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Saskatchewan Court of Appeal Confirms that a Registrar's Caveat Is Not a Magic Wand

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Decision Commented On: *Primrose Drilling Ventures v Registrar of Titles*, 2021 SKCA 15

This case involves the rights acquired by a party (Primrose Drilling) who took a title that was encumbered by a registrar's caveat. The caveat was filed to warn purchasers of a potential registrar's error made back in the chain of title, but it was filed *after* a purchaser for value had got on the register relying on the flawed title.

The case came before the courts on the basis of a reference from the registrar relying on section 108 of *The Land Titles Act, 2000*, SS 2000, c L-5.1. The trial judge (*Registrar of Titles and Great West Life Assurance Company and Primrose Drilling Ventures Ltd*, 2018 SKQB 290 (CanLII)) concluded that Primrose's title was subject to whatever interest the Registrar was seeking to protect (in this case the interests of GWL, the successor in interest to a party wrongly deprived of the mineral title to the lands in question). We commented on the trial judgment at some length in "Saskatchewan Land Titles Decision Calls Out for Appellate Review." We took the position that the registrar had no authority to file a caveat once a purchaser for value had got on title on the faith of the register and that Primrose (the last purchaser for value in the chain of purchasers for value) was entitled to a title free of the blemish represented by the registrar's claim. We refer the reader to that post for a detailed analysis and discussion of relevant authorities from both Saskatchewan and Alberta.

While it would be hubris on our part to think that our analysis played any role in the decision the Court of Appeal, that Court has now reversed the judgment at trial and confirmed Primrose's interest in the mineral title. In doing so, the Court has confirmed the long-standing proposition that the registrar has only limited powers to correct his or her errors and in particular cannot do so in a manner that prejudices right conferred for value in reliance on the register.

The Court also concluded, based upon a purposive interpretation of the relevant section of the *The Land Titles Act* as it stood at the time, that the registrar lacked the authority to file the caveat in question. While the statutory authority to file a registrar's caveat was broadly framed, Justice Barrington-Foote held:

> … the modern principle of statutory interpretation demands a purposive interpretation of this provision. In my view, the *purpose* of a Registrar's caveat is to provide notice of claims that could, if substantiated, affect the title or registered interest affected by that caveat. Limiting s. 153 to such claims is consistent with the scheme and purpose of the *1965 Act*. It accords with the key purposes of indefeasibility, reliance on the register and transactional efficiency. *Interpreting s.*

> *153 as authorizing the Registrar to file a caveat relating to a claim that, by its nature, could not affect the title or other interest to which the claim relates would undermine all of those purposes. The scope of the authority granted by s. 153 must be read accordingly*.
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> GWL's claim was not a claim that could affect Unocal's title. There has been no suggestion to the contrary. The Regina Registrar, like the Registrar, knew Unocal was a bona fide purchaser for value and would have removed the Registrar's caveat when asked to do so. …. The Registrar was not entitled to file the Caveat. As such, the Caveat was not a "duly registered" caveat that constituted or gave notice of an interest within the meaning of the exception specified in s. 14(a) of the *2000 Act* (at paras 58-59) (emphasis added)

The Court of Appeal also helpfully corrected the lower court's mischaracterization of the nature of a registrar's caveat. In stating that the registrar's caveat "did nothing to improve or increase GWL's rights … [which] could not be asserted against Primrose, a bona fide purchaser for value" (at para 69), Justice Barrington-Foote reaffirmed the point we made in our post on the trial judgment to the effect that a caveat cannot give a caveator an interest that it does not have, nor cure the invalidity of an invalid interest, nor revive a dead interest.

This post may be cited as: Nigel Bankes and Jonnette Watson Hamilton, "Saskatchewan Court of Appeal Confirms that a Registrar's Caveat Is Not a Magic Wand" (January 27, 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2021/01/Blog_NB_JWH_Primrose_SKCA.pdf