

COURT
COLUMBIA
ER REGISTRY

APR 20 2005



IN THE SUPREME COURT OF BRITISH COLUMBIA

No.
VANCOUVER REGISTRY

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

WRIT OF SUMMONS

20APR05 513072 RISS
21422 L050980

Plaintiffs:

Lawrence Ernest Perrault and Jacqueline Margaret Perrault
c/o LAKES STRAITH & WHYTE LLP
Barristers & Solicitors
Suite 301 - 145 West 15 Street
North Vancouver, BC V7M 1R9

Defendants:

The Corporation of the
District of North Vancouver
355 West Queens Road
North Vancouver, BC V7N 4N5

Craig Clark
c/o Sutton Group West Coast Realty
100 - 889 Harbourside Drive
North Vancouver, BC V7P 3S1

Norman Sibson and Hazel Sibson
209 - 8888 202nd Street
Langley, BC V1M 4A7

Jim Hendricks
c/o Re/Max Crest Realty
101 - 2600 Westview Drive
North Vancouver, BC V7N 4M2

Sutton Group Realty Services Ltd.
1200 – 570 Granville Street
Vancouver, BC V6C 3P1

Re/Max of Western Canada (1998) Inc.
600 – 8390 East Crescent Parkway
Greenwood Village, Colorado 80111
USA

Sutton Group West Coast Realty
100 – 889 Harbourside Drive
North Vancouver, BC V7P 3S1

Re/Max Crest Realty
101 – 2600 Westview Drive
North Vancouver, BC V7N 4M2

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

TO THE DEFENDANTS:

TAKE NOTICE that this Action has been commenced against you by the Plaintiffs for the claim set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set-off or counterclaim that you wish to have taken into account at the Trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled “Appearance” in the above Registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff’s address for delivery, which is set out in this Writ, and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above Registry of this Court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff’s address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for Appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for Appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and,
- (b) the end of the Time for Appearance provided for above.

(1) The address of the Registry is: 800 Smithe Street, Vancouver, BC, V6Z 2E1

(2) The Plaintiff's ADDRESS FOR DELIVERY is:

LAKES STRAITH & WHYTE LLP
 Barristers & Solicitors
 Suite 301 - 145 West 15 Street
 North Vancouver, BC V7M 1R9

Fax number for delivery: 604-984-8573

(3) The name and office address of the Plaintiff's Solicitor is:

James L. Straith
 LAKES STRAITH & WHYTE LLP
 Barristers & Solicitors
 Suite 301 - 145 West 15 Street
 North Vancouver, BC V7M 1R9

STATEMENT OF CLAIM

1. The Plaintiff, Lawrence Ernest Perrault, is an employee of the District of North Vancouver. The Plaintiff, Jacqueline Margaret Perrault, is a nursing unit clerk. Since January 14, 2004 they have resided at 2175 Berkley Avenue, North Vancouver, British Columbia.
2. The Defendant, The Corporation of the District of North Vancouver (the “**District**”) is a Municipality duly incorporated pursuant to the *Local Government Act* RSBC 1996, Chapter 323, having its address at 355 West Queens, North Vancouver, British Columbia.
3. The Defendants, Norman Sibson and Hazel Sibson (the “**Sibsons**”) are retired persons, currently living in Langley, British Columbia.
4. The Defendant, Sutton Group Realty Services Ltd. (“**Sutton**”) is a company duly incorporated in British Columbia pursuant to the *Business Corporations Act* SBC 2002, Chapter 57, with a registered and records office of 1200 – 570 Granville Street, Vancouver, British Columbia, and carrying on business as Sutton Group West Coast Realty, at 100 – 889 Harbourside Drive, North Vancouver, British Columbia.
5. The Defendant, Jim Hendricks was a realtor licensed pursuant to the *Real Estate Act* of the Province of British Columbia, RSBC 1996, Chapter 397. At all material times, he was an employee of Sutton Group West Coast Realty (“**Hendricks**”).
6. The Defendant, Re/Max of Western Canada (1998) Inc. (“**Re/Max**”), is a company duly registered in British Columbia pursuant to the *Business Corporations Act* SBC 2002, Chapter 57, with a head office of 600 – 8390 East Crescent Parkway, Greenwood Village, Colorado, USA, and carrying on business as Re/Max Crest Realty, at 101 – 2600 Westview Drive, North Vancouver, British Columbia.
7. The Defendant, Craig Clark was a realtor licensed pursuant to the *Real Estate Act* of the Province of British Columbia, RSBC 1996, Chapter 397. At all material times, he was an employee of Re/Max Crest Realty (“**Clark**”).

