



Land Titles Act

R.S.O. 1990 CHAPTER L.5, ss. 57(6)(7), 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 the condominium unit registered in the Land Registry Office for the Land Titles Division of Peel (No. 43) as Unit 28, Level 1, Peel Condominium Plan No. 184, in the City of Brampton, in the Regional Municipality of Peel, municipally known as 28 McMullen Crescent, Brampton, Ontario, L6S 3M2, PIN No. 19184-0028 (LT) (the "Property");

AND IN THE MATTER OF a claim for compensation from the Land Titles Assurance Fund filed on behalf of Wendy Tim (the "Applicant") for legal costs incurred to resolve the fifty percent interest in the Property claimed by Albin Tim's Trustee in Bankruptcy and \$10,000 in damages.

DECISION

THIS MATTER came before me for hearing at Toronto, Ontario on June 13, 2008. Appearing before me was Joseph De Teresi, of J.D.T. Legal Services, representative of the Applicant.

Having reviewed the evidence submitted in this matter and having heard the submissions of the Applicant's representative, I have determined that the Applicant is not entitled to compensation from the Land Titles Assurance Fund for the reasons set out below.

FACTS

The Applicant and her husband, Albin Tim, purchased the Property in 1989. On July 14, 1995, a power of attorney was granted by Albin Tim in favour of the Applicant that provided the Applicant with broad authority to deal with the Property, including the power to execute a transfer of the Property on behalf of Albin Tim. The power of attorney was registered on August 11, 1995 as Instrument No. LT1581055.

On March 21, 2003, Albin Tim filed for bankruptcy and Robert Rusinek & Associates Inc. was appointed as Trustee in Bankruptcy. On October 8, 2003, Robert Rusinek & Associates Inc. registered an Application, as Instrument No. PR519837, to be registered as the owner, as Trustee in Bankruptcy, of Albin Tim's interest in the Property. The Applicant discovered this registration when she proposed to sell the Property.

On March 17, 2005, the Applicant obtained an Order from the Superior Court of Justice, Family Branch, Brampton, Ontario granting a divorce from Albin Tim, granting the Applicant exclusive possession of the Property and ordering that the Applicant "shall have, effective as of July 1995, sole title to the property ...". The Order indicates that it was given based upon affidavit evidence received from the Applicant, Albin Tim not defending or opposing the application. The Court Order has never been registered on title to the Property.

Mr. De Teresi, on behalf of the Applicant, tried to get the Trustee in Bankruptcy to give up the interest it claimed in the Property. However, the Trustee in Bankruptcy refused to do so. Mr. De Teresi therefore retained a solicitor on behalf of the Applicant, who obtained the above referenced Order.

Mr. De Teresi stated that he also tried to get the Land Registrar to remove the Trustee's interest based upon the Court Order but the Land Registrar said a court order would be needed to permit removal of the Trustee's interest by the Land Registrar.

On May 15, 2008, the Trustee in Bankruptcy registered a Transfer on title to the Property as Instrument No. PR1436807, pursuant to which it transferred the interest previously in its name back to Albin Tim.

Applicant's Submissions

Mr. De Teresi submitted, on behalf of the Applicant, that the Land Registrar made an error because the power of attorney given to the Applicant by Albin Tim was never registered on title to the Property. It was his position that if it had been registered on title to the Property, the Trustee in Bankruptcy would not have been able to register the Transfer of Albin Tim's interest to itself. Therefore, he submitted that Mrs. Tim was deprived of the right to deal with the Property because of the registration by the Trustee in Bankruptcy and that deprivation was a result of the Land Registrar's error.

Upon receipt of the Application, I wrote to Mr. De Teresi and provided him with the sections of the *Land Titles Act* that applied to the Application. I also pointed out a number of issues with the Application that were apparent from what had been filed with the Application. I advised that the Application did not appear to evidence a claim that was compensable within the meaning of ss. 5(1), (4) or (5) of the Act, that there was no evidence that the Applicant had made any attempt to recover any loss suffered from the Trustee in Bankruptcy, who Mr. De Teresi claimed was not entitled to register the Transfer of Albin Tim's interest to itself, and there was no evidence that Mrs. Tim took actions available to her to protect her interest in the Property, as contemplated by ss. 57(1)(c) of the Act since, if she had exercised the Power of Attorney and registered the Property in her name alone, there would have been no interest of Albin Tim that the Trustee in Bankruptcy could have taken ownership of. I further advised Mr. De Teresi that the damages claimed by the Applicant were not compensable under the Act and referred him to the case of *Youseff v. Ontario (Ministry of Consumer and Commercial Relations)*, [2003] C.C.S. N. 7880, where the court held that it is only direct losses that are recoverable from the Land Titles Assurance Fund. I also pointed out that the Director of Titles has discretion to pay legal costs incurred where the other requirements for compensation are satisfied in respect of a claim.

