

Aaron: Court ruling rattles home inspectors



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The home inspection industry in Canada may never be the same again following the decision of the British Columbia Supreme Court last week in the case of Salgado v. Toth.

Back in September 2006, Manuel Salgado and Nora Calcaneo signed an agreement to buy a house in North Vancouver for \$1,095,000. The contract was conditional on financing and a home inspection.

At the recommendation of their real estate agent, the buyers hired Imre Toth and his company HomePro Inspections to prepare a home inspection report for the property. Toth inspected the interior of the house, then spent another 30 minutes examining the roof and the rest of the exterior.

The contract Toth signed with the buyers stated that the inspection and report could not be used as a warranty of the condition of the house, and in the event the inspector was found liable for negligence or breach of contract, his liability would be limited to the \$450 cost of the report.

After the inspection, Toth provided both a written and verbal report to Salgado and Calcaneo. He noted a number of structural deficiencies and told his clients that repair costs would be in the neighbourhood of \$15,000 to \$20,000. On that assurance, the buyers closed the deal.

After closing, the new owners discovered serious problems with the wooden structural beams of the house due to rot and moisture. As well, it turned out that the south part of the house was sitting on fill that had not been properly compacted and the structure itself was settling and unstable.

The buyers sued Toth, the sellers and the real estate agents. The case against the former owners was settled before trial and the claim against the agents was discontinued. The only defendants remaining at trial were Toth and his company.

After a five-day trial, Justice Grant Burnyeat awarded the buyers \$192,920, representing the restoration costs of \$212,920, minus Toth's original \$20,000 estimate.

The judge ruled that Toth was negligent in not inspecting all of the structural beams and in failing to draw to the buyers' attention that the rot was much more widespread than he indicated to them.

The judge found that Salgado and Calcaneo would not have bought the house and would not have suffered damages had they known the full

extent of the rot on the east and west side beams of the house. The judge also ruled that Toth was negligent in failing to advise the buyers to retain a geotechnical engineer before waiving the inspection condition in the offer. They relied on Toth's advice regarding the stability of the house and suffered damages as a result of that reliance.

Toth's repair estimate, said the judge, was "woefully inadequate." The judge decided that the repair estimate Toth provided led the buyers to believe that the structural expenditures would not be excessive and that the problems were not significant.

He awarded them the actual cost of the necessary structural changes, including engineering costs. With respect to the exclusion of liability in Toth's inspection contract, the evidence showed that the buyers never read the contract before signing it. The court decided that it was incumbent on Toth to draw to Salgado's attention the exclusion and waiver clauses in the contract and ensure that he understood them.

Since that didn't happen, the judge ruled the exclusion of liability paragraph didn't apply.

An award approaching \$200,000 in a home inspection case is virtually unheard of in Canada. My guess is that the case will result in an end to "quickie" home inspections.

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