

CITATION: Grey Sauble Conservation Authority v. Dirckx et al, 2025 ONSC 3090
COURT FILE NO.: CV-20-047-0000
DATE: 2024 05 27

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

GREY SAUBLE CONSERVATION)
AUTHORITY)

Applicant)

- and -)

LEROY DAVID DIRCKX)

Respondent)

Nicholas A.G. Lovell, for the Applicant

David Nusko, for the Respondent

HEARD: March 14, 2024, at Owen Sound

REASONS FOR JUDGMENT

Emery J.

[1] The applicant Grey Sauble Conservation Authority (“GSCA”) owns large tracts of land in part of southwestern Ontario that cradles the Bruce Peninsula from Lake Huron to the west, and Georgian Bay to the east. GSCA operates those lands as conservation areas, among them Hibou Conservation Area (“Hibou”). Hibou lies along the eastern shoreline of Owen Sound Bay just south of Leith, Ontario.

[2] GSCA brings this Application for a declaration under s. 97 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43 that it is the proper owner of title to a particular parcel of property described on PIN 37092-0350(R) within Hibou. Title to this property was left behind in the registry system when all other surrounding properties owned by GSCA were converted to land titles in 2009.

[3] The property at issue is Parcel 3 of Lot 36, Broken Front Concession in the former Township of Sydenham, now the Municipality of Meaford (the “subject property”). The legal description carried forward as the physical description for the subject property was the thirdly described piece of several properties described under a deed registered as Instrument number R138258. This deed conveyed title to certain lands under the registry system when the conservation lands for Hibou were acquired in 1973 by GSCA’s predecessor, North Grey Regional Conservation Authority.

[4] The Director of Titles assigned PIN's to the subject property and the surrounding lands during the administrative conversion of those other lands to the land titles system.

[5] The question over the ownership of the subject property has arisen because the respondent Leroy David Dirckx claims that the legal description for PIN 37092-0350(R) is wide enough to encompass the legal description for PIN 37092-0102 (LT). The property under PIN 37092-0102(LT) was converted to land titles along with most of the surrounding lands and is privately owned. Title to this property is held by individuals who are not parties to this proceeding and have nothing to do with Parcel 3 of Lot 36.

[6] The basis for the dispute between GSCA and Mr. Dirckx stems from his argument that the two PIN's are based on the same legal description. Ownership of the subject property became an issue because the instruments listed in PIN 37092-0350(R) showing the chain of title leading up to the creation of the PIN did not include Instrument R138258 to show the current owner.

[7] Mr. Dirckx claims that he is the rightful holder of title to PIN 37092-0350(R). He asserts a chain of title to the subject property going back to 2013. He relies on the fact that the chain of title for PIN 37092-0350(R) is based on the legal description for the subject property as there is no instrument showing a previous

owner within the 40 years preceding it. He takes this position because Instrument number R138258 is not listed on PIN 37092-0350(R) to establish root of title as required by the registry system.

[8] Mr. Dirckx asks this court to dismiss the Application on the basis that GSCA cannot show good title to the subject property. In the alternative, he submits that this dispute over title should be resolved administratively through the Director of Titles. In addition to asking the court to dismiss the Application, Mr. Dirckx requests that an order be made to remove the Certificate of Pending Litigation issued under the Order of Sproat J. dated April 21, 2020 and registered against title to Parcel 3 of Lot Number 36.

Background

[9] North Grey Region Conservation Authority was the owner of the Hibou lands prior to its amalgamation with the Sauble Valley Conservation Authority. These conservation authorities were amalgamated by an Order-in-Council to form GSCA in or around 1984. Any reference to GSCA should be taken to include its predecessor North Grey Regional Conservation Authority in these reasons.

[10] Hibou consists of approximately 133 hectares, or 328.5 acres of recreational land. This large area fronts on to Owen Sound Bay, with its eastern shore stretching several hundred metres from north to south along the waterfront.

[11] Since its acquisition, GSCA has maintained Hibou for the use and enjoyment of the public. Hibou offers 4 kilometres of trails, a playground for children, seating areas and parking lots. Hibou also has a large sand beach that families enjoy on the lake side of its perimeter.

Historical chain of title

[12] Timothy Lanthier, the Chief Administrative Officer of GSCA, has given an affidavit in support of the Application that sets out the history and provides much of the factual background for Hibou and the title to various properties at issue in this case. Mr. Lanthier relies heavily on the title searches conducted by Michael D. Hillyer, a professional title searcher. Mr. Hillyer completed a historic search of the subject property at the request of John Middlebro's, lawyer for GSCA. The parties have generally accepted the narrative provided by Mr. Lanthier to the extent of the land transactions leading up to the claim Mr. Dirckx' has made.

