



No. L050980
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

LAWRENCE ERNEST PERRAULT AND
JACQUELINE MARGARET PERRAULT

Plaintiffs

And:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER,
NORMAN SIBSON, HAZEL SIBSON, SUTTON GROUP REALTY SERVICES LTD.
carrying on business as SUTTON GROUP WEST COAST REALTY, JIM HENDRICKS,
RE/MAX OF WESTERN CANADA (1998) INC. carrying on business as
RE/MAX CREST REALTY, CRAIG CLARK

Defendants

**STATEMENT OF DEFENCE OF THE
CORPORATION OF THE DISTRICT OF NORTH VANCOUVER**

1. The Defendant, the Corporation of the District of North Vancouver (the "District") denies each and every allegation contained in the Statement of Claim as fully and to same extent as if each and every said allegation were set out in full herein and separately denied.
2. The District of North Vancouver admits to the facts set out in paragraph 2 of the Statement of Claim.
3. The landslide referred to in the Statement of Claim as well as any and all resulting injury, loss, cost, damage and expense was caused solely and wholly by the fault or neglect of the Plaintiffs, or one of them, particulars of which are outlined below.
4. The Plaintiffs are the registered owners of the property located at 2175 Berkley Avenue (the "Perrault Property"). The Perrault Property is located at the top of a steep bank above the Seymour River valley, known as Blueridge (the "Blueridge Slope").

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5. The residence situated on the Perrault Property was constructed in 1957.
6. On or about December 4, 1978, the District approved the subdivision of properties which now have civic addresses of 2430 and 2440 Chapman Way (the "Chapman Way Properties"). The Chapman Way Properties are situated at the base of Blueridge Slope, to the west of the Perrault Property.
7. In connection with the subdivision of the Chapman Way properties, a strip of land along the Blueridge Slope, situated between the Perrault Property and the Chapman Way Properties was conveyed to the District, for reservation as a park (the "Green Belt").
8. Prior to issuing a Building Permit in respect of the Chapman Way Properties, the District required and obtained a report from a professional engineer addressing the stability of those properties.
9. On or about December 17, 1979, following a period of heavy rainfall, landslides occurred at three locations along the Blueridge Slope, causing damage to properties at the top and bottom of the slope (the "1979 Slides").
10. Following the 1979 Slides, the District retained the engineering firm Golder Geotechnical Consultants Ltd. ("Golder") to conduct a geotechnical assessment and advise on the stability of the Blueridge Slope. In a report dated January 1980 (the "Golder Report"), Golder identified two areas along the Blueridge Slope, near 2217 Berkley Avenue and 1305 Lennox Street, which had the potential for future slide activity. The District advised six property owners within these two areas, in writing, of Golder's assessment and urged them to consult a geotechnical engineer for advice on remedial measures that may be required for their properties.
11. On or about May 12, 1980, the District retained the engineering firm Klohn Leonoff Consultants Ltd. ("Klohn Leonoff"), to conduct a further geotechnical assessment and advise on the stability of the Blueridge Slope. In a report dated November 3, 1980, (the "Klohn Leonoff Report"), Klohn Leonoff identified some properties along the Blueridge Slope which had potential for slide activity and provided some recommendations for remedial measures to minimize the risk of future slides.

12. The Perrault Property was identified in the Klohn Leonoff Report, in 1980, as having a "Low Risk" of major instability.
13. The Klohn Leonoff Report included some recommendations for remedial work to property owned by the District, however, none of these properties were within the vicinity of the Perrault Property.
14. On or about November 17, 1980, the residents of each of the 124 properties within the area of the Blueridge Slope assessed by Klohn Leonoff, including the Perrault Property, were provided with a copy of the main text of the Klohn Leonoff Report, as well as the appendices containing information and recommendations for remedial work specific to that resident's private property.
15. On or about November 24, 1980, the District also made the main text of the Klohn Leonoff Report available for release to the public, generally.
16. At all material times, the Plaintiffs knew, or ought to have known, of the risks inherent in purchasing or residing on the Perrault Property, which risks included, but were not limited to, the risk outlined in the Klohn Leonoff Report. The Plaintiffs did not seek or obtain advice in relation to those risks, notwithstanding that they knew, or ought to have known of the risks, nor did they take reasonable, or any, steps to reduce those risks.
17. The Plaintiffs purchased the Perrault Property in or around January 2004. Since acquiring the property, the Plaintiffs have increased the instability of the Perrault Property, the adjoining portion of the Green Belt, or both, as a result of one or more of the following:
 - (a) Constructing a large concrete pool on the Perrault Property, which was built without the knowledge of or a permit from the District;
 - (b) Disposing of the soil excavated for the installation of the concrete pool on the slope to the west of the Perrault Property, including the Green Belt;
 - (c) Removing trees and vegetation located on and around the Perrault Property; and
 - (d) Such other activities as may be determined in the course of these proceedings.

