

Court of Queen's Bench of Alberta

Citation: Royal Bank of Canada v 907593 Alberta Ltd., 2011 ABQB 767

Date: 20111207
Docket: 1103 14929
Registry: Edmonton

Between:

Royal Bank of Canada

Applicant

- and -

907593 Alberta Ltd. and 1519861 Alberta Ltd.

Respondents

**Reasons for Judgment
of the
Honourable Mr. Justice R. Paul Belzil**

The Application

[1] In an originating application, Royal Bank of Canada (RBC) seeks an order restoring a mortgage which it had discharged on a title to land in priority to a second mortgage which was also registered on a title.

Facts

[2] On February 7, 2007 a prior owner of land granted a mortgage to RBC which was registered on title as a first mortgage.

[3] In 2009 title to the land was transferred to 907593 Alberta Ltd. (907) subject to the first mortgage.

[4] In 2010, 907 mortgaged the land to 1519861 Alberta Ltd. (151) which registered a second mortgage on title.

[5] On March 24, 2011 RBC registered a discharge of the first mortgage. Several months later RBC realized that the mortgage had been discharged in error. On August 31, 2011 RBC registered a Caveat on title giving notice of its interest in the land pursuant to its mortgage.

[6] The mortgage granted to 907 went into default and in March 2011, 907 wrote to RBC inquiring as to what amount was owing to RBC on its mortgage.

[7] RBC replied by letter advising that it had discharged its mortgage and provided 907 with a copy of the discharge which contains the following statement:

Royal Bank of Canada, the mortgagee, does hereby acknowledge to have received all the money to become due under the within described mortgage made by the within mortgagor; that the mortgage has not been transferred and that the same is wholly discharged.

[8] On April 29, 2011, 907 commenced a foreclosure action. There is presently owing approximately \$250,000 on its mortgage and the property is currently valued at approximately \$242,000. The property is currently listed for sale.

Position of the Parties

[9] Counsel for RBC acknowledges that there is nothing in the *Land Titles Act*, R.S.A. 2000, c. L-4, as amended, which specifically addresses the issue of the consequences of an inadvertent discharge of any instrument in terms of priority to subsequent registrations on title. He also concedes that there is no case authority supporting his position but argues that the court should exercise its discretion to prevent 151 from gaining a windfall.

[10] 151's position is that the unilateral mistake by RBC does not change the foundation of the Torrens System, that is, priority of registration prevails and that RBC is the author of its own misfortune.

Discussion

[11] The priority ranking of encumbrances on title is determined by s. 14(3) of the *Act* which reads as follows:

14(3) For purposes of priority between mortgagees, transferees and others, the serial number assigned to the instrument or caveat shall determine the priority of the instrument or caveat filed or registered.

[12] The Registrar committed no error. RBC requested that a discharge be registered and the Registrar complied with the request. Even if the error was capable of being corrected, the power to correct the register cannot be exercised to defeat rights that otherwise arise in law.

[13] In *Manor Investments Ltd. v Ross*, 2000 ABQB 317 the Registrar incorrectly issued an abstract of title which indicated that a second mortgage had been discharged.

[14] Prior to the error being discovered and rectified, a Builder's Lien was registered on title.

[15] It was held that the Builder's Lien had priority notwithstanding that the error was made by the Registrar. The following passages at paragraphs 8, 9, and 12 are instructive:

8 The Registrar has the authority to correct the register under s. 177 (4) of the *Land Titles Act, supra*. This section allows the Registrar to correct errors "so far as practicable without prejudicing rights conferred for value." Practically speaking, this power to correct errors cannot be exercised to defeat a right which has been made indefeasible under other sections of the Act, as an unqualified power to cancel or correct the Register could strike at the very roots of indefeasibility of title: see *Re Land Titles Act, Ferguson v. Registrar of Land Titles*, [1953] 1 D.L.R. 36 (Sask. C.A.).

9 Unlike land registry systems that exist in some other jurisdictions, the Torrens system provides a state guarantee of registered interests and an assurance fund to compensate owners whose interests are (for example) defeated due to an error made at the Land Titles Office. The operation of the system has been described thus:

... the cardinal principle of the statute is that the register is everything, and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world. Nothing can be registered the registration of which is not expressly authorized by the statute. Everything which can be registered gives, in the absence of fraud, an indefeasible title to the estate or interest [...] [Emphasis added.]

Fels v. Knowles (1907), 26 N.Z.L.R. 604 at 620 (C.A.), cited approvingly in *Boulter-Waugh & Co. Ltd. v. Union Bank of Canada*, [1919] 58 S.C.R. 385.

...

12 For the purposes of determining Manor's place in the hierarchy of interests, it is the latter number, 991 303 041, that is operative in the circumstances. Although section 178(2) of the Act provides that a correction has the like validity and effect as if the error had not been made, this section does not permit the correction to defeat a properly registered interest that arose in the interim. To hold otherwise would be contrary to the purpose of the Torrens system and contrary to the principle approved by the Supreme Court of Canada in *Boulter-Waugh & Co. Ltd., supra*, that in the absence of fraud, registration gives an indefeasible title to the interest.

[16] This factual situation is even weaker in that the error was RBC's and not that of the Registrar. In the result, RBC's position is without merit and its application is dismissed. The Respondent 151 is entitled to costs.

Heard on the 30th day of November, 2011.

Dated at the City of Edmonton, Alberta this 6th day of December, 2011.

R. Paul Belzil
J.C.Q.B.A.

Appearances:

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