

CITATION: 2628793 Ontario Corporation v. Stolp, 2026 ONSC 3881
COURT FILE NO.: CV-24-2440-0000
DATE: 2026 07 06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

2628793 Ontario Corporation

Plaintiff

– and –

Lisette Maria Silva Stolp, 2546603 Ontario
Corporation and Stacy Henricus Christopher
Stolp

Defendants

) Alexander Verrilli and Elizabeth Dellio for
) the Plaintiff
)
)

) Efstathios Balopoulos for the Defendant
) Lisette Maria Silva Stolp
)

) Stacy Stolp is self-representing and acting as
) representative of 2546603 Ontario
) Corporation
)

) **HEARD:** April 7, 8, 9, 10, 11, 14, 15, 16 24,
) 25, 2025 May14, 2025, August 28, 2025,
) November 14, 2025 and February 3, 2026

REASONS FOR JUDGMENT

COATS J.

1. OVERVIEW:

[1] This is an application by the Plaintiff, converted to an action, wherein the Plaintiff is seeking declaratory relief under s. 3 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29. The Plaintiff, 2628793 Ontario Corporation (“262”), is the purchaser of the property municipally known as 465 Municipal Road, Sauble Beach, Ontario (the “Property”). The Plaintiff is also asking the court to order that instrument BR 180207, which is registered on the Property by the Defendant, Lisette Maria Silva Stolp (“Ms. Stolp”), be discharged.

[2] Ms. Stolp has also raised additional issues. She takes the position that the Agreement of Purchase and Sale between the Plaintiff and the Defendant 2546603 Ontario Corporation (“254”) is invalid as it was signed after the irrevocable date of May 31, 2021 at 11:00 p.m. Ms. Stolp also raises s. 78 of the *Land Titles Act*, R.S.O. 1990, c. L.5, and claims that the transfer from 254 to the Plaintiff is invalid.

2. BASIC BACKGROUND

[3] On November 1, 2016, the Property was purchased by Ms. Stolp and the other Defendant, Stacy Henricus Christopher Stolp (“Mr. Stolp”). Their names appear on the Agreement of Purchase and Sale. The purchase price was \$374,000. The Property is approximately 37 acres, and at all relevant times, was zoned as RU1 - General Rural. It has no access to municipal services, such as water or sewage. The intention was to develop the Property.

[4] Mr. Stolp and Ms. Stolp retained a lawyer, Daniel La Gamba, to close the Property. As part of the documents for closing, a signature purporting to be that of Ms. Stolp appears on a direction to put title into the name of 254. It is Ms. Stolp’s position that her signature was forged by Mr. Stolp.

[5] 254 was incorporated around the time of the purchase of the Property in 2016. This corporation was registered on November 16, 2016. Mr. Stolp is the only director and shareholder. Ms. Stolp was never a director or shareholder of 254.

[6] Ms. Stolp acknowledges that she became aware of the fact that 254 was the owner of the Property as early as September of 2018.

[7] Sometime around September of 2018, Mr. Stolp and Ms. Stolp separated and Mr. Stolp commenced a family law proceeding. Early in the family law proceeding Ms. Stolp knew that the Property was purchased in the name of 254. She knew prior to filing her answer in that proceeding

on October 18, 2018, as the relief she sought included a declaration that the transfer was invalid and an order restoring her one-half interest in the Property, amongst other relief.

[8] On or about May 15, 2020, in the family law proceeding between Mr. Stolp and Ms. Stolp, Ms. Stolp obtained a non-depletion order from Justice Fitzpatrick. The order is against Mr. Stolp personally and orders Mr. Stolp not to deplete the Property, among other assets. It is uncontroverted that Ms. Stolp did not take steps to register a Caution or Certificate of Pending Litigation on title to the Property.

[9] In January or February of 2020, Nitin Jain (the owner of 262, the Plaintiff) and Ted Russell (realtor for the Plaintiff) viewed the Property. After about 15 months, in May of 2021, the Plaintiff made an offer to purchase the Property for \$375,000.

[10] The Property was purchased by the Plaintiff from 254 pursuant to an Agreement of Purchase and Sale (“APS”) dated May 27, 2021 for \$375,000. On or about August 26, 2021, the Plaintiff and 254 amended the APS to extend the conditions date to September 15, 2021 and the closing date to November 15, 2021.

[11] The Plaintiff extended the closing date one more time by way of a second amendment to the APS. The amendment, signed on or about November 5, 2021, extended the closing date to November 25, 2021, increased the purchase price to \$385,000 and added provisions for a vendor take-back mortgage.

[12] The APS closed on or about November 26, 2021. At the time of closing, there were no encumbrances or other instruments registered on the Property.

[13] On or about January 24, 2022, Ms. Stolp became aware of the Plaintiff's purchase of the Property. Ms. Stolp requested a Case Conference in the family law proceeding between herself and Mr. Stolp. Justice Mills endorsed that Ms. Stolp could register a caution on title to preserve her rights to the proceeds of sale.

[14] On or about February 28, 2022, Ms. Stolp registered Instrument BR 180207 on title to the Property. It is an Application of Restriction Based on Court Order. It references Justice Fitzpatrick's non-depletion order. To date this remains on title to the Property.

[15] The trial in the family proceedings has not yet taken place.

[16] The Plaintiff has paid the sum of \$335,000, a portion of the money it was to pay 254 for the purchase of the Property, into court, where it remains.

[17] The Parties filed as Exhibit #2 a Statement of Agreed Facts which provides as follows:

The parties agree that, for the purposes of this proceeding only, the following facts may be accepted by the Court as true without the necessity of calling evidence as proof:

1. The sale by the Defendant, 2546603 Ontario Corporation, of the property municipally described as 465 Municipal Road, Sauble Beach, Ontario, to the Plaintiff, 2628793 Ontario Corporation, was contrary to section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F. 29 and the transaction is void as against the Defendant, Lisette Silva Stolp, unless the Court determines that the transaction falls within the exception contained in section 3 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29.

3. **ISSUES:**

[18] The issues in this action are as follows:

1. Is the APS invalid? This involves a consideration as to whether the APS was signed outside of the irrevocability period, and if yes, the consequences. It also involves a

consideration as to whether Ms. Stolp has standing to challenge the APS, as she was not a contracting party.

2. Does the Plaintiff's purchase of the Property fall within s. 3 of the *Fraudulent Conveyances Act*, specifically:

- a) Did the Plaintiff purchase the Property for good consideration and in good faith?

- b) Did the Plaintiff, at the time of purchase, have notice or knowledge of Mr. Stolp's intent to defeat, hinder, delay, or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures?

3. Is s. 78 of the *Land Titles Act* applicable to this case?

4. Did Ms. Stolp unlawfully register the Restriction Order (Justice Fitzpatrick's non-depletion order) on the Property?

4. **POSITIONS OF THE PARTIES:**

1. **Issue 1: The Validity of the APS**

Plaintiff's Position on Issue 1:

[19] The Plaintiff submits that the Agreement of Purchase and Sale was valid and enforceable. Although one version of the APS was undated and the dated version appears to have been executed after the irrevocability period expired, the Plaintiff argues that these technical defects do not invalidate the agreement.

[20] The Plaintiff's primary argument is that only the parties to the contract may rely on such defects. The contracting parties in this case were the Plaintiff and 254, and both parties clearly

treated the APS as binding. They negotiated amendments, extended timelines, and ultimately completed the closing of the transaction. In the Plaintiff's submission, these actions amount to ratification of the contract, curing any technical deficiencies that may have existed in the initial documentation.

[21] The Plaintiff further submits that Ms. Stolp has no standing to challenge the APS on the basis of the *Statute of Frauds*, R.S.O. 1990, c. S.19, or the timing of the signatures. Because she was not a party to the contract, she cannot rely on contractual formalities between the buyer and seller as a basis to void the transaction.

Ms. Stolp's Position on Issue 1:

[22] Ms. Stolp submits that the APS is void *ab initio* because it fails to comply with the *Statute of Frauds*, which requires agreements for the sale of land to be in writing and properly signed. She argues that the signed version of the APS appears to have been executed after the expiry of the irrevocability period, meaning that the offer had already lapsed and could not be validly accepted.

[23] Ms. Stolp also relies on the Plaintiff's failure to produce the complete 40-page DocuSign package associated with the agreement. She submits that the absence of this documentation warrants an adverse inference that the missing materials would undermine the Plaintiff's claim that the agreement was properly executed.

[24] On this basis, Ms. Stolp argues that the purported agreement was either void or at least vulnerable to being set aside.

254 and Mr. Stolp's Position on Issue 1:

[25] 254 and Mr. Stolp considered the APS binding and the transaction was closed.

2. **Issue 2: Section 3 of the *Fraudulent Conveyances Act***

Plaintiff's Position on Issue 2:

[26] The Plaintiff submits that although the parties have agreed that the conveyance technically engages s. 2 of the *Fraudulent Conveyances Act*, the transaction is nevertheless protected by the s. 3 exception for a *bona fide* purchaser for value without notice. In the Plaintiff's view, the evidence demonstrates that it purchased the Property in good faith, paid adequate consideration, and had no knowledge of any fraudulent intent on the part of Mr. Stolp.