[13] Mr. Middlebro's has also given an affidavit in support of the Application. Much of Mr. Middlebro's affidavit is dedicated to providing a roadmap through the title searches discussed by Mr. Lanthier.

[14] Mr. Dirckx filed an affidavit dated May 12, 2023 in response to the Application. In his affidavit, Mr. Dirckx sets out evidence of further details about title to the properties at issue.

[15] The geographic location of Parcel 3 is situated in the northwest corner of Lot 36, which is adjacent to Lot 37. It is a shoreline property. The geographic location of Parcel 3 in Lot 36 and in relation to Lot 37 and the greater Hibou Conservation Area is shown in the diagram attached as Appendix A to these reasons. This diagram was initially attached as exhibit "V" to Mr. Lanthier's affidavit.

[16] The lands making up Hibou were purchased by GSCA in 1973 and 1974. Much of the conservation lands assembled for Hibou came from the purchase of all or parts of Lots 36 and 37, and included Parcel 3 of Lot 36. These lands were purchased from the Estate of Anna Gertrude Ireland, the Estate of George Dillane McLauchlan, and Goldie A. Kennedy. The lands were conveyed to North Grey Region Conservation Authority by Deed of Land registered as Instrument number R138258 on June 15, 1973.

[17] Prior to the conveyance of the various lands to North Grey Region Conservation Authority in 1973, three properties including Lot 36 were conveyed by Margaret Lemon to John Henry McLauchlan in 1900. Those properties were then transferred from John Henry McLaughlan to William Goldie McLauchlan and George Dillane McLauchlan equally in 1904. The interest in the properties held by William Goldie McLaughlan passed to his daughters Anna Gertrude Ireland, Jean Alexandria McLellan and Goldie A. Kennedy. The interest of Jean McLellan was then conveyed by her estate to Goldie A. Kennedy in June 1959. As W.G.

McLaughlan and George Dillane McLaughlan were brothers, Ms. Ireland, Ms. McLennan and Ms. Kennedy were nieces of George Dillane McLaughlan. Ms. Ireland and Ms. McLellan predeceased George Dillane McLaughlan and therefore the grantors of the lands from the old McLaughlan farm were the Estate of Gertrude Ireland, the Estate of George Dillane McLaughlan and Goldie A. Kennedy.

[18] A Declaration of Possession was registered on Teraview as Instrument number R138925 on July 10, 1973 sworn by Goldie Kennedy as a prior owner. This Declaration of Possession confirmed Ms. Kennedy's possession of the subject property from January 13, 1953 to June 15, 1973.

[19] The other lands adjacent to the subject property were converted by Teraview on behalf of the Province of Ontario to a Land Titles Conversion Qualified parcel in 2009. The Director of Titles did not bring the deed for the subject property into the electronic parcel register to convert PIN 37092-0350 (R) to land titles at the time.

[20] Mr. Lanthier states that he does not know why Instrument number R138258 was omitted from the legal description for PI 37092-0350(R) when PINS were assigned to properties. He states that he is advised by Mr. Middlebro' and verily believes the omission of any reference to Instrument number R138258 is most probably the reason PIN 37092-0350(R) was not converted to the land titles

system. Mr. Lanthier deposed his understanding that, if any title defect with respect to a property was found during conversion, or where a forty-year search of the title gave no information regarding ownership, the Director of Titles would leave the land subject to the *Registry Act*.

[21] The subject property therefore remained in the registry system instead of becoming an electronic Land Title Conversion Qualified parcel in 2009.

The chain of title in dispute

[22] Mr. Dirckx has filed an affidavit setting out the chain of title to the subject property on which he relies to assert his claim to PIN 371092-0350(R), and that he therefore holds title to the subject property. This chain of title starts in 2013 with Roger Pearce.

