

ONTARIO

Land Titles Act

R.S.O. 1990, c. L. 5., s. 57(7)

IN THE MATTER OF land registered in the Land Registry Office for the Land Titles Division of Toronto (No. 66) as Parcel M-37-63-1, Section Township of Pickering being Lot 63, Plan M-37, (Scarborough), City of Toronto, identified by property identifier 06217-0143 (LT) and known municipally as 262 Koning Court, Scarborough, Ontario (the "Property");

AND IN THE MATTER OF an Application made by LORLOTTE JARVIS pursuant to section 57 of the Land Titles Act for payment of compensation out of the Land Titles Assurance Fund due to an alleged error in transfer and an alleged forged signature in respect of the Property.

Decision

FACTS

Lorlotte Jarvis has made a claim to the Land Titles Assurance Fund (LTAF) in accordance with section 57 of the *Land Titles Act*. She claims to have lost an interest in land as a result of a fraudulent transfer. The land in question is described as Parcel M-37-63-1 Section Township of Pickering (Lot 63, Plan 37, City of Scarborough) PIN 06217-0143 (LT).

Instrument No. C251771 registered December 4, 1985 is a transfer from Gerald Robert Mason and Jessieann Daisy Mason to Blair Stewart Jarvis and Lorlotte Jarvis as Joint Tenants in the above-described lands. Instrument No. E195600 registered September 4, 1998 is a transfer from Blair Stewart Jarvis to Blair Stewart Jarvis. The transfer effected a severance of the joint tenancy with Lorlotte Jarvis. Blair Stewart Jarvis died on September 14, 1998. If the joint tenancy had not been severed, Blair Stewart Jarvis' (Blair) interest would have passed to Lorlotte Jarvis (Lorlotte) by right of survivorship. Lorlotte claims that Blair's signature on the transfer severing the joint tenancy was forged.

Instrument No. E482268 is a transmission application for the Estate of Blair Stewart Jarvis by the estate trustees applying to be registered as owners as Estate Trustees of the estate of Blair Stewart Jarvis.

Bridget Eslinger, Judy Jarvis and Bradford Jarvis as Estate Trustees for the Estate of Blair Stewart Jarvis commenced an application in the Ontario Court (General Division) to have the matrimonial home partitioned and sold on October 6, 1999. The Respondent Lorlotte Jarvis filed a Notice of Cross-Application for an order setting aside the Transfer and claiming occupation rent. Justice Walsh ordered a trial of the issues. This matter was heard by Ferrier J. (*Jarvis v. Jarvis Estate* [2002] O.J. 2632.) Ferrier J considered the issue of whether there was undue influence exercised in the execution of the transfer from Blair to himself for purposes of severing the joint tenancy.

The action was with respect to the ownership and division of equity in residential property initially owned by Lorlotte and Blair as joint tenants. Lorlotte argued that that the transfer was not valid since it was executed under undue influence. In the context of the Land Titles Assurance Fund Application, she is now arguing that the transfer was fraudulent. She relies on the report of a handwriting expert to establish that Blair's signature was forged.

PRELIMINARY ISSUE

As a preliminary matter, I am considering whether the issue to be determined in connection with the Application to the Land Titles Assurance Fund has already been determined by Justice Ferrier, and if it has been determined, whether it is appropriate or necessary for the matter to be determined by me pursuant to the LTAF Application. If I find that the issue of the validity of the transfer has already been determined, the LTAF Application will be dismissed. Pursuant to a Notice of Pre-Hearing dated April 17, 2007, counsel for Lorlotte Jarvis has made written submissions to address this preliminary matter.

I have reviewed the Oral Reasons for Judgment of Justice Ferrier. In making his determination Justice Ferrier found the transfer from Blair Jarvis to himself was valid. He found Mr. Fleury, the lawyer that had acted for Blair in preparing and executing the transfer from Blair to himself, to be a credible witness. He accepted the evidence of Mr. Fleury that he attended at Blair's home for purposes of executing the transfer on September 2, 1998 and held that the transfer was valid and that undue influence was not exercised.