Good Consideration

[27] With respect to consideration, the Plaintiff relies heavily on the expert evidence of appraiser Dan Brewer, who valued the Property between approximately \$339,000 and \$415,000. The Plaintiff purchased the Property for \$385,000, which falls squarely within that range. The Plaintiff submits that the legal test under the *Fraudulent Conveyances Act* is not whether the price reflects the highest possible valuation, but whether it is "grossly inadequate". The Plaintiff submits that even if Ms. Stolp's higher estimate of approximately \$1.25 million were accepted, the price paid would still not meet the threshold of being grossly inadequate so as to demonstrate fraud or bad faith.

No Knowledge of Fraudulent Intent

[28] The Plaintiff further submits that the surrounding circumstances of the transaction demonstrate the absence of fraudulent intent. The negotiations leading to the purchase were slow and commercially typical, beginning in early 2020 and not resulting in a completed sale until November 2021. The Plaintiff argues that this lengthy negotiation period is inconsistent with the type of rushed or clandestine transaction typically associated with fraudulent conveyances. According to the Plaintiff, its principal Nitin Jain had no direct dealings with Mr. Stolp. Instead, the

transaction was handled primarily through Ted Russell, a realtor, who identified the property as a potential investment opportunity and facilitated communications between the Plaintiff and Mr. Stolp.

[29] The Plaintiff submits that Mr. Russell undertook the sort of routine due diligence expected in real estate transactions. This included reviewing the corporate profile of 254, which showed that Mr. Stolp was the sole officer and director, confirming through the parcel register that the corporation had been the registered owner of the Property since January 2017, and verifying through title searches and GeoWarehouse searches that there were no encumbrances or cautions registered against the Property. The Plaintiff emphasizes that the land titles register showed the corporation as the legal owner and contained nothing that would alert a purchaser to any competing claim.

[30] The Plaintiff also relies on the fact that Mr. Russell obtained from Mr. Stolp a standard declaration confirming that there was no spousal interest in the property, a routine document used in real estate transactions. While acknowledging that Mr. Russell was aware that Mr. Stolp was going through a divorce, the Plaintiff submits that knowledge of a divorce does not equate to knowledge of fraudulent intent, nor does it impose a duty to investigate the seller's personal family law affairs. The Plaintiff maintains that it had no reason to suspect that the Property was subject to any unresolved claims.

Delay by Ms. Stolp

[31] Finally, the Plaintiff argues that Ms. Stolp's own delay undermines her claim. According to the Plaintiff, she admits that she became aware as early as 2018 that the Property had been transferred into Mr. Stolp's corporation. Despite this knowledge, she did not take steps to protect

her interest by registering a caution, certificate of pending litigation, or other notice on title. The Plaintiff submits that had she done so, the sale would never have proceeded. Her failure to act until after the Property had been sold to an innocent third party should not now be used to undo the transaction.

Ms. Stolp's Position on Issue 2:

[32] Ms. Stolp submits that the conveyance falls squarely within s. 2 of the *Fraudulent Conveyances Act* and that the Plaintiff cannot rely on the s. 3 *bona fide* purchaser exception. In her view, the evidence demonstrates that the sale was carried out with the intent to defeat Ms. Stolp's claims in the parties' ongoing family litigation and that the Plaintiff either knew or ought to have known about the improper purpose of the transaction.

Fraudulent Intent

[33] Ms. Stolp argues that the sale must be understood in the broader context of the divorce proceedings between Ms. Stolp and Mr. Stolp. According to Ms. Stolp, she had already raised allegations in the family litigation that the earlier transfer of the Property into Mr. Stolp's corporation was fraudulent. In addition, the family court had issued a non-depletion or preservation order (the Fitzpatrick J. order) intended to prevent the disposition of family assets pending the resolution of the litigation. Ms. Stolp submits that the sale of the Property was part of a broader pattern by Mr. Stolp of attempting to place assets beyond Ms. Stolp's reach.

Knowledge by the Plaintiff

[34] Ms. Stolp further argues that the Plaintiff was not a truly innocent purchaser. She relies particularly on the conduct and knowledge of Ted Russell, whom she describes as the Plaintiff's agent. According to Ms. Stolp, Mr. Russell was aware that the Property was connected to an ongoing divorce proceeding and had knowledge of an imminent family trial scheduled for March 2020,

based on text messages exchanged with Mr. Stolp. Ms. Stolp argues that this information should have placed Mr. Russell and the Plaintiff on inquiry notice that the transaction might involve an attempt to dissipate family assets.

[35] Ms. Stolp also challenges Mr. Russell's credibility and impartiality. She points to missing text messages, Mr. Russell's ongoing business relationship with Mr. Jain and related development companies, and the significant financial benefits he stood to gain from the transaction. In particular, Ms. Stolp highlights evidence suggesting that Mr. Russell anticipated a potential \$1.2 million commission tied to the development plans for the Property. In Ms. Stolp's submission, these circumstances create a strong inference that Mr. Russell and Mr. Jain were not acting at arm's length from Mr. Stolp but were instead participating in or benefiting from his improper depletion of assets.

[36] For these reasons, Ms. Stolp maintains that the Plaintiff cannot satisfy the requirements of the s. 3 good-faith purchaser exception, and the transaction should therefore be set aside under the *Fraudulent Conveyances Act*.

Consideration

[37] It is Ms. Stolp's position that the Plaintiff paid an "unconscionable purchase price" for the Property. After a meeting with the County on July 26, 2018, Mr. Stolp and Ms. Stolp received a stage of approval by the County to build 49 lots of single-family dwellings on the Property. Her expert appraiser of the Property, Lauren Taylor, took this into consideration. She submits that Ms. Taylor's appraisal should be preferred by the Court.

[38] It is also Ms. Stolp's position that considerable funds were invested by Mr. Stolp and Ms. Stolp in the development of the Property, which would have increased the Property's value.

254 and Mr. Stolp's Position on Issue 2:

Consideration

[39] It is Mr. Stolp's position that he did not spend significant funds on consultations, surveys or studies in the process of commencing development on the Property. He learned quickly that the development of the Property was too difficult and expensive for him, which is why he began to look for a buyer or a partner.

Relationship with Mr. Russell

[40] Mr. Stolp testified that he had a very limited relationship with Mr. Russell over the years. They had met decades earlier through a mutual friend, but had very little communication over the years.

[41] Mr. Stolp did not know the purchaser of the Property and had never met Mr. Jain.

3. Issue 3: Section 78 of the *Land Titles Act* (Fraudulent Person / Instrument)

Plaintiff's Position on Issue 3:

[42] The Plaintiff submits that s. 78 of the *Land Titles Act* has no application to this case because the Plaintiff did not deal with a fraudulent person and the transfer to the Plaintiff was not affected through a fraudulent instrument. The Plaintiff emphasizes that the land titles system operates according to the mirror principle and curtain principle, which allow purchasers to rely on the information contained in the land titles register without investigating prior unregistered interests.

[43] According to the Plaintiff, the parcel register clearly showed that 254 was the registered owner of the Property. The Plaintiff dealt directly with that corporation, and the corporate records confirmed that Mr. Stolp was its sole officer and director. The Plaintiff therefore submits that it was entitled to assume that Mr. Stolp had authority to bind the corporation and complete the sale.

[44] The Plaintiff relies heavily on the Court of Appeal's decision in *Froom v. Lafontaine*, 2023 ONCA 519, 168 O.R. (3d) 102, which held that a third party dealing with a corporation is entitled to rely on the indoor management rule and need not investigate internal corporate irregularities. In the Plaintiff's submission, even if Mr. Stolp committed some form of internal fraud within the corporation, that would not affect the validity of a transaction entered into with an innocent purchaser who relied on the corporate records.

[45] The Plaintiff argues that the present case is even clearer than *Froom*. The parcel register for the Property showed that 254 was the registered owner, and the corporate profile showed that Mr. Stolp was the sole officer and director. In the Plaintiff's submission, this meant that the Plaintiff was entitled to rely on those records and proceed with the transaction without investigating potential internal disputes between Mr. Stolp and Ms. Stolp.

[46] The Plaintiff also points out that Ms. Stolp has not commenced any proceedings or sought any relief against the Plaintiff. She did not plead s. 78 of the *Land Titles Act* or provide any material facts to support these allegations.

Ms. Stolp's Position on Issue 3:

[47] Ms. Stolp argues that the 2016 transfer of the Property into the corporation was itself fraudulent because it was accomplished using forged documents, including a forged direction to the lawyer and documents bearing Ms. Stolp's signature marked "ASO." She submits that this forged documentation constitutes a fraudulent instrument within the meaning of the *Land Titles Act*.

[48] She relies on several cases addressing fraudulent instruments under the *Land Titles Act*, including *Culbert v. Culbert*, 2017 ONSC 3628 and *Morris v. Donegan*, 2015 ONSC 3360. In those cases, the courts held that where a transfer of land is based on a forged authorization or direction,

the document constitutes a fraudulent instrument and the resulting transfer is void despite its registration.

[49] Ms. Stolp also relies on *Chateramdas v. Sanasie*, 2025 ONSC 560, which addressed the consequences of a fraudulent transfer followed by a subsequent encumbrance. That decision applied the doctrine of deferred indefeasibility and held that where title is obtained through fraud, the resulting mortgage or transfer may be void even if registered.

[50] Because the corporation obtained title through fraud, Ms. Stolp argues that it never acquired a valid interest in the property. As a result, the subsequent transfer to the Plaintiff is tainted by the original fraud and cannot confer good title. Ms. Stolp also argues that *Froom* is distinguishable because in that case the corporation's original acquisition of the property was legitimate, whereas here the alleged fraud occurred at the very moment the corporation acquired title.

[51] For this reason, Ms. Stolp submits that the protections of deferred indefeasibility do not apply and that the transfer should be set aside.

