

Homeowner staves off enforcement of judgment against co-owner's registered interest (Brunton v. Lanzarotta)

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Ontario's *Land Titles Act* is intended to be a true and accurate reflection of the state of title to a property. In other words, if someone is listed as the registered owner then you can generally assume that they hold title as stated. Fraudulent registrations are sometimes an exception to this rule. In addition, a recent decision of the Ontario Superior Court of Justice reasoned that a trial would be required to determine whether a registered owner held their title in trust, thereby delaying enforcement of a judgment against the registered owner's stated interest: *Brunton v. Lanzarotta*, 2024 ONSC 6155 (CanLII).

The case arose from an application by the registered owner for a declaration that her daughter's registered property interests and bank accounts were held in trust.

In 2023, A. J. Lanzarotta Wholesale Fruits and Vegetables (Lanzarotta) obtained judgment against the applicant's daughter in the amount of \$1,793,732.90: *A.J. Lanzarotta Fruits & Vegetables Ltd. v. United Farmers*, 2024 ONSC 1780 (CanLII). The trial judge determined that the daughter and two other defendants had made fraudulent representations to Lanzarotta, based upon which Lanzarotta forwarded food products on credit to them. The defendants fell into serious arrears and then failed to pay for the food that had been delivered to them leading to the successful claim by Lanzarotta. Lanzarotta then sought to enforce its judgment.

In 2016 and 2017, the applicant had added her daughter to the title of three properties which she owned with her husband (since deceased). The parcel register and corresponding land transfer tax affidavits indicated that each transfer was from the applicant and her husband to themselves and the daughter for "natural love and affection." The daughter was also added to several bank accounts.

In order to protect her assets from Lanzarotta, the applicant sought a declaration that the property and the bank accounts were held by her daughter in trust or in a resulting trust for her. Lanzarotta argued that the daughter had acquired her interests as a gift from her mother.

In the leading case of *Pecore v. Pecore*, 2007 SCC 17, the Supreme Court held that a transfer of property from a parent to an adult independent child without consideration should lead to a rebuttable presumption of a resulting trust for the benefit of the parent. In the circumstances, Lanzarotta had the onus to prove that the daughter's acquisition of title on the real estate properties was a gift by the applicant.

The application judge reviewed the evidence filed, including evidence from the real estate lawyer involved in the transactions, and determined that the declarations sought could not be granted on the application without a mini-trial. In that regard, there were findings of fact and credibility and reliability assessments that required *viva voce* evidence from those involved in the transactions at issue. In the application judge's view, the importance and nature of the determinations required could only be made after observing and listening to the testimony of the witnesses at trial.

Lanzarotta argued that irrespective of the intention of the parties or the presumption of trust that applied, it ought to have the right to enforce judgment against the properties due to the registration of the daughter's name on title in the *Land Titles Act* system as co-owner. In Lanzarotta's submission, that ought to be the

case whether or not adding the daughter to the properties constituted a gift or a resulting trust.

Lanzarotta relied on the Superior Court of Justice decision in *Bao v. Mok*, 2019 ONSC 915, for the proposition that the *Land Titles Act* parcel register is definitive and rendered the daughter a beneficial owner. In *Bao v. Mok*, one party (Bao) had entered into an Agreement of Purchase and Sale to buy real estate from the other (Mok). The transaction did not close because Mok's parents claimed that they were the actual beneficial owners of the property and that Mok was holding title in a resulting trust for them. After examining the evidence and considering the case law, including *Pecore v. Pecore*, the court held that the intention of the parents was to gift the property to Mok, and that Mok therefore had the legal interest necessary to sell the property to Bao.

In the case at hand, the application judge noted that in *Bao v. Mok*, the court concluded that even if Mok received the property as a resulting trust in favour of her parents, the importance of certainty in the land titles system required that as a result of Mok being the registered owner on title, she could deal with the property as she saw fit. Mok's title was indefeasible and Bao was as a *bona fide* purchaser for value without notice whose title was protected by section 90 of the Ontario *Land Titles Act*.

Lanzarotta advanced a "doomsday argument" to the effect that the sky would fall if the land titles registration showing that the daughter was a co-owner did not allow a creditor such as Lanzarotta to succeed and enforce its judgment against a registered interest in the properties.

In distinguishing the circumstances at hand, the application judge reasoned that the key feature was that it was not a "conveyancing case" like *Bao v. Mok* in which there was a *bona fide* purchaser for value without notice. Rather, Lanzarotta was seeking to enforce a judgment. In the application judge's view, this put the circumstances outside the stringency of the land titles system and its purpose of safeguarding the integrity of the conveyancing process.

The application judge referred to jurisprudence from other Canadian provinces to conclude that land registry indefeasibility does not pertain to third-party creditors like Lanzarotta outside of the context of a real estate transaction. Following this authority, Lanzarotta did not acquire a property interest in reliance on the registry. Lanzarotta's argument premised on the indefeasibility of the Land Titles system was dismissed.

In the result, whether Lanzarotta will be able to enforce its judgment against the properties was deferred and will require another trial to decide. The decision provides a further example of a situation where what is shown by the *Land Titles Act* registry may not be what it seems. A PDF version is available for download [here](#).

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