



Bob Aaron bob@aaron.ca

April 22, 2006

House title thieves can wreak havoc Fraudulently signed mortgage can be valid, court rules

Homeowners can face eviction, huge legal bills

When the Ontario Court of Appeal decided last November that a forged power of attorney could be used to create a valid mortgage, it fundamentally changed the law of title registration in Ontario.

It also paved the way for innocent residents like Susan Lawrence to be evicted from their homes after fraudsters steal their house titles and mortgage the properties to unsuspecting financial institutions.

Lawrence's story was detailed in the *Star* this month. Earlier this year, an identity thief stole the title to her home and mortgaged it to Maple Trust for almost \$300,000. He immediately defaulted on the mortgage and disappeared with the money, leaving Lawrence facing an eviction action by the lender.

When I spoke to Lawrence in February, she told me the fraudster used the name Thomas Wright the name of the president and CEO of the Real Estate Council of Ontario, the licensing body of Ontario's real estate agents. Needless to say, the real Tom Wright had nothing to do with the Lawrence house.

At my suggestion, Lawrence contacted Toronto lawyer Morris Cooper, who has extensive experience with title fraud. She was shocked to learn that an Ontario Court of Appeal decision last November ruled that a fraudulently signed mortgage in a similar case was perfectly valid and enforceable against an innocent homeowner.

In the case of *Household Realty v. Chan and Liu*, the appeal court ruled that a mortgage was valid and enforceable where the wife signed her husband's name using a forged power of attorney. Once the mortgage was registered, the court ruled, it was binding against the innocent husband even if the lender was not aware of the fraudulent signature at the time the money was advanced.

That decision by Justice Robert Armstrong, writing for a three-judge panel, turned 100 years of existing Ontario land titles law on its end and directly paved the way for the nightmare in which Susan Lawrence finds herself. As well, it may have unintentionally done considerable damage to the real estate industry and Ontario's taxpayers, according to Toronto real estate lawyer and mortgage fraud specialist Sidney Troister.

Speaking to 400 lawyers at a Law Society seminar earlier this month, Troister said that the Household court decision indicates that once a mortgage or any other document is registered, it is valid regardless of how it was signed or the identity of the person who signed it. For Susan Lawrence it means that once the Maple Trust mortgage was registered, her equity in the house disappeared.

Ultimately, Lawrence has the right to be compensated for her loss from the Land Titles Assurance Fund, but it would take as much as two years and perhaps \$35,000 in legal fees. In the meantime, legally, she could be evicted from her house.

Fortunately for her, once the *Star's* reporter contacted Maple Trust (now owned by Scotiabank) for comment, it investigated the matter and the court case against Lawrence was discontinued.

While most lenders appear to be sympathetic to the innocent owners in similar cases, some, especially private lenders, might not be so ready to hold off enforcing a mortgage against the next unfortunate victim of title theft.

The likely implications of *Household Realty v. Chan* are severe, according to Troister. Owners can lose their land to subsequent, forged registrations. In addition, lenders can have their valid (legal) mortgages discharged by forgery and lose their claims to the land.

Virtually all lenders these days take out title insurance. When a mortgage turns out to be fraudulent, the lenders typically turn to the title insurers for relatively quick compensation. But in the wake of the *Household v. Chan* case, title insurers are likely to say that the courts have ruled forged mortgages are now valid, and they are not going to pay claims based on the "valid" (but forged) mortgages.

As a result, the Land Titles Assurance Fund may see an avalanche of new claims to be paid out of the public purse.

Under the court's new interpretation of the law, lenders like Maple Trust will have a very difficult public relations problem enforcing mortgages against innocent owners like Susan Lawrence. But the mortgages stay on title, interest accrues and the owners are unable to deal with their properties until the matter is resolved.

If this all sounds bizarre, I can assure you that it is. Many of us involved in real estate law believe that the Court of Appeal decision is horribly wrong.

The day after the Lawrence case became public, the *Star* reported that Joseph Cordiano, Ontario's minister of economic development and trade, said "No one should have to face this horrible situation." He added that it was unfair for innocent crime victims to have to spend tens of thousands of dollars to get recourse from the government.

Cordiano wants a review "of the entire system." His comments were echoed by Government Services Minister Gerry Phillips, NDP finance critic Michael Prue (himself a victim of a \$100,000 credit card fraud), and Progressive Conservative MPP Tim Hudak.

Unless the Court of Appeal reverses itself in a subsequent case, the only solution will have to be for the Ontario legislature to change the Land Titles Act to ensure there will be no more evictions, losses and delays like the ones faced by Lawrence and others like her.

In the meantime, all Ontario homeowners should seriously consider "existing owner" title insurance policies if they do not already have title-insured homes. The policies are available through Ontario real estate lawyers.

There is virtually no way for a homeowner to prevent theft of his or her property ownership, but having a title insurance policy will solve the problem with a minimum of delay and expense. It's a few hundred dollars well spent.