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## Mortgage fraud victims can also lose homes

Two Toronto residents face eviction and the loss of their \$500,000 condominium under power of sale for defaulting on a fraudulent mortgage placed on the unit a mortgage they knew nothing about.

Back in 1995, Lincoln Leung-Hang Shin and his wife, Ling Kam-Moi Shin, paid cash to purchase a luxury condominium on Bayview Ave. near Finch Ave. They have been living there since then.

Without their knowledge, title to the property was transferred by a forged deed in favour of Ru Rong Jiang on Aug. 27, 2000. The Shins do not know who Jiang is, and never signed a deed in his favour.

One year after the title was transferred to him, Jiang mortgaged the property to the Toronto-Dominion Bank to secure a \$200,000 line of credit. Apparently, the bank did a credit and identity check on Jiang, but no one knocked on the door to verify that the occupants knew about the mortgage deal.

Jiang drew out the entire \$200,000 line of credit and defaulted on the mortgage. The bank obtained a judgment against him, and earlier this year applied to the Ontario Superior Court to enforce the mortgage.

It was only when the Shins were served with notice that the bank wanted to sell the property and evict them that they found out how serious things were.

When the case got to court in March, TD's lawyer Jonathan Spiegel asked Justice James Spence to allow the bank to evict the Shins so it could sell the unit.

Under Ontario law if the bank has no knowledge of the fraudulent deed, its mortgage is valid and binding against the property for the amount loaned to the "registered" owner.

Back in 2000, the case of Durrani v. Augier involved a situation where there was a dispute between innocent owners and a subsequent innocent lender who advanced money to borrowers who claimed title under a forged deed (see <http://aaron.ca/columns/2001-01-11.htm> and <http://aaron.ca/columns/2002-03-16.htm>). The law in that case is that the real owners are entitled to have their title restored to them and the innocent mortgagee is entitled to a declaration that he or she has a valid and binding mortgage.

In the Durrani case, the judge did not deal with an application to enforce the mortgage, preferring instead to delay enforcement until the completion of an application for financial compensation from the Land Titles Assurance Fund. (The fund provides financial compensation for loss of an interest in land due to fraud or an error by land titles staff.)

The Shin and Jiang case was the first time an Ontario court had been asked to evict innocent owners before an application for government compensation was heard. At the court hearing, Mel Antflyck, lawyer for the Shins, argued that despite the legal validity of the TD mortgage, the bank should not be able to enforce the mortgage against his innocent clients.

In his ruling, Justice Spence stated that the law doesn't prevent the TD Bank from enforcing all of its rights under the mortgage. As a result, he issued an order allowing TD to proceed with evicting the owners.

Fortunately for the Shins, the TD Bank has agreed to defer its right to evict them until they can conclude their application to the Land Titles Assurance Fund for the money to pay off the TD mortgage.

Last week I spoke to Antflyck. He told me that a "pre-hearing" on the compensation fund application would take place in a few weeks. Similar fraud cases have taken as much as a year to resolve before the bank received money from the fund to discharge its mortgage.

In the meantime, says Antflyck, "my clients could be thrown out of their home and they are completely innocent."

One day, an innocent homeowner in the same position as the Shins might not be as lucky to have a lender willing to delay enforcing its default rights. Based on the law in the TD Bank and Jiang case, that owner could well be thrown out of his or her home and have it sold under power of sale before the compensation fund gets around to considering her application.

Clearly, some legislative action is necessary to remedy a law which allows innocent people like the Shins to be evicted and have their condo sold out from under them. My suggestions:

Compensation applications under the Land Titles Act should be required to provide decisions within 30 or 60 days of the initial application.

Judges should have the right to make compensation fund rulings in cases of fraud.

Innocent mortgagees should be prevented from evicting innocent owners and selling their properties where both are victims of fraud artists.

The compensation fund should be required to pay the legal costs of all innocent parties in addition to the amount owing on the mortgage.

Consideration should be given to amending the legislation to allow innocent owners to recover damages from the assurance fund for the stress caused by having their homes stolen, as well as out-of-pocket costs for being unable to sell or borrow against their homes while the title is not in their own names.

Meanwhile, the Shins, the TD Bank, and their lawyers are waiting patiently for the taxpayers of Ontario through the Land Titles compensation fund to replace the money taken by Ru Rong Jiang.

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