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Truly innocent people may lose homes to fraud

The Ontario Court of Appeal recently wrote what may be the final chapter in the case of two mortgages, signed using a forged power of attorney.

Unless it is appealed and overturned by the Supreme Court of Canada, the law in Ontario is now clear that an innocent homeowner can lose his or her house when a fraudster uses a forged power of attorney to deal with the property.

The story began in 1993 when Lik Liu and his wife Suet Ching Chan came to Canada from Hong Kong and together purchased a house in Richmond Hill. In 1998, Liu returned to Hong Kong where he obtained work in the jewellery business, visiting his wife and family here in Ontario twice a year.

During her husband's absences, Suet Ching Chan gambled. By the spring of 2002, her gambling debts were about \$80,000.

Chan arranged to have a fraudulent power of attorney prepared in her husband's name. She forged his signature and had the document registered on the title to the family home.

Armed with the fraudulent power of attorney, she obtained a line of credit for \$150,000 from TD Bank, secured by a mortgage on the home.

Within a few months, the \$150,000 was gone and Chan used the forged power of attorney to obtain a registered line of credit from CIBC in the amount of \$260,000 again secured by a mortgage on the house. This mortgage was used to pay off the prior TD loan.

Unfortunately, the \$260,000 was not enough to pay off the gambling debts, and in January 2003, Chan obtained a further mortgage loan from Household Realty. Chan's husband was unaware of the mortgages. He and the lenders were also unaware of the fraudulent powers of attorney.

By mid-2003, both remaining mortgages went into default, and CIBC and Household sued the couple for payment of the amounts due and for possession of the property.

When the case first came to court, Liu argued the CIBC and Household mortgages were void as they were obtained using a forged power of attorney.

A judge last year ruled that both mortgages were valid under the Land Titles Act, and the wife was ordered to repay the amounts owing. As well, the lenders were given the right to evict the couple from the property but that right had to await the outcome of Liu's appeal.

Last week, the Court of Appeal released its decision. Justice Robert Armstrong noted: "This is an unfortunate case in that the court is called upon to determine which of the two innocent parties to this litigation must bear the loss, Mr. Liu or Household Realty Corporation."

Justice Armstrong dismissed the Liu appeal and ruled the two mortgages valid.

In his judgment, he quoted from a published commentary on the case written last year by Toronto lawyer Sidney Troister. Writing in *Real Property Reports*, Troister noted there were three registered documents, but the only forged one was the power of attorney. He suggested that the court should have ruled the mortgages valid against the wife but invalid against the husband. I liked that suggestion, but the Court of Appeal disagreed.

The result of the court's decision is that Liu may get evicted from his house, and his recourse will be against the Land Titles Assurance Fund to reimburse him for any losses he suffered as a result of his wife's actions.

The fund is administered by the government to reimburse people who experience title fraud, so ultimately, the public may get stuck with the bill.

In writing about the case last year, Troister issued a strong warning with respect to the use of powers of attorney in real estate transactions. Powers of attorney, he said, are "powerful instruments," and they "can create substantial havoc," if they are used without intended authority, or if they are treated as authentic when they in fact have been forged.

It is now common practice for lawyers to obtain copies of client identity documents when they show up to sign real estate papers. It is more problematic, however, to verify that a power of attorney is genuine and has not been forged.

In my office, we attempt to contact the person who signed a power of attorney to confirm his or her signature. This is difficult when the person is ill, mentally incompetent, or overseas.

Eventually, mortgage lenders might be forced to refuse to allow mortgages to be signed by way of power of attorney unless the

document was signed in a lawyer's office or in the offices of the bank or trust company.

It would be unfortunate if the actions of a few bad players reduced the usefulness of the power of attorney document for the law-abiding citizens who genuinely need it.

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Date: 2005-11-24

Docket: C41837;C41838

[Noteup] [Cited Decisions and Legislation]

DATE: 20051124

DOCKET: C41837 and C41838

COURT OF APPEAL FOR ONTARIO

MacPHERSON, ARMSTRONG and LANG J.J.A.

