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Judge finds 'fraud' in sale of Broadmoor Bluffs home in landslide zone

By: Lance Benzel Apr 27, 2019



Caption +

A home is for sale on Broadmoor Bluffs Drive on the site of an active landslide on Thursday, October 13, 2016.
Photo by Stacie Scott, The Gazette

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A Broadmoor Bluffs man committed fraud when he sold a half-million dollar home in a landslide zone without disclosing that it one day could collapse, a judge found in ruling against him in a 2-year-old lawsuit.

Fourth Judicial District Judge David A. Gilbert rendered the October 2016 sale of 4780 Broadmoor Bluffs Drive void and ordered that Mahmoud Atala must buy back the home for \$506,000, the original sales price plus closing fees.

Whether that will happen is unclear. Instead of celebrating, plaintiffs John and Bo Kolodgy are girding for a new battle to collect on the judgment, which could be appealed or complicated if Atala follows through on plans to file for bankruptcy.



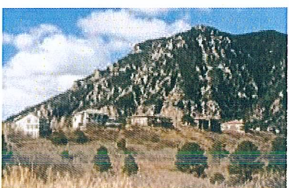
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“They feel validated by the ruling, but they understand that the fight isn’t over,” said their lawyer, Brian Stutheit of Littleton. “Unfortunately, they’re living in a house that, unless they get that money, they’ll never be able to sell to anyone except at a terrific loss.”

The ruling comes as the city recently demolished two landslide-ravaged houses on Broadmoor Bluffs Drive and prepares to ultimately demolish up to 19 there and in Lower Skyway, provided all the owners join the buyout program. Much of Broadmoor Bluffs Drive will convert to open space, and by law, nothing ever can be built on those sites again.



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Atala has 90 days from April 18 to appeal Gilbert's order.

If he files for bankruptcy, Kolodgy must seek an exclusion in court for assets related to the home sale on the grounds it was the result of fraud, Stutheit said.

Kolodgy, a military retiree who bought the house as part of a move from Fort Bliss, Texas, testified during a March trial that he lies awake at night listening to his house shift and moan, knowing it might be slowly crumbling.

"One of the hardest things he had to do, when they discovered their situation, was to confess to his wife that he had spent their retirement savings on a house that was on a landslide," Stutheit said.

Atala testified that he was "confused" as to whether the home was affected by landslides and said he and his real estate agent made all necessary disclosures.

But in a 15-page order, Gilbert disagreed, citing text messages showing that Atala himself was angered that a previous seller failed to disclose that it could be affected.

Atala initially threatened to sue but instead put the house up for sale without reporting information he had learned during an in-person visit from Tim Mitros, the city's former emergency management engineering program manager, who notified Atala that his house was in immediate danger.

According to Gilbert, Mitros conveyed that several neighboring homes had been purchased and slated for demolition under a Federal Emergency Management Agency buyback program. Mitros told Atala he would have recommended that his house be part of the program, but the previous owner didn't apply for the federal buyout, and the home was no longer eligible.

Knowing that Atala intended to sell, Mitros told him he was legally obligated to disclose the landslide zone and would need to perform a geologic study.

Instead, Atala commissioned a visual inspection without furnishing complete information to the company that performed it, the judge found.

Atala worked in part as a real estate investor who specialized in “fix and flip” properties and was therefore a relatively “sophisticated” seller aware of his legal obligations, the judge found. Atala’s attorney did not return a phone message requesting comment.

Stutheit said several homes in the area, including the Kolodgys’ residence, develop new cracks as time passes.

A neighbor one street below him makes a habit of covering new cracks with chicken wire to keep rodents from entering the house, the lawyer said.

Lance Benzel

Reporter

I cover legal affairs for The Gazette, with an emphasis on the criminal courts.

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