[23] The only instrument where Roger Pearce is shown on the Abstract Index for PIN 37092-0350(R) is a quitclaim deed given by him on May 23, 2013, with Catherine Pearce consenting as his spouse. This quitclaim deed was given by Mr. Pearce to Norman Edwards Sones and registered as Instrument R564534. The instrument states that it is a “quitclaim deed to confirm transferees legal title”. The deed contains a metes and bounds description for PIN 37092-0350(R) on page 2 as an extension of the legal description in box 6, which reads as follows:

“Part of Lot 36, Broken Front Concession, Township of Sydenham,
County of Grey more particularly described as follows:

PREMISING that the most easterly limit of the subject lands has a
geographic bearing of North 45 degrees, 14 minutes east, as shown
on the Boundaries Act Survey number BA-64, registered in the
Registry Office for Grey Number 16 on the 14th day of December,
1964 as Number 415 and relating all bearings herein thereto:

COMMENCING at the most southerly angle of the Parcel of lands
as shown on said Boundaries Act Survey Number 815 as
instrument number 55997; THENCE North 45 degrees, 14 minutes
east a distance of 80 feet;

THENCE North 43 degrees, 7 minutes west a distance of 48.76 feet
more or less to the waters edge of Owen Sound or Georgian Bay;

THENCE in a southwesterly direction along the said waters edge,
a distance of 80 feet more or less, to a point distant 54.47 feet more
or less measured on a bearing of south 38 degrees, 33 minutes
east from the point of commencement;

THENCE south 38 degrees 33 minutes east a distance of 54.47 feet
more or less to the point of commencement.”

[24] The inscription "AS IN A PREVIOUS INSTRUMENT UNDER R306871" appears below the legal description on page 2. The quitclaim deed further states that \$198,000 was paid for the subject property.

[25] Timothy Lanthier states in his affidavit that the legal description for PIN 37092-0350(R) for the subject property was taken from Instrument number R306871 as indicated at the bottom of the second page. Mr. Lanthier states that the legal description in that instrument is not the legal description for the subject property, but for a different parcel of property nearby. In particular, he believes that the legal description under these instruments belongs to the property having PIN 37092 – 0102 (LT).

[26] On July 28, 2014, the property under PIN 37092-0350(R) was transferred by Norman Edward Sones as the transferor to Barbara E.M. Dean and Leroy David Dirckx as the transferees. The transfer was registered on title as instrument number R564718. This instrument shows that consideration of \$250,000 was given in exchange for the repayment of a mortgage on another property. The legal description shown in box 6 that is continued on page 2 is the same as the quitclaim deed, but on this deed the inscription reads "AS IN A PREVIOUS INSTRUMENT NUMBER R564534". This reference is to instrument number given when the quitclaim from Mr. Pearce was registered. Mr. Lanthier states that this transfer also used the wrong legal description for the subject property.

[27] On April 7, 2020, Barbara E.M. Dean and Leroy David Dirckx registered a transfer of PIN 37092-0350(R) under Instrument number R565487 to Leroy David Dirckx alone. The land transfer tax affidavit shows the consideration of \$138,000 given for Ms. Dean's transfer of her 50% interest.

Positions of the parties

GSCA

[28] GSCA brought this Application when Mr. Dirckx placed a "For Sale" sign on the subject property, drawing complaints from neighbors and users of GSCA lands.

[29] GSCA submits that it is the true owner of the subject property in fee simple. GSCA states that Mr. Dirckx has never acquired title or any interest or estate in the subject property from his alleged predecessor in title as they had no right to title and therefore held no rights in the subject property to convey. GSCA submits that it has held title to PIN 37092-0350 (R) since 1973.

[30] At no time has the paper version of the parcel register or the electronic parcel register for the subject property shown any evidence of ownership or possession by Roger Pearce. There was never a right, interest or title to the subject property held by Roger Pearce to give on May 23, 2013 as Instrument number R564534. This was the instrument which was purportedly given to Norman Edward Sones to confirm his title as "transferee" to the subject property.

[31] GSCA states that the metes and bounds description used in that deed relates to a different property to the north of the subject property. That other property has a separate chain of title.

[32] GSCA claims ownership of PIN 37092-0350(R) and the subject property because Instrument R138258 intended to convey title to that property described as Parcel 3, Lot 36 as the “thirdly” part of four parcels of land conveyed to GSCA. Any omission to make a reference to Instrument R138258 when the PIN was assigned to the subject property was made in error. Had Instrument 138258 been referenced properly, GSCA’s ownership of the subject property would have been established for the first registration required for conversion to land titles.

[33] In the event its ownership of the subject property cannot be proven through chain of title, GSCA claims in the alternative that it is entitled to ownership of the subject property by virtue of adverse possession. It has exercised sole dominion and control over it since 1973. To the best of its knowledge, GSCA has paid municipal taxes on the subject property since that time.