In order to determine that the transfer was fraudulent, I would have to also find that Justice Ferrier made errors in his findings. Justice Ferrier's finding that Mr. Fleury attended at Blair's home for the purposes of executing the transfer and that the transfer was valid, is completely inconsistent with a finding that the transfer was fraudulent. In his written submissions, Counsel argues that I am not being asked to determine the same issue that was determined by Justice Ferrier since the issue that he determined was with respect to undue influence.

The Applicant has stated in written submissions that the issue to be determined is whether *City of Toronto v. CUPE* [2003] 3 S.C.R. prohibits me from considering whether the signature on the transfer that severed the joint tenancy was a forgery. That is not the issue I asked counsel for the Applicant to address. In a letter dated April 13, 2007 (also referenced in a subsequent letter enclosing the Notice of Written Hearing) the stated issue to be considered was the applicability of the concept of abuse of process to the facts of this case, and whether the relitigation of the matter previously determined by the court would be detrimental to the adjudicative process in a way that would bring the administration of justice into disrepute.

THE LAW

Abuse of Process

The leading case considering the issue of abuse of process is *City of Toronto v. CUPE*. Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel are not met, but where allowing the litigation would violate the principles of judicial economy, consistency, finality and the integrity of the administration of justice. The court also indicates that there are instances where relitigation will enhance rather than impeach the integrity of the judicial system. Such instances include: when the first proceeding is tainted by fraud; when fresh evidence, not available previously conclusively impeaches the original results; or when fairness dictates that the original result should not be binding.

None of the above factors is satisfied in this case. The handwriting report cannot be classified as fresh evidence. It would have been available at the time of the proceeding before Justice Ferrier however apparently it was not obtained at that time. The fact that the Applicant did not seek out such evidence does not make it fresh evidence.

The Applicant relied on *Enoch Band of the Stony Plain Indians v. Canada* [1996] F.C.J. No. 391. In that case the plaintiffs had commenced an action seeking to recover land that had been surrendered to the federal Crown in 1908. The Applicant argued that

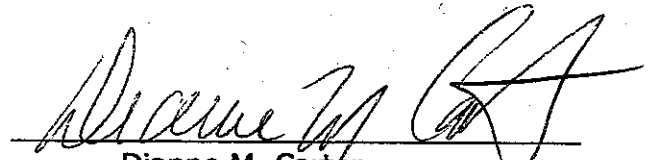
the court held that earlier proceedings had not dealt with the issue of forgery (which the Band raised in this proceeding) and that as such, the question of forgery was not res judicata. A review of the case reveals that the Plaintiffs argued that the surrender poll was fraudulent, involuntary and obtained under duress by the Crown. The Crown in its defence argued that the issue of forgery was res judicata by reason of earlier court determinations. The court held in this case that there were previously two points at issue, first, whether the surrender vote had to be by a majority of the male members of the Band, or just a majority of those present at the surrender meeting and second, whether certification by one principal man of the Enoch Band was in compliance with the *Indian Act*. The case does not assist me in determining the matter before me, as it deals with res judicata, and not abuse of process, a doctrine with less strict requirements. In any event, the questions determined by the court in the initial proceedings in *Enoch Band* were not inconsistent with the later consideration of the question of forgery. In the case before me, the finding that the transfer was validly executed is completely inconsistent with a finding of forgery.

The Applicant also relied on *R. v. Householder* [2004] O.J. 5886 (S.C.J.) In that case the accused was charged with perjury with respect to two affidavits sworn in a civil matter. It was held that the previous court proceeding did not deal with the falsity of the affidavits, and that determination of that issue in the current proceeding did not raise issues of res judicata or abuse of process. Again, I do not find this case helpful in addressing the matter before me. Counsel for the Applicant put forward other cases that I will not review in this decision as they do not assist in resolving the issue before me.

DETERMINATION AND ORDER

I accept Justice Ferrier's determination that the transfer from Blair to himself severing the joint tenancy with Lorlotte was valid. There is no evidence before me to indicate that the proceedings before Justice Ferrier were improper in any way. A reconsideration by this Tribunal of the validity of the transfer would be an abuse of process. As such, I determine that the Application of Lorlotte Jarvis for compensation out of the Land Titles Assurance Fund should be dismissed. It is not necessary for me to independently determine the issue of fraud.

Dated at Toronto this 24 th day of July, 2007.



Dianne M. Carter
Deputy Director of Titles

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