04.

Tina Kagi (Baldassin & Associates), Missoula, for Riegers; Jon Doak (Doak & Associates), Billings, for Hirsch; Lance Tonn (Lucas & Tonn), Miles City, for UBC; Jared Dahle (Nelson & Dahle), Billings, for the City.