



Bob Aaron bob@aaron.ca

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Woman loses 'squatter's rights' case

Judge critical of attempts to 'take over' another couple's property

Tracey Murray owns the property at 7255 King St., in Caledon. She and her husband bought the house and land with two partners back in 1990, and then bought the partners out in 1994. On Valentine's Day, 1995, she became the sole owner when her husband transferred title into her name alone.

Originally, 7255 King St. was part of a farm consisting of almost 100 acres, owned by James and Linda Rutledge. Back in 1981, the Rutledges severed off the one-acre parcel, which was to become 7255 King St. and built their house on it.

At the time, the Rutledges had constructed a split rail fence near, but not actually on, the boundary line between the house and the rest of the farm, which they still owned. The purpose of the fence was to contain their horses on the farm property and to prevent them from wandering out onto the road.

Since the Rutledges owned the land on both sides of the fence, it did not concern them that the fence was not on the boundary line but was actually three feet east, on the larger farm property. With the fence in the wrong position, the land belonging to the house at 7255 King St. appears larger than it really is. The disputed portion is triangular in shape, and contains about one-third of an acre.

Ultimately, the Rutledges sold the house in 1984 and the farm in 1998, but left the fence where it was not on a legal boundary line. Today, Raghbir Singh Lehal and his wife Devinder Kaur Lehal own the 98-acre farm, and Tracey Murray is sole owner of the house on the one-acre parcel.

When Murray and her husband bought the smaller parcel, they received a copy of the survey and were aware of the legal boundaries of their land and that the fence was not on the deed line. Nevertheless, they continued to treat the triangle between their deed line and the old fence as their own. They built a new home on the foundations of the original one, and enlarged the underground septic bed so that it extended beyond the deed line.

When the Murrays applied to the Town of Caledon in 1997 for a building permit for a new four-car garage, they submitted a site plan showing where the garage would be located. When the garage was completed, however, it was not situated where the plans show it should be. In fact, part of one of the four Murray garages sits on land owned by the Lehals.

After the Lehals bought the farm, they attempted to erect a fence along the legal lot line but Robert Murray twice threatened to remove Raghbir Lehal from the property, by force if necessary. Finally, the Lehals sued Tracey Murray for damages and Murray counterclaimed for a declaration that she had acquired title to the disputed triangle by adverse possession a legal term equivalent to what is commonly known as squatter's rights.

Under the Limitations Act in Ontario, an owner's title to land can be extinguished by the adverse possession of another person for a period of 10 years. In order for an adverse possession claim to succeed, the person claiming the disputed land must meet three tests. Throughout the entire 10-year period, he or she must have:

- had actual exclusive, open, and visible possession,
- had the intention to exclude the true owner from possession, and

Judge called woman's conduct 'fraudulent, wilful and reprehensible'

- effectively excluded the true owner from possession

Unless a claimant meets these three tests, the claim to possessory title will fail.

When the case between the Lehals and Tracey Murray came to court in November, it took five days for both sides to present their witnesses and arguments before Justice Francine Van Melle.

In her decision, Van Melle said she was "disturbed" by the evidence of Tracey and Robert Murray. There was some evidence, said the judge, which seemed to suggest that the area in the disputed triangle "grew" from time to time during the Murrays' ownership, and that Robert Murray had "extended the fence ... knowing full well that he was installing a fence on property that did not belong to him."

In awarding judgment in favour of the Lehals, the judge was critical of the conduct of Murray and her husband. Her words are worth keeping in mind by others who may have boundary disputes.

"Adverse possession," she said, "is not a mechanism whereby someone can convert to his or her own use property belonging to his or her neighbour. This is not a case of mutual mistake or inadvertence. There is a course of conduct by the defendant and her husband apparently designed to appropriate property belonging to someone else."

The judge referred to their conduct as designed to "take over" someone else's property rather than being consistent with a legitimate claim for adverse possession.

In denying Murray's claim for possessory title, the judge concluded that the Lehals' claim against Murray for trespass should succeed. Although the Lehals had not lost any money as a result of the trespass, the judge called Tracey Murray's conduct "fraudulent, wilful and reprehensible," and awarded the Lehals \$10,000 in punitive damages, plus costs, against her.

Recently I spoke with Gavin Tighe, of Toronto's Gardiner Roberts, who successfully represented the Lehals. He explained what makes this case unique when compared to other adverse possession cases is that Van Melle ordered Tracey Murray to remove all of the encroachments on the Lehal property without delay. These include surveyor stakes outlining the property Murray claimed, part of the underground septic system, the fence, and part of the four-car garage.

Prior to trial, the Lehals offered to settle the case on the basis that they were the owners of the disputed triangle, so it could be sold to Murray at a reasonable price. Now, Murray has been ordered to pay the substantial removal costs for the encroachments, \$10,000 in punitive damages, plus the Lehals' legal costs of at least \$45,000 and possibly much more, as well as their own legal costs for the five-day trial which could be another \$90,000.

But the case isn't over yet. Murray has filed an appeal to the Divisional Court and the Court of Appeal, and the encroachments remain in place.

Bob Aaron is a Toronto real estate lawyer. www.aaron.ca ©Aaron & Aaron. All Rights Reserved.