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March 1, 2003

Family compensated in mortgage fraud case

But judge limits award to actual expenses

Deed transferred without their knowledge

Mortgage fraud is in the news again with the release of a decision by Ontario's deputy director of titles awarding compensation to a Markham family for having the title to their house stolen from them.

It all started back in October 1999, when Maria and Leonardo Morra bought their house on Reansbury Cres. in Markham and took out a \$50,000 new first mortgage with the Royal Bank of Canada.

Without their knowledge, on March 1, 2000, a deed to the property was registered, transferring ownership to someone masquerading under the name Sambhu Ghosh. Land transfer tax of \$7,515 was paid on the stated purchase price of \$552,000. At the same time, the Royal Bank mortgage was discharged and a new mortgage was registered in favour of the Toronto-Dominion Bank for \$240,000.

All three documents the deed, the discharge and the new mortgage were fraudulent. The Morras never sold their house and did not pay off their mortgage. Nor did they know until much later what had happened to their title.

By August, 2000, the Morras had discovered the fraud and the York Region police had begun an investigation. Charges were laid against three individuals, but they were stayed or abandoned for lack of evidence.

The Morras retained a lawyer and 19 months after the fraud, they finally obtained a court order restoring their title and the original Royal Bank mortgage, as well as cancelling the deed to Ghosh and the fraudulent TD mortgage. By this time, however, whoever it was who received the proceeds of the phony TD loan was long gone.

Under Ontario law, a person wrongfully deprived of an interest in land can apply to a court to recover from the fraudster "what is just by way of compensation or damages." If, however, the injured party cannot recover from the guilty parties, he or she is entitled to apply to the Land Titles Assurance Fund for damages.

The Morras retained Toronto lawyer Bernard Gasee, who was successful in several previous applications for compensation from the assurance fund. But this time, in addition to their out-of-pocket costs, Gasee asked for damages for indirect economic loss, including costs of anti-anxiety medication, loss of the ability to refinance their Royal Bank mortgage at a lower rate, as well as intangible, aggravated and punitive damages of \$75,000.

The Morras' application was heard by Louis Arki, Ontario's deputy director of titles, in January 2002. It took more than a year for Arki to write his five-page decision awarding the Morras their actual costs and expenses, but declining to award any money for their pain, suffering and anxiety.

In the end, the Morras were awarded \$12,370 (representing most of their legal costs) and the Royal Bank got \$2,000 for most of its losses.

No claim was made by the Toronto-Dominion Bank for its \$240,000 loss.

Coincidentally, the week after the Arki decision in the Morra case was released, Justice Ted Matlow of the Superior Court rendered his decision on an appeal of similar compensation fund orders made a year earlier by Jean Iu, another deputy director of titles. Those orders awarded actual cash losses, but no damages for the grief suffered by the innocent parties who had their land titles stolen from them.

The question for the court on the appeals was whether the parties could recover additional monies from the assurance fund as "just compensation" for their suffering, grief and non-monetary losses. Gasee also acted for the claimants on the appeals.

Justice Matlow was obviously troubled by the cases, saying that the compensation provision of the Land Titles Act "is not a model of legislative draftsmanship." He agreed with the decisions in the previous hearings and declined to award compensation for any non-monetary losses. He did note, however, that the claimants could recover compensation for their "actual loss."

In light of the rash of title frauds, I would encourage homebuyers to protect their ownership by buying title insurance at the time of purchase. For a one-time premium, it protects owners from any subsequent title fraud. But if you already own your home, it's too late. Just pray it doesn't happen to you.

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