BETWEEN :)	
)	
HOUSEHOLD REALTY CORPORATION LIMITED))	H. Keith Juriansz and
)	Ronald H. Lachmansingh,
)	for the appellant
)	
Plaintiff (Respondent))	
)	
- and -)	
)	
<u>LIK LIU</u> and SUI CHING CHAN))	Mark Hartman and
)	Benjamin Frydenberg,
)	for the respondents
)	
Defendant (Appellant))	
)	
AND BETWEEN)	
)	
CIBC MORTGAGES INC.)	
)	
Plaintiff (Respondent))	
)	
- and -)	
)	
SUI CHING CHAN and <u>LIK LIU</u>)	
)	

Defendant (Appellant))	
)	
)	Heard: May 30, 2005

On appeal from the judgment of Justice Thea P. Herman of the Superior Court of Justice dated April 8, 2004.

ARMSTRONG J.A.:

[1] The issue in this appeal is whether a mortgage registered under the Land Titles system, given on the authority of a fraudulent power of attorney, is valid and enforceable in accordance with its terms.

[2] Justice Thea Herman held that the two mortgages in issue are valid and granted summary judgment in favour of the mortgagees, Household Realty Corporation Limited (Household Realty) and CIBC Mortgages Inc. (CIBC).

[3] The defendant/appellant, Lik Liu, appeals from the order granting summary judgment. This is an unfortunate case in that the court is called upon to determine which of the two innocent parties to this litigation must bear the loss, Mr. Liu or Household Realty.

Facts

[4] Lik Liu and Suet Ching Chan are husband and wife. They immigrated to Canada from Hong Kong in 1993 with their two sons. Prior to arriving in Canada, Mr. Liu and Ms. Chan purchased a house located in Richmond Hill, Ontario. The title to the property was taken in joint tenancy.

[5] In 1998, Mr. Liu returned to Hong Kong where he obtained work in the jewellery business. He travelled to Canada at least twice a year to visit Ms. Chan and their two sons, who continued to reside in the Richmond Hill residence.

[6] After Mr. Liu began working in Hong Kong, Ms. Chan developed a gambling addiction and fell deeply into debt. By the spring of 2002, her gambling debts had accumulated to a level of some \$80,000.

[7] On the advice of a person whom she had met at a gambling casino, she arranged to have a fraudulent power of attorney prepared in her husband's name. She forged Mr. Liu's signature on the power of attorney which contained the following provision:

The restriction is NIL and my attorney shall also be authorized but not limited to arranging and executing all documents to mortgage the property at 129 Devonsleigh Blvd., Richmond Hill.

The power of attorney was registered on the title to the Richmond Hill property on May 6, 2002.

[8] Armed with the fraudulent power of attorney, Ms. Chan was able to obtain a line of credit for \$150,000 from the TD Bank which was secured by a mortgage to the Richmond Hill property.

[9] Ms. Chan paid off her gambling debts of \$80,000. However, she continued to gamble. She exhausted her line of credit with the TD Bank. By August, 2002, she had accumulated \$150,000 in additional gambling debts.

[10] Ms. Chan used the fraudulent power of attorney again to obtain a line of credit from CIBC in the amount of \$260,000 secured by a mortgage against the Richmond Hill property. The CIBC mortgage was registered on title on September 6, 2002. Ms. Chan then paid off the TD Bank line of credit and the TD Bank mortgage was discharged.

[11] Ms. Chan did not then have sufficient funds to pay off her outstanding gambling debts. She was able to borrow an additional \$96,250.67 from Household Realty which was secured by way of a second mortgage against the Richmond Hill property. Ms. Chan once again utilized the device of a fraudulent power of attorney in her husband's name, which was registered on title on January 14, 2003, together with the Household Realty mortgage.

[12] Both the CIBC mortgage and the Household Realty mortgage contained the following provision:

I, Suet Ching Chan, say that to the best of my knowledge and belief, the power of attorney is still in full force and effect and the principal had the capacity to give the power of attorney when giving it and was at least 18 years of age when the power of attorney was executed.

[13] In about early spring of 2003, the CIBC and Household Realty mortgages went into default. In July 2003, CIBC and Household Realty commenced separate actions against Ms. Chan and Mr. Liu in which they claimed the principal and interest owing on the mortgages and possession of the property. Ms. Chan and Mr. Liu defended both actions and counterclaimed against CIBC and Household Realty for declarations that both mortgages are void, and that the principal and interest in respect of both mortgages are cancelled. They also sought injunctions restraining the sale of the property.

