

ONTARIO

Land Titles Act

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

IN THE MATTER OF title to land registered in the
Land Registry Office of the Land Titles Division of York Region (No. 65)
as Parcel 64-1 in the Register for Section 65M-2797, being Lot 64, Plan 65M-2797,
municipally known as 67 Black Walnut Crescent, Richmond Hill, Ontario

AND IN THE MATTER OF the application by WAFAA YOUSSEF,
MULLER ABDEL-MALEK and the ROYAL BANK OF CANADA
for compensation out of the Land Titles Assurance Fund

Reasons for Decision

Appearances: Mr. Bernard B. Gasee, counsel for the applicants, Wafaa Youssef, Muller Abdel-Malek and the Royal Bank of Canada,

Hearing dates: October 29, 30, 31, November 2, 2001

The applicants are spouses and have made a claim for compensation from the Land Titles Assurance Fund. On September 29, 1999, the applicants became the owners of a single family dwelling known municipally as 67 Black Walnut Crescent, Richmond Hill, Ontario. The property was purchased for \$460,000.00. In order to finance the purchase of the property, the applicants gave a charge to the Royal Bank of Canada in the amount of \$424,350.00 for a term of five years.

In support of the application, the parties have filed a number of documents relating to the criminal proceedings against one Emanuele Tesoro and produced evidence concerning his financial circumstances. Included in the exhibits are the transcripts of the criminal proceedings, a certified copy of the information indicating guilty pleas to thirty-three counts of fraud-related charges, a restitution order to the victims of those charges, and a statutory declaration from Tesoro admitting to the facts in support of his convictions. Dealing with the financial circumstances of Tesoro, the parties have filed a notarized copy of a receiving order, an execution certificate, and an affidavit setting out the results of a search of Tesoro's name in the Teraview Computerized Land Registry system.

As well, I heard extensive sworn testimony from Det. Const. Phil Shrewsbury-Gee of the York Regional Police, the lead investigator into the activities of Emanuele Tesoro. His evidence was based upon the first-hand evidence gathered in the course of his investigations as well as information from confidential police sources that have been proven to be reliable.

On August 8, 2001, Tesoro pleaded guilty to all of the charges. On August 9, 2001, he was sentenced to thirty-eight months' incarceration for his role in frauds involving five properties, including the property which is the subject of this hearing.

From the foregoing and from the evidence presented by the applicants, I make the following findings of fact. Unbeknownst to the applicants, the title to the property was transferred to one Emanuele Tesoro in December, 1999. The transfer to Tesoro was fraudulent. Subsequently, the charge to the Royal Bank of Canada was fraudulently discharged. Tesoro then gave a charge to the Equitable Trust Company for \$232,500.00.

It is clear that the applicants have suffered a wrongful deprivation of land or interest therein as a result of the fraudulent transfer of the title to the property to Tesoro and the giving of the charge by Tesoro to Equitable Trust. I am satisfied that the applicants are unable to recover compensation from Tesoro and that the proceeds of his fraudulent activities cannot be recovered. Based upon the provisions of the *Land Titles Act*, R.S.O. 1990, Chap. L.5, I am satisfied that they are entitled to just compensation from the Fund.

I am further satisfied, based on the materials from counsel, that the Equitable Trust charge was a *bona fide* loan for value without notice of the fraudulent activities and that counsel for the lender had taken the standard precautions as required of a prudent solicitor. Furthermore, I have reviewed the title insurance from Stewart Title Guaranty Company and am satisfied that the insurance does not cover the fraudulent activities of Tesoro.

The applicants came to Canada from Egypt. Their first real estate purchase of the house at 67 Blackwalnut Crescent was described as the acquisition of their dream home. At the time of the purchase of the home, Dr. Abdel-Malek was writing his qualifying examinations in order to obtain a licence to practice medicine in Canada and looking after their two young children. Ms. Youssef was working double shifts of eight hours each as a pharmacist in order to support the family.

Both applicants testified that by April, 2000, Dr. Abdel-Malek had passed his examinations and commenced his training at the University of Toronto. He was no longer able to devote the same amount of time to caring for his children. As a result, Ms. Youssef was required to reduce her hours of work. The applicants were no longer able to afford to keep the house. Unfortunately, the applicants were unable to sell the house due to the fraudulent transfer of title by Tesoro.

The applicants testified that they had hoped to reduce their house costs from \$4,000.00 per month to \$1,000.00 per month through the sale of the house. However, I have not been provided with any information or calculations as to the potential real estate commission payable or the applicable interest penalties required for the discharge of the charge should the house have been sold at that time.

The applicants further testified that they were forced to borrow funds from family members at a relatively high rate of interest and to sell property in Egypt at a loss in order to meet their financial obligations. The applicants have made a claim in the amount of \$35,000.00 which, they stated, was the reduction in the proceeds of the sale. However, I have not been provided with any information as to the nature of the property or expert evidence as to the value of the property at any time. Dr. Abdel-Malek testified that the proceeds represented approximately one-half of the potential value of the property.