[34] It is important for the court to determine the ownership of the subject property and its PIN so that no other party, including Mr. Dirckx, is able to sell or attempt to sell the subject property to an unwary buyer. GSCA is also concerned that the subject property could be encumbered by municipal tax arrears if Mr. Dirckx is

shown as the owner but has not paid the required property tax to the Municipality of Meaford.

Leroy David Dirckx

[35] Mr. Dirckx is employed as a realtor and from time to time purchases and sells investment properties. He is the principal of Atlas World Realty Inc.

[36] Mr. Dirckx takes the position that he holds title to PIN 37092-0350(R) and is therefore the legal owner of the subject property. He has provided evidence that he took title to the subject property through a series of transactions starting with a quitclaim deed from one Roger Pearce as the only owner shown over the preceding 40 years. As the subject property remains in the registry system, good title is established through tracing legal interests in property described under various instruments.

[37] Mr. Dirckx states that he believed he was acquiring a property that was not part of the Hibou lands when he purchased the subject property. He refers to the Grey County Property Report for 359186 Grey Road 15 prepared on February 11, 2022 in support of this belief. The surrounding lands in Hibou are described as “Conservation Authority Land” in the Grey County Report. In contrast, Mr. Dirckx states that the Grey County Report refers to PIN 37092-0350(R) as “vacant

residential/recreational land on water.” He therefore believed he was acquiring the property under the PIN at the correct physical location.

[38] Mr. Dirckx also relies on the Boundaries Act Survey number BA-64 on file at the Registry Office for Grey County to support his belief as to the location of the property he was purchasing. Survey number BA-64 showed PIN 37092-0350(R) as the property identifier for the subject property. He states that he relied on the PIN placement on that survey when he bought the subject property.

[39] Mr. Dirckx has since confirmed that, due to an error in the Parcel Index Map maintained by the Director of Titles for the placement of PINS, the actual location of the legal description he used is some distance east of where he believed the property was located. The confusion arose because the Director of Titles has signed two PINs with the same legal description.

[40] Mr. Dirckx further states that he believed the legal description for the subject property was correct as it was the same legal description used on instruments previously registered on title to the PIN, including Instrument R306871 in particular.

[41] After he was served with the Application, Mr. Dirckx removed the “For Sale” sign and took the subject property down from the Multiple Listing Service. He engaged an Ontario Land Surveyor, Neil C. Milne of Hewett & Milne Ltd., to prepare a surveyor’s report. Mr. Milne and Mr. Dirckx determined that the Land

Registry Office apparently created two PINs for the property described in Instrument number 564534. It further appeared to them that the Land Registry Office had placed PIN 37092-0102(LT) on the correct location of the Property Index Map, while PIN 37092-0350(R) had been placed in the wrong location.

[42] Mr. Dirckx admits that Mr. Milne's report shows that GSCA owns "the physical dirt" where he placed the "For Sale" sign. He concedes that the subject property was included in the transfer registered as Instrument number R138258. However, he maintains that the Milne report also concludes that the legal description of PIN 37092-0350(R) places it outside the lands described in Instrument number 138258 on which GSCA relies. He concludes from this deduction that GSCA does not own the subject property described under that PIN as it was not shown under the deed. He states that the most efficient way to correct this defect is to apply to the Director of Titles. It is his position that it is up to the Director of Titles to correct any error in the title to the subject property.

[43] Mr. Dirckx argues that Instrument number R138258 on which GSCA relies to support its claim does not appear on the Abstract index for PIN 37092-0350(R). He states that the Director of Titles has taken the position that PIN 37092-0350(R) is not a duplicate of PIN 37092-0102(LT) and that the subject property is situated outside surrounding properties having separate PIN's.

[44] Mr. Dirckx therefore submits that GSCA does not have a valid claim to title under PIN 37092-0350(R). He further submits that GSCA has not named the owner of the other property having the PIN 37092-0102(LT) as the property having the same legal description as PIN 37092-0350(R) so that they may join issue in this proceeding.

[45] As a result, Mr. Dirckx takes the position that he became the full owner of the subject property on April 7, 2020 when he acquired the interest of the co-owner Barbara Dean under a Transfer/Deed of Land registered as Instrument number R565487. He concludes that the court should dismiss the Application because GSCA cannot prove it has an interest in the subject property.

