

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CK HOLDINGS LTD.

Applicant

- and -

MICHAEL PEEL

Respondent

MEMORANDUM OF JUDGMENT

[1] The applicant, CK Holdings Ltd., is the registered owner of the property legally described as Lot 4, Block 539, Plan 2094, Yellowknife. This is undeveloped commercial property which the applicant purchased from the City of Yellowknife pursuant to an agreement dated June 14, 2002. The respondent registered a certificate of pending litigation on title to this property. The applicant now seeks to discharge the certificate.

[2] When this matter first came on for hearing in regular chambers on August 15, 2002, I directed that further submissions be filed to clarify certain evidentiary matters and the legal positions of the parties. Part of this was due to the fact that the respondent has chosen to represent himself in this matter. The pertinent legal issues are therefore not as clearly delineated as one would like to see on this type of application. Those submissions have now been filed and, based on my consideration of the respective arguments, the application to discharge the certificate of pending litigation should be granted. These are my reasons for so ruling.

[3] Rule 476(1) of the Supreme Court Rules provides that a certificate of pending litigation may be issued where an action is commenced in which an interest or estate in land is in question. Rule 478(1) provides that a person affected by the registration

of a certificate of pending litigation may apply for an order discharging the registration of the certificate. It thus becomes incumbent to ascertain if there is an arguable case that the respondent has an interest in the land in question. To do that it is necessary to examine another proceeding, one commenced by the respondent, which is the foundation for this certificate.

[4] On June 20, 2002, the respondent commenced action number S-0001-CV 2002000184 by the filing of a Statement of Claim in this court. That action names as defendants Coldwell Banker Northern Bestsellers, a local real estate agency, and the City of Yellowknife. The claim alleges that the plaintiff made an offer to purchase the same property and provided a deposit to the realtor (who was acting as the City's agent). He further alleges that the realtor was in a conflict of interest since it was dealing with another party, the applicant herein, and the realtor chose to recommend to the City that it sell the property to the applicant. The respondent seeks an order directing the sale of the land to him and damages.

[5] The evidence filed on this application shows that Certificate of Title No. 53971 was issued by the Registrar of Land Titles on June 20, 2002, identifying the applicant as the registered owner of the subject property. The title, however, also lists, among the encumbrances and interests, the certificate of pending litigation registered by the respondent also on June 20, 2002.

[6] After commencing his action, the respondent (being the plaintiff in the other action) sought injunctive relief in that action. He sought to stay the transfer of title and to prohibit work on the property. The application was dismissed by Brooker J. on August 2, 2002, holding that it was too late to stop the transfer and there was no basis for a remedy against the new owner, the applicant here, since it was not a party to that action.

[7] It seems clear to me that, in law, the respondent has no interest in the land in question. He may have a very good claim for damages but I make no comment on that. But his remedy is simply damages. There is no identifiable cause of action against the applicant here since it is clear that the applicant was a bona fide purchaser for value. A certificate of title has been issued and the respondent is confronted by a statutory enactment, s.66 of the *Land Titles Act*, R.S.N.W.T. 1988, c.8 (Supp.), which codifies the principle of the indefeasibility of title. To invalidate the title of a registered purchaser for value, there must be proof of fraud in which the owner has

participated or colluded: deCatri, *Registration of Title to Land* (1987), at para.870. There is no evidence here of fraud and indeed there is no claim advanced against the applicant in the action commenced by the respondent.

[8] Whatever may be the outcome of that action, I am convinced that the one remedy the respondent will not be able to obtain is a transfer of the property to him. There was no acceptance by the City of his offer and no fully executed contract of sale. His complaint, it seems to me, is best directed at the realtor's conflict of interest. But, all that is to be determined at the trial of that action. Nothing I say here on that issue should be taken as deciding anything.

