

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Pesseau v. Pesseau Estate, 2010 NSSC 201

Date: 2010 05 31
Docket: SFHMPAY-068042
Registry: Halifax

Between:

Robert Marcel Pesseau

Applicant

v.

Pesseau Estate

Respondent

Judge: Leslie J. Dellapinna, J.

Subject: *Matrimonial Property Act* - a disposition of an interest in a matrimonial home.

Summary: A husband and wife owned as joint tenants a matrimonial home. In 2004 the wife was diagnosed with cancer. Being unhappy in her marriage with her husband she executed a warranty deed to herself presumably with the intention of severing the joint tenancy. She then executed a will leaving her estate to the parties' two children. The husband did not consent to the deed and only became aware of its existence after the wife's death in February 2008. The husband applied pursuant to sub-section 8 (2) of the *Matrimonial Property Act* to set aside the deed on the ground that the husband had not consented to the disposition.

Issues:

1. Does a deed by one joint tenant to him/herself sever a joint tenancy?
2. Was the wife's deed to herself a disposition or an incumbrance of an interest in the matrimonial home within the

meaning of sub-sections 8 (1) and (2) of the *Matrimonial Property Act*? and

3. Should the deed be set aside?

Result:

A joint tenancy can be severed by a joint tenant executing and registering a conveyance to him or herself because it destroys the unity of title essential to the continuance of a joint tenancy. However, at common-law a conveyance to one's self is a legal impossibility and such conveyances are only possible if allowed by provincial legislation. While some provinces allow for such conveyances Nova Scotia is not one of them. Judgement was therefore granted in favor of the Applicant.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet.