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Nightmare ending for victims of fraud

Assurance Fund pays some costs but no money for business losses

Ontario's deputy director of titles has just released a written decision that marks the end of the Durrani family's horrendous nightmare with the title to their home on Gilroy Dr. in Scarborough.

In this column on Jan. 11, 2001 (<http://aaron.ca/columns/2001-01-11.htm>), I related the horrifying tale of Asad and Zaib Durrani.

In 1995, they owned their home free and clear of any mortgages. According to the decision of the director of titles, through fraudulent means and unknown to the Durrani, Gideon McGuire Augier of Hamilton registered a judgment against the property and then, through a bogus foreclosure action, had the title to the property transferred into his own name.

Augier, who has a long history of fraud convictions, then agreed to sell the house to Melanie and Sophie Zettler of Toronto for \$116,000, at least \$60,000 below market value. At the time, the Zettler sisters were in their late teens.

The Zettlers had never seen the inside of the house because the Durrani family was living in it - unaware of the ongoing title hijinks. They paid \$25,000 down to Augier and obtained an \$87,000 mortgage from the Royal Bank to finance their purchase.

Full disclosure of the circumstances was not made to the Royal, and a dummy agreement of purchase and sale was shown to the bank in order to obtain financing. The sale of the property by Augier to the Zettlers, and their mortgage, closed in August, 1995.

When the Durrani family found out what had happened, they obtained a court order preventing the Zettlers from evicting them, and another order setting aside the foreclosure judgment against them.

Since then, the Durrani and the Royal Bank have spent a huge amount of time and money to undo the damage caused by Augier and the Zettlers. A six-day civil trial seeking damages and rectification of the title took place in January, 2000, and Justice Gloria Epstein handed down her decision in August of that year.

She ruled the transfer of title from Augier to the Zettlers was void and unenforceable, and ordered the property title rectified to show the Durrani as the true owners.

She ordered that Augier pay the Durrani \$100,000 in court costs, plus punitive damages of \$25,000 for his "malicious ... oppressive and high-handed" conduct. Those amounts were never paid.

The scary part of the whole story is that the title fraud scenario could happen again and again and again, on Gilroy Dr. or anywhere else in the province, and there is virtually nothing any homeowner can do to prevent it.

Melanie and Sophie Zettler were ordered to pay the Durrani \$15,000 in costs.

Since the Royal Bank did not participate in the fraud, or know anything about it, its mortgage was ruled valid and binding against the property, but the bank was prohibited from recovering payment from the Durrani, or evicting them.

It did, however, get an order for payment against the Zettlers.

Several appeals to the Court of Appeal were launched by Augier and the Zettlers, but Irvin Schein, who has represented the Durrani throughout the nightmare, told me last week that all litigation among the parties is now over.

The appeals never got to the hearing stage. Joseph Markin, counsel for the Zettlers before the Land Titles deputy director, confirmed civil proceedings are definitely over because the Zettlers and Augier could not come up with the \$135,000 in security for costs.

Following the court decision, the Durrani family applied to the Land Titles Assurance Fund for compensation due to the title fraud, and the Royal Bank joined in the application to seek damages resulting from its registered but unenforceable mortgage.

The assurance fund hearing took place last November, and the decision of Jean C.H. Iu, the deputy director of titles, was released late last month.

The fund was ordered to pay the Durrani \$181,913 plus 7 per cent interest from last November. That money will discharge the mortgage with the Royal Bank, and pay the legal costs of the bank's lawyer, Bernard Gasee. This \$182,000 award was on a mortgage with an original principal balance of \$87,000. The Durrani also obtained an order for their own legal fees exceeding \$150,000.

According to the decision, "There is no doubt that the actions of Augier went beyond simply depriving the Durrani of their interest in land. There were telephone calls of a threatening nature and strangers sent to the house in order to intimidate the claimants. Those intimidating acts exacerbated the stress suffered by Mr. and Mrs. Durrani."

But no money was awarded to the Durrani family in response to claims of business losses approaching \$400,000, their serious health problems, the death of Asad Durrani, or their grief and stress over the whole situation.

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Prior to his involvement with Augier, Asad Durrani had experienced serious health problems, including a debilitating stroke. Durrani suffered a heart attack in 1998 and died in July, 2000, just before Epstein released her decision partially rectifying the title problems.

Following the decision of Epstein, the Royal Bank was left with a registered but unenforceable mortgage, and an unsatisfied judgment against the Zettlers.

The Durrans were unable to collect on their judgment against Augier, and were saddled with a huge legal bill.

Their lawyer, Irvin Schein, told me last week that he was "delighted" with the land titles decision.

"I regret the extra expense the Durrans have been put to to get matters set right when they were completely innocent parties. They received no compensation for their time, trouble and aggravation."

Schein told me he is considering an appeal for compensation due to the related claims.

While Augier's legal troubles continue, the Durrani family will be happy if they never hear his name again.

But the scary part of the whole story is that the title fraud scenario could happen again and again and again, on Gilroy Dr. or anywhere else in the province, and there is virtually nothing any homeowner can do to prevent it.

Fortunately, in most cases, title insurance covers the activities of fraud artists like Augier. If you're buying a new or resale house after reading this column, tell your lawyer to get title insurance.

If you already own your house and don't have title insurance, it's too late to buy it. Just hope a fraud like this doesn't happen to you.