254 and Mr. Stolp's position on Issue 3:

[52] Mr. Stolp did not make any submissions on this issue.

4. Issue 4: Registration of the Fitzpatrick J. Preservation Order

Plaintiff's Position on Issue 4:

[53] The Plaintiff argues that Ms. Stolp's registration of Fitzpatrick J.'s preservation order against the property was unlawful. The Plaintiff emphasizes that it was not a party to the family law proceeding in which the order was made and received no notice of any attempt to register the order against the Property.

[54] The Plaintiff also notes that by the time the order was registered in February 2022, the Plaintiff had already become the registered owner of the property. In the Plaintiff's submission, the family court order was directed at Mr. Stolp and his assets, not at a third-party purchaser who subsequently acquired the Property. The Plaintiff argues that if Ms. Stolp believed the earlier transfer of the Property was fraudulent, she should have taken steps prior to the sale to protect her interest on title.

[55] The Plaintiff submits that the registration of the order after the sale improperly encumbered the Property of an innocent third party and should therefore be discharged.

Ms. Stolp's Position on Issue 4:

[56] Ms. Stolp submits that the registration of the Fitzpatrick J. order was appropriate and necessary to preserve Ms. Stolp's rights. She argues that the order had already been issued in the family proceedings and that pandemic-related delays prevented earlier registration. According to Ms. Stolp, registration was required to prevent the Property from being transferred again to another purchaser, which would have further complicated Ms. Stolp's ability to recover her interest.

[57] Ms. Stolp also relies on the fact that Justice Mills later addressed the same order without invalidating it, which she says confirms that the order remained operative and enforceable.

254 and Mr. Stolp's Position on Issue 4:

[58] Mr. Stolp's position is that the order should not have been registered on title and he wishes the money that has been paid into court to be paid to 254.

5. THE STATUTORY PROVISIONS AND LAW

Law on Issue 1: Statute of Frauds, R.S.O. 1990, c. S.19

[59] With respect to the Agreement of Purchase and Sale, s. 4 of the *Statute of Frauds* requires agreements for the sale of land to be in writing and signed. A failure to comply may render an

agreement unenforceable: *Erie Sand and Gravel Limited v. Tri-B Acres Inc.*, 2009 ONCA 709, 97 O.R. (3d) 241, at paras. 48-49.

[60] The doctrine of part performance is a recognized exception to this general rule that oral agreements to sell land are not enforceable. A party to an oral agreement for the sale of land cannot avoid its enforcement by pointing to the absence of a signed agreement (or note or memorandum of it) if the doctrine of part performance, which has both an evidentiary and a detrimental reliance aspect, applies: *2730453 Ontario Inc. v. 2380673 Ontario Inc.*, 2025 ONCA 112, at para. 2.

[61] As a general rule, only parties to a contract may rely on defects, and third parties lack standing unless the defect engages fraud or illegality affecting their rights: *Warraich v. Choudhry et al.*, 2019 ONSC 2656, at para. 81.

Law on Issue 2: *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29

[62] Sections 2 and 3 of the *Fraudulent Conveyances Act* provide as follows:

Where conveyances void as against creditors

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

Where s. 2 does not apply

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

[63] The *Fraudulent Conveyances Act*, which is couched in very general terms, is clearly remedial in nature and should be given a fair, large, and liberal interpretation that best achieves its purpose, namely to strike down all conveyances of property made with the intention of delaying, hindering, or defrauding creditors and others except for conveyances made for good consideration and *bona*

fide to persons not having notice of such fraud: *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 1 S.C.R. 325, at p. 365.

[64] Section 2 of the *Fraudulent Conveyances Act* provides that any conveyance of property made with the intent to defeat, hinder, delay, or defraud creditors or others is void as against such persons. The central inquiry is whether the transferor had the requisite fraudulent intent: *FL Receivables Trust 2002-A v. Cobrand Foods Ltd.*, 2007 ONCA 425, 85 O.R. (3d) 561, at para. 39. Because direct evidence is rare, intent may be inferred from surrounding circumstances such as timing, relationships, and pending litigation.

[65] Section 3 of the *Fraudulent Conveyances Act* provides an exception where the transferee establishes that the conveyance was made for good consideration and in good faith, without notice or knowledge of the fraudulent intent. Both elements must be satisfied: *Stevens v. Hutchens*, 2022 ONCA 771, para. 22. The adequacy of consideration is assessed based on whether it is grossly inadequate, not whether it reflects the highest possible value: *Makwana v. Bishnu*, 2019 ONCA 543, para. 21. Good consideration is consideration “which is arguably in the range of fair market value”: *DBDC Spadina Ltd. v. Walton*, 2014 ONSC 3052, at para. 21. The good faith analysis focuses on whether the purchaser had actual or constructive knowledge, including whether circumstances alerted them to the need to make inquiries: *Infolink Technologies Corp. v. Punit Lala et al.*, 2024 ONSC 3175, at para. 17.

Law on Issue 3: Section 78 of the Land Titles Act

[66] Section 78 of the *Land Titles Act* provides as follows:

Registration

Time of receipt to be noted

78 (1) The day, hour and minute of the receipt of each instrument presented for registration and of each copy of a writ or lien received under section 136 shall be noted thereon by the officer or clerk receiving the instrument or copy.

Order of registration

(2) Subject to the regulations, an instrument received for registration shall be registered in the order of time in which it is so received, unless before registration is completed it is withdrawn or the land registrar decides that it contains a material error, omission or deficiency or that there is evidence lacking that the land registrar considers requisite or declines registration for any other reason, and notifies the parties or their solicitors accordingly within twenty-one days after being so received and allows a period of time not less than seven and not more than thirty days from the date of such notification for correction of the error, omission or deficiency or for furnishing evidence and, when the error, omission or deficiency is corrected or evidence furnished within the time allowed, the instrument has priority as if it had been correct in the first instance, but, if the error, omission or deficiency is not corrected or if evidence is not furnished within the time allowed or if the person desiring registration fails to appeal successfully from the decision, the land registrar may proceed with other registrations affecting the land as if the instrument had not been presented for registration, and the land registrar shall be deemed not to be affected with notice of the contents of the instrument.

When registration complete

(3) Registration of an instrument is complete when the instrument and its entry in the proper register are certified in the prescribed manner by the land registrar, deputy or assistant deputy land registrar, and the time of receipt of the instrument shall be deemed to be the time of its registration.

Effect of registration

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register.

Exception

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.

Non-fraudulent instruments

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

Priorities

(5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, despite any express, implied or constructive notice, are entitled to priority according to the time of registration.

Postponement of registered rights

(6) Upon registration of an instrument in the prescribed form, the rights of priority acquired by registration may be postponed to rights acquired or claimed under another registered instrument.

[67] Both counsel relied upon the Court of Appeal’s decision in *Froom*. In that case, the Court of Appeal considered the very provisions of the *Land Titles Act* that Ms. Stolp says are applicable in this case.

[68] Paragraphs 20-28 of *Froom* provide an overview of the provisions:

[20] The issues in this appeal are narrow and technical, and need to be put in context. In *Vavilov* the Supreme Court noted a legal expectation important to statutory interpretation: “[t]hose who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose”. This draws on the “modern approach” to interpretation, which “requires that the words of a statute be read ‘in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament’”. To analyze the issues the court must consider the text of the LTA, the context within which it operates, and the particular purpose for the provisions at issue.

[21] The LTA was originally enacted in 1885 and was modelled on the English Land Transfer Act, 1875 (38 & 39 Vict. c. 87). The “essential purpose of land titles legislation” like the Act “is to provide the public with security of title and facility of transfer”. The Act embodies three basic principles, namely:

- The mirror principle – i.e., that the register of title reflects accurately and completely the state of title;

- The curtain principle – i.e., that the register is the sole source of information regarding title such that a person need not search behind the title and investigate the property’s history; and
- The insurance principle – i.e., that the state guarantees the accuracy of the register and compensates any person who suffers loss as the result of an inaccuracy.

[22] The LTA has been amended many times, including in 2006. Before the 2006 amendments, s. 78(4) provided:

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register.

[23] The bare text of s. 78(4) led to the argument that the LTA conferred “immediate indefeasibility” on registered instruments, meaning that instruments were effective and indefeasible as soon as they were registered, even if they were fraudulent. This argument was accepted in *CIBC Mortgages Inc. v Chan*, 2004 CanLII 66351 (Ont. S.C.), appeal dismissed by this court under the name of *Household Realty Corporation Ltd. v. Liu* (2005), 2005 CanLII 43402 (ON CA), 261 D.L.R. (4th) 679 (Ont. C.A.), where the mortgage obtained through the use of a forged power of attorney was enforced. The result created a furor.

[24] Sections 78(4.1) and (4.2) were added to the LTA in 2006 and create an exception for “fraudulent instrument[s]” with the effect that such instruments are not deemed to be embodied in the register despite the words of s. 78(4). The 2006 amendments provide:

Exception

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.

Non-fraudulent instruments

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

[25] The 2006 amendments added several definitions to s. 1 of the LTA. The term “fraudulent instrument” is defined in several ways in s. 1, some of which incorporate the concept of a “fraudulent person”.

1 ... “fraudulent instrument” means an instrument,

(a) under which a fraudulent person purports to receive or transfer an estate or interest in land, ...

