

Before:

Metis Settlements Appeal Tribunal
Land Dispute Panel

Between:

David Delorme, Appellant

-and-

Elaine Delorme, Respondent

Concerning:

Land Dispute over NE-30-64-16-4

Decision Date:

June 2, 2008

D e c i s i o n

Land Dispute Panel Members

Allan Lamouche, Panel Chair
Dorothy Anderson, Panel Member
Violet Haggerty, Panel Member

Parties present at the hearing

David Delorme, Appellant
Elaine Delorme, Respondent

MSAT staff present at hearing

Harry Cunningham, Dispute Resolution Officer
Harold Robinson, Tribunal Secretary

Place and date of the hearing

Buffalo Lake Metis Settlement
May 21, 2008

Issue/relief - what the parties want

1. *Clarification of ownership interests in NE-30-64-16-4*: The Appellant, David Delorme, requested the Tribunal to order that a 20.4 acre lot in NE-30-64-16-4 be transferred to him.

1. Clarification of ownership interests in NE-30-64-16-4

1.1 Applicable legislation – jurisdiction and decision-making criteria

Section 8.2 of the Metis Settlements General Council Land Policy [Policy GC-P9201] sets out the Tribunal’s authority to decide this matter. It reads as follows:

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. [A footnote to section 8.2 reads that section 189 of the Act sets out the conditions under which a dispute or reference can be made to the Appeal Tribunal].

The relevant part of section 189(1) of the *Metis Settlements Act* (the Act) [R.S.A. 2004] is set out below:

Responsibilities

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, bylaws or General Council Policies.

The Land Dispute Panel is satisfied that section 8.2 of the Metis Settlements Land Policy [GC-P9201], as read in conjunction with section 189(1)(b), effectively vests our Panel with authority to decide the question of ownership now before us. For clarity, section 8.2 of the Policy clearly sets out a key appeal function of the Tribunal—which is to settle questions of ownership in Settlement lands—while section 189(1)(b) of the Act calls on the Tribunal to fulfill all appeal functions named in General Council Policies.

1.2 Evidence before the Panel

The Appellant, David Delorme, argued that he purchased two parcels of land located on the NE-30-64-16-4 from his sister, Elaine Delorme. According to the Appellant, he bought “Lot 6” on the NE-30-64-16-4 and then purchased another 20.4 acres for \$2,500.00 in a separate transaction.

The Appellant referred the Panel to a Bill of Sale at tab 10 of the hearing package, which he suggested supports his claim to have purchased an additional 20.4 acres on NE-30-64-16-4 from Ms. Delorme. The Bill of Sale reads as follows:

I Elaine Delorme have received \$200.00 Dollars from David Delorme on Dec 13/04 for payment on land on NE-30-64-16-W4 west of existing and south of property of his west side remaining land to NW Quarter, \$800.00 dollars remaining owing on land parcel

The apparent signatures of Elaine Delorme, David Delorme and a witness follow the portion set out above. This is then followed by a list of purported payments and dates.

Also contained in the hearing package was another Bill of Sale between David Delorme and Mr. Elmer Ghostkeeper, for the same 20.4 acres. This second purported Bill of Sale came after the first purported Bill of Sale set out above.

The Respondent, Elaine Delorme, testified that she originally purchased the NE-30-64-16-4 quarter for her parents to retire on. She received Metis Title in the land on May 27, 1996 and told the Panel that she later subdivided and sold certain parts of the land, including transferring certain interests to Ed Swain, as well as her niece, and Lot 6 to her brother, David Delorme. According to the Respondent, though, the Bill of Sale at tab 10 applied to Lot 6 and not to the 20.4 acres as claimed by the Appellant. Furthermore, the Respondent claimed not to have any discussions or dealings whatsoever with the Appellant for the NE-30-64-16-4.

1.3 Findings of Fact

- The Metis Settlements Land Registry (MSLR) Land Search Report—which was contained in the hearing package—shows Elaine Delorme as holding Metis Title in NE-30-64-16-4, *excepting* thereout several subdivided parcels, including Plan 900460 Lot 6 (9.54 ac.).
- A MSLR Land Interest Transfer Document—which was also contained in the hearing package—shows that Elaine Delorme transferred 9.54 acres (Plan 900460) on NE-30-64-16-4 to David Delorme effective January 21, 2005.
- The MSLR does not contain any other recorded transfers of interest between Elaine Delorme and David Delorme for the NE-30-64-16-4.
- Elaine Delorme and David Delorme signed a Bill of Sale, with a date of December 13, 2004 incorporated into the document.
- The date of December 13, 2004 was originally noted as the transfer date in the MSLR Land Interest Transfer document for Lot 6 contained in the hearing package and listed above.

1.4 Analysis / Reasons

The Metis Settlements of Alberta have established rules and structures for recording land interests and transferring land interests. Though the land interests are unique (Metis Title and Provisional Metis Titles interest are only found on the Metis Settlements), the Metis Settlements Land Policy and Land Registry system is based on the common principle of providing certainty with respect to recording and transferring interests in Settlement lands.

This means that the rules for transferring and recording interests must be followed. It also means that those who wish to challenge the Land Registry record must provide evidence that is strong, clear and consistent with their claim to having acquired an interest in land. This type of evidence

could include a clearly worded and properly executed Bill of Sale along with signed transfer documents required by the MSLR.

The Appellant asked that the Panel read the Bill of Sale at tab 10 as providing sufficient proof of his acquisition of an additional 20.4 acres from the Respondent. However, given the extremely vague language of the Bill of Sale—and the Respondent’s equally likely assertion as evidence in the MSLR Transfer document that the Bill of Sale related to the transfer of the Lot 6 to the Appellant, and not to any additional land on NE-30-64-16-4—the Panel cannot rely on the Bill of Sale as supporting the Appellant’s claim.

The Appellant also said that a third party, who was not present at the hearing, had additional documents to back his claim to the additional 20.4 acres in question. The Panel is not moved by the Appellant’s claim. In this regard, the Panel notes that the Appellant had every opportunity leading up to the hearing to review the hearing package and include the “missing” documents. In the Panel’s view, the failure to produce documents before a hearing will not be rewarded by having the Panel rely on mere assertions of their existence.

In general, it is up to an Appellant to prove his or her case on the balance of probabilities. (This means that an Appellant must convince the Panel that their position is more likely than not to be true). All parties are expected to prepare and produce reliable evidence that meets the standards of review and fairness established by the Tribunal.

On a final note, it is also up to third parties who wish to acquire interests in Settlement lands to first check with the MSLR to determine the recorded interests in the land. The MSLR exists to provide this certainty and those who proceed without first checking the recorded interests do so at their own peril.

1.5 Decision

In the case at hand, the Appellant did not supply clear or strong evidence to back his claim for an additional 20.4 acres on the NE-30-64-16-4. The Appellant’s appeal is therefore rejected.

Dated in the City of Edmonton in the Province of Alberta on the 2nd day of June 2008.



Allan Lamouche, Panel Chair