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What if your house was sold out from under you?

How would you feel if you woke up tomorrow morning to find out that someone had placed a fraudulent mortgage on your house, let it go into default, completed a phony foreclosure, and then sold the house - with you still in it?

It sounds unbelievable, but that is exactly what happened to Asad and Zaib Durrani at their Gilroy Dr. home in Scarborough.

In June, 1995, when the Durrani went out to buy a lawnmower, a routine credit check revealed a sizeable court judgment registered against them and the title to their home.

"This," said Justice Gloria Epstein five years later, "was the beginning of what can only be described as a nightmare for the Durrani."

That was an understatement.

At the time of the trial last year, Asad and Zaib Durrani were retired, had been married for 38 years and had three adult children in their 30s. The eldest son, Auran Durrani, became acquainted with a paralegal named Gideon Augier in 1992.

Discussions took place about some work Augier would do for Auran. Augier prepared a draft of articles of incorporation for a company Auran wanted to create. Augier subsequently claimed he was owed \$10,000 by Auran for his advice and services and eventually sued him to recover the fees. Auran was never served with any court papers. Using doctored paperwork, Augier obtained an unopposed court order against Auran requiring "repayment" of the \$10,000.

In 1995, Augier registered a fraudulent Collateral Loan Agreement against the title to the Durrani home on Gilroy Dr., even though the Durrani never borrowed money from him. The signatures on it were forged. Then Augier started a foreclosure action, and again obtained an unopposed default judgment in his favour without the knowledge of the Durrani.

Augier registered his foreclosure and became the titled owner of the property. Then he hired Joanna Jones, a real estate agent, to sell it for him. Of course, she was unable to show the house to prospective buyers because the Durrani were still living there. As a result, a proposed sale at \$176,000 fell through.

Eventually, Augier agreed to sell the property for \$116,000 to Melanie and Sophie Zettler, the daughters of Joanna Jones. At the time they were in their late teens. Neither Jones nor her daughters had ever seen the inside of the house. The Zettler sisters put \$25,000 down and got an \$87,000 mortgage from the Royal Bank of Canada. 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.

On the day the transaction closed, the agent Jones called the Durrani and told them that she was buying the house. The Durrani told her that the house was not for sale.

Meantime, the Durrani had retained lawyers to set aside the bogus foreclosure. While the court application was underway, Augier closed the sale to the Zettler sisters and the Royal Bank advanced the proceeds of its new mortgage.

Shortly afterward, the Durrani got a court order preventing the Zettlers from evicting them, and another order cancelling the original \$10,000 judgment and the foreclosure.

It wasn't long before everybody was suing everybody else. The Durrani wanted title to their house back in their names, the Royal Bank mortgage discharged, and punitive damages and costs against the paralegal. The purchasers claimed they were the rightful owners, and asked the court for their money back from Augier.

The Bank sued for an order declaring its mortgage was valid, as well as a judgment against Augier, the Zettlers and the Durrani for the amount owing under the loan (even though the Durrani never signed the document).

Augier had previously been convicted of fraud on more than one occasion, once using documents similar to the ones registered against the Durrani home. Under the old Registry system, a forged document has no effect and cannot create good title if registered. But title to the Durrani home is registered in the Land Titles system.

Under its governing legislation, whatever is on the title page is the full and complete title, but a fraudulent document does not automatically become valid just because it is registered. The Land Titles Act protects a bona fide purchaser who becomes the registered owner. But Augier never had a legitimate interest in the property, and Jones' daughters were not bona fide purchasers because their mother knew of Augier's spurious claim to ownership.

The couple were awarded for punitive damages for being victims of 'malicious . . . oppressive and high-handed' conduct'

As a result, Justice Epstein ordered that the Durrani had valid title to the property, and ownership should be restored to them, along with full rights to possession.

The Royal Bank, however, did not participate in the fraud, and its mortgage was ruled to be a valid and binding charge against the property. Despite this, the Bank was prohibited from proceeding to recover the amount owing from the Durrani. It did succeed in getting an order for payment against the Zettler sisters.

The Durrani were awarded judgment against Gideon Augier for punitive damages of \$25,000 and costs of \$100,000 for his "malicious . . . oppressive and high-handed" conduct. The Zettlers were ordered to pay total costs of \$40,000 to the Bank and the Durrani, as well as the full amount owing on the mortgage.

Under the Land Titles Act, the government of Ontario establishes and maintains a Land Titles Assurance Fund to compensate people who are prejudiced by the operation of the Act. Justice Epstein suggested that the Bank could pursue a claim against the Assurance Fund if it could not recover its money from the Zettler sisters.

Unfortunately for the Durrani and the Bank, the case is not over yet. Notices of appeal to the Court of Appeal have been filed by Gideon Augier and the Zettlers.

Although the facts in Durrani v. Augier are quite bizarre, the fact is that fraudulent dealings with registered title documents, although statistically small in number, continue to accumulate losses of many millions of dollars. Some 35 fictitious transactions were reported to police in Ontario in 1999 and last year.

If you're negotiating a real estate transaction, and it seems too good to be true, it probably is.