



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;

AND IN THE MATTER OF the title to land registered in the Land Registry Office for the Land Titles Division of Toronto (No.66), as Lot 10, N/S Adelaide St., 11 N/S Adelaide St., Pl. 17, Toronto; City of Toronto, known municipally as 230 Adelaide Street West, Toronto, Ontario, P.I.N. 21411-0112 (LT), registered in the name of Emanuel Tannenbaum (the "Property");

AND IN THE MATTER OF a transfer of the Property allegedly given by Emanuel Tannenbaum in favour of Bellany Investments Inc. and registered on title to the Property on January 31, 2006 as Instrument No. AT1051401 (the "Transfer");

AND IN THE MATTER OF a charge of the Property given by Bellany Investments Inc. in favour of Interbay Funding Corp. and registered on title to the Property on February 6, 2006 as Instrument No. AT1055633 (the "Charge");

AND IN THE MATTER OF a Notice of Assignment of Rents given by Bellany Investments Inc. in favour of Interbay Funding Corp. and registered on title to the Property on February 6, 2006 as Instrument No. AT1055655 (the "Assignment of Rents");

AND IN THE MATTER OF a Transfer of Charge given by Interbay Funding Corp. in favour of Bayview Financial Management Corp., general partner, Bayview Financial, L.P. and registered on title to the Property on February 6, 2006 as Instrument No. AT1055668 (the "Transfer of Charge");

AND IN THE MATTER OF a Notice of Assignment of Rents given by Interbay Funding Corp. in favour of Bayview Financial Management Corp., general partner, Bayview Financial, L.P. and registered on title to the Property on February 6, 2006 as Instrument No. AT1055681 (the "Second Assignment of Rents");

AND IN THE MATTER OF an Application by Emanuel Tannenbaum (the "Applicant") for payment of compensation out of the Land Titles Assurance Fund of losses incurred as a result of the alleged fraudulent Transfer and subsequent registrations.

BACKGROUND

A hearing in this matter was scheduled for May 10, 2007. Prior to the hearing date, I received confirmation that counsel for Interbay Funding Corp., Bayview Financial Management Corp and Bayview Financial LP (collectively the "Chargee") had undertaken to immediately discharge the Charge, the Assignment of Rents, the Transfer of Charge and the Second Assignment of Rents from title to the Applicant's property. It was therefore only necessary that the application continue in order to deal with rectification of the title register for the Property and payment of compensation to cover the Applicant's costs in dealing with this matter. Counsel for the Applicant and for the Chargee consented to the hearing continuing as a written hearing and waived notice of such written hearing. In view of the consent of the Chargee to the discharge of the

Charge and security documents, it is not necessary for me to rule on the validity of them. Submissions were made by both counsel, as hereinafter mentioned, and this decision is based upon the Application and subsequent submissions.

FACTS

The Applicant acquired the Property on October 1, 1964 by a Transfer registered as Instrument No. ES59334. He rents the property to tenants as a source of income. Upon not receiving the tax bill for the Property, he made enquiries and discovered that the Transfer had been registered and that he was no longer shown as the registered owner of the Property. In addition, the Charge, Assignment of Rents, Transfer of Charge and Second Assignment of Rents had been registered on title to the Property.

Further investigations revealed that a person impersonating the Applicant had executed the necessary documentation and incorporated Bellany Investments Inc. (the "Corporation") on January 10, 2006, listing the Applicant as the incorporator and sole director of the Corporation. The imposter then posed as the Applicant to execute the Transfer of the Property and all subsequent Instruments referred to above that were executed on behalf of the Corporation.

On January 23, 2007, the Applicant received a Notice of Sale Under Mortgage from Bayview Financial, L.P. by its General Partner Bayview Financial Management Corp. indicating that it would sell the Property if the Charge was not paid by March 5, 2007. At that time, the title insurer for Bayview had taken the position that the Charge was valid and it had no liability under the title insurance policy. However, counsel for the Chargee subsequently advised that the Chargee was prepared to discharge the Instruments wrongfully registered against the Property as a result of the fraud committed by the imposter. Although the Chargee ultimately agreed to the rectification of the Applicant's title to remove the Transfer and security instruments from his title, from the time of the registration of the Transfer until rectification of title is complete, the Applicant has been effectively deprived of his interest in the Property since he has been unable to deal with it.

Counsel for the Chargee forwarded a letter to me confirming, on behalf of the Chargee, consent to rectify title to the Property as requested by counsel for the Applicant (which is essentially in a manner so as to put title to the Property back into the name of the Applicant free of the Charge and subsequent security Instruments) and an original Acknowledgement and Direction, executed by Bayview Financial Management Corp., as General Partner of the Limited Partnership Bayview Financial, L.P. authorizing and directing its counsel to register a Discharge of the Charge, the Transfer of Charge and related security Instruments. I advised that I would retain these documents in my file as backup to support the Order rectifying title below.