Analysis

[46] In *Williams v. Ontario*, 2012 ONSC 5780, Lax J. for the Divisional Court explained that:

Ontario operates two land registration systems. In the land titles system, a statement of title confirming ownership is provided for each registered property and the Ontario government guarantees that the owner is the party named on the register. In the registry system, the government does not provide a guarantee of ownership and a purchaser must search title to satisfy himself or herself that a potential vendor has valid property to convey. Ontario has converted most properties registered in the registry system to the

land titles system; however approximately 36,000 properties remain in the registry system.

[Section 112](#) of the [Registry Act](#) provides that a person dealing with land in the registry system only has to trace the chain of title back for forty years to receive good title. This is commonly referred to as the “forty year rule.”

[47] GSCA must show that it holds title to the subject property by proving root of title to the property as the applicant. This burden requires GSCA to follow the chain of title to establish its ownership of the subject property and its PIN.

[48] In order for Mr. Dirckx to claim good title to the subject property, he must establish chain of title prior to 2013 to show that Roger Pearce held title to that property to quitclaim or convey.

Chain of title to P.I.N. 37092-0350(R)

[49] The first chain of title to review relates to PIN 37092-0350(R) as GSCA takes the position that PIN 37092-0350(R) is the Property Identification Number for the subject property. This is not an issue in dispute.

[50] GSCA has traced title to the thirdly described parcel of the conveyed property under Instrument R138258 from the deed transferring three parcels of land to John Henry McLaughlan in 1900 to the transfer of the thirdly described parcel of property conveyed to North Grey Regional Conservation Authority in 1973.

[51] Since 1973, the subject property has been owned by GSCA and has been maintained exclusively by it. GSCA has controlled access to the subject property and excluded all persons except those individuals entering onto the subject property with permission. For the last 50 years, GSCA has maintained the subject property in its natural state.

[52] In para. 36 of his affidavit, John Middlebro' concludes from a review of the data retention report for PIN 37092-0350(R) attached as exhibit "R" to Timothy Lanthier's affidavit that PIN 37092-0350(R) did not convert to land titles because the Land Registry office could not find an owner.

[53] Mr. Middlebro' attaches a letter from Debra Eveleigh, counsel for the Director of Titles, dated November 30, 2023 to both himself and to Mr. David Nusko, counsel to Mr. Dirckx. The letter was written after this proceeding was commenced. In her letter, Ms. Eveleigh sets out an overview of the origin descriptions for PI. 37092-0350(R) and PIN 37092-0102(LT). Ms. Eveleigh expresses the view as counsel for the Director of Titles that Mr. Dirckx is incorrect in his assertion that the Land Registry Office made an error by supposedly creating two distinct PINs for one parcel of land. Ms. Eveleigh states that the two PINs relate to two distinct properties located within Lot 36.

[54] Ms. Eveleigh notes that the legal description for PIN 37092-0350(R) refers to the northern boundary of a road allowance and discusses the possible intention of the parties in Instrument R565487 to reference the County Road (East Bay Shore Road) that runs north of it. This is not a “road allowance” as that term is defined. Ms. Eveleigh concludes that the legal description for “Parcel 3” does not exist in the absence of a road allowance within Lot 36. This may provide the reason why the subject property was not converted to the land titles system on the Abstract map.

[55] The reference to the County Road is likely to Grey County Road 15. This road is a public highway that runs the length of Hibou from the southwest to the northeast. The road comes within 60 feet of the shoreline in places. There is no vehicular access to the subject property from this highway although access by vehicle is controlled through parking areas on conservation lands.

[56] Mr. Dirckx objected to the admissibility of the letter from Ms. Eveleigh as hearsay. I do not consider this letter to be hearsay evidence. I accept it for the statements Ms. Eveleigh makes in it, and not *per se* for the truth of its contents. If it is hearsay evidence, I accept the letter for its necessity and reliability as Ms. Eveleigh expresses her views as a legal advisor in the Director’s office to provide the institutional view of the matters in dispute.

[57] It was not until the spring of 2020 that Mr. Lanthier learned that GSCA's ownership of the subject property was under challenge. He only learned of this challenge when he received complaints from neighbouring property owners that a "For Sale" sign had been placed on the subject property by Mr. Dirckx. Upon being confronted, Mr. Dirckx took the sign down and the parties continued their contest through this proceeding.