DEVELOPMENT OF 2175 BERKLEY AVENUE

8. In 1958, the **District** issued a building permit to Riverside Hill Estates Ltd. (now dissolved) for the construction of a house on the property located at the municipality of North Vancouver, Parcel Identifier Number 009-847-201, Lot 25, Block 3, District Lot 850, Plan 8987, commonly known as 2175 Berkley Avenue (the “**Property**”).
9. The Property stood approximately 250 feet above a slope owned by the **District**, which ran at a 32 to 35 degree angle, downhill (the “**District’s Slope**”).

10. During the course of construction of the Property, and other properties in the area of the Riverside Hill Estates on Berkley Avenue, the **District** knew that:
- a) septic fields were installed at the rear of the residences on Berkley Avenue, adjacent to the District's Slope;
 - b) the natural drainage of the area, near the Property and other locations of Berkley Avenue was changed as a result of construction by the **District**, and the developers of Riverside Hill Estates Ltd.; and,
 - c) storm drains were put from the residences immediately north and south of the Property, running to and under the rear of the Property and emptying on the west side of the Property, one third down the slope on land owned by the **District**.
11. The **Sibsons** purchased the Property from Riverside Hill Estates Ltd. on or about March 31, 1958, and resided there until January 13, 2004.
12. In 1979, the **District** permitted the rezoning and sub-division of lands in North Vancouver, known as Parcel Identifier Number 004-741-021, Lot A of Lot 36, Block 1, District Lot 850, Plan 17873, and Parcel Identifier Number 007-249-268, Lot B of Lot 36, Block 1, District Lot 850, Plan 1737 (hereinafter referred to as "2440 Chapman Way" and "2430 Chapman Way").
13. 2440 Chapman Way and 2430 Chapman Way were at the base of the District's Slope.
14. At the time of the sub-division, 2440 Chapman Way and 2430 Chapman Way were owned by Rockland Construction Ltd., which owned the lands from December 27, 1979 up to December 31, 1981.
15. As of January 19, 2005, the subdivided property at 2440 Chapman Way was owned by Michael Kuttner and Eliza Kuttner as joint tenants, and 2430 Chapman Way was owned by Nancy Marilyn Van-Insberghe.

GEOTECHNICAL INFORMATION

16. In December, 1979 three surface slides occurred on the District's Slope between Berkley Avenue and Riverside Drive. A preliminary geotechnical report indicated concerns in regard to future slides and the stability of the District's Slope.
17. Following the 1979 slides, the **District** received a petition from residents of the Riverside / Berkley Area to undertake further geotechnical studies to assess the potential for future slides in the area of the District's Slope, and to recommend corrective action.

18. In April and May, 1980, the District Mayor, Don Bell, sent letters to residents of the Riverside / Berkley area (the "Bell Letter") indicating that the **District** would only undertake the investigation if each property owner in the Berkley / Riverside area agreed:
 - a) that any remedial action recommended would be the responsibility of the property owner;
 - b) that the results of the investigation would not be used in any claim against the **District** for damage that had already occurred or occurred in the future; and,
 - c) not to use the contents of the report as evidence in any claim or action against the **District**.
19. The **Sibsons** received but did not agree to the contents of the Bell Letter.
20. On or about November 3, 1980, the **District** received a report from Klohn Leonoff Engineers (the "Report"), with respect to a geotechnical appraisal and slope stability of the Berkley / Riverside area, and the District's Slope.
21. The Report concluded that:
 - a) the greatest danger for future slides would be to properties at the base of the District's Slope;
 - b) the house at 2175 Berkley Avenue was founded on fill;
 - c) at the bottom of the District's Slope, lot areas had been extended, in some instances by cutting into the natural slope at the back of the properties, resulting in increasing the grade of the District's Slope;
 - d) the storm sewer system of residents on Berkley Avenue resulted in storm sewers discharging down the District's Slope; and,
 - e) where there was fill at the crest of the District's Slope, and where ground water drainage was towards or into the fill, there was a greater potential for instabilities to develop then in areas where such conditions did not exist.
22. The Report recommended that the **District** and property owners carry out remedial work to minimize the potential of further slides. The Report recommended that with properties at low risk of major instability:
 - a) existing debris would need to be removed, and no new debris placed at or over the crest of the District's Slope;