Legal Costs

I was provided with copies of accounts and dockets detailing the legal work of the solicitors for the Applicant. Those accounts total \$37,762.71 for fees, disbursements and goods and services tax. In addition, the Applicant's solicitors have indicated another \$2,500 will be required to complete this matter including reviewing this decision, reviewing title, reporting to the Applicant and ancillary matters. Counsel submitted that the total amount claimed of \$40,262.71 is reasonable given the complexity of the matter, the fact that the case law changed during the period they were dealing with this matter, the value of the fraudulent mortgage, the experience of the lawyers who worked on the file, the time spent and the quality and value of services provided to the Applicant.

The complexity of the matter can be gleaned from reviewing the dockets. Counsel dealt with a number of parties on various aspects of this matter. In the end, likely because of the change in case law that occurred since this the fraud was allegedly perpetrated, counsel was successful in getting agreement to removal of a \$1,000,000 mortgage from title and all related security documentation and avoided the costs involved in court action. I find that the amount claimed is reasonable in the circumstances of this claim.

I note that the Chargee paid \$15,022.70 in property taxes in relation to the Property and this amount should be deducted from the amount otherwise payable to the Applicant because the Applicant received the benefit of that portion of the proceeds of the Charge.

Bellany Investments Inc.

An Order of the Ministry of Government Services, Companies and Personal Property Security Branch, was issued, dated June 6, 2006, cancelling the Certificate of Incorporation of the Corporation and dissolving the Corporation as of January 10, 2006 (the date of incorporation) for failure to pay the incorporation fee, pursuant to Section 241(4) of the *Business Corporations Act*, Ontario.

In view of the fact that the incorporation documentation was executed by an imposter, posing as the Applicant, the Companies and Personal Property Security Branch is being provided with a copy of this Decision so that it may review it and take any action with respect to the status of the Corporation on the public record that may be appropriate.

DECISION AND ORDER

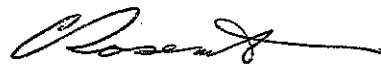
I find:

1. That the Applicant was deprived of an interest in land as a result of some other party being registered as owner through fraud;
2. That the Applicant in no way caused or contributed to the loss;
3. That the Transfer is void and should be deleted from title to the Property. Since the Corporation never existed, it could not have executed a valid transfer of the Property. In any event, the Corporation never took valid title to the Property because it obtained it by fraud (*Lawrence v. Maple Trust*, [2007] O.J. NO. 381 (O.C.A.));
4. That the Applicant should be reinstated as the registered owner of the Property; and
5. That the Charge, Assignment of Rents, Transfer of Charge and Second Assignment of Rents should be deleted from title to the Property pursuant to the consent thereto submitted by counsel for the holders of that security.

AND I HEREBY ORDER:

1. That upon the expiration of the appeal period referred to in paragraph 3 below, title to the Property be rectified as set out in the attached Order, which I will forward to the Land Registrar for the Land Titles Division of the Toronto Land Registry Office (No. 66) for registration; and
2. That the Applicant be paid the sum of \$25,240.01 as full compensation for the Applicant's loss in this matter; and
3. That this Order be stayed for a period of thirty days pending the expiration of the appeal period.

DATED this 2nd day of August, 2007.



Carolyn Rosenstein
Deputy Director of Titles

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Director, Companies and Personal
Property Security Branch
Ministry of Government Services
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Terry Brown
Land Registrar for the Land Titles Division
of Toronto Land Registry Office (No.66)
Suite 420, 20 Dundas Street West
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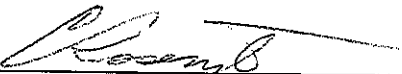
ORDER

UPON reviewing the application received and the evidence provided and the completion of a written hearing in respect of the claim of the Applicant, including submission of evidence from counsel for Bayview Financial Management Corp., Bayview Financial, L.P. and InterBay Funding Corp. of consent to rectification of the parcel register for the Property as ordered below, and having found that the Transfer is void, I HEREBY ORDER:

1. That the following Instruments be deleted from title to the Property (P.I.N. 21411-0112 (LT)):

- (a) Transfer registered on January 31, 2006 as Instrument No. AT1051401;
 - (b) Charge registered on February 6, 2006 as Instrument No. AT1055633;
 - (c) Notice of Assignment of Rents registered February 6, 2006 as Instrument No. AT1055655;
 - (d) Transfer of Charge registered on February 6, 2006 at Instrument No. AT1055668;
 - (e) Notice of Assignment of Rents registered on February 6, 2006 as Instrument No. AT1055681;
 - (f) Caution registered by the Land Registrar on February 22, 2007 as Instrument No. AT1382409; and
2. That the Transfer given by Harry Weinstock in favour of Emanuel Tannenbaum and registered on October 1, 1965 as Instrument No. ES59334 be re-instated on the title to the Property and that the ownership of the Property be re-instated into the name of Emanuel Tannenbaum.

DATED at Toronto, Ontario this 4th day of September, 2007.



Carolyn Rosenstein
Deputy Director of Titles

TO: Terry Brown
Land Registrar for the Land Titles Division
of Toronto Land Registry Office (No.66)
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