“fraudulent person” means a person who executes or purports to execute an instrument if,

- (a) the person forged the instrument,
- (b) the person is a fictitious person, or
- (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument;

[26] The 2006 amendments to the LTA were passed in the wake of this court's decision in *Household Realty* and before the court overruled that decision in *Lawrence*. The amendments were aimed at ensuring that fraudulent instruments would not be given effect in the title register. The legislative debates evidence a concern about real estate fraud and the attendant risk that a property owner might lose their property or become responsible for a fraudulent mortgage. It is noteworthy that there was no specific discussion in the legislative debates to the 2006 amendments about their impact on corporations owning land and securing financing through mortgages and charges.

[27] Based on the 2006 amendments, 128 argues that the mortgage was a "fraudulent instrument" under the LTA and that the doctrine of "deferred indefeasibility" applies to protect 128 and to deprive Seligman of protection.

[28] We make two observations as we turn to the issues: first, the LTA does not provide a remedy for all frauds; second, and relatedly, the fact that a fraud might have been perpetrated is not in itself enough to invalidate an instrument.

[69] As set out at paragraph 24 of *Froom*, s. 78(4.1) creates an exception for "fraudulent instruments", to the rule in s. 78(4) that an instrument is valid once registered.

[70] The terms "fraudulent instrument" and "fraudulent person" should be narrowly construed: *Froom*, at para. 37.

[71] Fraudulent person can include a corporation: *Froom*, at para. 36. A fraudulent instrument includes one executed by a person who forged the instrument, by a fictitious person or by a person who held themselves out as owner while knowing they were not.

[72] The Court of Appeal considered the term "fraudulent person" in the context of the indoor management rule at paras. 46-50 of *Froom*:

[46] The expansive approach to the interpretation of "fraudulent person" urged by 128 runs into another significant barrier: the indoor management rule, which has

been codified in s. 19 of the Business Corporations Act, R.S.O. 1990, c. B.16. Under the indoor management rule, if a corporation holds someone out as a director, officer, or agent to a third party, the corporation cannot deny that the person has the authority usual for the position. The third party is entitled to assume that the corporation's internal procedures have been complied with unless the third party knew or ought to have known otherwise. Stated differently, the indoor management rule provides that a party dealing with a corporation acting in good faith and without knowledge of any irregularity, is entitled to assume that the corporation has complied with its internal policies and procedures.

[47] If the court treated a document authorized by a director or officer who fraudulently obtained control of a company as a forgery, it would mean that those transacting with corporations would potentially have to look behind the corporate register to ensure that the director or officer was duly appointed and authorized to enter into the transaction. This is not only impractical, but contrary to the indoor management rule.

[48] In this case, and contrary to the indoor management rule, 128 is effectively asking this court to look behind Lafontaine's apparent authority to enter into the mortgage in order to conclude that it was a forgery. It has not pleaded that Seligman ought to have known that Lafontaine lacked authority to enter into the transaction or that the corporate documents Lafontaine executed should have alerted Seligman to the alleged fraud.

[49] The curtain principle under the LTA is intended to excuse a purchaser or lender from having to go behind the title register. This is quite consistent with the policy thrust behind the indoor management rule.

[50] We accordingly dismiss 128's invitation to expansively interpret what constitutes a forgery for the purpose of s. 1 of the LTA. There was no forgery within the restricted meaning of that provision in this case because Lafontaine was authorized to act for 128, even if 128 is correct that she obtained control through fraudulent means. The mortgage is authentic.

[Footnotes omitted.]

[73] In *Froom*, the Court of Appeal considered the doctrine of deferred indefeasibility at paras. 66-78:

[66] Under the theory or doctrine of deferred indefeasibility, the mere registration of an instrument that is void because of fraud does not cure the defect for the party who immediately acquires the property by means of that fraudulent instrument, but the next person dealing with the property may rely on the fraudulent document and its registration and takes good title. Deferred indefeasibility was explained by this court in *Lawrence*, at para 67:

Under this theory, the party acquiring an interest in land from the party responsible for the fraud (the "intermediate owner") is vulnerable to a

claim from the true owner because the intermediate owner had an opportunity to avoid the fraud. However, any subsequent purchaser or encumbrancer (the “deferred owner”) has no such opportunity. Therefore, in accord with s. 78(4) and the theory of deferred indefeasibility, the deferred owner acquires an interest in the property that is good as against all the world.

[67] Before the 2006 amendments, this court had considered the theory of deferred indefeasibility and the LTA in *Household Realty Corporation Ltd.* In that case, the defendant wife had forged her husband’s signature to create a fraudulent power of attorney, which she used to grant mortgages on the property. The court held that these mortgages were valid and enforceable under s. 78(4) of the LTA, despite their fraudulent origin, because the mortgagees offered good consideration and did not have notice of the fraud. Although the court expressly declined to determine whether deferred indefeasibility applied under the LTA, the result was seen as a rejection of deferred indefeasibility in favour of immediate indefeasibility.

[68] When the 2006 amendments were being debated, some members of the Legislative Assembly spoke of their fear that this court’s decision in *Household Realty* would open the doors for people to commit title fraud. However, this court soon overturned *Household Realty* in *Lawrence*. Justice Gillese, writing for a unanimous five-judge panel, held that *Household Realty* was wrongly decided. She stated that deferred indefeasibility, rather than immediate indefeasibility or absolute title, was consistent with prior case law and the plain meaning of the statute, as well as being preferable from a policy perspective. As Gillese J.A. noted, a system of deferred indefeasibility “encourages lenders to be vigilant when making mortgages and places the burden of the fraud on the party that has the opportunity to avoid it, rather than the innocent homeowner who played no role in the perpetration of the fraud”.

[69] Notably, *Lawrence* was heard based on the LTA as it existed before the 2006 amendments because those amendments did not have retroactive effect to the date of the transaction in question. However, the Attorney General of Ontario, who intervened on that appeal, advised that Bill 152, which introduced the amendments, was “intended to make clear that, as of the effective date, the [LTA] operates on the basis of deferred indefeasibility”.

[70] In view of this court’s decision in *Lawrence* and the legislative history of the LTA, there is little doubt that the Act incorporates the doctrine of deferred indefeasibility and should be interpreted accordingly. The Act operates to put the obligation on the party acquiring the interest in land to ensure that it acquires that interest from the true owner. But, as we will explain, it does not follow that the appeal should be allowed.

[71] 128 argues that it would be consistent with the purpose of deferred indefeasibility for the court to exercise its residual discretion, which was not abrogated by the amendments to the LTA, to protect an innocent party like 128 against fraud. We reject this argument.

[72] While this court recognized in *Lawrence* that the LTA is predicated on a theory of deferred indefeasibility, it also held that “it is the relevant legislative provisions that must drive the analysis”. 128 argues that deferred indefeasibility, as applied to protect innocent property owners against fraud, was not expressly abrogated by the 2006 amendments, so that the exceptions to s. 78(4) are not limited to those types of fraudulent activity defined in s. 1 of the Act in accordance with s. 78(4.1), relying on the court’s comments in *Lawrence* that the theory of deferred indefeasibility permits common law principles of real property to remain the law unless expressly abrogated.

[73] For example, while the deferred indefeasibility of title regime typically guarantees that a transfer in favour of a subsequent purchaser or encumbrancer is valid once registered, there may be an exception for a subsequent purchaser or encumbrancer with actual notice of a defect. In *MacIsaac v. Salo*, 2013 ONCA 98, 114 O.R. (3d) 226, this court endorsed the principle, at para. 39, “that equity continues to have application to claims governed by the Land Titles Act and that the Act has not abrogated equitable principles of actual notice”.

[74] Despite the ongoing role of equity in decisions made under the LTA, deferred indefeasibility and the principles underlying it do not assist 128 in this case. There are four reasons for this. First, this is not a case about whether a purchaser or encumbrancer had actual notice of a defect in title. The discussion in *MacIsaac* is thus of limited assistance. 128 does not claim that there was a defect in title to the condominium and that Seligman had notice of that defect. To the extent actual notice of a defect may defeat the interest of a *bona fide* purchaser or encumbrancer for value with notice of the defect, the principle would not apply in this case.

[75] Second, 128’s argument rests on a misunderstanding of deferred indefeasibility. 128 essentially argues that because Seligman was the immediate, rather than deferred, encumbrancer, the mortgage is not valid in her favour. The problem with this argument is that the doctrine of deferred indefeasibility concerns fraudulent, and therefore invalid, instruments. It is not the case that any instrument is invalid as against the immediate person who registers it simply because that person is the first to deal with it. Here, the Legislature, through the 2006 amendments, has delineated what constitutes a fraudulent instrument. For the reasons discussed above, the mortgage is not a fraudulent instrument.

[76] Third, applying the doctrine of deferred indefeasibility in this case would arguably be inconsistent with its own underlying principles. The doctrine is premised in part on the principle that, as between two innocent parties, the party who, by due diligence, has an opportunity to uncover and possibly prevent the risk of fraud ought to be the one who bears it. While the motion judge’s findings of fact in this case are limited, given that his analysis proceeded on the assumption that 128’s allegations are true, it is notable that there is no allegation that Seligman should have been aware of the alleged fraud. To the contrary, in her affidavit evidence, Seligman stated that her counsel conducted a search of the corporation and obtained corporate documents. These documents identified Lafontaine as the

director and officer of 128 and did not disclose any obvious fraud. 128 was better placed to avoid this fraud by due diligence than was Seligman.