PREHEARING CONFERENCE

I held a prehearing conference in this matter on May 20, 2008. At that time, I advised Mr. De Teresi that the facts he presented did not appear to support a claim to the Land Titles Assurance Fund; that as I understood it, although the Applicant had a power of attorney from Albin Tim, she never exercised it to transfer title into her name alone; therefore, when the Trustee in Bankruptcy searched title and title showed that Albin Tim had an interest in the Property, it transferred that interest to itself, as it is required to do. I further indicated that even if the power of attorney had been registered on the parcel register, so long as the Property remained in the name of the bankrupt, the Trustee in Bankruptcy would have had to transfer the interest to itself. Mr. De Teresi stated that he did not agree with me. I advised that it would be necessary for him to produce legal authority at the hearing for the position that if the power of attorney had been registered on title to the Property, the Trustee in Bankruptcy would not have been able to register the transfer to itself.

Subsequent to the prehearing conference, I noted that the power of attorney contained registration particulars and checked into it further. I discovered that the power of attorney had in fact been registered on August 11, 1995 as Instrument No. LT1581055. At that time, ss. 59(1)(d) of Regulation 690 (R.R.O. 1990) provided for the registration of power of attorneys in a separate index, not on property parcel registers. Any document registered on a property parcel register would simply recite that it was being executed under power of attorney and provide the registration details so that the power of attorney could be found in that separate index. I advised Mr. De Teresi of this by letter so that he

could confirm it before the hearing and determine what submissions he wished to make in respect of it.

HEARING

The Applicant did not attend the hearing. Only Mr. De Teresi, the Applicant's representative, attended. Mr. De Teresi indicated that I had the Applicant's affidavit so he did not think it was necessary for her to attend the hearing (even though I had written to him earlier and advised that evidence should be given by sworn testimony at the hearing).

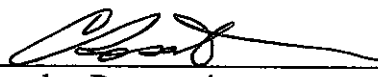
Mr. De Teresi repeated the same submissions he had made at the time of the prehearing conference. He had difficulty understanding why the power of attorney was not registered on the property parcel register and that the power of attorney was in fact registered, in accordance with the requirements of law at the time, even though it did not appear on the property parcel register. He had no authority for the position that if the power of attorney had been on the parcel register the Trustee in Bankruptcy would not have been able to register the Transfer to itself. Mr. De Teresi thought that the Land Titles Assurance Fund should pay his client and then the Fund should pursue the Trustee in Bankruptcy for the amount paid by it. I pointed out that that is not the process provided for in the Act.

Mr. De Teresi also took issue with the fact that the Land Registrar refused to remove the interest of the Trustee in Bankruptcy, based upon the court order giving the Applicant title to the Property effective as of July, 1995, without a court ordering the removal of the Trustee's interest. I explained to Mr. De Teresi that the Land Registrar was faced with two conflicting documents: a Transfer to a trustee in bankruptcy and a court order, that may have been obtained without the Trustee in Bankruptcy having any knowledge of the proceeding, that the property was not owned by the bankrupt but by the Applicant. In such a situation, the Land Registrar would be at risk if the Land Registrar favoured one document over the other without a further court direction. Certainly, there was no error on the part of the Land Registrar.

FINDING

Based upon the evidence submitted, and the submissions made by Mr. De Teresi on behalf of the Applicant, I find that, in addition to other deficiencies in the Application discussed above, the Applicant has failed to establish that she was deprived of an interest in land by reason of an error in an entry on the register and therefore she is not entitled to compensation under the provisions of Section 57 of the *Land Titles Act*.

DATED at Toronto, Ontario this 23rd day of June, 2008.


 Carolyn Rosenstein
 Deputy Director of Titles

TO: Ms. Wendy Tim
 C/o Mr. Joseph De Teresi
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