

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BRUCE McOUATT and SANDRA McOUATT

Applicants

- and -

JERRY A. WESELOWSKI

Respondent

MEMORANDUM OF JUDGMENT

- [1] In this Application, Bruce and Sandra McOuatt are asking that an encumbrance registered against their property be discharged. They say that the debt associated with that encumbrance has been paid in full and that the Respondent, Jerry Weselowski, has refused to execute a discharge of the encumbrance. The application came before me in Chambers on March 9th, 2006. Sandra McOuatt appeared on behalf of herself and her husband. Mr. Weselowski did not appear, nor did anyone appear on his behalf.
- [2] In an affidavit sworn on January 26th, 2007, Mr. McOuatt sets out the circumstances leading to this application. On January 15th, 2004, he and his wife purchased property situated at 44 Calder Crescent in Yellowknife from Mr. Weselowski. This property is legally described as Lot 18, Block 516, Plan 1237 Yellowknife.
- [3] As part of the transaction, Mr. and Mrs. McOuatt signed a Promissory Note to Mr. Weselowski for the sum of \$36,625.00. This amount, along with interests, was to be paid in full no later than November 16th, 2004. The amount due under this Promissory Note was registered in the Land Titles' Office against the property.

- [4] On November 11th, 2004, the McOuatts sent Mr. Weselowski a cheque in the amount of \$38,761.46. This sum included the principal and the interest that the McOuatts calculated were owed. The McOuatts sent a note with the cheque, asking that Mr. Weselowski execute a discharge of the encumbrance.
- [5] The cheque was cashed and a corresponding amount of money was taken out of Mr. McOuatt's bank account. Mr. Weselowski never provided the discharge as requested. Since then, the McOuatts have made several attempts to obtain the documents needed to discharge this encumbrance from the title of the property, but without success. In one of those attempts, Mr. McOuatt contacted Mr. Weselowski by telephone and offered to go to Mr. Weselowski's residence in Alberta and bring him the necessary papers to complete this process, at no cost to Mr. Weselowski. Mr. Weselowski refused. This occurred in October of 2006.
- [6] Mr. and Mrs. McOuatt have filed copies of various materials, including a copy of the returned cheque that bears a stamp showing it was cashed. This is consistent with Mr. McOuatt's evidence that the money was taken out of his account. When this matter was heard in Chambers on March 9th, Mrs. McOuatt produced the original cheque. I looked at this cheque and was able to see that Exhibit "F" to Mr. McOuatt's affidavit is indeed a true copy of it.
- [7] The evidence presented is uncontested. There is no indication whatsoever in the materials before me as to why Mr. Weselowski is refusing to cooperate with the removal of the encumbrance on the title of the property. The evidence that has been adduced has satisfied me that the debt was paid in full in 2004 and that the McOuatts are entitled to the relief that they seek.
- [8] One of the reliefs sought in the Originating Notice is that any claims registered against the McOuatts in the Personal Property Security Registry be discharged. At the hearing of the application Mrs. McOuatt advised that she and Mr. McOuatt are no longer seeking this relief.
- [9] The Originating Notice also includes a request for costs in the event that the application is contested. That is an extremely fair approach on the part of the McOuatts, considering the history of this matter. In any event, as Mr. Weselowski did not contest the application, there will be no order as to costs.

- [10] For these reasons, pursuant to Section 117 of the *Land Titles Act*, R.S.N.W.T., c. 8 (Supp.), I direct that the encumbrance registered in favor of Jerry A. Weselowski against the property legally known as Lot 18, Block 516, Plan 1237, Yellowknife, be wholly discharged.
- [11] The Clerk of the Court will prepare a certificate to this effect for my signature. This certificate will be provided to the Applicants so that they can produce it to the Registrar of Land Titles in accordance with Paragraph 117(1)(b) of the *Act*.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
26th day of March 2007

Sandra McOuatt appeared for the Applicants
No one appeared for the Respondent

S-0001-CV2005000203

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