

Order No. 158

MSAT File No. 03-0004-03

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Judy Anne Stewart

Appellant

-and-

Settlement Council for the Peavine Metis Settlement

Respondent

Concerning a Land dispute on the NW-24-079-16-5

DECISION

The Hearing

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

Lorne Dustow, Panel Chair
John Brosseau, Panel Member
Joyce Parenteau, Panel Member

Parties present at the hearing:

Judy Anne Stewart, Appellant
Represented by: Roger Cunningham and Hazel Vicklund

Peavine Metis Settlement, Respondent
Represented by: Richard Hajduk, legal counsel

MSAT staff present:

Terri Quintal, Research and Development Officer
Vince Paniak, Executive Director/Tribunal Secretary

Place and date of the Hearing:

Room 302, High Prairie Inn
High Prairie, Alberta
March 1, 2004

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.

Background

Judy Anne Stewart was granted a provisional Metis title (PMT) to the NW-24-079-16-5 on the Peavine Metis Settlement (the Settlement). The PMT was granted from April 21, 1998 to April 20, 2003, with farming and agriculture listed as the purpose of use for the land. The special conditions outlined in section 8 are “as per conditions set on this Memorandum.”

On April 8, 2003, Ms. Stewart went to the Settlement Office and applied to renew her PMT interest. Ms. Stewart indicated on her application she, “cleared approximately 15 acres and 60 ft wide x ½ mile on east side of property and the west side is partly fenced.” She also wrote she used the land by hauling wood and clearing the property for the last five years. The application asks what improvements do you intend to make? Ms. Stewart wrote, “we intend to log it out and continue clearing, break and seed it for agricultural use”.

On June 4, 2003, the Metis Settlements Appeal Tribunal received Ms. Stewart’s appeal letter. Ms. Stewart is appealing the Peavine Metis Settlement Council’s lack of decision on her PMT renewal application.

On June 24, 2003, the Metis Settlements Land Registry sent Ms. Stewart a letter informing her of the cancellation of her PMT interest.

Ms. Stewart received annual rental compensation payments (compensation) for the NW-24-079-16-5 from April 21, 1998 until her PMT was cancelled on June 24, 2003. Ms. Stewart received the last compensation payment for her PMT interest on April 8, 2003. Currently, the Settlement is holding the compensation for the NW-24-079-016-5 in trust until the matter of Judy Stewart’s PMT renewal is resolved.

According to s. 4.7(1) of the Metis Settlements General Council Land Policy (Land Policy), Settlement Council has 45 days in which to decide on a submitted application. The Council should have, but did not make a decision on Ms. Stewart’s application by May 23, 2003.

Section 8.1 of the Land Policy allows for an appeal within 30-days of the date a Settlement Council was to decide on the application. Ms. Stewart appealed the Council’s lack of decision on June 4, 2003, which is within the 30-day appeal period. Her appeal references her request for Metis title, which the Tribunal understands it to be and accepts jurisdiction on the renewal of provisional Metis title.

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;

It further finds jurisdiction under s. 8.1 of the Land Policy.

8.1 Right to appeal

- (1) Wherever this Policy requires the General Council or a settlement council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area, any person affected by the decision, or lack of a decision, can appeal in writing to the Appeal Tribunal.
- (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar, within 30 days of the settlement council's decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.
- (3) There is no right of appeal if the proper documents are not filed with the Appeal Tribunal and the Registrar within the specified time limit.

Summary of Evidence

Appellant's Evidence

Mr. Roger Cunningham submitted Ms. Judy Anne Stewart made attempts to improve the land when money permitted. He indicated they do not have a good understanding of what improvements are or what needs to be done to renew a PMT or be awarded a Certificate of Metis Title.

Ms. Stewart and Mr. Cunningham submitted sworn statements testifying they used the land for hauling wood and clearing the property. Mr. Cunningham contends they cleared approximately 15 acres of the property and fenced part of the west side. Ms. Stewart informed the Panel she intends to log the quarter section and use it for agricultural purposes.

Roger Cunningham said some deadwood was knocked down but trees suitable for timber were left standing. The trees in the cleared area were knocked down and not piled in order to let the roots dry out. Mr. Cunningham said he worked on the west side of the quarter section. He indicated they tried to fence the property but could not finish because the boundaries of the quarter section are not marked.

