

CONTINUING LEGAL EDUCATION SOCIETY OF NOVA SCOTIA
REAL ESTATE SEMINAR
April 21, 1994

STATUTORY DECLARATIONS

The practice of conveyancing in Nova Scotia has been to solve title objections concerning judgments recorded against similar names to your client by way of Statutory Declaration. A Statutory Declaration is prepared wherein your client swears that he or she is not the judgment debtor named in the listed judgments. These have become quite standard and rather simple in wording. On closing the document is registered and forgotten. However, what if your client lies? What if your client executed the Statutory Declaration fraudulently?

Unfortunately, there have been incidents where a lawyer has been found negligent by relying upon a fraudulent Statutory Declaration. We all know this can easily happen, for we all have taken Statutory Declarations further to the above practice. Therefore, each and every one of us could receive one of those phone calls telling us we may be liable due to a fraudulent Statutory Declaration that we have based our title certificate on.

Our treatment of Statutory Declarations and similar name judgments is one area that must be tightened in our practices. I make the following suggestions:

1. When the title abstract is delivered to your office by your title searcher and similar name judgments are noted, don't play advocate with yourself and decide whether or not they apply and assume a Statutory Declaration will solve the problem. Go to the Prothonotary's office and check the judgment files to obtain further name references, or perhaps address references. This information will help you determine whether or not this is your client, more so than your guess or your client's voluntary statement;
2. Question your client about the judgments, without predetermining in your own mind that they do not apply. For example, if the judgment was registered in 1992, ask your client where he worked in 1992, or where he lived, or whether he had ever done business with the creditor. The answer may suggest that you investigate further, perhaps by calling the judgment creditor directly;

3. If the Statutory Declaration is being used on title, then it would be beneficial to attempt to qualify your certificate. The Certificate should be qualified "subject to the facts as contained and presented in the referenced Statutory Declaration". Of course, in order to qualify your certificate, you must give prior notice to your client and/or the mortgage company and receive their permission. There is also the question as to whether or not your client should receive independent legal advice before accepting a qualified certificate;
4. There are forms of judgments that can be registered without actually proceeding to court. The government has the ability now to register judgments for a variety of breaches of statutes. Revenue Canada infractions and Student Loan problems are two examples. Therefore, if there is a registered judgment possibly against your client, that does not have a Prothonotary's file, you should obtain your client's social insurance number and contact the judgment creditor to see if in fact they are the same people;

5. Carefully document your file with notes as to the investigations you have carried out to ascertain whether or not your client is the judgment debtor.

In passing, please note that if you are requested by a walk in client or a client of your firm that you do not know personally, to take his or her affidavit, you should request identification. A few years ago in my firm, one of my partners became quite upset with another partner when he requested identification from a client prior to taking an affidavit. Personalities aside, the prudent step is to always confirm that the person whose affidavit you are taking is who they purport to be.

A final plea is that the purchaser's lawyers should take more exhaustive steps than presently being employed to determine the true identity of judgment creditors. As well, vendors' solicitors should be more helpful in dealing with title objections surrounding judgments. All too often, an objection is answered by a simple denial with no assistance or information being offered. Don't forget, it may be your deductible, but we all pay the claim one way or another.

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