18. On or about January 19, 2005, following heavy rainfall, fill material on the Perrault Property became saturated with water and collapsed in an uncontrolled manner down the Blueridge Slope to the west of the Perrault Property (the "2005 Slide"), through the Green Belt and on to the Chapman Way Properties.
19. In specific answer to paragraphs 59 - 61 of the Statement of Claim, the District says that the 2005 Slide originated on the Perrault Property, not on the Green Belt.
20. The fault or neglect of the Plaintiffs, or either or them or their agents, solely and wholly caused the 2005 Slide, particulars of which include:
 - (a) Failing to implement the remedial measures recommended in the Klohn Leonoff Report, or any measures to reduce the risk of slide activity on the Perrault Property;
 - (b) Failing to construct and/or adequately maintain a proper drainage system for the Perrault Property;
 - (c) Failing to construct and/or adequately maintain a proper retaining wall at the west side of the Perrault Property;
 - (d) Allowing the fill material to remain on the Perrault Property, without proper measures for drainage and support;
 - (e) Installing a large concrete pool on the Perrault Property at the west side of the Perrault Property;
 - (f) Disposing of the soil excavated for the installation of the concrete pool on the slope adjacent to the Perrault Property, thereby adding to the steepness and instability of the slope;
 - (g) Failing to ensure that the residence, concrete pool and other improvements on the Perrault Property were situated on competent soils or foundations;
 - (h) Removing trees and vegetation located on and around the Perrault Property, thereby reducing the stability of the Perrault Property and adjacent slope;
 - (i) Placing excessive loads on a concrete retaining wall at the westerly edge of the Perrault Property resulting in its failure and triggering of the subject landslide;
and

- (j) Such further and other particulars as may be identified and disclosed in the course of these proceedings.
21. Alternatively, the 2005 Slide was caused or contributed to the fault or neglect of the Plaintiffs, or either of them, and by a series of environmental factors, including, a large accumulation of snow, unusually warm temperatures and extremely heavy rainfall.
 22. In further answer to the whole of the Statement of Claim, the District denies that it, or any of its employees or agents, was negligent as alleged in the Statement of Claim, or at all.
 23. In specific answer to paragraph 27 of the Statement of Claim, the District says that it took all reasonable steps in the circumstances to ensure that the Green Belt was reasonably safe and reasonably maintained.
 24. In specific answer to paragraph 30 of the Statement of Claim, the District says that it disclosed the contents of the Klohn Leonoff Report to the residents of affected properties and took reasonable steps to ensure that the Green Belt was reasonably and safe and reasonably maintained.
 25. In specific answer to paragraph 31 of the Statement of Claim, the District says that it had no duty or obligation in law to implement remedial measures on private property, including the Perrault Property.
 26. Alternatively, if the Plaintiffs suffered any of the damages alleged in the Statement of Claim, and if there was any negligence on the part of the District, as alleged or at all, all of which is denied, then the negligence of the District did not cause or contribute to the Plaintiffs' damages.
 27. In the still further alternative, if the Plaintiffs suffered any of the damages alleged in the Statement of Claim, which is denied, those damages were caused solely by or contributed to by the acts or omissions of others, for whom the District is not responsible in law, particulars of which include:

- (a) The original developer of the Perrault Property and the builder of the residence, both of whom failed to ensure that the residence was situated on competent soils, failed to install a proper drainage system and failed to construct a proper retaining wall on the west side of the Perrault Property;
 - (b) The Defendants, the Sibsons, who as previous owners of the Perrault Property, failed to implement the remedial measures recommended in the Klohn Leonoff Report, or any measures to reduce the risk of slide activity on the Perrault Property, and failed to warn the Plaintiffs of the slide risks associated with the Perrault Property;
 - (c) The Defendants, Sutton Group Realty Services Ltd., Jim Hendricks, Re/Max of Western Canada (1998) Inc. and Craig Clark, who as realtors or real estate companies involved in the purchase by the Plaintiffs of the Perrault Property, failed to warn the Plaintiffs of the risks of slope instability associated with the Perrault Property; and
 - (d) Such further and other particulars as may be identified and disclosed in the course of these proceedings.
28. In still further answer to the whole of the Statement of Claim, the District denies that it, or any of its servants or agents, was negligent for failing to warn the Plaintiffs or breached a fiduciary obligation to advise the Plaintiffs, as alleged in the Statement of Claim, or at all.
29. In specific answer to paragraphs 28, 29, 30 and 32 of the Statement of Claim, the District says that it advised affected residents and the public generally of its knowledge concerning the potential for slide activity by, *inter alia*, delivering copies of and making available copies of the Golder Report and the Klohn Leonoff Report.
30. In specific answer to paragraph 33 of the Statement of Claim, the District says that it had no duty or obligation to register a restrictive covenant against title to the Perrault Property, as alleged or at all.
31. In specific answer to paragraphs 34 – 38 of the Statement of Claim, the District says that neither the development of, nor construction on the Chapman Way Properties caused or contributed to the 2005 Slide. In the alternative, the District says that it was entitled to, and did, reasonably rely on the reports of a professional engineer concerning the stability

the properties, which were submitted to the District prior to issuing a Building Permit for construction on the Chapman Way Properties.

32. In still further answer to the whole of the Statement of Claim, all acts or omissions of the District, and any of its employees or agents, in relation to which negligence, duty to warn or breach of a fiduciary duty is alleged in the Statement of Claim were, in fact and in law, policy decisions made by a public authority, and as such are not actionable in law.
33. The District pleads and relies on the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333, as amended.
34. If the Plaintiffs suffered any of the damages alleged in the Statement of Claim, which is denied, then the Plaintiffs failed to take reasonable steps or any steps to mitigate their damage or loss.
35. In still further answer to the whole of the Statement of Claim, the District pleads and relies upon the provisions of the *Limitation Act*, R.S.B.C. 1996, c. 266, as amended, and in particular, the District says that the Plaintiffs have failed to commence this action within the time period provided in section 3 and/or section 8 of the *Act*.
36. In still further answer to the whole of the Statement of Claim, the District pleads and relies upon the provisions of the *Local Government Act*, R.S.B.C. 1996, c. 323, including sections 286, 288, 289 and 290.

WHEREFORE the Defendant, the Corporation of the District of North Vancouver asks that the within action be dismissed against it, with costs.

Dated May 27, 2005



Solicitor for the Defendant, the Corporation
of the District of North Vancouver

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