

HOME INSPECTOR LIABLE FOR HOUSE DEFECTS

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A British Columbia Supreme Court judgment has recently found a home inspector liable for almost \$200,000 in damages for an inadequate pre-purchase inspection of a residential property. The facts behind the case, *Salgado v. Toth*, are both straightforward and cautionary. The plaintiffs, Manuel Salgado and Nora Calcaneo, were considering the purchase of a North Vancouver property valued at approximately \$1,200,000. They made an offer subject to obtaining a satisfactory pre-purchase home inspection for which they retained the services of Imre Toth, a member of the Canadian Association of Home and Property Inspectors. The inspector attended at the house and discussed his findings on site with the plaintiffs and gave them a handwritten report. They paid him a fee of \$450 for his services.

The inspector examined some, but not all, of the structural beams supporting the house. He identified two beams that he felt were rotten and in need of repair. He advised the purchasers that he estimated the cost of repairing those two beams to be about \$4,000. After purchasing the house, the plaintiffs discovered that nearly all the structural beams in the home were rotten and that the cost of undertaking those structural repairs was \$90,000.

However, that was not the end of the purchasers' problems. The home was constructed on a hillside and much of the foundation was supported on fill. The inspector had noted some "moderate" settlement of the structure in his report. He suggested that repairs to address the settlement of the home could be completed for approximately \$15,000. After buying the home further inspection determined that the settlement of the home was a more significant problem and would cost \$126,000 to repair.

The purchasers sued the inspector for breach of contract and negligence. Following a trial, the Court found the inspector negligent due to his decision to inspect only some of the structural beams of the home—especially in circumstances where the beams he had checked had revealed evidence of decay and rot. Relying on expert evidence, the Court held that the indication there were two rotten beams triggered the need to inspect the remaining beams. The Court also found that the inspector ought to have recommended the involvement of a structural engineer to assess the structural integrity of the beams once it became clear that at least some of them were decaying.

The Court also found fault with the estimate provided for the beam repair since it was, in the words of the Judge, Mr. Justice Grant Burnyeat, “woefully inadequate” and lulled the purchasers into believing the issue with the structural beams was not a major concern.

The Judge made similar comments about the inspector’s description of the stability of the house foundations. The inspector’s report described the foundation settlement as “moderate” and in a condition between “average and below average”. In the Court’s view, this characterization did not convey to the purchasers the significance of the foundation problems. In addition, the estimate for addressing this problem was so far off the mark that it failed to reveal both the seriousness and the scope of the problem. Like the structural beams, the Court found that the inspector’s observations of the foundation settlement should have triggered a recommendation to the purchasers to obtain the advice of a geotechnical engineer.

In his judgment, Mr. Justice Burnyeat found that the inspector was liable for the cost of carrying out the necessary repairs to the structure and foundation, less the value that the inspector had assigned to those items in his report.

Like many home inspection contracts, the contract used by Mr. Toth in this instance contained a clause that purported to limit the liability of the inspector for errors to no more than the value of the inspection fee charged. However, the Court declined to give effect to this provision because the circumstances under which the contract was presented for signature were such that the inspector could not rely on the limitation of liability clauses.

The Court noted that the purchasers were not given an opportunity to fully review the contract before signing it. The inspector had conveyed his verbal advice while on site at the conclusion of his inspection, while at the same time filling out the written report and then handing it to the plaintiffs for their signature. The Court also noted that the purchasers’ attention had not been drawn to those specific provisions in the contract that the inspector now sought to rely on in limiting his liability for errors. In the absence of those steps being taken, the Court was not convinced that the purchasers had agreed to limit the inspector’s liability for errors.

This decision will interest those practising in the home inspection field. Identifying the presence of some defects likely triggers an obligation to undertake a more extensive inspection. Alternatively, the nature of the defects may require the inspector to recommend the services of a specialized consultant to provide additional advice. Reliance on exclusionary clauses in contracts will not be enforced unless those clauses are specifically brought to the attention of the purchaser. The purchaser must be given the opportunity to fully review and consider the contract terms before signing it.