[77] Fourth, and relatedly, not extending deferred indefeasibility to this case says nothing about any remedies the appellant might potentially have against Lafontaine directly. If 128 is correct that Lafontaine fraudulently revived the corporation and made herself a shareholder, officer and director, 128 might have a valid claim against her for the amounts it owes to Seligman under the mortgage. That, however, is a separate issue from whether the mortgage is valid and enforceable by Seligman.

[78] For these reasons, the doctrine of deferred indefeasibility does not assist 128. To the extent the court has a residual discretion beyond the LTA to invalidate the registration of an instrument, the motion judge did not exercise that discretion to invalidate the mortgage, nor do we. There is no doubt that, of the three parties, Seligman is entirely innocent; it is not clear how the dispute between Froom and Lafontaine over 128 will end.

[Footnotes omitted.]

[74] A forged authorization or direction may constitute a fraudulent instrument within the meaning of the *Land Titles Act*. Paragraphs 25-28 of *Culbert v. Culbert*, 2017 ONSC 3628 provide:

[25] Section 155 of the Land the Titles Act reads:

Subject to this Act, a fraudulent instrument that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner.

[26] Section 159 of the Land Titles Act provides:

Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just.

[27] The case of *Morris v. Donegan*, [2015] O.J. No. 2693 is factually similar to the present case. In *Morris v. Donegan*, the trial judge concluded that someone other than the plaintiff had signed the Acknowledgment and Direction authorizing the transfer to the defendant of all but five percent of the plaintiff's ownership interest in the property. At paragraphs 126 and 127, the trial judge stated:

It is not necessary for me to find that this was a fraudulent conveyance within the meaning of the Fraudulent Conveyances Act because the Acknowledgment and Direction to transfer all but 5% of the ownership interest of Ms. Morris to Mr. Donegan on May 23, 2014 was a

fraudulent instrument. As a fraudulent instrument, it was fraudulent and void, and remains fraudulent and void, despite registration: section 155 of the Land Titles Act, RSO 1990, c. L. 5.

In view of my finding that the Acknowledgment and Direction resulting in the transfer was a fraudulent instrument, I find that the transfer itself was fraudulent and therefore void. Ms. Morris retains the ownership interest purportedly transferred to Mr. Donegan on May 23, 2014. She continues to hold an undivided 50% ownership interest in 108 Vivians Crescent as a joint tenant. I therefore order the Director of Land Titles to rectify the register under section 159 of the Land Titles Act, which reads as follows: [section set out above].

[28] I adopt the same reasoning in the present case. Ron's signature on the Acknowledgment and Direction was forged by Tim. Accordingly it is a fraudulent instrument on which the subsequent transfer was based. Therefore, the transfer was fraudulent and void. Ron continues to be the beneficial owner of the property and is entitled to rectification of the registration of the purported transfer to Marjorie.

[75] Ms. Stolp relied on *Chateramdas v. Sanasie*, 2025 ONSC 560. Paragraphs 43-49 review the relevant provisions of the *Land Titles Act*:

[43] The provisions of the *LTA* are central to this dispute.

[44] The Court of Appeal has described the purpose of legislation like the *LTA* is to "provide the public with security of title and facility of transfer": *Froom* at para. 21.

[45] The three basic principles of the *LTA* are described as the "mirror, curtain, and insurance" principles. That is, the register reflects (mirrors) title accurately and completely; no party need to be search behind the curtain of the registry to investigate title; and the state guarantees the accuracy of the registry and compensates loss from inaccuracy: *Froom* at para. 21.

[46] Prior to 2006, as will be discussed beginning at paragraph 61 below, s. 78(4) of the *LTA* led to the finding that instruments were generally effective and indefeasible upon registration. That section provides:

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register.

[47] The *LTA* was amended in 2006 to add provisions aimed at protecting against some, but not all, types of fraud: *Froom* at para. 28. The legislature added s. 78(4.1) and (4.2):

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

[48] Definitions of *fraudulent instrument* and *fraudulent person* were also added:

“fraudulent instrument” means an instrument,

- (a) under which a fraudulent person purports to receive or transfer an estate or interest in land,
- (b) that is given under the purported authority of a power of attorney that is forged,
- (c) that is a transfer of a charge where the charge is given by a fraudulent person, or
- (d) that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument;

“fraudulent person” means a person who executes or purports to execute an instrument if,

- (a) the person forged the instrument,
- (b) the person is a fictitious person, or
- (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument;

[49] Section 155 was also amended. It now reads: “Subject to this Act, a fraudulent instrument that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner.”

[76] Ms. Stolp particularly relies on the analysis at paras. 76-90 of *Chateramdas*:

[76] In *Froom*, the registered owner of the property at issue was a corporation that had been controlled at various times by one spouse (Froom) or the other (Lafontaine). The couple’s relationship broke down. The corporation mortgaged the property. Froom alleged that Lafontaine, who was the registered director and officer at the time the corporation granted the mortgage, had fraudulently become the corporation’s officer and director.

[77] On a motion for partial summary judgment, the Court found in favour of the mortgagee. It noted that there was no dispute that the corporation was a real, not fictitious corporation, and that it owned the property in respect of which the mortgage was given. Consistent with the indoor management rule, there was no requirement for the mortgagee to go behind the corporate register to ensure that Lafontaine had actual authority to bind the corporation. There was no doubt that the corporation was the true registered owner of the condominium, so the Court of

Appeal found that the definition of fraudulent person in s. 1(c), at issue in this case, did not apply in *Froom*.

[78] The Court in *Froom* held that the doctrine of deferred indefeasibility did not assist the corporation or the personal parties as, unlike in *Lawrence*, there was no fraudulent instrument. The court also pointed out that the doctrine of deferred indefeasibility is premised on the theory that, as between two innocent parties, the party who had the opportunity to discover the fraud by due diligence should be the party who bears the risk of the fraud. In the case before it, that party was the corporation, not the mortgagee.

[79] The plaintiffs argue that under the doctrine of deferred indefeasibility, RiverRock is the intermediate owner, and the burden falls on RiverRock as the party who had the opportunity to avoid the fraud, not on the innocent homeowner who played no role at all in the fraud: see *Chang v. Chen*, 2022 ONSC 870, at para. 33, citing to *Lawrence*, at paras. 1, 58.

[80] The plaintiffs argue that RiverRock could have exercised better due diligence before advancing the funds to Melissa, although they do not go so far as to argue that RiverRock had actual or imputed knowledge of the fraudulent transfer. The plaintiffs argue that RiverRock missed “important telltale signs” of fraud including that it was the plaintiffs, not Melissa, who were named as the borrowers on the appraisal on which RiverRock relied to advance funds to Melissa.

[81] The Director takes the position that, incorporating the doctrine of deferred indefeasibility into the interpretation of the LTA, it is the intermediate owner who generally has the opportunity to discover the fraud, as it is dealing directly with the person who engaged in the fraud. The innocent homeowner has no such opportunity. RiverRock, as the intermediate owner, is the one who bears the risk, not the plaintiffs who are the innocent homeowners.

[82] RiverRock takes the position that *Chang* was wrongly decided and should not be relied upon, noting it was a default judgment case. Further, RiverRock argues that there were no “telltale signs of fraud” in this case. RiverRock did not know Melissa but had had previous dealings with the mortgage broker. Even if there had been an error in naming the borrower, it would not be problematic because the proper parties would be referenced when the mortgage loan was applied for, and documents were prepared for, registration.

[83] RiverRock states that it is entirely unrealistic to suggest that it failed to conduct due diligence in confirming that the appraisal was conducted with the consent of the plaintiffs. The appraisal was prepared by an accredited appraiser, and no lender would question an appraiser as to whether they had consent of the owner to conduct the appraisal. From the photographs attached to the appraisal, the appraiser clearly was given access to the property. Nor was there any note from the appraiser indicating any issues with access or otherwise with dealing with the property. There was no reason for RiverRock to question the appraisal or to think there was anything untoward behind the different names on the appraisal and the mortgage application.

[84] I find that RiverRock had the opportunity to discover the fraud. The plaintiffs did not. It is not necessary to find, and I make no finding, as to whether RiverRock failed to exercise due diligence or should have discovered the fraud. It is enough to find it could have done so. I note the following exchange at its cross-examination:

Q. Thank you. Is it standard practice for RiverRock to approve a mortgage by way of mortgage commitment on the same day as receiving the application?

A. 100 percent, that is one of our selling features. We say four hour turnaround time, maximum.

[85] If a lender commits to a maximum four-hour turnaround time, it is undoubtedly exposing itself to some risk as an intermediate owner.

[86] I agree with RiverRock that the amendments were not intended to deal with all aspects of real estate fraud. Indeed, in both *Computershare* and *1168760 Ontario Inc.* the Divisional Court reversed decisions that had found fraud based on false or fraudulent statements in affidavits by the person who purported to convey an interest in the land. In both cases, however, the Divisional Court found that the conveyancer had proper authority to make the conveyance. Similarly, the possibly fraudulent conduct in *Froom* related to a notice of change registered with the government in respect of officers and directors of a corporation. The fraudulent activity was not with respect to title – the corporation had title to the property in issue and was therefore able to convey an interest in the land. There was no dispute that the corporation was the registered owner. The indoor management rule meant that the mortgagee was entitled to assume that the corporation had complied with its internal policies and procedures. In none of these cases was the fraud or fraudulent statement referable to the documents on title.