PIN 37092-0102(LT)

[58] Mr. Hillyer researched PIN 37092 – 0102 (LT) to determine the root of title to that property. Mr. Hillyer reported that the first conveyance located for that lot occurred on September 3, 1907 as a deed from William McKeen to Thomas W. Douglas in instrument SY 7837. Mr. Hillyer traced title to that property all the way up to the date of the administrative conversion to land titles. In 2002, Raymond Joseph Bastarache and Juanita Netta Bastarache conveyed the property to Ian Harold Stewart and Heather Anne Drummond under instrument R0451647. Later, Ian Harold Stewart and Heather Anne Drummond conveyed the property to Ian Harold Stewart on February 12, 2010 in instrument GY26925.

[59] The owner of the property now bearing PIN 37092-0102(LT) is not the same as the parties disputing title to the subject property. Despite the position taken by Mr. Dirckx, the owner of the property with PIN 37092-0102(LT) has not been

named as a party to this Application because that property is under the land titles system. Accordingly, ownership of title is guaranteed, subject to certain limitations, under s. 44(1) of the *Land Titles Act*, RSO 1990, c. L.5. There was no need to involve Mr. Stewart as a party to the dispute over PIN 37092-0350(R).

[60] There is also the difference in topography that distinguishes the description of the property having PIN 37092-0102(LT) from the subject property. For one thing, the shoreline shown in the survey for this PIN is inconsistent with the shoreline of the subject property. The shoreline shown for the property under PIN 37092-0102(LT) is relatively level. By comparison, the shoreline of the subject property has a north-south slope as it proceeds east.

[61] GSCA acquired the subject property at a time when there were four cottages on the subject property which were leased to private individuals until 1979. These cottages were removed as each of the four leases expired. The true copy of plan BA-64 from the Boundaries Act survey for the Owen Sound shoreline shows only one building on the property having PIN 37092-0102(LT).

[62] From all accounts, appears that even the physical attributes of the two properties show demonstrable differences to make them separate and distinct from one another.

Municipal taxes

[63] GSCA has learned that the Municipality of Meaford was advised of a change in ownership by someone who was not representing GSCA when the deeds in and after 2013 were registered. Subsequently, significant municipal tax arrears have accumulated on the subject property. As of August 22, 2022, Mr. Dirckx is shown as owing \$20,001.02 to the Municipality of Meaford for those municipal taxes. The subject property is therefore subject to a potential tax sale.

[64] Despite this revelation, Mr. Lanthier believes that GSCA has in fact continued to pay the municipal taxes on the subject property. According to the MPAC Assessment for the Hibou area that falls within Meaford's municipal boundaries, the assessed value for the 328.5 acres was \$312,000 in 2008. Mr. Lanthier has confirmed that the acreage for Hibou assessed by MPAC each year up to and including the 2022 assessment has remained unchanged. He concludes that the MPAC Assessment for the intervening years must have included the subject property when assessing the total value of the Hibou lands for taxation purposes. Mr. Lanthier believes that when GSCA has paid the municipal taxes for Hibou over the years as they came due, payment of tax for the subject property was included.

Fraudulent scheme alleged

[65] GSCA submits that this entire dispute over the ownership of the subject property or the proper holder of title to PIN 37092-0350(R) has been caused by the attempt of Mr.

Dirckx to obtain the property or the title through a fraud. GSCA submits that Mr. Dirckx cannot acquire an interest in PIN 37092-0350(R) because he knowingly participated in, if not orchestrated the fraudulent scheme to obtain title. In making this allegation, GSCA acknowledges that it has the burden of proof on the balance of probabilities to prove Mr. Dirckx was involved in a fraudulent scheme or made false representations to gain an advantage: *Russel v. Thompson*, 2021 ONCJ 16, at paras. 17-18.

[66] GSCA has included the affidavit of Erica Lawson in the Application Record in which she gives evidence of this intent to defraud. Ms. Lawson at one time worked as a realtor at Atlas World Realty Inc., the company owned or controlled by Mr. Dirckx.

[67] Ms. Lawson describes how Mr. Dirckx would brag about his scheme to locate a property that had been held back in the registry system because it did not appear to have a registered owner. His intention was to register “rogue deeds” to claim ownership of the property, and then to register successive transfers between his friends to create a “false chain of title.” He would ultimately have the property conveyed to himself and then sell the property at a profit. She stated that Mr. Dirckx referred to this scheme by the code name “Project Perspicarious”.

