

Title Insurance: Your Guardian Angel When Things Go Wrong

Residential, Corporate and Commercial Real Estate

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Your home is likely your biggest investment and it is important to protect it. Real estate lawyers often recommend that their clients purchase title insurance. Title insurance covers unknown risks or problems such as title fraud, damage to structures caused by by-law infractions, outstanding liens and title defects relating to the property. Such policies are designed to compensate for actual loss arising from defects in existence as at the date of the policy.

In a recent case before the Court of Appeal for Ontario, *MacDonald v. Chicago Title Insurance Company of Canada* [2015 ONCA 842], the MacDonalds purchased a home in Toronto in 2006 and at the same time, through their lawyer, they also purchased a title insurance policy with Chicago Title Insurance Company of Canada. In 2013, the MacDonalds discovered that the second floor of their home was falling apart. A load-bearing wall had been removed during renovations seven years ago and as a result, the second floor was unsafe to use. At this point, the City of Toronto got involved and issued a remediation order. It turned out that the previous owners of the property had conducted unapproved renovations and had removed the load bearing wall without obtaining the necessary building permits through the City.

The MacDonalds turned to their title insurer and made a claim for the cost of installing the temporary support for the second floor and the subsequent permanent repairs. Chicago Title denied coverage on the basis that the defect did not affect “ownership of the land” and therefore did not affect “title”. The MacDonalds then took their claim to the Ontario Superior Court of Justice and argued that the policy provided coverage under the clause:

“your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease, or to make a mortgage loan”.

At the trial level, the Judge found that title remained marketable, even though it was marketable for an amount that was less than what the MacDonalds had paid when they purchased the property. The MacDonalds appealed this decision.

The Court of Appeal was quick to point out that the fact that someone might be willing to purchase a dangerously defective building does not mean that it is “marketable” under the title insurance policy. The proper approach is to ask:

1. Can a potential purchaser refuse to close an Agreement of Purchase and Sale on learning of the defect? and;
2. Is coverage excluded under the exclusions or limitations of liability provisions of the title policy?

The Court of Appeal also confirmed several important principles applicable to the interpretation of title insurance policies:

1. Coverage provisions are to be construed broadly and exclusion clauses are to be construed narrowly;
2. The contract of insurance should be interpreted to promote a reasonable commercial result; and
3. Ambiguities will be construed against the insurer, having regard to the reasonable expectations of the parties.

The MacDonalds were awarded \$32,800.00 for their damages which also included a portion of their legal fees.

Not all title insurance policies are the same. When you are purchasing a home, it is important to review the wording of the title insurance policy and choose an insurer wisely. Our real estate lawyers will be able to assist you in determining which provider will best represent your needs. Contact SorbaraLaw for a consultation today.

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