[87] As stated above, RiverRock also relies on *Hillmount*. I do not find that *Hillmount* assists RiverRock. The facts in *Hillmount* are different from this case in important ways. In that case, the court found that the grantor of the mortgages at issue, Mr. Onsori, was the registered owner of the property. He consented to the first mortgagee's request to appoint a receiver over the property. A second respondent, Ms. Afkari, alleged she was the owner of the property, and that the property had been transferred to Mr. Onsori through fraudulent transactions by "the notorious Arash Missaghi". Ms. Afkari had been the registered owner, but Mr. Onsori became the registered owner in power of sale proceedings. Ms. Afkari wanted the court to adjourn the application to appoint the receiver to allow her time to investigate the incident and initiate legal proceedings regarding the conveyance.

[88] The court found that even if Ms. Afkari were believed, her evidence was that she was not making mortgage payments and there was no evidence anyone else was making those payments on her behalf, despite the fact that she thought someone was doing so. Therefore, even if the mortgage that led to the power of sale proceedings was fraudulent, the transfer to Mr. Onsori was not and he became the registered owner of the property. The court found Mr. Onsori was not a fraudulent person. He was the registered owner of the property in question.

[89] The case now before the court is markedly different from *Computershare, 1168760 Ontario Inc.*, *Froom*, and *Hillmount*. Here, the fraud goes to the very issue of title, and the issue of whether Melissa was the “true” owner and therefore legally able to convey an interest in land. I note that in both *Computershare* and *Froom*, the Divisional Court and Court of Appeal respectively used the language of “true owner” in their analyses of the LTA provisions (*Computershare* para. 53, *Froom* para. 70). Melissa’s actions in this case are exactly the kind of fraud the amendments were meant to protect against. The definition of fraudulent person is intended to, and does, capture this very situation. Melissa knew she had no legal interest in the property. She held herself out to be, but knew she was not, the true registered owner of the land. She purported to take title by fraud and then convey an interest she knew she did not have. She meets the definition of fraudulent person as defined in clause (c) of the LTA definition *vis-à-vis* the charge.

[90] Given that Melissa is a fraudulent person, the mortgage is a fraudulent instrument and void against the property and the plaintiffs. The register must be rectified to delete it from title.

[77] The Plaintiff claims that *Chateramdas* was wrongly decided and the court did not grapple with RiverRock’s position as set out at paras. 55-58 of *Chateramdas*:

[55] The Director of Titles supports the plaintiffs’ position. It argues that the fraudulent transfer did not make Melissa the true registered owner capable of issuing valid charges that burden the innocent homeowner. The Director argues that the amendments were added to the LTA to codify the doctrine of deferred indefeasibility. Under the doctrine, discussed below, the intermediate owner (RiverRock), is not protected from a claim by the true, innocent owner (the plaintiffs).

[56] RiverRock argues that, while the transfer is a fraudulent instrument, the charge is a separate transaction, and the charge does not fall within the LTA’s definition of a fraudulent instrument. Melissa supports RiverRock’s arguments. The mortgage was registered after the fraudulent transfer, and Melissa and RiverRock argue that s. 78(4.2) provides that the mortgage, a subsequent instrument, is unaffected by the fraud pertaining to title.

[57] RiverRock relies on *Hillmount Capital Mortgages Inc. v. Onsori-Saisa*, 2024 ONSC 4481 at para. 41 and argues that “registered” must mean only that. Parties are entitled to rely on registered title and no inquiry into “true” ownership is contemplated by the legislation. This is the intended consequence of the mirror and curtain principles, two of three foundational principles on which the land titles regime is based.

[58] RiverRock argues that subsection 78(4.2) specifically provides that instruments registered subsequent to a fraudulent instrument are not invalidated.

Thus, if the transfer is fraudulent, the subsequent mortgage is not invalidated if it is not itself a fraudulent instrument.

[78] The Plaintiff relies on *CIBC Mortgages Inc. v. Computershare Trust Company Canada*, 2016 ONSC 7094 (Div. Ct.) and in particular paragraphs 46, 47, 49, 51-53 and 60-63.

[46] However in light of the amendments to the LTA, s. 78(4) no longer needs to be read in a manner that recognizes that the LTA gives effect to the theory of deferred indefeasibility. Sections 78(4.1) and 78(4.2) spell out explicitly, for the first time, that the Act establishes a scheme of deferred indefeasibility only with respect to “fraudulent instruments”. In addition, the two sections spell out explicitly how deferred indefeasibility will work. Specifically, s. 78(4.2) provides that “[n]othing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.”

[47] What is important is that the two new sections, taken together, provide only for the invalidation of “fraudulent instruments.” The Court in *Lawrence v. Maple Trust Co.* held that the party acquiring an interest in land from the party responsible for the fraud is vulnerable to a claim from the true owner. This would only be the case pursuant to the amendments if the party acquiring the interest in land from a fraudster does so by way of an instrument that is a fraudulent instrument. Generally speaking, this distinction will make no difference. In the circumstance of an innocent person taking an interest in a home to which the grantor of the home had no interest, which was the concern of the legislature when it amended the LTA, the result would be the same in either case. But the fact remains that in deciding a case such as this one, we are called upon to apply the LTA as amended, and not simply the interpretation of the LTA before it was amended, found in *Lawrence v. Maple Trust Co.* Specifically, we must determine whether or not the CIBC and Secure Capital mortgages are fraudulent instruments.

...

[49] In this case, the application judge did in fact consider whether the CIBC and Secure Capital mortgages were fraudulent within the meaning of the LTA. If they were, then of course, by virtue of ss. 78(4), 78(4.1) and 78(4.2), they were not deemed to be embodied in the register and not deemed to be effective to create an interest in the property. He found that they were fraudulent, and therefore that the Computershare mortgage should be rectified and given priority over them.

...

[51] The application judge then concluded that the Lowtans fell within the definition of fraudulent persons in their dealings with CIBC and Secure Capital, and that as a result the mortgages given by the Lowtans to CIBC and Secure Capital are fraudulent instruments. He reasoned, at para. 51:

The Lowtans did not own the interest in the property purported to be conveyed to CIBC and to Secure Capital. The Lowtans were fraudulent persons within the meaning of the LTA in their dealings both with CIBC and with Secure Capital. Therefore, I conclude that the mortgages given by the Lowtans to CIBC and Secure Capital were fraudulent instruments within the meaning of s. 78(4.2) of the LTA.

[52] I do not doubt that the Lowtans perpetrated a fraud on CIBC and Secure Capital, by concealing from them, at the time they entered into the respective mortgage agreements, the existence of the Computershare mortgage. But that is not enough to make the Lowtans “fraudulent persons.” To be fraudulent persons in this circumstance, the Lowtans had to have knowingly and falsely held themselves out, in the two mortgages, to be the registered owners of the estate or interest in the land affected by the mortgages.

[53] I cannot agree with the application judge’s analysis. In this case, the Lowtans were the true owners of the estate or interest in the land affected by the mortgage and their ownership was validly registered. They were perfectly entitled to grant an interest or charge on the land by way of mortgage. They did not falsely hold themselves out “in the instrument[s]” to be registered owners of the affected estate or interest. They were the holders of the fee simple. The two mortgages are therefore deemed by ss. 78(4) and 78(4.2) of the LTA to be effective to create interests in the property in favour of CIBC and Secure Capital, and do not fall within the exception in s. 78(4.1).

...

[60] As I understand his reasoning, the application judge was saying that the Lowtans first conveyed an interest in the property to Computershare, then conveyed that same interest back to themselves by their fraudulent discharge, and finally conveyed that same interest, an interest that they didn’t have, to CIBC. Since the discharge was fraudulent, the Lowtans did not reacquire title to the interest they had conveyed to Computershare, and the subsequent conveyance of that interest to CIBC is invalid on the basis of deferred indefeasibility to the immediate purchaser, namely CIBC.

[61] In my view, this analysis fails for the same reason as the s. 78(4.1) argument fails. The mortgage to CIBC was perfectly valid. It was not a fraudulent reconveyance of the Computershare first mortgage to CIBC. It was simply a conveyance of a charge on the property that the Lowtans were the registered owners of in return for a mortgage loan. The fraud was in the concealment of the mortgage to Computershare, and cannot be found in the instrument. If the value of the property had doubled by the time of the defaults in the mortgages, Computershare and CIBC would both be entitled to recover their interests.

[62] In fact, had the application judge carried his logic through to the end, he ought not to have ordered that Computershare’s mortgage had priority over the CIBC mortgage. He ought instead to have declared the CIBC mortgage to be void. Of course that would not be an equitable outcome on any view of the matter. CIBC

innocently advanced funds to fraudsters, and ought not be disentitled to collect what it can.

[63] At bottom, what the application judge did, and what the respondents seek in this case is simply not what the doctrine of deferred indefeasibility contemplates, regardless of the terms of the LTA. According to the doctrine of deferred indefeasibility, registration of an invalid instrument does not make the instrument valid in favour of an immediate purchaser, but if the purchaser becomes the registered owner, a purchaser from the immediate purchaser is protected by the statute. This second purchaser is entitled to rely upon the register and need not go behind it. Here the discharge of the Computershare mortgage was fraudulent and invalid. If the discharge had been discovered before the mortgage to CIBC was registered, the Computershare mortgage could have been restored to title. But that did not happen, and the owners of the property gave a further mortgage to CIBC. As I see it, the owners were entitled to put a further mortgage on title, whether or not the Computershare mortgage was discharged. As a result, CIBC is not an immediate purchaser of a fraudulently acquired interest registered on title, and was entitled to rely on the mirror principle (the register is a perfect mirror of the state of title) and the curtain principle (a purchaser need not investigate the history of past dealings with the land, or search behind the title).

