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Wife's forgery puts home at risk

A Toronto man whose wife forged a power of attorney to herself stands to lose his entire interest in their family home if a recent decision of the Ontario Superior Court is upheld on appeal.

Suet Ching Chan and her husband Lik Liu are joint owners of their family home. While her husband was out of the country, Chan incurred gambling debts and needed to raise money.

After forging her husband's signature on a power of attorney, Chan obtained two lines of credit one from CIBC Mortgages in 2002, and a second from Household Realty in 2003.

Liu was unaware of his wife's gambling problem. He had not signed a power of attorney and never authorized her to borrow money on the security of the family home.

In the registered mortgage documents, which were used to secure the two lines of credit, Chan signed for herself as to her interest and on behalf of her husband relying on the forged power of attorney. She falsely declared the power of attorney was still in effect and that her husband had the right to grant the power of attorney to her. Neither lender was aware that the power of attorney was forged.

In July of last year, both CIBC and Household started separate lawsuits against Liu and Chan seeking to recover the mortgage money and interest, and to evict the couple from their home.

The case of *CIBC Mortgages v. Chan* was decided on a preliminary motion and never got to trial. Based on a statement of facts agreed to by all parties, Justice Thea P. Herman decided not to hold a trial as there were no issues to be determined by listening to evidence.

She ruled both mortgages were valid under the Land Titles Act, and awarded judgment for the mortgage amount against the wife. As well, the lenders were given the green light to have the couple evicted.

Although the final word on the case will go to the Court of Appeal, a fascinating commentary on the decision, published in the Real Property Reports, strongly suggests that the judge's decision was wrong in law.

The case commentary was written by Sidney H. Troister, an expert in mortgage and title fraud.

The fraud, he says, involved three registered documents (the power of attorney and the two mortgages) but the only document that was actually forged was the power of attorney itself. If it had not been forged, the mortgages would have been valid.

He says under a two-stage process in the Land Titles Act, only a registered owner can sell or mortgage property. A document signed by an impostor for the registered owner has no effect.

But, in the second stage of the process, once a person is shown as the registered owner, he can validly sell or mortgage the land, even if he obtained title from a prior owner as a result of fraud.

Although this may seem strange to a layperson, the scheme is necessary so that the public can rely on a title search at face value. It is not necessary to go behind the registered documents to investigate their integrity. Anyone suffering a loss as a result of fraudulent documents can apply for reimbursement to a title insurer, if a policy is in place, or ultimately to the Land Titles Assurance Fund, which effectively is public money.

Troister says the registration of a bogus power of attorney does not validate it or make the attorney the registered owner of the property. There is nothing in the Land Titles Act that makes a document signed under a registered power of attorney valid if the power of attorney itself was forged.

Troister argues convincingly that since the lenders were not dealing with the husband as one of the registered

owners, the legislation does not validate their mortgage. Simply stated, a document signed under a forged power of attorney is no different than if the document itself is forged. It is no good.

Many of us who practise real estate highly regard Troister. I find it very convincing when he argues that the proper decision in this case would have been to make the two mortgages void with respect to only to the interest of the husband, Liu, and to validate them with respect to the wife's interest.

Whether the Court of Appeal agrees with the judge or with Troister remains to be seen. My money is on Troister's position.

At the same time, Troister issues a strong warning with respect to the use of powers of attorney in real estate transactions. They are, he says, "powerful instruments," and they "can create substantial havoc" if they are used without intended authority, or if they are treated as authentic when they in fact have been forged.

Given the amount of fraud taking place in real estate transactions today, Troister cautions it is only a matter of time before "courts tell us powers of attorney cannot be taken at face value," and further investigation of the documents will be required.

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