

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Dempsey v. Dempsey, 2008 NSSC 137

Date: 20080514

Docket: SH. No. 290935

Registry: Halifax

Between:

Reginald Dempsey, Dermot Dempsey, Carleton Dempsey, Donald Dempsey, Lyllith Pellerin, Caroline Dempsey Ranger, Marina Forster and Cyril Dempsey, all of Halifax Regional Municipality, Province of Nova Scotia

-and-

**Karen Dempsey of Herring Cove in the Halifax Regional Municipality,
Province of Nova Scotia**

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Judge: The Honourable Justice Robert W. Wright

Heard: April 29, 2008 in Halifax, Nova Scotia

Written

Decision: May 14, 2008

Subject: Certificates of *Lis Pendens* - procedure under s. 58 of the **Land Registration Act**.

Summary: The plaintiffs commenced a legal action disputing the defendant's title to a parcel of land. They seek an order from the court setting aside the defendant's deed, pleading grounds of mental incapacity of their father as grantor, undue influence, fraud or mistake. If successful in their action, title to the property in question would become vested in them under the Will of their late father. Once the action was commenced, the plaintiffs requested the prothonotary to sign a Certificate of *Lis Pendens* for recording under s. 58 of the **Land Registration Act**. They were advised to make application to the court, on notice to the defendant, for an order authorizing the prothonotary to sign such a certificate.

Issues:

- (1) What are the procedural requirements to be followed in obtaining a Certificate of *Lis Pendens* ?
- (2) Are the plaintiffs entitled to have a Certificate of *Lis Pendens* signed by the prothonotary in the present application?

Summary: Under the court's interpretation of s. 58 of the **Land Registration Act**, it is not necessary for a plaintiff to make application to the court for an order authorizing the prothonotary to sign a Certificate of *Lis Pendens*. Once the prothonotary reviews the Statement of Claim, and is satisfied that it calls into question some title or interest in a specified parcel of land, the prothonotary has the authority to sign a Certificate of *Lis Pendens* under s. 58(3) of the Act. In those unusual cases where the Statement of Claim does not clearly call into question title to a specified parcel of land, the prothonotary has the discretion to refer the request for a Certificate of *Lis Pendens* to a judge for directions, in similar fashion as a prothonotary may refer any order to a judge for directions under Civil Procedure Rule 51.09(2).

Because of the way the present application came before the court, the court determined that the Statement of Claim in this proceeding clearly calls into question the title to the lands in dispute and that the plaintiffs were entitled to a Certificate of *Lis Pendens* signed by the prothonotary. It was then open to the defendant to bring a further application to have the Certificate of *Lis Pendens* discharged under s. 58(2)(b) of the Act.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.
