

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 171-1, Section 65M-2658, being Lot 171, Plan 65M-2658,
Town of Richmond Hill, Regional Municipality of York,
municipally known as 232 Strathearn Avenue, Richmond Hill, Ontario

AND IN THE MATTER OF the application of SANJAY KUMAR,
SHALINI KUMAR, 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, Sanjay Kumar, Shalini Kumar,
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 July 29, 1999, the applicants became the owners of a single family dwelling known municipally as 232 Strathearn Avenue, Richmond Hill. The property was purchased for \$466,000.00. In order to finance the purchase of the property, the applicants gave a charge to the Royal Bank of Canada in the amount of \$345,000.00 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 was the subject matter 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 on December 1, 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 Katherine Rosa for \$250,000.00. Rosa subsequently transferred the charge to herself and to Anna Ben Zvi jointly.

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 charges 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 Rosa 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. Rosa and Ben Zvi are therefore the legitimate holders of a charge on the property known municipally as 232 Strathearn Avenue, Richmond Hill, Ontario.

Mr. Sanjay Kumar testified as to the losses that he and his family have suffered as a result of the activities of Tesoro. Mrs. Shalini Kumar was visiting India with their eight-month-old daughter at the time of the hearing and did not testify.

The purchase of the Strathearn Avenue property was described as the acquisition of their dream home. Mr. Kumar testified that Mrs. Kumar loved the house and the neighbourhood and was extremely happy with their first home. At the time of the purchase, Mr. Kumar was working with a firm called The Management Network Group Inc. ("TMNG"), a U.S. based management consulting firm in the telecommunications industry. His work required him to travel extensively throughout North America.

When the fraudulent transfer was discovered in the spring of 2000, both Mr. and Mrs. Kumar felt a great deal of anxiety. Mr. Kumar testified that he and his wife felt as if their house had been stolen from them and since that time have felt unsettled as they do not know how the ordeal will end. He further testified that he was fearful that people might be watching the house and became concerned whenever there were cars parked or slowing down in front of his house. He indicated that their love of travelling was impeded by the fear of losing their home during their absence. Mr. Kumar stated that he was extremely uncomfortable whenever he had to leave his family in order to travel for work.

Mr. Kumar further testified that he was offered job opportunities to work for TMNG in the United States and in Europe. However, he was unable to take advantage of those opportunities because of the inability to sell the house. I was not provided with any information as to the potential interest penalties and real estate commission, if any, that would have been payable should the claimants have sold the house. Mr. Kumar stated that his salary would have increased by \$50,000.00 U.S. *per annum* and he would have been provided with lucrative stock options if he had been able to relocate with his employer.

In February 2001, Mr. Kumar left TMNG to become a co-founder of a new software development business. As a result of that change, he has not drawn a salary since February 2001 and has used his savings to support his family. He testified that he would have liked to access the equity in the home or to sell the home in order to reduce the living expenses.

In addition to funds sufficient to discharge the Rosa/Ben Zvi charge, the applicants claim the following:

1. \$20,000.00 stress and mental anguish per claimant;
2. \$25,000.00 aggravated damages
3. \$100,000.00 US for loss of job opportunities.

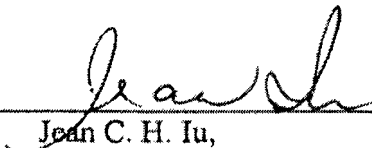
For reasons given in *re Nimita Raina, Ravinder Raina and the Royal Bank of Canada; and re Ila Wieser and Midking Investments Limited* released on today's date, I find that the Land Titles Assurance Fund has no jurisdiction to pay those claims.

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.

I have been advised by counsel that a discharge of Rosa/Ben Zvi 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, the sum of \$297,653.77 representing the amount required to discharge the new charge calculated as at October 29, 2001 along with interest in the amount of \$81.30 *per diem* commencing October 30, 2001 will be paid to the applicants. Furthermore, 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.

Pursuant to s. 57(13) of the Act, I will direct the rectification of the title to ensure that the applicants, of Sanjay Kumar and Shalini Kumar 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. Iu,
Deputy Director of Titles

TO: Sanjay Kumar and Shalini Kumar

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