

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Cheryl Martineau

Appellant

-and-

Allan Martineau

Respondent

-and-

Paddle Prairie Metis Settlement

Affected Party

Concerning a dispute regarding the recording of special interests on the
SE-09-102-19-W5M, NE-09-102-19-W5M
and the SE-16-102-19-W5M.

DECISION

Table of Contents

THE HEARING	3
BACKGROUND	4
JURISDICTION	5
SUMMARY OF EVIDENCE	5
APPELLANT'S EVIDENCE	5
RESPONDENT'S EVIDENCE	5
FINDINGS OF FACT	6
DECISION	6
REASONS	6
ORDER	7

The Hearing

Appeal heard by the following members of the Metis Settlements Appeal Tribunal:

Lorne Dustow, Panel Chair
John Brosseau, Panel Member
Richard Anderson, Panel Member

Parties to the hearing:

Cheryl Martineau, Appellant

Allan Martineau, Respondent

MSAT staff present:

Terri Quintal, Research and Development Officer

Place and date of the Hearing:

Council Chambers
High Level Town Office
High Level, Alberta
June 24, 2003

Objections to the Panel:

The Panel Chair asked if there were any objections to the composition or jurisdiction of the Panel. There were no objections.

Procedural Issues:

Allan Martineau informed the Panel at the hearing that his lawyer was not able to attend the hearing. The Panel Chair asked Allan Martineau if he would like to proceed without counsel, he said he would proceed. Allan Martineau also informed the Panel that he was not able to receive his hearing package, and thus was not prepared for the hearing. Allan Martineau was provided a copy of the hearing package and asked if he would like a recess in order to become familiar with the case. Allan Martineau opted to continue without a recess.

Allan Martineau submitted evidence to the Panel, a copy of which was given to the appellant. After the Panel reviewed the evidence it found that the submissions did not have a bearing on the case before them.

Background

On June 3, 1983, Beatrice Ghostkeeper signed an abandonment of land form, which relinquished her claim to the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M. Ms. Ghostkeeper abandoned the land in favour of Darrin Martineau.

In a letter dated January 29, 1990 to the Paddle Prairie Metis Settlement, Darrin Martineau explained that he had purchased numerous quarter sections of land from Ms. Ghostkeeper and that he had yet to receive title to the property. The letter further states that Leonard Olson, District Manager, Metis Settlement Branch, questioned the approval of the allotment of the quarter sections to one individual. Darrin Martineau asked the Paddle Prairie Metis Settlement Council to “re-approve” his applications for the allotments as per the request of the Metis Settlement Branch. The Paddle Prairie Metis Settlement re-approved his application and the land interests were put into Darrin Martineau’s name.

On June 30, 1995, Darrin Martineau applied to convert the SE-09-102-19-W5M and the NE-09-102-19-W5M to Metis titles. He also applied to have the SE-16-102-19-W5M converted to an allotment interest. The Paddle Prairie Metis Settlement Council approved all three applications pending a survey plan.

On January 22, 1998, Allan Martineau wrote to the Registrar of the Metis Settlements Land Registry and indicated that he would like to record an interest in the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M. Allan Martineau wrote that he had a “beneficial interest” in the quarters. The Registrar recorded the interests as “special interests”.

On February 11, 1999, Darrin Martineau filled out form MSLR14, Notice of an Application to Cancel a Recording. The MSLR14 form is used to cancel the recording of an interest without the consent of the claimant. Cheryl Martineau said that the forms were never sent to the Metis Settlements Land Registry prior to Darrin Martineau’s passing, but that it was his intent to file the requests.

On March 11, 1999, Darrin Martineau passed away without leaving Estate Instructions for the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M. As a result, the Paddle Prairie Metis Settlement Council became the Land Trustee. On June 29, 1999, the Paddle Prairie Metis Settlement Council passed resolution #0105/99, which moved to accept trusteeship for Darrin Martineau’s land as well as to transfer the above noted quarter sections to Cheryl Martineau, as the spouse of Darrin Martineau. To date the quarter sections have not been transferred to Cheryl Martineau because surveys of the properties have to be completed before the transfers can take place.

