



Bob Aaron bob@aaron.ca

November 18, 2006

Sister's signature forged in sale

When Sharon Dunford's mother died in June 2000, she bequeathed the family home on Russell Ave. in St. Catharines to Dunford and her sister equally. At the time, it was worth about \$80,000.

The will provided that Dunford's sister could live in the house as long as she wanted, but she was to be responsible for taxes, upkeep and utilities.

In July of this year, Dunford and her husband Trevor were travelling from their home in Peterborough to Niagara Falls and decided to stop by the house in St. Catharines to check on it.

To their surprise, they found that it was empty. One of the neighbours told them it had been sold. Since Dunford was half-owner of the home, this obviously came as a great shock to her.

The house had been offered for sale without Dunford's knowledge.

Someone posing as Sharon Dunford had signed an agreement of purchase and sale, and the house was sold to the wife of a real estate agent.

The declared selling price was \$57,000, which, I am told, is about half of its market value.

Both sellers (the real one and the imposter) and buyer used the same lawyer in Welland. When the sister and someone posing as Sharon Dunford went to the lawyer's office on July 31 to sign all the paperwork, it appears that the lawyer neglected to make a thorough review of the ID of both sellers.

It's fairly routine now for lawyers to check the identity of buyers and borrowers, but it may not be as common for lawyers to verify who the sellers are.

The deal closed on Aug. 1 and the sale proceeds were paid to the St. Catharines sister.

A few days later, on the Sunday of the Civic Holiday weekend, I received an email from Trevor Dunford outlining what had happened to the family home and asking how he and his wife should proceed.

Realizing that it wasn't too late to unwind the sale, I replied to Trevor and told him that it was extremely urgent that they hire a lawyer immediately.

Since the Dunfords live in Peterborough, I suggested that they retain my colleague Tom Cole, in nearby Lakefield.

Cole practises law with Adam Baker, and the two lawyers met with the Dunfords on the Tuesday after the holiday weekend.

As this was only a few days after the deed had been registered, Baker and Cole jumped into action. They did exactly what I had hoped they would do.

A word of explanation: In Ontario, when a document is registered in the land registry system, it is common for the lawyers, banks and parties to the document to accept the registration as final.

The moment the document is accepted for registration, keys and money change hands, and the moving trucks start to roll.

But that's not what the law says.

Under section 78 of the Land Titles Act, the land registrar has 21 days to notify the parties to the document that it contains an error or omission, or that it can't be registered "for any other reason." If the problem is not corrected, the registration can be cancelled and the document is effectively bounced as if it had been a bad cheque.

When the Dunfords arrived at the offices of Baker and Cole, the deed that was registered electronically with the forged signature of Sharon Dunford had not yet been certified for registration since the 21-day period was still running.

With the co-operation of the local land registrar, the two lawyers had the deed bounced, and all registrations on the title were frozen. As well, within a matter of days, they had sued the new owner of the property, and registered notice of the lawsuit on title.

The registered owner failed to respond to the lawsuit, and an application to restore title to half of the property to Sharon Dunford was brought before the Superior Court in Peterborough at the end of September.

Based on the supporting affidavits and legal briefs filed by Baker and Cole, Justice Hugh McLean ordered that ownership of a one-half interest in the property be restored to Sharon Dunford.

The other half interest remains registered in the name of the real estate agent's wife who thought she had purchased the entire house from Dunford's sister. This may well be the first case in which a suspected real estate fraud was stopped and corrected within the 21-day certification period under the Land Titles Act.

As a result, the Dunfords did not lose the title to the house, which has been the fate of a number of other owners whose stories have been chronicled in the Star.

Sharon Dunford emailed me recently to say how thrilled she was that her lawyers acted on the situation so quickly. Meantime, Dunford's problems are far from over. Based on the photos she sent me, it appears that the family home is an absolute disaster, and has been badly mistreated.

Dunford said she was told by a member of the Niagara Region police fraud unit that the case was "investigated thoroughly" and that they have "closed this matter" on the advice of the local Crown attorney.

Dunford emailed me after this to say she was "furious" that no fraud, forgery, impersonation or any other charges will be laid.

The police have, however, frozen the \$30,000 bank account of Dunford's sister to allow time for civil but not criminal proceedings.

The Law Society's insurer is involved on behalf of the lawyer who acted for both parties in the suspect transaction, and a claim may well be made to the Land Titles Assurance Fund.

Now Dunford wants someone to pay her legal fees, and the saga continues. Her story has three valuable lessons for homebuyers:

- ▶ The next time you're in a lawyer's office to buy *or sell* a property, be prepared to produce lots of identification.
- ▶ Although there is no prohibition on the practice, using the same lawyer for both sides of an arm's-length transaction is not always a good idea.
- ▶ If someone steals the title to your home in the Niagara Region, don't plan on much help from the local police.

Bob Aaron is a Toronto real estate lawyer. www.aaron.ca ©Aaron & Aaron. All Rights Reserved.