



ONTARIO

# *Land Titles Act*

R.S.O. 1990, Chapter L. 5., as amended

**IN THE MATTER OF** the *Land Titles Act*, R.S.O. 1990, c. L.5, s. 57(7)

**AND IN THE MATTER OF** the title to land registered in the Land Registry Office for the Land Titles Division of Peel (No. 43) as Parcel 70-1, being Part of Lots 69 and 70, Registered Plan 43M-595, City of Mississauga (the "Parcel") in the names of Jaime Raposo De Sousa and Elisa Botelho De Sousa;

**AND IN THE MATTER OF** an Application by Riina DeFaria for payment of compensation out of the Land Titles Assurance Fund in respect of legal and survey costs to obtain a Release of Easement in a circumstance where the register did not disclose the existence of an easement which had inadvertently been left off of the register.

## **REASONS FOR DECISION**

This matter came before me for hearing on January 31, 2001, in Toronto, Ontario, at which time there appeared before me:

Ryan De Faria, Student-at-law of the firm De Faria & De Faria.  
Mr. De Faria appeared on behalf of the Applicant, Riina De Faria.

## **FACTS**

The facts in this case were provided by way of the Affidavit of Riina De Faria dated January 30, 2001. Riina De Faria did not appear at the hearing to provide oral evidence. Mr. De Faria's only submission was that the action taken by the Applicant was necessary to protect the interests of her clients. All other submissions with respect to this matter were made through the Affidavit.

The Applicant was the solicitor for the purchasers Jaime Raposo De Sousa and Elisa Botelho De Sousa in the purchase of 244 Fairview Road West, Mississauga ("the property"). In preparing for the closing transaction, Ms. De Faria searched the title to the property. The search did not disclose an easement in favour of the City of Mississauga. Ms. De Faria was later advised by a lawyer acting for a purchaser of an adjacent parcel of the existence of the easement.

The easement in favour of the Corporation of the City of Mississauga, Instrument No.570551 was not annexed to the Affidavit; however, I have reviewed the document and it indicates that the easement was created to "...construct, operate, maintain, inspect, alter, remove, replace, reconstruct, enlarge and repair sewers and drains and appurtenances...."

The claim is with respect to the cost associated with obtaining a Release and Abandonment of Easement from the City of Mississauga. It was Ms. De Faria's submission that if the situation was not rectified, a subsequent potential purchaser could refuse to close the transaction or could insist on an abatement in purchase price. As a result, it was necessary to obtain the Release. The cost associated with obtaining the Release was in the amount of \$1,445.92. The total cost includes legal fees and one half the cost of obtaining a reference plan.

#### **WHETHER THERE IS JURISDICTION TO PAY THE CLAIM**

In order to be entitled to compensation, the Applicant must establish wrongful deprivation pursuant to subsection 57(1) of the *Land Titles Act*:

A person wrongfully deprived of land or some estate or interest therein, by reason of the land being brought under this Act or by reason of some person being registered as owner through fraud or by reason of any misdescription, omission or other error in a certificate of ownership or charge, or in any entry on the register, is entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error.

#### **DETERMINATION**

In order to show wrongful deprivation pursuant to subsection 57(1), the Applicant must demonstrate that they had an interest in land. Ms. De Faria was the solicitor acting for the purchaser in a sale transaction. She did not have an interest in land. Her claim for compensation is, therefore, denied.

Jaime Raposo De Sousa and Elisa Botelho De Sousa would have been in a better position to make a claim to the Land Titles Assurance Fund (the "Fund") than the Applicant since they, as owners, had an interest in the land.

DATED at Toronto, Ontario, this 25th day of April, 2001.



Dianne M. Carter  
Deputy Director of Titles

**TO:** Riina DeFaria  
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