[79] Under the Land Titles system in Ontario, the rights of a *bona fide* purchaser for value without notice trump any prior unregistered interests in the property. Paragraph 4 of *Pichelli v. Adair Barristers LLP*, 2019 ONCA 843 provides:

[4] Moreover, any beneficial ownership by the appellants would arise by way of trust. Even where an owner of land is described as a trustee, pursuant to s. 62(2) of the Land Titles Act, R.S.O. c. L.5, absent a caution on title, a party may deal with the registered owner without inquiring as to the owner's power to grant a charge against title. The respondent is a bona fide purchaser for value with a registered interest in the property; her interest trumps any unregistered interest of the appellants in the property that pre-existed the granting of the mortgage: *Di Michele v. Di. Michele*, 2014 ONCA 261, 319 O.A.C. 72, at para. 107.

Law Issue 4: Registration of the Order

[80] Neither counsel provided any case law on this issue.

6. ONUS:

[81] The party asserting the *bona fide* purchaser defence must establish good consideration and absence of notice. Issues are determined based on a balance of probabilities.

7. ANALYSIS:

Issue 1: Is the APS Valid?

[82] It is unclear whether the initial APS was accepted after the irrevocability period. One version of the APS was undated, and the dated version appears to have been executed by Mr. Jain after the irrevocability period had expired. For this analysis, I have assumed that the APS was executed by Mr. Jain after the irrevocability period had expired.

[83] I agree with the Plaintiff's position that only parties to the contract may rely on such a technical defect to invalidate the agreement. The contracting parties were the Plaintiff and 254. Both clearly treated the APS as binding. After the initial APS, the Plaintiff and 254 negotiated amendments, extended timelines and ultimately closed the transaction. This subsequent conduct ratified the APS.

[84] The doctrine of part performance is a recognized exception to the rule that where acceptance takes place after the expiry of an irrevocability period, the offer lapses. In this case, there was full performance of the APS. This is clear in the evidence. The Plaintiff relied on the APS being binding and closed the transaction.

[85] Ms. Stolp has no standing to challenge the APS on the basis of the timing of the signatures. She was not a party to the contract. That the APS may have been signed just beyond the irrevocability period does not engage fraud affecting her rights. There is no evidence that this

technical defect was in any way intended to affect Ms. Stolp's rights, considering the findings of fact below.

Issue 2: Does the Plaintiff's purchase of the Property fall within s. 3 of the *Fraudulent Conveyances Act*?

[86] It is uncontested in this case that the conveyance of the Property from 254 to the Plaintiff was a fraudulent conveyance. This is acknowledged in the Statement of Agreed Facts. The Property was transferred contrary to Fitzpatrick J.'s order.

A. Did the Plaintiff purchase the Property for good consideration?

[87] The November 2016 Agreement of Purchase and Sale that Mr. Stolp and Ms. Stolp made to purchase the Property was for \$374,000. The Plaintiff purchased the Property from 254 for the final amended price of \$385,000.

[88] To answer whether the Property was purchased for good consideration involves primarily a consideration of the evidence of two appraisers - Dan Brewer, a litigation expert who testified on behalf of the Plaintiff, and Lauren Taylor (Primeau), a litigation expert who testified on behalf of Ms. Stolp. Both witnesses gave their evidence in chief primarily by affidavit and were cross-examined by the other parties.

i) **Evidence of Mr. Brewer- Plaintiff's Litigation Expert**

[89] Mr. Brewer has been an accredited appraiser with the Appraisal Institute of Canada since 1983. He was engaged by the Plaintiff to provide an opinion of value for the Property, retrospective to the date of May 27, 2021.

[90] Mr. Brewer determined that at the retrospective effective date of his report, there had been no applications for re-zoning, no official plan change and no application for a plan of subdivision with respect to the Property. There was a sketch of the Property but no official survey.

[91] The “Comprehensive Narrative Appraisal Report and Retrospective Valuation Analysis of an Improved Single Family Residential Acreage Property” for the Property was prepared by Mr. Brewer and a colleague.

[92] Mr. Brewer’s report was prepared for this civil proceeding.

[93] In Mr. Brewer’s report he provided a neighbourhood overview, location, property overview, site description and zoning summary for the Property as follows:

NEIGHBOURHOOD OVERVIEW

The subject neighborhood evidences mixed rural, residential, agricultural and commercial type products. Unless otherwise noted, no nearby anticipated public improvements or proposed private improvements would appear to have an impact on the herein concluded value. At this time, in Grey & Bruce Counties, First Nations have a dispute with the Canadian government over waterfront lands, the subject is not located on the disputed lands. The local Sauble Beach which is the prime attraction for this area is under this claim. It is creating some political and social disruption This, in time, may affect property and taxes and Municipal spending.

LOCATION

Locational attributes are the relationship of the site to its immediate environs, neighbours and activity centre. The subject property is located in a mixed rural, residential, commercial and agricultural area on the outskirts of the Town of Sauble Beach which is located in the Township of South Bruce Peninsula in Bruce County. It is bounded to the north by Town of Wiarton, east by the Village of Hepworth, south by Town of Southampton and west by Lake Huron. This improved acreage site is situated in an area where little to no development had occurred on the subject street as of the effective date of this report. At this time, the First Nations have a long standing land claim dispute with the Canadian government over a large portion of beachfront. This, in time, may affect property use of the waterfront in the area, taxes and Municipal spending. The political and social situations in the Town of Sauble Beach may affect future development decisions. The subject is not located on the disputed lands.

PROPERTY OVERVIEW

The irregular shaped subject is located with frontage on Municipal Road (gravel road) with additional frontage on Bruce Road 8(main street), adjacent to rural lands, a corner commercial property and backs onto a church. The subject does not include the corner lot, however, it has 2 road frontages. There are driveways off of Bruce Road 8 and Municipal Road. According to the owner, the majority of the lot has been farmed with hay by a neighbouring farmer, creating \$3,000/yr income. There are advertising signs on site and there is no information known with respect to contracts or income with the current owner. There is a metal outbuilding on site(Access not available). According to public records it is a Type III, uninsulated barn. It was not viewed and assumed to be in average condition. Full municipal services are not available in this area.

SITE DESCRIPTION

The appraiser has not been provided with a legal survey. Geowarehouse indicates the subject property has an approximate road frontage of 1192.84 feet by an irregular depth. The subject site is irregular in shape. The overall land area is reported to be 37.66 acres. The site is level with the road grade. The site is currently being farmed with hay. The county map indicates that there is some type of watercourse travelling from the southeast corner to the northwest.

Unless otherwise noted, the concept of assemblage is not applicable to the value herein concluded. Assemblage is the merging of adjacent properties into one common ownership for a designated common use. Assemblage can result in a value of two or more merged properties having a value greater than the sum of the two or more properties values added together as individual entities.

ZONING

The zoning governing the use of the site is the Township of South Bruce Peninsula, "RU1 – General Rural" designation, with the subject appearing to be a conforming usage as developed, however, full compliance has not been confirmed. Refer to the excerpt from the zoning by-law for permitted uses and provisions, contained in the Addendum of this report. The 2019 South Bruce Peninsula official plan states the subject as RUR Rural zoning. It re-affirms that it is a rural classification

[94] The Property is subject only to the usual municipal easements. The Property is assumed to be able to be fully serviced with hydro, natural gas, fire hydrants, fire protection, street lights, septic systems, paved roadways, telephoning, water wells and police protection.

[95] Mr. Brewer based his appraisal on what he considered to be the Property's highest and best use. In Mr. Brewer's report he indicates that in conducting the highest and best use analysis, an appraiser "should first consider the reasonable probable uses of a site that is legally accepted." He

then referred to five criteria for determining highest and best use: the use must be physically possible; the use must be legally permissible; the use must be probable; the use must be marketable and financially feasible; and, the use must be maximally productive.

[96] It was Mr. Brewer's opinion that the highest and best use of the Property would be development by an owner occupier as a single-family residential acreage property - a rural residential acreage building lot. This was based on the size of the Property and on zoning and the official plan. Mr. Brewer applied a direct comparison approach to value and looked at 4 comparable properties (rural residential building lots) and adjusted plus or minus based upon comparison to the Property.

[97] He concluded at page 31 of his report that "[a]fter consideration for the differences that exist and a weighting of the comparable sales, a range of between \$9,000 and 11,000 per acre of land is considered evident." The Property is 37.66 acres. Therefore Mr. Brewer concluded that the Property had a retrospective value range, based on a direct comparison approach, of \$339,000 to \$415,000.

ii) Evidence of Lauren Taylor - Ms. Stolp's Litigation Expert

[98] Ms. Taylor has been an accredited appraiser with the Appraisal Institute of Canada since 2020, having completed the courses in 2015, and having worked as a candidate appraiser from 2015 to 2020.

[99] Ms. Taylor also appraised the Property retrospective to May 26, 2021. In her report she indicates that the report "is to be used as an asset valuation for use by Lisette Silva (Stolp) and her legal counsel for information purposes regarding a matrimonial settlement, and no other use".

[100] Ms. Taylor appraised the Property as a residential development site.

[101] Ms. Taylor also noted there was no legal survey for the Property.