The *Statutory Powers Procedure Act* R.S.O. 1990 c. S. 22 s. 15 provides a tribunal with latitude as to the admissibility of evidence. In other words, a tribunal has a great deal of discretion as to the form of evidence that can be used at a hearing. However, nothing in that statute or the *Land Titles Act* dispenses with the necessity to produce sufficient evidence in support of a claim.

Dr. Abdel-Malek completed his training with the University of Toronto in June, 2001 and was accepted into a psychiatry residency, a specialist training programme, in London, Ontario. The family moved to London. Prior to the move, the applicants engaged the services of a real estate agent in order to rent the house. The agent found tenants for the property and was paid a commission equal to one month's rent for those services.

Unfortunately, the tenants failed to meet their obligations under the lease. By July, 2001, the rent cheques were not honoured by the bank due to insufficient funds in the account. In September, 2001, the applicants received a telephone call from the York Regional Police informing them that the tenants had used the premises to cultivate marijuana. The applicants testified that upon returning to their house, they found the results of severe neglect, abuse, as well as some structural damage. They testified that the value of the house diminished as a result of its "criminal reputation" in the neighbourhood.

In relation to the problems caused by the tenants, the applicants claimed as follows:

1. \$13,250.00 repairs to damage caused by tenants;
2. \$160.00 + \$74.00 for purchase and installation of new lock; \$1,500.00 to reinstate hydro electrical service;
3. \$50.00 NSF charge for rent cheques;
4. \$27,000.00 devaluation of house due to activities of tenants; and,
5. \$23,100.00 representing the loss rental income and agent's fee.

The applicants indicated that they have taken no separate legal action to recover the damages caused by the tenants. They have taken no proceedings against their home insurer, the agent nor have they taken any independent steps to find the tenants. In these circumstances, I find that the requirements of s. 57(4) have not been met as the applicants have presented no evidence that they were "unable by such means or otherwise to recover just compensation" for their losses.

The applicants have also testified as to the mental distress suffered by the entire family as a result of the incidents. Symptoms included depression, loss of enjoyment of life and nightmares, even on the part of the two children. The stress affected relationships between the family members. As a result of the financial strains, the family postponed having another child and a trip to visit Ms. Youssef's mother.

In addition to the costs of discharging the Equitable Trust charge and rectifying the problems caused by the tenants, the applicants have made the following claims:

1. \$30,000.00 to \$40,000.00 stress and mental anguish per claimant;
2. \$5,000.00 aggravated damages per claimant;
3. \$35,000.00 loss due to the need to sell property in Egypt quickly;
4. \$19,000.00 representing 13 months of additional monthly household expense of \$1,500.00 as a result of the inability to sell the house; and,
5. \$12,500.00 representing the cost of borrowing funds to maintain the house.

For reasons given in *re Nimita Raina, Ravinder Raina and the Royal Bank of Canada; and re Ila Wieser and Midking Investments Limited* released on today's date, I find that the Land Titles Assurance Fund has no jurisdiction to pay those claims.

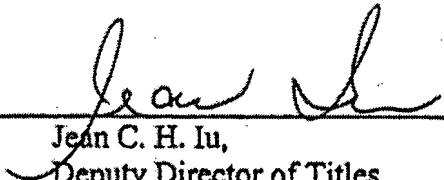
I have also been asked by counsel to assess the quantum of damages should damages be payable under these provisions. Section 26 of the Act provides that any appeal from this decision shall be by way of a new trial. I therefore decline to make any such finding.

Given the costs of travel from London to Toronto in order to prepare for and attend the hearing, the Fund will pay the cost of the two nights' accommodation in the amount of \$252.20 along with \$60.00 in incidental expenses. In addition, costs in the amount of \$10,000.00 inclusive of disbursements and GST will be paid to the applicants on account of the legal costs for Mr. Bernard B. Gasee as counsel to both the homeowners and the Royal Bank of Canada.

I have been advised by counsel that a discharge of Equitable Trust charge has been prepared and provided to counsel in escrow. I have been further advised by counsel that the homeowner will apply funds received on account of the new charge directly to that charge. Accordingly, a further sum of \$277,305.52 representing the amount required to discharge the new charge calculated as at October 29, 2001 together with interest in the amount of \$53.82 *per diem* commencing October 30, 2001 will be paid to the applicants.

Pursuant to s. 57(13) of the Act, I will direct the rectification of the title to ensure that the applicants, Wafaa Youssef and Muller Abdel-Malek are shown as the registered owners and to reinstate the Royal Bank charge as the first encumbrance on title.

Dated at Toronto, this 22nd day of February, 2002.



Jean C. H. Lu,
Deputy Director of Titles

TO: Wafaa Youssef and Muller Abdel-Malek
AND TO: The Royal Bank of Canada
c/o Mr. Bernard B. Gasee
Gasee, Cohen & Youngman
65 Queen Street West
Toronto, Ontario M5H 2M5