

MÉTIS SETTLEMENTS ACT

MÉTIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Clarence Cunningham

Appellant

-and-

Randy Cunningham

Respondent

Concerning a Land dispute on the SE-01-079-16-W5M

DECISION

The Hearing

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

Stan Delorme, Panel Chair
Dorothy Anderson, Panel Member
Ken Allred, Panel Member

Parties present at the hearing:

Clarence Cunningham, Appellant
Jack Cunningham: Witness for the Appellant
Lawrence Cunningham: Witness for the Appellant

Randy Cunningham, Respondent
Dorothy Cunningham: Witness for the Respondent

Claude Cunningham, Representing Peavine Métis Settlement
Land & Membership

MSAT staff present:

Russ Teed, Research and Development Officer

Place and date of the Hearing:

Peavine Community Centre
Peavine Metis Settlement, Alberta
July 26, 2007

Objections to the Panel:

In a letter dated June 11, 2007, MSAT asked the parties if there were any objections to the composition or jurisdiction of the Panel. There were no objections.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 8.2 of the Métis Settlements General Council Land Policy section which states:

8.2 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

Section 8.2 is accompanied by footnote number 38 which adds:

Section 189 of the Act sets out the conditions under which a dispute or reference can be made to the Appeal Tribunal.

Section 189(1) of the *Métis Settlements Act* states:

189(1) *The Appeal Tribunal*

- (a) must hear appeals and references and perform any function given to it under this Act or any other enactment;*
 - (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;*
- ...

Section 190(1)(d) of the *Métis Settlements Act* states:

190(1) *The Appeal Tribunal may in respect of any matter before it,*

...

- (d) confirm a mediated or other agreement reached between 2 or more persons in dispute in the form of a decision ;*

Section 26(1) of the *Métis Settlements Land Registry Regulation (AR 361/91)* states:

26(1) *As long as the registration of an interest is uncanceled, even if it is an unauthorized registration, the registered owner is the owner of the registered interest if*

- (a) the interest is qualified for registration,*
- (b) the registered owner has legal capacity to own the interest, and*
- (c) in the case of Métis title, provisional Métis title or allotment, the owner at the time of registration is the settlement in whose area the land is located or a member of the settlement.*

Evidence from the Hearing Package

On June 14, 1984, Council approved Clarence Cunningham's application for Allotment of land legally described as SE-01-079-16-W5M. However, the Department of Municipal Affairs (Métis

Development Branch) stopped the transaction July 12, 1984, due to outstanding housing and wiring loans, \$485.00 and \$677.72.

A document, dated January 21, 1990, indicates Clarence sold the SE ¼ - Twp 79 - R16 to Randy Cunningham for \$600.00.

Clarence Cunningham reapplied for the land March 23, 1990. His application was not approved by Council. The accompanying *Applicant Information Report*, dated March 23, 1990, indicates Clarence Cunningham had outstanding wiring and housing loans for \$740.56 and \$485.00. However, the document has been adjusted to indicate those loans were for the "Year ending '87 from Municipal Affairs". It also indicates the amount paid was \$1,225.56. The document is initialled by Debbie Quist and dated April 10, 1990.

Randy Cunningham applied for the land (SE-01-079-16-W5M) in 1990. His original application is not part of Peavine Métis Settlement records. However, communication indicating his application was submitted to the Métis Settlements Branch, reviewed by the Branch and contested by Clarence Cunningham is part of the record.

May 22, 1990 Clarence Cunningham wrote a letter to the Métis Settlements Branch contesting Council's decision to give Randy Cunningham the land.

May 23, 1990 a letter was sent from the Métis Settlements Branch to the Peavine Métis Settlement Council informing them of Clarence Cunningham's concern regarding Council granting Randy Cunningham the land.

In a letter dated, May 24, 1990, from the Métis Settlements Branch to Peavine Métis Settlement Council, it was indicated the Branch had reviewed Randy Cunningham's application for the land. As a result of Clarence Cunningham contesting the allocation of land to Randy Cunningham, the Branch recommended the Settlement hold off dealing with the matter until after proclamation of the new legislation (Métis Settlements Act) unless the application was approved at a general meeting.

A land agreement dated January 21, 1991, indicates Clarence Cunningham abandoned the land in favour of Randy Cunningham.

Randy Cunningham applied for a Métis title interest in SE-01-079-16-W5M on July 9, 1992. Council granted Randy Cunningham Métis title August 26, 1992 with Motion 92:08:26:09.

An explanation of Randy Cunningham's visit that ultimately led to his application was documented July 14, 1992 by the Land and Resource Assistant. The Métis Settlements Land Registry records indicate Randy Cecil Cunningham holds a Métis title interest in SE-01-079-16-W5M. Randy Cunningham's Métis title interest was registered in May, 2001. There is no recorded Allocation interest filed for the land.

Clarence Cunningham appealed to the Tribunal because he felt the interest in the SE-01-079-16-W5M belonged to him.

On November 20, 2006, Peavine Metis Settlement submitted a letter stating it did not have information to clarify the dispute between Clarence Cunningham and Randy Cunningham.

Appellant's Position

Clarence Cunningham felt the SE-01-079-16-W5M is his interest, because he wasn't paid by Randy Cunningham. He says he lent Randy the land for 2 years.

