

COURT ASSAILS MORTGAGE-FRAUD LAW
ONTARIO COUPLE FREED FROM BOGUS FINANCING AS JUDGE SCOLDS
PROVINCE, BANK AND BROKER

An Ontario judge has absolved a Toronto couple of the need to pay off a fraudulent \$247,860 mortgage on their condominium – and lashed out at a chink in the law that has created “a serious mortgage-fraud plague.”

In a blistering judgment, Mr. Justice Randall Echlin of the Ontario Superior Court said yesterday that the fraud perpetrated against Seyed Rabi and Shohreh Shafiei could have been quickly detected had the Toronto Dominion Bank or its mortgage broker exercised “rudimentary due diligence.”

He said numerous irregularities in the way the bogus financing took place ought to have set off alarm bells – simply sending an appraiser to the condo door would have tipped the institutions to the fact they were being hoodwinked.

“I cannot help observe that there ought to have been more care taken in advancing a sum in excess of one quarter of a million dollars,” he noted.

Morris Cooper, a lawyer for Mr. Rabi and Ms. Shafiei, hailed the ruling as a dramatic turning point in a scandalous situation that has left numerous victims. “Today’s decision and how the Court of Appeal deals with it will undoubtedly have nationwide impact,” he said in an interview. “This decision is certainly a breakthrough in this entire area of law relating to title and mortgage fraud. To make homeowners responsible for compensating the bank is perverse.”

In an unusual departure, Judge Echlin went so far as to call for the province to better protect innocent homeowners who find themselves required to fight for compensation from a special fund.

“This can involve years of proceedings and tens of thousands of dollars in legal expense, not to mention heartbreak and aggravation,” he said. “Victims of the system are essentially revictimized.”

Mr. Rabi and Ms. Shafiei bought the condo, where they live with their two children, in 2001. They had it paid off in full by 2004, when fraudsters used false documents and a falsified “purchaser” name to take out a mortgage on the property.

A year later, the couple noticed that it was no longer registered in their name. By that time, the fraudsters had disappeared with the money. Meanwhile, the mortgage broker delegated by the bank to complete the deal refused to compensate the bank, claiming it was a valid mortgage.

Toronto Dominion acknowledged at trial last month that the couple was defrauded. However, the bank said that it was an equally innocent victim, and that Mr. Rabi and Ms. Shafiei ought to be legally responsible for the mortgage.

“It is extremely curious that the condominium unit in questions was listed as having a locker and two parking units, and yet the fraudulent sale did not refer to these, nor did it offer any explanation for the absence of such transfers,” Judge Echlin noted yesterday. “Finally, it was odd that there was no deposit. All these red flags should have raised questions for the lender.

“In this day and age of impersonalized mortgage lending and borrowing in which banks download the appraisal process to a mortgage broker who, in turn, does as little as possible to maximize profit, such frauds can and will occur,” he added.

The focus now moves to the Ontario Court of Appeal, which will hear a major appeal later this month dealing with the mortgage fraud problem.

Previous Court of Appeal decisions have stated that while a fraudulent mortgage can be re-registered, there is nothing the courts can do to relieve innocent homeowners of the burden of paying the mortgage.