[68] Ms. Lawson states in her affidavit that Mr. Dirckx told her he had done this with multiple properties. One of those properties was Beausoleil Island, also known as Island 147, near Honey Harbour in Georgian Bay. Another property was

on Flower Pot Island, which forms part of Fathom Five National Park. Ms. Lawson believes registration of the deeds to convey these properties were unsuccessful due to the intervention of the Director of Titles.

[69] To the best of her knowledge, the subject property was the first property that Mr. Dirckx had attempted to sell through this scheme. She recalls him stating that in a best case scenario, he would complete the sale at a profit. In the worst case, he would make a claim for the loss of the property to the Land Titles Assurance Fund or through a claim against a private title insurance policy purchased for the property.

[70] Ms. Lawson states in her affidavit that she understood from her dealings with Mr. Dirckx that Norman Sones was a business associate of his. She provided a Power of Attorney to show that Mr. Sones had acted as power of attorney for Mr. Dirckx in 2005 as evidence of their history. She states that she understood from conversations with Mr. Dirckx that Barbara Margaret Deans is also a business associate. Ms. Lawson states that she has no knowledge of Roger Pearce.

[71] Mr. Dirckx did not cross-examine Ms. Lawson. He did not address the allegations about any scheme to create a false chain of title to any property in the registry system described in her affidavit.

[72] The technique of establishing a false chain of title resembles the scheme discussed in *Matwijow v. Pelham (Town of)*, 2013 ONSC 2079 (Div. Ct.), at paras. 8-12. *Matwijow* was an appeal of an Order dismissing the applicants claim of ownership for the purpose of seeking a building permit from the Town of Pelham. That ownership was based on the attempt of the appellant to establish a root of title to a piece of property within the preceding 40 year period through fraudulent means under the *Registry Act*.

[73] The Divisional Court in *Matwijow* dismissed the appeal upon upholding the finding of the court below that such a scheme was based on a fraud, and that the subsequent deeds did not convey title because the vendors were not owners of the land. In the court below, Tucker J. held that subsequent deeds “cannot validate deeds in which the transferor and transferee had actual knowledge that its vendor of the lands or its immediate predecessors in title had no title to give”.

[74] The most troubling aspect of many in the evidence put forward by Mr. Dirckx to establish the chain of title to PIN 37092-0350(R) is that there is no evidence of how or where Roger Pearce obtained title to the subject property in the first place. The quitclaim deed only states its purpose to “confirm transferee’s title.” No evidence was given about the source of that title by Mr. Dirckx, and no affidavit was given by Mr. Pearce or his purchaser, Mr. Sones.

[75] In the absence of evidence from Roger Pearce or from any Instrument registered on title to explain how he acquired title to the subject property as it is described in Instrument R138258 or as PIN 37092-0350(R), I have used my discretion to draw an adverse inference against the interest of Mr. Dirckx. He was the party who has exclusive control over Mr. Pearce in this scheme: *Tiwari v. Chevalier*, 2022 ONSC 3071, at paras. 27-29. The source of the title in the quitclaim deed of Mr. Pearce would have been key evidence in this case, and Mr. Pearce would have been the witness to give it. As Mr. Dirckx relies on this chain of title, it was up to him to either produce this evidence or provide a reasonable explanation why he could not. I therefore conclude that the evidence of Mr. Pearce would have been damaging to the position of Mr. Dirckx and I draw an adverse inference to that effect.

[76] Without evidence of that root of title, I find that Mr. Pearce had no title to give. Therefore, and consistent with the court in *Matwijow*, I conclude as a matter of law that subsequent deeds did not validate the quitclaim deed given by Mr. Pearce. I also infer as a fact that Mr. Sones and Mr. Dirckx had actual or deemed knowledge that he had no title to confer.

[77] The quality of title in the subsequent deeds is only as strong as the weakest link in the chain of title starting with the quitclaim deed in 2013. In addition to the evidence given by GSCA in this proceeding, the propriety of registering these fraudulent deeds under PIN 37092-0350(R) is defeated by the opinion of Mr. Dirckx own surveyor, Neil C. Milne. The letter from Mr. Milne to Mr Dirckx dated September 23, 2021 is attached as exhibit

“D” to the affidavit of Mr. Dirckx, and in that letter Mr. Milne states that it is his opinion that the lands having PIN 37092-0350(R) are under the ownership of the GSCA, having acquired title through deed numbered 138258. He states that he is at a loss how and why that PIN failed to convert to land titles “due to no ownership” when it is clearly shown in the above mentioned deed and abstract.