He says the documents in the Settlement office are forged. He would like a handwriting specialist to look at the papers, because he says he never signed anything other than the document he considers to be a Bill of Sale.

Clarence also says he didn't owe the Settlement money. It was a mistake. He said he did his own wiring after the company went broke so the Settlement forgave his debt. Clarence claims to have a letter from the Settlement stating the debt was a mistake and they gave his land back to him.

He said if he does not get the land he should be compensated. He says he had the land for approximately 6 years where he pastured cattle.

Clarence felt if he couldn't have the land, Randy Cunningham shouldn't have it either, because it wasn't posted when Randy applied for it. He says Randy received the land based on the sale from him. He felt if the Panel determined he didn't legally own the land and he couldn't legally sell it to Randy, the Settlement should post the land and everyone should have a right to apply for the land.

Respondent's Position

Randy Cunningham said he paid Clarence Cunningham for the SE-01-079-16-W5M, but he never signed the Bill of Sale Clarence made. He said his signature was forged. He said they were drinking when the deal was made and it was a handshake deal when he paid Clarence. He said Jack Cunningham was not present when Clarence sold him the land.

He said the only documents he signed were at the Settlement in front of Council. He felt he owns the land. He applied for it and they lost his application. He applied again and Council gave him the land.

Evidence at the Hearing

At the hearing Clarence Cunningham advised that he did not send the letter to the Métis Settlement Board dated May 22, 1990 and included as Tab 5. He also stated that he "didn't sign nothing" and Randy Cunningham didn't pay him one cent and hasn't spoken to Randy more than three times in ten years. He also advised that he did not sign the alleged agreement at Tab 8

witnessed by four councillors. He alleged that a lot of important papers are missing from the Settlement office and that he assumes the land is still his.

Randy Cunningham stated that Clarence and he shook hands on the deal and he paid \$600.00, a little bit at a time. He also stated that he and Clarence had been drinking at the time of the purchase. Randy's wife Dorothy advised that her mother-in-law told her that she had given Randy money to pay for the land. Randy advised that there has been money coming in for the power line since 1974 and that there would be more money coming in for a road in 2007 and that was what this fight was all about. He suggested that Clarence had not been concerned all of these years until now.

Lawrence Cunningham, Clarence's brother advised that Clarence could not read or write. He pointed out that neither of the documents at Tab 3 or Tab 8 had been signed by Clarence. He advised that he (Lawrence was chairman of the Settlement Council in 1973 and that the housing and wiring loans were wiped out at that time. Lawrence advised that there is no power line on the quarter section.

Jack Cunningham, whose signature as a witness is on the Tab 3 document stated that he did not see any money change hands.

Claude Cunningham, the Settlement Land and Membership clerk advised that the road would not be crossing the quarter section.

In response to a question from the panel in reference to the plan at Tab 15, Clarence advised that the quarter section shown on the plan was not the quarter section that he was claiming an interest in. Upon further questioning of all parties, it was determined that Clarence was claiming an interest in the NE $\frac{1}{4}$ of section 1, not the SE $\frac{1}{4}$.

Claude Cunningham produced a copy of Road Plan MSLR 389-0104 which clarified the location of the roadway through the SE $\frac{1}{4}$ 1-79-16-5 and other adjacent lands.

The parties thus agreed that the dispute before the panel was a misunderstanding of the facts and that there was no conflicting claim for the SE $\frac{1}{4}$ of section 1-79-16-5.

Findings of Fact

Based on the evidence (Tab 13) being a Land Search Report form the Métis Settlements Land Registry, the panel finds that Randy Cecil Cunningham, the respondent is the owner of a Métis Title estate in the SE $\frac{1}{4}$ of Section 1, Township 79, Range 16, West of the 5th Meridian.

In view of the admission of Clarence Cunningham that his interest was not on the SE $\frac{1}{4}$ of section 1 but rather on the NE $\frac{1}{4}$ of section 1, the panel finds that there is no dispute over the ownership of the SE $\frac{1}{4}$ of Section 1, Township 79, Range 16, West of the 5th Meridian.

Decision

The Métis Settlements Appeal Tribunal having heard the evidence of the parties and having determined that there was an error made by the appellant in assuming that the land claimed by Randy Cunningham was the NE ¼ of Section 1, Township 79, Range 16, West of the 5th Meridian rather than the SE ¼ of Section 1, Township 79, Range 16, West of the 5th Meridian dismisses the appeal and confirms the ownership of Randy Cunningham in the SE ¼ of Section 1, Township 79, Range 16, West of the 5th Meridian.

Reasons


The parties have agreed that the appeal was filed in error due to the misconception that the land owned under Métis title by Randy Cunningham was the land being claimed by Clarence Cunningham.

Pursuant to section 26(1) of the Métis Settlements Land Registry Regulation (AR 361/91) "*As long as the registration of an interest is uncanceled, even if it is an unauthorized registration, the registered owner is the owner of the registered interest . . .*"

Order

The Tribunal orders that the appeal of Clarence Cunningham with regard to the ownership of the SE ¼ of Section 1, Township 79, Range 16, West of the 5th Meridian be dismissed and the Métis Title of Randy Cecil Cunningham is hereby confirmed in the SE ¼ of Section 1, Township 79, Range 16, West of the 5th Meridian.

Dated in the city of Edmonton in the
Province of Alberta on the 27 day of
AUG, 2007.


Stan Delorme, Panel Chair