- b) vegetative growth should be controlled to allow the homeowner to carry out periodic examinations of drainage, outlets, and inspections of the slopes for any sign of distress;
- c) if at any future time an inspection shows any sign of slope distress, the owner should have a further stability assessment made;
- d) those properties not connected to storm sewers would need to be inspected, energy dispensators should be placed to disperse flows, and non-operational drains replaced;
- e) existing abandoned septic tanks should be removed or filled; and,
- f) home owners should inspect the drain pipes at least two times each year, and should maintain the pipes in good working order.

23. The Report made certain recommendations specifically related to the Property, including that:

- a) down spouts for drainage should be connected to a closed conduit that is carried over the slope to a point below any fill which has been placed on the lot;
- b) down spouts, foundation, and driveway drainage should be connected to a conduit;
- c) interceptor drains should be installed;
- d) drains should be placed across the backyard natural soils, upslope of any fill material that has been placed on the District's Slope crest; and,
- e) a trench should be excavated at 1½ feet into hardpan, or at least 5 feet deep across the yard.

24. The Report further noted that approximately one-half of the properties at the base of the slope were unstable, and noted a number of properties had drainage problems at the rear of the lots.

25. The Report further recommended installation of a storm drainage system on property owned by the **District**, including the District's Slope.

26. The District's Slope was in such a dangerous condition considering its location and position near residential properties, that it constituted a nuisance.

DUTIES OF DISTRICT

27. The **District** owed the Plaintiffs a duty of care to ensure or to take reasonable steps to ensure that the District's Slope was properly maintained and kept in a safe condition considering its position and use.
28. Because of its possession of the Report and its refusal to release it unconditionally to property owners, the **District** had a special knowledge of the condition of the lands on the District's Slope and adjoining properties. As such, the **District** was under a fiduciary obligation to advise the then owners, the **Sibsons**, and subsequent owners, of the inherently dangerous or potentially dangerous condition of the District's Slope for people and properties in the area.
29. The **District** had an obligation to:
- a) undertake remedial work on its land and services, as recommended in the Report;
 - b) disclose the contents of the Report to the residents of the Property, and 2430 Chapman Way and 2440 Chapman Way;
 - c) disclose the Report as it pertains to those properties to any subsequent purchasers of those properties; and,
 - d) take reasonable care to investigate on an ongoing basis, the stability of the District's Slope in the Berkley / Riverside area.
30. The **District** owed the Plaintiff a duty of care to prevent the failure of the District's Slope, or to warn the Plaintiff and other prospective owners of the Property of the potential of the failure of the slope, when the **District** knew or ought to have known that the District's Slope in the Berkley / Riverside area was unstable.

BREACHES OF DUTIES OF DISTRICT

31. The **District** did not take any of the remedial actions recommended in the District's Geotechnical Report, as it pertained to the Property in regard to the property owned by the **District** between 1980 and 2005.
32. The **District** neglected or refused to provide the information in the Report to property owners or residents of North Vancouver unless the property owner agreed in advance to not use the information in the Report for the purpose of suing the **District**.

