

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

September, 2014

“LAWYER? I DON’T NEED NO STINKING LAWYER!”

A long-time client sold a property in small-town Alberta. Once the paperwork was ready, I gave him a call and he came in to sign. We had a great conversation about life, family, his portfolio, and plans for new real estate projects. I hadn’t seen one of my favorite clients for a couple of years so it was a great catch up.

Then it was time to sign documentation and go over the numbers. One thing your lawyer should always discuss with you is how to pay out your sale proceeds. Typically there might be realtor’s commission to pay, pay out on an existing mortgage, and perhaps some outstanding taxes along with a legal account. We got to this point in the paperwork and I said, “I see you sold this on your own so there is no commission. So it looks like the only two things to pay out are the mortgage and my legal account.”

His face went white. “Mortgage, what mortgage? I don’t have a mortgage.” I showed him the copy of the title, which indicated a mortgage to Alberta Treasury Branches (ATB). “I see that a mortgage is registered, but I paid cash. I don’t know what’s going on,” said our investor.

Then I pointed out another registration against title being an unpaid vendor’s caveat. He looked at the caveat and said, “Those are the names of the people I bought the property from.” Remember I said that this was a long time investor and client. At this point I asked him, “Did I act for you on this deal?” He looked a little sheepish and said, “No, it wasn’t a very expensive property and I knew the people selling... so I thought I would just do it on my own.” Without beating up this very nice man, I gently pointed out to him that this is why you hire a lawyer.

Why do I need a lawyer?

One of the many jobs your buyer’s lawyer does for you is to make sure that title to the property you are buying is completely clear of anything related to the previous sellers. The lawyer for the seller is put under trust conditions that once the purchase price is paid, the seller’s lawyer will clear the title of, in this case, the old ATB mortgage and the unpaid vendor’s caveat.

The happy ending is the ATB mortgage was paid out and our investor was pretty easily able to get a discharge of the mortgage from ATB. Similarly, the sellers were still in the small-town and signed a discharge of the unpaid sellers caveat.

Our member was fortunate that these two potentially very serious problems were easily solved!

Lessons Learned:

1. Obtain a copy of your title before you sell.
2. Make sure only expected registrations appear on the title.
3. Best advice, don’t be your own lawyer!

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EMAIL B.MCGUIRE@RMLO.COM

[RMLO Law LLP](#)

MacCosham Building

Suite 101, 10301-109 ST Edmonton, AB T5J 1N4

Phone: [780.431.1444](tel:780.431.1444) Fax: [780.431.1499](tel:780.431.1499)