[14] It is accepted that Mr. Liu was completely unaware of his wife's activities in obtaining the lines of credit from the three financial institutions and that he had no knowledge of the fraudulent powers of attorney and the three mortgages.

[15] It is also accepted that none of the financial institutions were aware of the fraudulent nature of the powers of attorney upon which they relied to grant the lines of credit and to take the mortgages as security.

The Motions for Summary Judgment

[16] The motions for summary judgment brought on behalf of CIBC and Household Realty were heard together. Ms. Chan filed a notice of intent to act in person but she did not appear on the motion. She did not appear on this appeal.

[17] The position of CIBC and Household Realty before the motion judge was that the mortgages are valid, having been registered pursuant to the *Land Titles Act, R.S.O. 1990, c. L-5* (the Act). Mr. Liu took the position that the mortgages are void since they were obtained by way of fraudulent powers of attorney. Mr. Liu also argued that CIBC and Household Realty were negligent in not conducting appropriate investigations in respect of the authenticity of the powers of attorney. In addition, Mr. Liu submitted that the mortgages were invalid because the property was the matrimonial home so that his consent was required in order to mortgage it, pursuant to the *Family Law Act, R.S.O. 1990, c. F-3*.

[18] The motion judge in her reasons for judgment observed that:

The common law rule that a forged document is a nullity and is void is modified by the *Land Titles Act*.

The motion judge referred to s. 155 of the Act which provides:

Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner [emphasis added].

The motion judge then referred to s. 78(4) of the Act which provides:

When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate therein mentioned in the register.

[19] The motion judge concluded:

Both the policy underlying the *Land Titles Act* and the language of s. 78(4) reflect the principle that an instrument, once registered, is effective. In the result, the two mortgages in this case, having been given for valuable consideration and without notice of a fraud are, once registered, effective and can be relied on.

The effect of s. 78(4) of the *Land Titles Act* is that the instrument is deemed to be embodied in the register and effective according to its terms. The two mortgages are thereby deemed to be effective with respect to parties who have acquired an interest for value, in good faith and without notice.

[20] The motion judge considered the theory of deferred indefeasibility relied upon by counsel for Mr. Liu:

According to the theory of deferred indefeasibility, the registration of a void instrument does not cure its defect, and neither the instrument nor its registration gives good title. However, a subsequent person dealing with the property may rely on the otherwise defective document and/or registration. Mr. Liu's submission is that based on this theory, the plaintiffs, as the ones registering the mortgage, do not have a valid mortgage. However, anyone dealing with the property subsequent to the plaintiffs would be entitled to rely on what is in the register.

The motion judge considered *Durrani et al v. Augier et al* [redacted] reflex, (2000), 50 O.R. (3d) 353 (S.C.J.) and *Toronto-Dominion Bank v. Jiang et al* 2003 CanLII 38078 (ON S.C.), (2003), 63 O.R. (3d) 764 (S.C.J.). Both of the aforementioned cases consider the applicability of the theory of deferred indefeasibility. The motion judge distinguished both cases as follows:

While both *Durrani v. Augier* and *Toronto-Dominion Bank v. Jiang* refer to the doctrine of deferred indefeasibility, the result in those cases is that the fraudulent document did not give good title to the person who perpetuated the fraud. Rather, it created rights for the person who subsequently dealt with the property on a *bona fide* basis and for good value. This is different from the result that Mr. Liu is proposing, whereby *bona fide* parties would be disentitled from pursuing their claims.

Both the policy underlying the *Land Titles Act* and the language of s. 78(4) reflect the principle that an instrument, once registered, is effective. In the result, the two mortgages in this case, having been given for valuable consideration and without notice of the fraud are, once registered, effective and can be relied on.

[21] The motion judge dismissed the allegation of negligence against CIBC and Household Realty on the ground that they were not in possession of any information that would put them on their inquiry in respect of the authenticity of the mortgages. There was nothing in the circumstances here to suggest that the powers of attorney were forged. This appeared to be a common situation of a spouse acting on her husband's power of attorney while the husband was out of the country.

[22] Mr. Liu relied on s. 21 of the *Family Law Act*, which requires the consent of both spouses to encumber a matrimonial home. The motion judge concluded:

In this case, Ms. Chan and Mr. Liu are joint tenants so that Mr. Liu had to be a party to the transaction regardless of whether it was the matrimonial home. The fact that it was a matrimonial home and that his consent to the transaction was required does not add anything to the situation since his consent was required in any case.

