

North Van landslide lawsuit dismissed

BY BETHANY LINDSAY, VANCOUVER SUN APRIL 25, 2014



Scales of Justice on top of the Old Bailey on April 27, 2007 in London.

Photograph by: Bruno Vincent, Getty Images

<http://www.courts.gov.bc.ca/jdb-txt/SC/14/06/2014BCSC0688.htm>

A North Vancouver couple who sued their realtor for not disclosing geotechnical risks at their property neighbouring the site of a fatal landslide has had their lawsuit dismissed in B.C. Supreme Court.

Martyn and Tammy Louise Shaw's home at 2217 Berkley Ave. wasn't damaged in the 2005 landslide that killed one person and destroyed two houses. Still, they say the slide hurt their home's resale value, and they have been unable to sell the property at a price comparable to those seen outside the Berkley Escarpment area.

Justice Robert Sewell on Wednesday dismissed the case against realtor John McKilligan and Care Realty Ltd., writing that two decades-old reports on the area's landslide risk were "largely forgotten" by the time of the 2005 slide.

"I am unable to find that Mr. McKilligan failed to meet the standard of care required of him by failing to make enquiries about the property at the offices of the District of North Vancouver," Sewell wrote.

The Shaws' property, which they purchased in 2001, was the site of a landslide in 1979. Two reports commissioned by the district in response to that event revealed a risk of further landslides, according to court documents. However, those reports were stored in the District of North Vancouver's engineering department library and were not posted publicly. When Martyn Shaw visited the district's offices in 2004 to obtain permits for constructing a garage, he was told there was nothing on file concerning his property.

"There is simply no evidence that it was local knowledge in 2001 that there was a landslide hazard on the Escarpment," Sewell wrote. "I am satisfied on the evidence presented in this case that the reports only became generally known after the 2005 landslide."

The Shaws' original lawsuit also named the district, the 1979 owner of the home, and the couple they purchased it from, as well as their realtor, but those defendants were dropped.

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