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Claim Against Covenantor Under Discharged Mortgage Dismissed: MBCA

A covenantor whose covenant was extinguished when the mortgage was paid in full and discharged in conjunction with the sale of the property was granted summary judgment dismissing the registered owner's claim based on the covenant in [*Finley v. Tines*](#), 2012 MBCA 33. The appeal court disagreed with the lower court's decision that there was a genuine issue for trial as to whether the plaintiffs intended "to pay off the mortgage and discharge it or ... to keep the mortgage for their own benefit" pursuant to an assignment of the mortgage made after the mortgage was discharged. Although the disposition of the appeal turned on its facts (in particular, the timing of the discharge), and not on the complex law with respect to mortgages and covenants, the court did see fit to comment on the plaintiff's flawed interpretation of s.6 of *The Mortgage Act* at paras. 64-66.

LVAC Expropriation Compensation Methodology Upheld: MBCA

In [*Roeland v. Her Majesty the Queen in Right of the Province of Manitoba*](#), 2012 MBCA 37 the court dismissed the Province's appeal from a decision of the Land Value Appraisal Commission determining the market value of expropriated land and granting an award for injurious affection. The court found that LVAC's conclusions were within the boundaries of its expertise and amply supported by the evidence. The novel issue of the interpretation of [s.28 \(2\)](#) of *The Expropriation Act* (and whether applying the traditional machinery (disturbance) allowance constitutes double recovery) was referred back to the LVAC for determination.

Recent QB Decisions

- [*Morgan v. Thiessen*](#), 2012 MBQB 151 - the court grants summary judgment for specific performance of an agreement to transfer property (by terminating a joint tenancy that was in place to secure the interests of a family member who had contributed money to save the farm from foreclosure, but then refused to accept repayment of the loan or release his interest in the property).
- [*Hoffman v. Heinrichs*](#), 2012 MBQB 133 - the court dismisses an application challenging the validity of the 30-year old will of a schizophrenic woman who left a million-plus estate entirely to her twin brother or his son. While the fact that the testator suffered from schizophrenia "may raise suspicious circumstances, one cannot infer incapacity simply from the fact that a person suffers from that illness, especially when it is treated" said the court.
- [*The Estate of Ann Barbara Kirk*](#), 2012 MBQB 132 - the master declines to pass the accounts of an executor who failed to provide a proper accounting or evidence supporting claimed disbursements, delayed in attending to his duties, pre-took compensation, and kept no records of the time and work he expended in performing his duties.

Sale by Email: NBCA

A recent decision of the New Brunswick Court of Appeal concerning the purported sale of a condominium via email has attracted some attention. Although the appeal court in [*Druet v. Girouard*](#), 2012 NBCA 40 overturned the [lower court decision](#) that a series of emails exchanged between the owner of a condominium and a potential buyer created a binding contract to sell, it did not rule out the possibility of such a sale in principle. The court noted, however, that when there is a rapid-fire exchange of email correspondence between consumers acting on their own, the rebuttable presumption should be that there was no intent to establish a binding relationship. (para.41) The court sidestepped the issue of whether an electronic signature can convey real estate, deciding instead on the basis that the parties in this case lacked the requisite intent to enter into a binding agreement of purchase and sale. These articles discuss the decision:

- [Email Transactions in Land - in New Brunswick](#) - Slaw;
- [New Brunswick Court: E-mail Exchange Can Create a Binding Contract](#) - Deeth Williams Wall;
- [You can sell property via e-mail, N.B. court rules](#) - Legal Feeds blog.

Residential Tenancies Act Amendments Introduced

[Bill 28](#), *The Residential Tenancies Amendment Act*, proposes amendments to the Act to clarify the rights and obligations of tenants and landlords concerning termination, rent increases and rehabilitation. As noted in this government [news release](#), the amendments would require landlords proposing extensive renovations to provide tenants with an estimate of rent increases. The explanatory note to the bill discusses other key changes.

New Land Titles Fees

Several new land titles fees will come into effect August 26, 2012, pursuant to Land Titles Fee Regulation, amendment, [55/2012](#), registered May 14, 2012. The new regulation amends M.R. [171/89](#). The new fees are described in this [Property Registry notice](#), dated May 25, 2012.

Recommended Reading

Property lawyers may be interested in these recent articles:

- [*Choosing arbitration to mend leasing woes*](#) - leasing disputes are inevitable according to the author of this May 2012 *Inhouse* article, and as more commercial landlords and tenants turn to arbitrators to resolve their differences lawyers are recognizing the importance of including well-drafted arbitration clauses at the outset.
- [*Real estate lawyers: The buck stops with you*](#) - this article from the May/June 2012 edition of LAWPRO magazine discusses the common mistakes Ontario real estate lawyers make and what can be done to prevent them.

Upcoming CPD: LSM

[Passing of Accounts - What You Need to Know](#) - Presenters Master Joy Cooper and Peter Glowacki will discuss the most effective way to keep and present accounts at this lunch program from 12:00 noon to 2:00 p.m. on June 14, 2012 at the Law Society classroom. [Register](#) to attend in person or by teleconference.

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