[23] The issues of negligence and s. 21 of the *Family Law Act* are not before us in this appeal.

The Issues in this Appeal

[24] The appellant raises the following four issues in this appeal:

- (i) Did the motion judge err in failing to find that the respondents have no interest in the property, given that both of the registered owners did not mortgage the property?
- (ii) Did the motion judge err in failing to find that the two mortgages are void as they were signed pursuant to a fraudulent power of attorney?
- (iii) Did the motion judge err in failing to find that the respondents' mortgages are fraudulent, and therefore invalid, in that they contain a fraudulent declaration as to the validity of the registered power of attorney?
- (iv) Did the motion judge err in determining that the respondents were entitled to rely upon their own mortgages as registered, having been given for valuable consideration and without notice of the fraud? The appellant raises a related issue in this regard: Did the motion judge err by misinterpreting and/or mis-applying the doctrine of deferred indefeasibility of title under the Act and instead imposing the doctrine of immediate indefeasibility of title?

(i) Did the motion judge err in failing to find that the respondents have no interest in the property, given that both of the registered owners did not mortgage the property?

[25] The appellant submits that the Act protects innocent parties who deal with registered owners, as opposed to innocent parties who rely on title. For this proposition, he relies upon an annotation to the report of the motion judge's reasons in this case in the *Real Property Reports* prepared by Sidney Troister.^[1] Mr. Troister, in his annotation, refers to several sections of the Act which make specific reference to the registered owner. At page 155 of his annotation, Mr. Troister then observes:

The *Land Titles Act* and the sections noted above reflect a policy to protect *those who deal with registered owners* and not those who rely on title. The whole system depends on people dealing with registered owners, because it is registered owners who have the right to transfer land, not anyone who says they are the owners of registered title as reflected on the parcel register.

[26] The appellant argues that only Mr. Liu and Ms. Chan could charge the property because they were the registered owners. Mr. Liu did not execute the mortgage and Ms. Chan's execution, on his behalf, was invalid as it was carried out pursuant to a fraudulent power of attorney.

[27] The appellant relies on *Shute v. Premier Trust Co.* [redacted] reflex, (1993), 50 R.F.L. (3d) 441 (Ont. Ct. Gen. Div.), in which the trial judge held that for a mortgagee to take title, a contract must exist between the mortgagor and the mortgagee. In that case, the husband's signature was forged, and, as a result, legal title could not pass to the defendant mortgagee. I do not find this case particularly relevant since it does not appear to involve the *Land Titles Act* and no mention is made of the Act.

[28] I agree with the submission of counsel for the respondents that the appellant's analysis, supported by the Troister annotation, downplays the impact of s. 78(4) of the Act. Mr. Troister, in his annotation, states at p. 153:

All s. 78(4) says is that an instrument, once registered, is effective according to its terms. It does not, however, make a forged document into an instrument that is effective to create or transfer an interest in land.

Mr. Troister's annotation adds that s. 155 of the Act makes it clear that registration of a forged instrument does not create an interest in land.

[29] While a forged instrument does not create an interest in land for the fraudster, that, in my view, places too narrow a focus on the intent of the Act. In *R.A. & J. Family Investment Corp. v. Orzech* 1999 CanLII 3739 (ON C.A.), (1999), 44 O.R. (3d) 385 (C.A.) at 390, Goudge J.A. said:

Section 78(4) deems such a document to be effective according to its nature and intent. Section 155 provides that such a document, although fraudulent and void at common law, is subject to the provisions of the Act with respect to registered dispositions for valuable consideration [emphasis added].

In that case, the court was considering the fraudulent registration of a cessation of charge and subsequent registration of a new mortgage by a mortgagee who had no knowledge of the fraud. In my view, this court's interpretation of s. 78(4) and s. 155 of the Act in *R.A. & J. Family Investment v. Orzech* suggests that the legislature intended those sections to have a broader reach than is contended by the appellant.

(ii) Did the motion judge err in failing to find that the two mortgages are void as they were signed pursuant to a fraudulent power of attorney?

[30] The appellant, relying on a judgment of the Manitoba Court of Appeal, *Hill Estate v. Chevron Standard Ltd.* [redacted] reflex, (1992), 83 Man. R. (2d) 58 (C.A.), submits that a contract made pursuant to a void power of attorney is also void. The appellant concludes that the two mortgages in issue in this case are void as they were executed pursuant to a fraudulent power of attorney.

