

ONTARIO

Land Titles Act

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

IN THE MATTER OF title to land registered in the Land Registry Office for the Land Titles Division of Niagara South (No. 59), in the names of Zenon Dzida, Alfred Dzida and Annette Dzida, registered as P.I.N. 64243 0009 (LT) and being Part Lot 7, Concession 11, Niagara River, former Township of Bertie now Town of Fort Erie (the "Property");

AND IN THE MATTER OF an Application by Zenon Dzida, Alfred Dzida and Annette Dzida (the "Dzidas") pursuant to section 57(6) of the *Land Titles Act* for compensation out of the Land Titles Assurance Fund for legal costs incurred in a dispute over the ownership of the Property.

THE FACTS

On October 27, 1971, Alicia Rzezniczak obtained a 50% interest, as tenant in common with Wincenty Mili and Karol Szmurlik (Deed no. RO151324). On July 17, 1980 and Oct. 14, 1980 respectively, Konrad Dzida obtained title to the ¼ undivided interest of each of Wincenty Mili and Karol Szmurlik (Deed nos. RO357151 and RO361706 respectively). On October 24, 1989, Janina Dzida obtained title to the ¼ interest of Konrad Dzida as wife under his estate. On July 5, 1994, Janina Dzida transferred her interest to Zenon, Alfred and Annette (the "Dzidas") (Deed no. RO674234).

The property was in the registry system at the time of the Deed under which the Dzidas obtained title from Janina Dzida (1994 Deed). Janina Dzida's Deed from Konrad Dzida (1989 Deed) provides that the interest in land being conveyed is a 1/4 interest in the property. The legal description in the 1994 Deed under which the Dzidas took title from Janina Dzida does not mirror the 1994 Deed, which was immediately prior to the 1994 Deed. Conversion of the property to land titles conversion qualified (LTCQ) occurred on December 13, 1995. The heading on the LTCQ parcel register showed the Dzidas as owners but did not reflect the 50% interest of Alicia Rzezniczak.

The Dzidas sold the property to new owners in June 2000. That Deed no. LT159432 does not reflect in the legal description that only the ¼ interest owned by the Dzidas is being conveyed. The Land Registrar was notified of the June 2000 transaction which purported to transfer a 100% interest in the property. The Land Registrar cautioned the property and notified the new purchasers and other interested parties that the property record was to be corrected to show the 50% interest of Alicia Rzezniczak. The Dzidas and Alicia Rzezniczak settled the matter by dividing the proceeds of the June 2000 sale to the new owners.

The Dzidas now claim compensation from the Land Titles Assurance Fund in the amount of \$4,000.00 representing legal costs incurred to resolve the property ownership issues, on the

grounds that but for the administrative conversion of the property record to land titles conversion qualified and the 50% interest of Alicia Rzezniczak that was missing from the record, the Dzidas would have known of Alicia Rzezniczak's interest before the July 2000 sale and would not have had to incur legal costs to resolve the matter.

THE LAW

The *Land Titles Act*, R.S.O. 1990, c. L.5, as amended, sets out the requirements the Applicant must meet in order to ground a successful claim for compensation from the Land Titles Assurance Fund. The threshold requirements can be found in sections 57 and 59 of the Act and must be satisfied in order to obtain compensation from the Fund. In summary, the statute requires that:

- the applicant must have been wrongfully deprived of an interest in land for one of the reasons set out in the Act.
- the applicant must not have caused or substantially contributed to his own loss.
- the applicant must be otherwise unable to recover.

in order to mount a successful claim for compensation from the Land Titles Assurance Fund.

In addition, section 74 of the *Registry Act* states that an instrument registered under the Act is deemed to be notice to all persons claiming an interest subsequent to that registration.

DECISION AND ORDER

I find on the facts that the Applicants do not meet the criteria of section 57 and 59 of the *Land Titles Act* in order to succeed in their application for compensation from the Fund. Section 59(1)(c) states that a claimant is not entitled to recover from the Fund "...where the claimant has caused or substantially contributed to the loss by the claimant's act, neglect or default...."

By the operation of section 74 of the *Registry Act*, I find that that the Dzidas had actual notice of the extent of their interest in the property under the Deed by which they took title and of the interest of Alicia Rzezniczak in her 1971 Deed. The Dzidas' application states that they were not "made aware of any interests other than their own". According to section 74 of the *Registry Act*, by virtue of registration of the 1971 Deed, the Dzidas had notice of Alicia Rzezniczak $\frac{1}{4}$ interest. They also knew that they only received a $\frac{1}{4}$ interest in the 1994 Deed from Janina Dzida. Further, there is no obligation on the registration system to "make an owner aware" of other interests. It is incumbent upon the transferor and his counsel to ensure that the transferor transfers only what he owns, and no more.

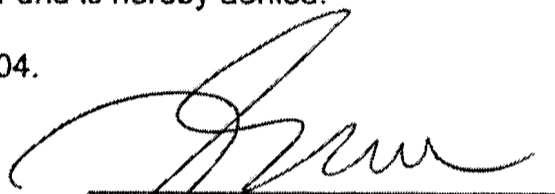
I further find on the facts that the Dzidas contributed to their own loss by not ensuring that only the $\frac{1}{4}$ interest owned was described in the 2000 Deed to the new purchasers. While the new owners may have been without knowledge of the interest of Alicia Rzezniczak at the time of their purchase, the Dzidas' took title when the property was in the Registry system, and the interest of Alicia Rzezniczak was clearly reflected on the abstract record. As well, the $\frac{1}{4}$ interest of Janina Dzida was clearly reflected in her 1989 Deed, from whom the Dzidas received their title.

The Dzidas' application states at paragraph 5 that the Dzidas never "searched the full title of the property". This is unfortunate as it is well settled law that there is no guarantee of title in the registry system. Those who transact in the registry system must therefore satisfy themselves as to title through a proper search of the records. I find the Dzidas contributed to their own loss by choosing to proceed with the transaction without a title search and by not ensuring that only the $\frac{1}{4}$ interest they owned was reflected in the 2000 Deed to the new owners.

ORDER

The Applicants claim for compensation from the Fund is hereby denied.

DATED at Toronto, this 23rd day of January, 2004.



Tammy A. Evans
Deputy Director of Titles

TO: Zenon Dzida, Alfred Dzida and Annette Dzida
c/o Mr. Jerry W. Switzer
Feehely, Gastaldi & Hayes
Barristers & Solicitors
P.O. Box 370
5 Mill Street East
Tottenham, ON L0G 1W0