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Title fraud costs taxpayers

Bank losses, legal fees covered by government fund

Ontario's deputy director of titles has released a series of decisions ordering rectification of five property titles taken by fraud artists, and re-registration of the same number of fraudulently discharged mortgages.

In addition, the Land Titles Assurance Fund has been ordered to pay more than \$2 million in damages and legal costs to pay off the bogus mortgages signed by the fraudsters.

Last month, I wrote a column entitled *Stolen dreams*, which detailed how fraud artist Emanuele Tesoro forged deeds and transferred the titles to five Richmond Hill properties into his own name. He then forged and registered discharges of the existing mortgages, allowing him to place new first mortgages on houses he didn't own. In one case, he did it twice.

(The column is archived at <http://www.thestar.com> under Columnists, then click on Bob Aaron.)

With the decision in one more case still to be released, Ontario taxpayers have been hit, through the assurance fund, with repayment of a half-dozen fraudulent mortgages to the tune of almost \$1.8 million, and just shy of \$250,000 in legal costs for a platoon of lawyers to straighten out the mess.

Typical of the cases is that of Nimita and Ravinder Raina, who bought a house on Alessia Ct. in Richmond Hill in 1999. Evidence at the Land Titles hearing showed that the title to the Raina property was, without their knowledge, transferred to Tesoro six months after they bought it.

Tesoro presented documents with the Rainas' forged signatures on a deed, registered it, and paid land transfer tax on the bogus registration.

The existing mortgage to the Royal Bank was fraudulently discharged, and a new mortgage for \$350,000 was registered from Tesoro in favour of Ila Weiser and Midding Investments Ltd. Within weeks, that mortgage was also fraudulently discharged, and a new mortgage for \$252,500 from Tesoro was registered to Equitable Trust Company.

It's not difficult to imagine the effect on a homeowner of having his or her house title stolen, and not knowing for more than two years if, or when, it will be given back.

According to the decision, the Rainas had a thriving business exporting computer hardware and software to Zambia. Having lost the title to their house, they were unable to use the equity in it to finance large shipments of equipment. As a result, they experienced lost business opportunities of about \$60,000 in potential profits.

They suffered badly from the stress of the situation, and Nimita Raina had to undergo extensive medical treatments and physiotherapy, both in Zambia and Ontario. They spent a small fortune in legal costs attempting to rectify the title to their property.

When the compensation decision came out late last month, it ordered payments from the assurance fund totalling about \$743,000 to pay off and discharge the Weiser/Midding and Equitable Trust mortgages.

In addition, the fund will cough up legal fees and expenses to three sets of lawyers for almost \$68,000 even after chopping one lawyer's \$90,000 bill in half. All this is, of course, taxpayers' money.

The director of titles also ordered that the forged deed to Tesoro be struck off the title, and that Nimita Raina be shown as the registered owner of the property. As well, the Royal Bank mortgage will be restored.

These results were not unexpected. The big question in this, and the other four cases released last month, was whether the assurance fund would pay other damages claimed by the owners due to Tesoro's fraud.

Under the provincial Land Titles Act, a person wrongfully deprived of an interest in land is entitled to recover "what is just, by way of compensation or damages" from the person who acquired title through fraud or error.

If the injured person is unable to recover "just compensation" for his or her loss, that person is entitled to have the compensation paid out of the assurance fund.

Unfortunately for the owners, Jean C.H. Lu, the deputy director of titles, ruled that "just compensation" for the loss only means indemnity for the "pecuniary loss which has been suffered" and should only restore the applicant to the position he or she would have enjoyed if there had been no fraudulent act.

Restoration of the wrongful deprivation, Lu ruled, does not include more remote damages resulting from the fraud.

Toronto lawyer Alan Drenfeld acted for the Rainas, and Bernard Gasee represented the Royal Bank and the other owners in the five Tesoro cases in which the decisions were released last week.

Gasee told me he is recommending the homeowners appeal the decision. The legislation, he says, gives authority to award "just compensation." This, he suggests, should include general damages, aggravated damages, punitive damages and all out-of-pocket expenses. He feels his clients should also be fully compensated for non-monetary damages, such as pain and suffering, anxiety, stress and aggravation.

Why, for example, should the parties recover their legal costs but none of their medical expenses?

I agree with Gasee.

The government has set up a land registry system that makes it ridiculously simple to perpetrate frauds resulting in losses of millions of dollars to Ontario homeowners.

The institutions who loaned money to Tesoro got every cent of their money back, with compound interest. Why shouldn't the homeowners get damages like any other injured plaintiff, even if it is from taxpayer funds?

Another interesting aspect of the case is the fate of Stewart Title, which insured one of the Royal Bank mortgages. In her compensation decision, Jean Lu said she had reviewed the

title insurance from Stewart Title Guaranty Company, and was satisfied that the insurance did not cover the fraudulent activities of Tesoro.

The underlying legal concept is very complicated. Wayne Lipton, vice-president of Stewart Title, explained this decision is based on the fact Tesoro used his own name, and the lawyers dealing with the title had the right to rely on the title page as a guarantee of the state of the title.

If a fraudster used a different name, Lipton told me, the lawyers could not rely on the title abstract because of the false name on title. In that case, he said, the loss would "likely" be covered by Stewart.

In either event, everybody gets paid the homeowner, the real mortgage and the bogus mortgage either by the compensation fund, or the title insurer.

More on the land titles decisions next week.

FOOTNOTE: There are two local men named Emanuele Tesoro. One is in jail as a result of his real estate fraud convictions. The other is married, and an honest, religious man who has no connection or relationship to the fraud artist. I regret that the publicity given to the former has embarrassed and caused confusion among the friends and family of the latter.

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