[31] *Hill Estate v. Chevron* appears to be distinguishable from the case at bar. *Hill Estate* involves the lease of mineral rights. The lease was signed by the owner's wife under a power of attorney signed when he was incapacitated. While the case involves the validity of the lease, it does not appear to involve the issues which concern us here, namely, the interpretation of statutory provisions concerning title to land.

[32] In the Troister annotation, the author observes at p. 156:

As noted above, the registered owner continued to be both husband and wife, notwithstanding registration of the power of attorney. The registration of the power of attorney did not in any way validate it or make the attorney the registered owner of the property. There is nothing in the Act that makes a document signed under a *registered* power of attorney valid. Registering a power of attorney simply creates a public record of a document that purports to give one authority to deal with land. It does not transfer or charge land or otherwise create interests in land, nor does it make an attorney under that power of attorney a registered owner for the purposes of the Act.

I agree with the above statement. However, the focus should be on the registered mortgages and not on the powers of attorney. The powers of attorney were simply the means by which the respondents were induced to accept mortgages that turned out to be fraudulent without any knowledge on their part. It is the application of s. 78(4) to the mortgages which is relevant.

(iii) Did the motion judge err in failing to find that the respondents mortgages are fraudulent, and therefore invalid, in that they contain a fraudulent declaration as to the validity of the registered power of attorney?

[33] Ontario Regulation 19/99, amended to O. Reg. 52/01 as made under the *Land Registration Reform Act*, R.S.O. 1990, c. L4 provides:

Section 4: A document submitted for electronic registration shall contain

- (i) if the document is made by an attorney, a statement by the attorney that, to the best of the attorney's knowledge and belief,
 - (i) the principal was at least 18 years old and had the legal capacity to give the power of attorney when giving it, and
 - (ii) the power is in full force and effect;

[34] Ontario Regulation 26/99, as made under the *Land Titles Act* provides:

Section 6: An instrument that is executed under a power of attorney and that is submitted for registration in a non-electronic format shall not be registered unless the attorney states in the instrument that, to the best of the attorney's knowledge and belief,

- (a) the principal was at least 18 years old and had the legal capacity to give the power of attorney when giving it; and
- (b) the power is in full force and effect.

[35] In this case, each mortgage was registered electronically, by the mortgagee. The appellant submits that the party registering the mortgage must obtain the required declaration of the attorney (Ms. Chan). Each of the mortgages contained the required declaration. The appellant reasons that in each case, the person tendering a document for registration is obliged to verify that the statement made by the attorney is true. The appellant argues that failure to do so will render the mortgage fraudulent if the declaration turns out to be fraudulent. In the result, the party who tendered the document for registration will have no interest in the property.

[36] Section 70(3) of the Act provides:

No registered power of attorney shall be deemed to be re-voked until a revocation thereof is registered or evidence is filed with the land registrar showing that it is no longer in force.

There was no revocation registered in respect of either power of attorney. As found by the motion judge in her dismissal of the negligence claim, there was nothing to put either Household Realty or CIBC on inquiry in respect of either of the powers of attorney. No evidence was available to show that either of the powers of attorney was not in force. Therefore, the powers of attorney were still in force pursuant to s. 70(3).

(iv) Did the motion judge err in determining that the respondents were entitled to rely upon their own mortgages as registered, having been given for valuable consideration and without notice of a fraud? Did the motion judge err by misinterpreting and/or misapplying the doctrine of deferred indefeasibility of title under the Act, and instead imposing the doctrine of immediate indefeasibility of title?

[37] The doctrine of the indefeasibility of title was described in an article by Marsha Neave, *Indefeasibility of Title in the Canadian Context* (1976) 26 U.T.L.J. 173 at 174, and adopted by Epstein J. in *Durrani v. Augier* at paragraph 42:

The philosophy of a land title system embodies three principles, namely, the mirror principle, where the register is a perfect mirror of the state of title; the curtain principle, which holds that a purchaser need not investigate the history of past dealings with the land, or search behind the title as depicted on the register; and the insurance principle, where the state guarantees the accuracy of the register and compensates any person who suffers loss as the result of an inaccuracy. These principles form the doctrine of indefeasibility of title and [are] the essence of the land titles system.