[78] Mr. Milne goes on to state in his letter that the description of the last three documents registered on PIN 37092-0350(R) prepared by Roger Pearce, Norman Edward Sones and Leroy D. Dirckx were registered under that PIN in error as they relate to another PIN.

[79] I therefore conclude that the legal description in the three instruments R564534, R564718 and R565478 have no relationship to the subject property.

Adverse possession of the subject lands by GSCA

[80] GSCA takes the position as an alternate ground for claiming title to the subject property that, to the extent Mr. Dirckx may have acquired an interest in PIN 37092-0350(R), any such interest is extinguished by adverse possession.

[81] Had I not reached the conclusion that GSCA has established ownership of the property described as Parcel 3 of Lot 36 and its PIN 37092-0350(R) by the chain of title to the “thirdly” described property in Instrument R138258, I would find that it has acquired

title to Parcel 3 as more than 10 years has passed since the quitclaim deed from Roger Pearce to Norman Edward Sones on May 23, 2013.

[82] It was held in *Pepper v. Brooker*, 2017 ONCA 532 at para. 32 that a party must demonstrate the following over a ten-year period to make a claim to the title of land based on the doctrine of adverse possession:

- a. They have had actual possession of the land;
- b. They have had the intention of excluding the true owner from possession; and
- c. They have effectively excluded the true owner from possession.

[83] The claim for adverse possession of the subject property seems redundant given that the facts in evidence show that GSCA has exercised dominion and control over that property since 1973.

[84] As mentioned above, Goldie Kennedy registered the Declaration of Possession as Instrument R138925 in 1973 to confirm her possession of the subject property from January 13, 1953 to June 15, 1973. GSCA has had possession of the subject property and surrounding lands making up Hibou since that time. It has maintained the subject property along with the other lands in Hibou, paid municipal taxes for those lands and exercised management of those lands to the exclusion of all other persons or parties except for those who have used them according to GSCA's policies for use. The only

exception occurred when Mr. Dirckx placed the “For Sale” sign on the property, which was taken down when GSCA raised the issue of ownership with him.

[85] On applying the facts to the test for adverse possession, I would have concluded that GSCA has acquired title to the subject property by adverse possession to the exclusion of any successors in title to Roger Pearce.

Conclusion

[86] GSCA has met the burden of satisfying the court that it is entitled to the relief it seeks in the Notice of Application. Despite the alternating positions taken by Mr. Dirckx that there is a distinction between ownership of the physical property and PIN 37092-0350(R), or that two PINs have been assigned for one legal description, GSCA has shown it is entitled to an order unifying the subject property with its own PIN. An Order shall therefore issue to have ownership of Parcel 3 of Lot 36 together with legal title granted to GSCA by way of a vesting order.

[87] This decision also recognizes that title to the subject property flows from Instrument R138258 as a parcel that was transferred to North Grey Regional Conservation Authority in 1973 with other lands. It is now and has been since that time part and parcel within the Hibou Conservation Area.

Judgment

[88] For the above reasons, judgment is granted to the Grey Sauble Conservation Authority as follow:

- a. a declaration that all right, title and interest in the subject property as described in PIN 37092-0350(R) is vested in the Grey Sauble Conservation Authority in fee simple;
- b. a declaration that all right, title, interest or claim of Leroy David Dirckx or any other person in the subject property be and is hereby extinguished;
- c. an order directing the Land Registrar for Grey County to delete Instruments R564534, R564718 and R565478 from the parcel register of the subject property as null and void;
- d. Upon this judgment issuing, an Order that the Certificate of Pending Litigation issued with respect to the subject property is discharged and the director of land titles is directed to delete it from the parcel register.

[89] The parties are strongly encouraged to resolve the costs of this application between them. If they cannot, the GSCA may file written submissions on costs by June 6, 2025. The respondent shall then have until June 20, 2025 to file responding submissions. Each submission shall not exceed three pages of

double-spaced print, not including any bill of costs or offer to settle. No reply submission shall be permitted.

[90] All submissions may be filed by email addressed to my attention at scj.csj.general.brampton@ontario.ca

Released: May 27, 2025

Emery J.

CITATION: Grey Sauble Conservation Authority v. Dirckx et al, 2025 ONSC 3090
COURT FILE NO.: CV-20-047-0000
DATE: 2024 05 27

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

GREY SAUBLE CONSERVATION
AUTHORITY

Applicant

- and -

LEROY DAVID DIRCKX

Respondent

REASONS FOR JUDGMENT

Emery J.

Released: May 27, 2025