33. The **District** neglected or refused to register or take any action to a restrictive covenant or other form of notice under S. 219 of the *Land Titles Act*, RSBC 1996, Chapter 250, against the affected lands to warn purchasers or subsequent owners of the lots to be created by subdivision of the danger of building on unstable land.
34. In 1980, prior to receiving the Report, the **District** issued a building permit for the houses at 2430 Chapman Way and 2440 Chapman Way, when they knew, or ought to have known, that the District's Slope above these properties and backing onto the Property was unstable, and there was a risk of slope failure.
35. The residences on those properties were not completed at that time and still subject to building and other inspections by the **District**.
36. The **District** negligently allowed construction to continue and be completed on the houses on 2430 Chapman Way and 2440 Chapman Way, and to be sold and occupied, when the **District** knew, or ought to have known, that the land above those houses and backing onto the Property was unstable, and there was a risk of slope failure.
37. Despite being aware of the prior problems with the District's Slope between Berkley Avenue and Riverside Drive, the **District** did not require the builders of 2430 Chapman Way and 2440 Chapman Way to do anything to ensure slope stability, nor did the **District** do anything itself to ensure the stability of the slope.
38. The **District** was in further breach of its duties in:
 - a) issuing building permits for construction of houses at 2175 Berkley Road, 2430 Chapman Way, and 2440 Chapman Way, and for continued and subsequent construction on all properties when the **District** knew, or ought to have known, that there would be a risk that the slope, which had previously failed, was unstable and could fail and cause serious damage to persons, properties, and homes;
 - b) failing to ensure that all geotechnical and engineering studies were completed with respect to the stability of the slope and possible affects of houses at the base of slope, before either rezoning or issuing permits; and,
 - c) failing to take appropriate measures to ensure that the District's Slope was stable on an ongoing basis.
39. The concealment of the information concerning the instability of the District's Slope by the **District** was a deliberate operational decision by the **District** as a means intended to avoid political and legal consequences.

40. As a result of the **District's** operational decision to not disclose the contents of the Report to current or future residents of the Berkley / Riverside area, and to not take any steps to implement the recommendations of the Report, the **District** knowingly put the life, health, and safety of the residents of the Berkley / Riverside area and their property at risk.
41. The failure of the **District** to disclose the Report or take the steps recommended in the Report constitutes an outrageous and ongoing deception of homeowners and purchasers of residences in the Berkley/Riverside area. This is a breach of the **District's** duty of care and fiduciary obligations to the Plaintiffs and other members of the public. As such the Plaintiff is entitled to exemplary and punitive damages.

RE: SALE OF 2175 BERKLEY IN 2004

42. During the month of November, 2003, the Plaintiffs retained the services of **Hendricks** and **Sutton** to act as a real estate agent on their behalf for purchasing a home.
43. In the course of acting as real estate agent for the Plaintiffs, **Hendricks** and **Sutton** showed the Plaintiffs the Property.
44. On or about the 30th day of November, 2003, the Plaintiffs, through the agency of **Hendricks** and **Sutton**, made an offer to purchase the Property. The offer was made to the **Sibsons** through their real estate agent, **Clark** and **Re/Max**.
45. Pursuant to the terms of the Real Estate Agreement, the **Sibsons** later delivered a disclosure statement to the Plaintiffs through **Hendricks** and **Sutton**, and **Clark** and **Re/Max**. The disclosure statement made no mention of geotechnical issues concerning the District's Slope on the west side of the Property.
46. The sale of the Property completed in January of 2004.

DUTIES OF VENDORS AND REAL ESTATE AGENTS

47. The **Sibsons**, as vendors, had a duty to disclose all latent and material defects that could affect the health and safety of the residents and property to the Plaintiff purchasers.
48. **Clark** and **Re/Max**, and **Hendrix** and **Sutton** were in a special position of knowledge as real estate agents familiar with the history and position of real estate in the Berkley/Riverside area and as such owed the Plaintiffs a special duty of care both as fiduciaries and as licensed real estate agents.