Blair J.A. also adopted the above statement in *Regal Constellation Hotel Ltd. (Re)* (2004), 71 O.R. (3d) 355 (C.A.) at para. 42.

[38] The doctrine has manifested itself in two forms immediate indefeasibility and deferred indefeasibility. The appellant submits that in Ontario, in circumstances involving fraudulent documents, courts have generally interpreted the relevant provisions of the Act in accordance with the doctrine of deferred indefeasibility of title. As discussed earlier in these reasons, the doctrine of deferred indefeasibility holds that a person who is registered on title by means of a fraudulent document does not take title. However, an indefeasible title is deferred to a *bona fide* purchaser or mortgagee for valuable consideration without notice of the fraud.

[39] The appellant makes the following submission:

It is submitted that registration of the fraudulent powers of attorney did not change the fact that Mr. and Mrs. Chan were both registered owners of the property as joint tenants. According to the doctrine of deferred indefeasibility, an indefeasible interest as mortgagee *would not* be deferred to CIBC or Household Realty on the basis that they dealt innocently with Ms. Chan for valuable consideration without notice of a fraud, because Ms. Chan was not the sole registered owner of the property and was not Mr. Liu's attorney. However, an indefeasible interest as mortgagee *would* be deferred to an assignee of the CIBC mortgage or the Household Realty mortgage who dealt innocently with CIBC or Household Realty for valuable consideration without notice of a fraud, because CIBC and Household Realty were the registered mortgagees.

[40] The appellant further submits that the motion judge erred in concluding that CIBC and Household Realty were entitled to rely on their own mortgages as registered and in doing so, the motion judge applied the doctrine of immediate indefeasibility. As in the court below, the appellant relies upon *Toronto-Dominion Bank v. Jiang*, *Durrani v. Augier* and *R.A. & J. Family Investment Corp. v. Orzech*.

[41] To some extent, this case invites the question of whether Ontario courts should follow the doctrine of deferred indefeasibility or the doctrine of immediate indefeasibility in the interpretation of the Act. The respondents submit that the doctrine of immediate indefeasibility should govern. In my view, Mr. Troister puts this discussion in proper perspective at p. 153:

At the end of the day, in my opinion, the theories of the Land Titles system described in both Marsha Neave's 1976 paper on *Indefeasibility of Title in the Canadian Context*, as well as in my papers, are largely irrelevant. The *Land Titles Act* itself determines what is and what is not valid.

[42] I am inclined to believe that the continuing discussion of theories of interpretation of the Act is better left to others. It is not necessary to resolve which of the two competing theories of indefeasibility of title should govern in order to decide this case.

[43] In my view, the motion judge got it right. She focused on the language of s. 155 and s. 78(4) of the Act. A plain reading of s. 155 and s. 78(4) leads to the conclusion reached by the motion judge that the two mortgages registered on title are effective in accordance with their terms. To use the motion judge's language:

In the result, the two mortgages in this case, having been given for valuable consideration and without notice of the fraud are, once registered, effective and can be relied on.

[44] I also agree with the motion judge's analysis of *Durrani v. Augier* and *Toronto-Dominion Bank v. Jiang*. Both cases are distinguishable from this case. The results in those cases are not incompatible with the result here.

Disposition

[45] In the result, I would dismiss the appeal.

Costs

[46] I would award costs to the respondents on a partial indemnity scale in respect of the motion brought by the appellant to amend his notice of appeal and factums. I would also award costs to the respondents for the appeal on a partial indemnity scale. The respondents seek costs in the amount of \$35,014.57. In my view, the aforesaid amount is excessive. The respondents did not have the same burden as the appellant in the preparation of the appeal. The amounts in issue in this case are roughly \$350,000 plus interest. The respondents had a strong judgment of the motion judge in their favour, which they succeeded in upholding. In my view, a fair and reasonable costs award in favour of the respondents is \$20,000 including disbursements and Goods and Services Tax.

RELEASED:

RPA Robert P. Armstrong J.A.

NOV 24 2005 I agree J.C. MacPherson J.A.

I agree Susan Lang J.A.

[1] Sidney H. Troister, Annotation to *CIBC Mortgages Inc. v. Chan*, (2004), 20 R.P.R. (4th) 153.