

Transfer by corporate property owner not a fraudulent instrument (2628793 Ontario Corporation v. Stolp)

Land Titles Act | Litigation & Dispute Resolution | Owner | Property

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Under the Ontario *Land Titles Act* (the “LTA”), a transfer of property may be removed from title if it is determined to be a “fraudulent instrument”. While this provides some protection to innocent homeowners whose title is fraudulently transferred, the statutory definition may not apply in circumstances where the registered property owner is a corporation, even if there is a live dispute between the stakeholders of the corporation as to its authority to convey the property.

In *2628793 Ontario Corporation v. Stolp*, 2026 ONSC 3881, the Ontario Superior Court of Justice addressed whether a transfer of property by a corporate owner was invalid under the LTA during the context of an ongoing matrimonial dispute between two spouses (the Stolps).

In 2016, the Stolps agreed to buy a 37-acre property near Sauble Beach, Ontario, pursuant to an Agreement of Purchase and Sale which they both signed. The documents prepared for closing included a direction to put title to the property into the name of a numbered corporation whose sole shareholder and registered director was Mr. Stolp.

In 2018, the Stolps separated and family law proceedings ensued. In Ms. Stolp’s pleadings, she claimed that her signature on documents directing title into the corporation had been forged and she sought a declaration that the transfer to the corporation was invalid.

In 2020, Ms. Stolp obtained a non-depletion order against Mr. Stolp. However, no caution, certificate of pending litigation, or other notice was registered on title to the property.

In 2021, the property was sold by the numbered corporation to a third party buyer for \$385,000, part of which was financed by way of vendor take-back mortgage. At the time, the parcel register showed the corporation to be the registered owner.

In early 2022, Ms. Stolp discovered that the property had been sold and she registered a caution on title, followed by an Application of Restriction Based on Court Order. The buyer paid the remaining closing funds due under the vendor take-back mortgage into court.

The buyer then commenced an action to determine whether it had acquired good title. In Ms. Stolp’s defence, she claimed that the transfer by the corporation was a fraudulent conveyance the *Fraudulent Conveyances Act* and/or was invalid as a “fraudulent instrument” under the LTA.

Under section 2 of the *Fraudulent Conveyances Act*, a transfer of property made with intent to defeat, hinder, delay or defraud creditors or others is void as against such persons. However, section 3 of the *Fraudulent Conveyances Act* provides that this does not apply to an interest in property conveyed for good consideration and in good faith to a person not having notice or knowledge of the transferor’s fraudulent intent.

Based on the evidence, the trial judge accepted that the buyer was a *bona fide* purchaser for good consideration and had no actual or constructive knowledge of Mr. Stolp’s fraudulent intent to transfer the property contrary to the non-depletion order. Accordingly, the transfer to the buyer was not void.

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Ms. Stolp also argued the transfer was invalid as a “fraudulent instrument” under the *LTA*, which is defined in part as an instrument under which a “fraudulent person” purports to receive or transfer an interest in land. “Fraudulent person” is defined to include “a fictitious person” or a person who “holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument”.

Ms. Stolp argued that her signature was forged on the initial closing documents conveying her interest in the property to the numbered corporation in 2016 and the buyer therefore could not acquire title from the corporate property owner which only held title as a result of fraud.

A fatal problem with Ms. Stolp’s position, however, was that she had not commenced any proceeding or sought any relief against the buyer. While her statement of defence disputed the buyer’s position that it acquired the property for good consideration and in good faith, she made no claims herself and did not plead the *LTA*.

Nevertheless, the trial judge assessed Ms. Stolp’s position that if her spouse had forged her signature on the initial closing documents in 2016, then the subsequent transfer to the buyer years later was completed by way of a fraudulent instrument.

The *LTA* invalidates a transfer in situations where a “fraudulent person” registered a “fraudulent instrument”. This depends upon the involvement of a “fraudulent person”. Here, however, the registered owner of the property was the numbered corporation and the buyer acquired title in good faith and without any notice of Ms. Stolp’s claims of fraud.

Indeed, there was no evidence that the buyer had any knowledge or notice of any fraud in the initial 2016 closing and Ms. Stolp had not alleged any such knowledge or notice. Accordingly, the trial judge reasoned that even if a “fraudulent instrument” was involved in the corporation’s acquisition of the property in 2016, the transfer to the new buyer in 2021 was not invalid.

Further, as affirmed by the Court of Appeal for Ontario’s decision in *Froom v. Lafontaine*, 2023 ONCA 519, a third party dealing with a corporation is entitled to rely on the indoor management rule and need not investigate internal corporate irregularities when buying a property. Where a person is registered as an officer or director and enters into a transaction on behalf of the corporation, a *bona fide* third party is entitled to rely on that authority and does not have to look behind the officer or director’s apparent authority.

The buyer was therefore entitled to rely on the parcel register which identified the corporation as the registered owner of the property and on corporate records confirming Mr. Stolp’s authority to enter into the transfer.

The trial judge also agreed with the buyer’s position that to permit a subsequent challenge based on an unregistered private dispute dating back to at least 2018 would undermine the Land Titles system which is based on the mirror and curtain principles and be contrary to the indoor management rule (referring to *Pichelli v. Adair Barristers LLP*, 2019 ONCA 843 (CanLII), at paragraph 4).

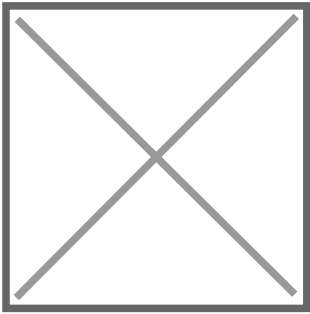
The buyer’s title to the property was accordingly declared to be valid. The proper forum for Ms. Stolp’s dispute, if any, was against Mr. Stolp and the court in the ongoing family law proceedings, which could address the consequences of whether the authorization or direction were forged when they purchased the property.

The result may be distinguished from a recent decision of the Ontario Divisional Court, *Sanasie v. Chateramdas*, 2026 ONSC 1599 (CanLII), in which an individual acquired title to property from her parents in fraudulent circumstances and subsequently provided a mortgage to a lender once title was in her name. In that case, the court found that the transfer and the subsequent mortgage were invalid since the purported title holder knew she had no legal interest in the property and was not the true registered owner, but held herself out to be. She purported to take title by fraud and then convey an interest she knew she did not have.

In the case of a corporation that acquires and subsequently conveys or mortgages its interest, an underlying dispute over ownership of the corporation’s property may not meet the statutory requirements for a “fraudulent person” or “fraudulent instrument” under the *LTA*. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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