[9] The respondent bases his case on the argument that his certificate was placed on title prior to the issuance of the new title and therefore the applicant is, simply put, stuck with it since he took title subject to it. He relies for support on certain comments made by Brooker J. in his judgment in the other action dismissing the application for injunctive relief.

[10] Brooker J., in a portion of his oral judgment, said as follows (as transcribed):

It appears from the evidence that the City accepted Northern Best Sellers' advice or recommendation and sold the property to CK Holdings Ltd. I am not exactly sure from the evidence as to what date the CK Holdings Ltd. offer was accepted; but, in any event, it is clear from the record that the Plaintiff commenced his action against Coldwell Banker Northern Best Sellers and the City of Yellowknife by Statement of Claim issued June 20th, 2002. On the same day, the Plaintiff filed a Certificate of *lis pendens* against the title to Lot 4. And again on that same day, but obviously after the *lis pendens* was filed, title to the property was issued by the Registrar of Land Titles here in the Northwest Territories in the name of CK Holdings Ltd., and the *lis pendens* is noted on the certificate of Title, at the back with the encumbrances.

Now, with respect to the specific relief which Mr. Peel seeks in this application, it is my decision that it is too late to stay the transfer of title. That is the first thing you have sought. Title has already been transferred to the new purchaser, CK Holdings Ltd. And as I have said, however, *I note that your lis pendens is noted on the back of the Title and thus the new Title was issued with that notation.* [Emphasis added].

[11] The respondent contends that these comments amount to a judgment or ruling that the new title was issued subject to his certificate of pending litigation. I do not

agree. Certainly the new title that was issued shows registration of the certificate, but that is not conclusive as to the state of the title when the applicant took title. Furthermore, while I do not know what evidence was before Brooker J., it seems to me that his comments were merely observations of the state of the title as reflected on the certificate. They do not imply legal conclusions. In any event, no issue of *res judicata* arises since the parties were not the same in the two proceedings. Brooker J. was also dealing with different issues.

[12] The further evidence filed by the applicant includes a certified copy of the Transfer of Land from the City of Yellowknife to the applicant. The registration particulars noted thereon show registration on June 20, 2002, at 10:12 hours (presumably 10:12 a.m.), as number 124,958. The certified copy of the certificate of pending litigation shows that it was registered on June 20, 2002, at 15:50 hours (presumably 3:50 p.m.), as number 124,972. Undoubtedly, the transfer was registered prior to the certificate. As submitted by applicant's counsel, simply because the certificate appears on the back of the title as having been registered on the same day does not mean that title was issued subject to it. I agree.

[13] The complete answer to the respondent's argument on this point is provided by sections 70 and 71 of the *Land Titles Act*:

70. Every instrument becomes operative according to the tenor and intent of the instrument, when it is registered, and on registration it creates, transfers, surrenders, charges or discharges, as the case may be, the land or estate or interest mentioned in the instrument.

71. Instruments registered in respect of or affecting the same land are entitled to priority the one over the other according to the time of registration and not according to the date of execution.

The effect of these sections is to make the sequence of registration the determinative factor in establishing priorities. The transfer was registered prior to the certificate; therefore it is not bound by it.

[14] The application is therefore granted. An order will issue directing the discharge of the certificate of pending litigation filed by the respondent and registered as instrument number 124,972.

[15] At the hearing before me in chambers, I said to the respondent that it may be advisable for him to obtain some legal advice on this issue. Whether he did or not is not evident to me. He certainly has a right to represent himself but, in doing so, he faces the same consequences as any other litigant. One of those consequences is costs, which normally follow the result. I see no reason to deviate from that principle. The applicant will therefore recover its costs from the respondent, to be taxed on the basis of column 2 of the party-and-party tariff of costs. An allowance should be made for written argument.

J.Z. Vertes,  
J.S.C.

Dated at Yellowknife, NT, this  
23rd day of September 2002

Counsel for the Applicant: Gerard K. Phillips  
The Respondent represented himself.

S-0001-CV 2002000209

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