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Victims of a mortgage discharge fraud

Private lender faces \$70,000 close call

When the file landed on my desk, it looked like an ordinary mortgage collection task, but by the time it was concluded several months later, lawyers had become involved to remedy a forged mortgage discharge and what may have been a fraudulently inflated purchase price.

My client, whom I will call Mike, is a private mortgage lender. He has given me his permission to write about his case.

Late last year, Mike was approached by a mortgage broker acquaintance with a proposal to invest in a \$70,000 first mortgage on a 712-square-foot one-bedroom bungalow at 33 Earl Grey Rd., near Danforth and Pape Aves., in Toronto. The borrower's application was in the name of John Stinziani.

According to the title records in the land registry office, the property, built circa 1930, had been purchased by Stinziani in April, 2001, for \$227,000, and it was mortgage-free. From the private lender's point of view, a first mortgage of \$70,000 was a relatively risk-free investment, since there would be an equity of \$157,000 in the event the mortgage ever went into default.

Before he agreed to invest in the mortgage, Mike drove by the property to satisfy himself that he could get his money out if the borrower defaulted. Mike thought the purchase price was on the high side, but that his investment would be secure.

He instructed his lawyer to prepare a first mortgage for \$70,000. It was eventually signed in the office of the borrower's lawyer, registered, and the money advanced. Mike was not present. At the time the mortgage was signed, Stinziani produced a mock-up of a Canadian citizenship card with that name, a birth date and photograph. When I recently showed a copy to a detective with the Toronto Police Service fraud squad, I was told that the name and the card were most likely a forgery.

The mortgage went into default almost immediately, and I was retained late last year to start default proceedings so Mike could recover his investment.

The first thing I did was to look at the title search for 33 Earl Grey Rd. from the files of Mike's lawyer. It showed the Stinziani purchase for \$227,000, Mike's \$70,000 first mortgage, and nothing else.

I should explain at this point that there are two ways of conducting electronic title searches in Ontario. One option is to have all deleted, discharged and obsolete documents omitted from the electronic printout. That was the option Mike's lawyer chose and the result showed a nice, clean title.

The other method is to have the title printout show all the deleted and obsolete documents. When I completed my own title search showing the cancelled documents, it told an entirely different story.

According to government records, in June, 2000, the property was sold for \$135,800. Less than a year later, in April, 2001, that owner appears to have sold it to the person calling himself Stinziani - unrenovated - for a reported \$227,000. At that time, a new first mortgage for \$196,809 was registered in favour of the Royal Bank of Canada. Two months later, a discharge of this mortgage was registered, giving Stinziani a title free and clear of any debts.

When I obtained a copy of that discharge, it became immediately apparent to me that it was a forgery. It contained mistakes which the Royal Bank would never make on its documents. As well, it was discharged so soon after registration that it raised all kinds of red flags. People just don't pay off five year closed mortgages right after taking them out.

My client and his lawyer were shocked to find out that their mortgage may have been in second position behind a prior first mortgage which was fraudulently discharged. It took me a long time and many telephone calls and faxes to convince the Royal Bank that their mortgage had disappeared from the registered title without their knowledge.

Eventually negotiations were underway among my client, his original lawyer, his litigation counsel Morris Cooper, Royal Bank lawyer Richard Horodyski of Gowlings, myself, and Stewart Title, which had title-insured the Royal's mortgage in the first place.

Ultimately, in order to protect Royal's position, Stewart Title paid my client the \$70,000 mortgage and costs, and Royal took over the property in an attempt to recover its \$197,000 investment and have its mortgage restored to the title abstract. While all this was going on, my client obtained an appraisal from Jim Parthenis of Lebow, Hicks & Katchen which showed the value of the abandoned property at 33 Earl Grey Rd. earlier in 2002 to be only \$143,000.

Was the \$227,000 sale price genuine? Who and where is "John Stinziani?" What happened to my client's \$70,000? All these are good questions but unfortunately I have no answers.

My client has not lost any money, but Stewart Title and Royal Bank have been significantly hurt by whoever was using the Stinziani name.

In the wake of fraud cases like this one, don't be surprised if mortgage brokers, lenders, lawyers and appraisers are very thorough in verifying all the details in your next mortgage loan application.

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