On March 24, 2003, Cheryl Martineau appealed to the Metis Settlements Appeal Tribunal to remove the special interests that Alan Martineau recorded against the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M from the land registry. Cheryl Martineau wants the interests cancelled as she feels that according to the law the “special interests” should not have been recorded.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 189(1)(b) of the *Metis Settlements Act*, which states:

189(1) The Appeal Tribunal

...

- (b) must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, by-laws or General Council Policies; ...

8.2 of the General Council Land Policy

8.2 References

Any question or dispute as to the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision.

Summary of Evidence

Appellant’s Evidence

Ms. Cheryl Martineau stated that the interests recorded against the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M should be taken off the registry, as Allan Martineau did not in fact have an interest in the properties.

Respondent’s Evidence

Allan Martineau testified that he recorded an interest in the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M in order to retain something for Darrin Martineau’s children. Allan Martineau said that Darrin Martineau was about to lose everything so he recorded the interests so that he could keep the land for Darrin Martineau’s children. Allan Martineau said that he did not record the interests for himself but for his grandchildren. Allan Martineau’s son, David Martineau, indicated that there was a verbal agreement that the land should go to Darrin Martineau’s children.

Allan Martineau also informed the Panel that he had cleared and farmed a portion of the property. He also said that he has a bill for \$19000 for the construction of a drainage ditch. Allan Martineau indicated that he would like the Panel to come to the property in order to view the area and inspect the drainage ditch.

Findings of Fact

- Darrin Martineau purchased the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M from Beatrice Ghostkeeper in 1983.
- On December 5, 1995 the Paddle Prairie Metis Settlement Council approved three application's to convert an allocation submitted by Darrin Martineau. The SE-09-102-19-W5M, NE-09-102-19-W5M were approved for Metis title and the SE-16-102-19-W5M as an allotment interest.
- On January 22, 1998, Allan Martineau sent a letter to the Registrar of the Metis Settlements Land Registry in which he asked to record a beneficial interest in the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M.
- On February 11, 1999, Darrin Martineau filled out a notice of application to cancel a recording form to cancel Allan Martineau's recorded special interest against the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M.
- On June 29, 1999 the Paddle Prairie Metis Settlement Council resolved, as land trustee, to transfer the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M to Cheryl Martineau.
- The Tribunal received Cheryl Martineau's appeal letter on March 24, 2003.

Decision

The Panel finds that the Respondent, Allan Martineau, does not have a legitimate special interest on the lands described as the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M on the Paddle Prairie Metis Settlement.

The Panel further finds that the Registrar of the Metis Settlements Land Registry erred in recording a special interest on the Registry in the name of Allan Martineau.

Reasons

The *Metis Settlements Land Registry Regulations*, Alberta Regulation 361/91 sets out the requirements that are to be met before an interest may be recorded. Sections 13(2) and 14(1) (a) and (b) state:

13(2) An interest that is to be recorded only may be recorded by submitting a recording document or by submitting the document on which the interest is based.

14(1) A person wishing to have an interest recorded must submit to the Registrar

- (a) a recording document that summarizes the transaction on which the interest is based, or
- (b) the document or a copy of the document on which the interest is based.

The document that Allan Martineau sent the Registrar of the Metis Settlement Land Registry as the basis for his special interest does not meet the criteria for a recorded interest as set out in s. 14(1)(a) or (b) of the *Metis Settlements Land Registry Regulations*. The document that the

Registrar received from Allan Martineau does not describe the transaction on which Allan Martineau based his special interest.

An interest in land is a right that is granted to someone by the owner of the land that permits you to use and occupy land or a portion of land to the exclusion of others. That is not the case with Allan Martineau's claim. Allan Martineau's claim was based on the fact that he worked, developed and farmed the lands and that is why he claimed a beneficial interest in the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M. Allan Martineau may have worked the land with Darrin Martineau but that does not grant him a special interest in the property. In order for Allan Martineau to claim an interest in the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M he would have had to have a signed agreement with Darrin Martineau attesting to the terms of the contract. There was no documentation presented to the Panel that confirmed that such a contract was in place.

Order

The Tribunal orders the Registrar of the Metis Settlements Land Registry to remove the special interests recorded by Allan Martineau against the lands legally described as the SE-09-102-19-W5M, NE-09-102-19-W5M and the SE-16-102-19-W5M on the Paddle Prairie Metis Settlement.

Dated in the City of Edmonton in the
Province of Alberta on the 31st day of
July, 2003.

Panel Chair