REACH OF DUTIES

49. The **Sibsons** failed to disclose the issues of the geotechnical safety of the Property with reckless disregard to the accuracy of the material provided to the purchasers. The **Sibsons** were aware of the issues, after having received the Bell Letter in 1980, but concealed the issue from the Plaintiffs.
50. **Clark and Re/Max**, and **Hendricks and Sutton** knew, or ought to have known, of the issue of the geotechnical stability of the slope at the rear of the Property, and failed to make reasonable efforts to investigate this and verify information as provided by the vendor.
51. **Clark and Re/Max**, and **Hendricks and Sutton** failed to exercise reasonable care and skill when providing information and opinion to the vendors which they knew, or ought to have known, the Plaintiffs would rely on.
52. The Plaintiffs purchased the Property from the **Sibsons**, and took possession of the Property from the **Sibsons** on or about January 13, 2004.
53. The **Sibsons** owed the Plaintiffs a duty of care to properly disclose any and all information they had in regard to the instability of the slope in the Berkley / Riverside area, and in the area immediately at the rear of their residence.
54. Further, **Clark and Re/Max**, and **Hendricks and Sutton** owed the Plaintiffs a duty of care to make reasonable investigations as to the accuracy and completeness of the information provided by the vendors, to them, knowing that the purchasers would rely on that information in their assessment, and in making a decision to purchase the Property.
55. Further, **Hendricks and Sutton** owed the Plaintiffs a duty of care to exercise reasonable care and skill when providing information and opinions which could be reasonably expected to be relied upon by the Plaintiffs in their assessment to purchase the Property.
56. The Plaintiffs say that a prudent Realtor would have discovered the extent of the misrepresentation of the facts, based on historic information, concerning slides in the Berkley / Riverside area.
57. The risk presented by the District's Slope represented a significant hazard that was unknown to the Plaintiffs at the time they purchased the Property. The Plaintiffs relied upon the advice of **Hendricks and Sutton** and the **Sibsons** in deciding to purchase the Property. Had the Plaintiffs known of the hazard presented by the District's Slope they would not have purchased the Property.

he failure of the **Sibsons** and their agents **Clark** and **Re/Max** to disclose the long standing geotechnical issues in the disclosure statement in regard to the Property constituted a misrepresentation of the condition of the Property.

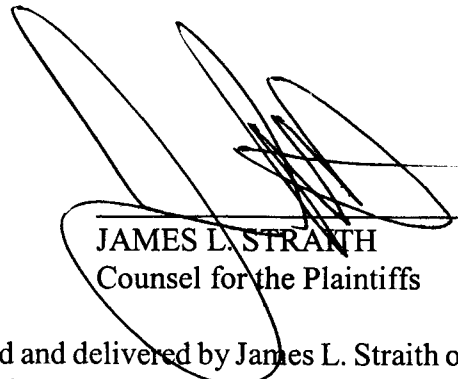
JANUARY 2005 LANDSLIDE

59. On or about January 19, 2005, during a period of heavy rainfall, the District's Slope at the west side of the Property collapsed (the "Collapse"). As a result of the Collapse:
- a) dirt and mud destroyed the residence at 2440 Chapman Way, killing Eliza Kuttner, and causing serious bodily harm to Michael Kuttner;
 - b) mud and debris landed on the property of 2430 Chapman Way;
 - c) undercutting of the District's Slope occurred at the rear of the Property, resulting in the collapse of the rear portion of the Property; and,
 - d) The residence on the Property became unsafe to inhabit, and worthless as a home.
60. The District's Slope collapsed due to the amount of water saturating the soil on the slope, leading to a loss of slope stability.
61. This saturation of the District's Slope would have been avoided had the **District** taken the measures recommended by its geotechnical engineers in 1980.
62. As a result of the negligence of the Defendants and of their breach of their duties in their contract with the Plaintiffs and their fiduciary duties owed to the Plaintiffs, the Plaintiffs have suffered damages as follows:
- a) damages to and, or loss of, the Plaintiffs property, including their house built thereon;
 - b) additional living expenses;
 - c) moving expenses; and,
 - d) such further and other damages as the Plaintiffs may advise.

HEREFORE THE PLAINTIFFS CLAIM AGAINST THE DEFENDANTS:

- a) general damages for negligence;
- b) special damages;
- c) punitive and aggravated damages against the **District**;
- d) damages against the Defendants Sibsons, Clark, Re/Max, Hendricks, and Sutton for breach of contract and breach of fiduciary duty;
- e) interest pursuant to the Court Order Interest Act;
- f) special costs; and,
- g) such further and other relief as this Honourable Court may deem just.

Dated this 20th day of April, 2005.



A handwritten signature in black ink, appearing to read 'James L. Straith', is written over a horizontal line. The signature is stylized and somewhat illegible due to overlapping loops.

JAMES L. STRAITH
Counsel for the Plaintiffs

This Writ of Summons and Statement of Claim is filed and delivered by James L. Straith of the firm of LAKES STRAITH & WHYTE, whose place of business and address for service is Suite 301 - 145 West 15th Street, North Vancouver, British Columbia, V7M 1R9. Phone (604) 984-3646 Facsimile (604) 984-8573