Mr. Cunningham informed the Panel he did not pay a contractor to clear the land. He borrowed his nephew's Cat and cleared the land himself. Mr. Cunningham speculated it took him approximately two and a half days to clear the areas claimed as improvements. Mr. Cunningham said if he had to pay for a Cat and operator, it would have cost him approximately \$125 or \$150 per hour.

Ms. Vicklund informed the Panel Ms. Stewart did not receive the compensation she was entitled to, and was only paid until April.

Mr. Cunningham was presented with aerial photos of the quarter section, which were submitted as evidence by the Settlement. He showed the Panel the areas where improvements had been

made. He said he completed the said improvements, not the adjacent landowner, as alleged by the Settlement.

Respondent's Evidence

The Council submitted Ms. Stewart did not qualify for a PMT renewal, as she does not meet the conditions set out in s. 3 of the Memorandum of Provisional Metis Title. There is no inherent right to a PMT, it is a privilege, and the titleholder has an obligation to comply with the conditions in order to maintain the interest. Council indicated there were no substantive improvements made to the property which would allow the renewal of Ms. Stewart's PMT. Further, any attempts at improving the property were not directed at any fundamental purpose.

Council contends the area which Ms. Stewart claims to have cleared is something significantly less than 15 acres. Aerial photographs were presented as evidence to the Panel by the Settlement. Mr. Peter Geib of Digital Land Resources provided a photo interpretation explaining the aerial photography. Digital Land Resources approximates the size of the clearing to be 1 to 1.5 acres and the half-mile strip to be around 2 acres. Council submits the half-mile strip of land, claimed by the appellant as an improvement, serves absolutely no purpose. Council also posed the question as to whether the strip was cleared by Ms. Stewart or the adjacent landowner. Council indicated the attempts made by Ms. Stewart to improve the land were a 'fanciful appearance' to get a renewal to her PMT.

Ms. Stewart was instructed, in both Cree and English, about the requirements of the PMT. At no time during the instruction did she inform the Settlement Land Clerk she did not understand the requirements.

The Settlement indicated the current rate for a machine with an operator is around \$60 to \$175 an hour, depending on the size of the machine and the job required. For example, it is more expensive to have the trees knocked down and piled than to just knock them down. The timber on Ms. Stewart's land was only knocked down. It was not piled.

Findings of Fact

- Ms. Stewart held a provisional Metis title interest in the NW-24-079-16-5 starting April 21, 1998 and ending April 20, 2003. Farming and agriculture are listed as the intended land purpose.
- Although the amount of acreage is in dispute, both parties acknowledge land clearing has taken place. Clearing is evidenced by land and aerial photography. The trees knocked down during the land clearing process are not piled.
- Judy Anne Stewart received surface compensation for her provisional Metis title interest for resource activity on the NW-24-079-16-5.
- The Peavine Metis Settlement paid Judy Anne Stewart surface compensation until June 2003.

- The Metis Settlements Land Registry cancelled Judy Anne Stewart's provisional Metis title interest in the NW-24-079-16-5 was cancelled on June 24, 2003.

Decision

The Panel denies the application of Judy Anne Stewart to renew a provisional Metis title interest in the NW-24-079-16-5.

The Peavine Metis Settlement must compensate Judy Anne Stewart \$1,500 for the improvements made to the NW-24-079-16-5.

Reasons

Section 1(2) of the Memorandum of Provisional Metis Title indicates if an individual has not received a Metis title at the end of the first 5-year term, but in the Settlement's opinion, the titleholder is productively using the land and has made satisfactory progress on improvements, the grant can be renewed for another 5-year term. The evidence submitted by Ms. Stewart indicates two separate areas that were cleared. This combined cleared area is substantially less than 15 acres. The Panel finds the conditions of section 1(2) were not satisfied.

The Panel finds there was no rationale presented behind the selection of the location of the cleared areas for agricultural purposes or the placement of the partial fence.

Ms. Stewart incurred expenses, in the form of both monetary costs and sweat equity, while attempting to improve the land and should be compensated for her efforts. The Panel determines the \$1,500 payment by calculating the charge of a machine operator rate of \$100 per hour for 15 hours.

Order

The Tribunal orders:

- The Peavine Metis Settlement to pay Judy Anne Stewart \$1500 within 4 weeks of the date of this Decision.
- Both Judy Anne Stewart and Peavine Metis Settlement provide the Tribunal with proof of the \$1,500 payment within 6 weeks of the date of this Decision.

Dated in the City of Edmonton in the
Province of Alberta on the 5th day of May,
2004.

Lorne Dustow, Panel Chair