[102]With respect to existing use and occupancy, Ms. Taylor's report contains the following description:

EXISTING USE AND OCCUPANCY

The subject property is a 35.71-acre parcel of land currently used as cultivated agricultural land and improved with a storage shed outbuilding. Since 2017, efforts have been ongoing to prepare the site for development as a low-density residential development with potential for commercial buildings on the Main Street frontage. Work to date has included consultations with the Town and Bruce County, Geotechnical Assessment (June 2017), Nitrate Loading Impact Assessment (December 2017) and Archeological Assessment (July 2018). While the Town has not yet approved a site plan or zoning change, they have been working with the owner towards planning a suitable development that they are in agreement with. The property is significantly close to development approval, and reviewed correspondence with the Town suggests they are willing and eager to have the property developed.

[103]Ms. Taylor's description of an analysis of the Property is set out in the report:

DESCRIPTION AND ANALYSIS OF SITE

LOCATION:

The subject property is located at the northwest corner of the intersection of Main Street/Bruce Road 8 and Municipal Road (with an unrelated property on the actual corner), approximately 1.8 km east of Sauble Beach's main intersection of Bruce Road 13/Sauble Falls Parkway and Main Street

SIZE & SHAPE:

The subject site is irregular in shape, with a frontage of 869.33 feet along Main Street and 1,192.84 feet along Municipal Road according to GeoWarehouse data services. Reported area is 35.71 acres/14.45 hectares.

TOPOGRAPHY:

The site is generally level at street grade and is at grade with adjacent properties. The provided Geotechnical Investigation report by Peto MacCallum Ltd. dated June 27, 2017 states that the relief (slope) from east to west is less than 1 meter.

SOIL CONDITIONS:

No Phase I Environmental Site Assessment for the subject site was made available to provide information concerning possible contamination at the subject location. There are no indications that the subject soils do not have the necessary bearing capacity to support the subject improvements or typical improvements that might be constructed on the subject site. The provided Geotechnical Investigation report by Peto

MacCallum Ltd. dated June 27, 2017 suggests that basements are likely not a practical option for buildings on the subject property due to the high underlying water table. There were no indications in a cursory inspection of the subject site and buildings showing evidence of water or drainage problems.

SERVICES:

The subject site is assumed to be currently serviced with hydro to the existing storage shed building; electricity and natural gas are available at the road (Main Street). Municipal Road is a gravel/dirt road with open ditches and above-ground hydro lines. Main Street is a paved roadway without curbs and sidewalks, typical of commercial corridors.

ACCESS AND SITE IMPROVEMENTS:

The subject site is currently vacant with the exception of the storage shed and used as agricultural land. Due to the contentious nature of this case, the property was viewed from the public road only. There are no constructed driveways from either the Main Street or Municipal Road frontages, however review of correspondence with the County of Bruce suggests that future driveway/access to both roads from the subject site would be permitted to facilitate a future development.

ENVIRONMENTAL COMMENTS:

The subject property has reportedly been used as agricultural land for many years and is currently used in this capacity. No Environmental Assessment information concerning the subject was made available.

[104] With respect to development of the Property, Ms. Taylor's report states:

DEVELOPMENT:

Since 2017, efforts have been ongoing to prepare the site for development as a low-density residential development with potential for commercial buildings on the Main Street frontage. Work to date has included consultations with the Town and Bruce County, Geotechnical Assessment (June 2017), Nitrate Loading Impact Assessment (December 2017) and Archeological Assessment (July 2018).

Discussions with the county and municipal planning authority and professional investigations have shown that a development of up to 49 residential lots is possible on the subject site. The provided Nitrate Loading Impact Assessment confirmed that private septic systems would be possible on the site, as a common sewer system would be impractical in this location. While the property owners had originally planned for 39 residential lots and 2 commercial blocks fronting onto Main Street, the Town had indicated that they preferred higher-density housing such as townhomes in this location.

While the Town has not yet approved a site plan or zoning change, they have been working with the owner towards planning a suitable development that they are in

agreement with. The property is significantly close to development approval, and reviewed correspondence with the Town suggests they are willing and eager to have the property developed. A draft preliminary site plan of the property with 39 residential lots and 2 commercial blocks (Blocks “A” and “B” on the plan) is included below:

[105] Ms. Taylor then inserts a site plan in her report.

[106] Ms. Taylor notes in her report that the Official Plan for the Town of South Bruce Peninsula designates the Property as being within a Secondary Plan Study Area, with a current Rural land use designation. In her report, Ms. Taylor states in bolded print that “[n]otwithstanding the above, it is noted that correspondence between Bruce County and the Client has been reviewed which supports that the County and Town are willing to amend the Official Plan designation of the subject property to allow for development.” She acknowledges that the current zoning includes a range of agricultural uses, a single-detached dwelling and forestry uses, etc., and makes a similar note in bolded print that correspondence between Bruce County and the Client supports that the County and Town are willing to amend the zoning of the Property to allow for development.

[107] In her opinion, the highest and best use of the Property is for residential development.

[108] Ms. Taylor also uses the direct comparison approach. She uses five comparable properties. The sale price per acre rates are from \$6,724.45 to \$109,848.48 based on developable acres. The mean is \$32,388.35 per acre. The median is \$20,079.44 per developable acre. The comparable properties were sales of development/future development properties. Adjustments were made.

[109] A price per acre of \$33,000-\$37,000 was determined to be applicable and multiplied by 35.71 acres. This led Ms. Taylor to conclude that the retrospective value of the Property was \$1,250,000.

iii) Which expert evidence do I prefer, Mr. Brewer’s or Ms. Taylor’s evidence?

[110] I prefer the evidence of Mr. Brewer over the evidence of Ms. Taylor for several reasons.

[111] Ms. Taylor's report was not prepared for this case. It was prepared for settlement discussions in the family proceeding. Ms. Taylor's report was not created for use in this trial.

[112] In cross-examination, Ms. Taylor agreed that the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) established by the Appraisal Institute of Canada for use by appraisers require that the authorized use of a report be stated in the report and her report did not state that the report could be used in this civil proceeding or for any type of litigation.

[113] Ms. Taylor's entire report, evidence, choice of comparable properties and opinion was based on an assumption that the Property was "significantly close to development." This included her belief that the County and Town were willing to amend the Official Plan and zoning to allow for development.

[114] Based on these assumptions, Ms. Taylor used comparable properties that would result in "infilling", a term used in the official plan to define when lands abutting developed lands are chosen next for development. The comparables she used were designated as "future residential", a designation different than the Property.

[115] This assumption, which was central to Ms. Taylor's choice of comparable properties, was not in keeping with the evidence.

[116] Significantly, Ms. Taylor relied on meeting notes from a meeting the Stolps had with the municipality on July 26, 2018. In my view, these notes do not state or infer that the Property was "significantly close to development." The summary indicated that a geotechnical report had already been completed but that a grading plan had to be prepared during the decision process. Grey Sauble Conservation would have to provide detailed comments which would include a review of natural hazards and heritage properties. A servicing statement was required. The notes make it clear that an

application had not yet been submitted. The notes are clear that a servicing statement will be required. A hydrogeological assessment would be required.

[117] These meeting notes do not indicate that the Property was significantly close to development. No other evidence at trial did.

[118] Ms. Taylor acknowledged in cross-examination that no site plan or zoning change application had ever been submitted to the Town in regard to the Property. The July 2018 meeting notes are the last statement with any details of communications with the Town before the 2021 valuation date. There were many things outstanding and an application had not been submitted. There is no indication of any changes between 2018 and the valuation date.

[119] Ms. Taylor, in cross-examination, indicated that significant time and money had been invested in studies the Stolps had undertaken for the Property. She confirmed she had not seen any proof of the money invested. Ms. Stolp did not provide any such proof at trial.

[120] Ms. Taylor relies in her report and in formulating her opinion, on information she received from Ms. Stolp about the state of development of the Property. Ms. Stolp offered no proof at trial that the Property was close to development. Ms. Taylor's report refers to her having "reviewed correspondence" between Bruce County and the Client which suggested that the County and Town are willing and eager to have the Property developed. No correspondence, other than the notes of the July 26, 2018 meeting, were provided at trial. Ms. Taylor testified that she reviewed "pages and pages" of email correspondence which suggested that the County and Town were positive and willing to cooperate to come to a satisfactory development plan. I have seen none of these "pages and pages" of correspondence.

[121] Ms. Stolp said in her Trial Affidavit (submitted in her evidence in-chief) that on July 26, 2018, Mr. Stolp and she were approved to build 49 lots on the Property. She attached the email summary of the July 26, 2018 meeting. This summary does not say that approval had been granted. Ms. Taylor relied on Ms. Stolp's inaccurate characterization of the stage of development.

[122] Mr. Brewer based his valuation of the Property on the accurate state of the Property as it was in 2021, which was that a single-family residence could be built on it. This was in keeping with the applicable Official Plan and zoning in 2021. I accept Mr. Brewer's evidence that the highest and best use of the Property is what the Property actually was approved for at the time of valuation, a rural agricultural property on which a single residence could be built.

[123] Ms. Taylor agreed that under the applicable zoning in 2021, 49 homes could not be built on the Property. At most, four residences could be built without a zoning change and for more than five lots a plan of subdivision would be required. No plan of subdivision existed. Even the division of the Property into less than five lots would require a severance. There was no severance. Ms. Taylor agreed in cross-examination that the current zoning of the Property does not allow for residential development.

[124] Ms. Taylor also testified that she did not review the *Rules of Civil Procedure* when she prepared her report in terms of what was supposed to be in her report. This makes sense as her report was not prepared for this case or other litigation. It was prepared for family law settlement discussions.

[125] Further, in cross-examination, Ms. Taylor confirmed that she did not review the Acknowledgment of Expert's Duty until approximately eight months after her report was completed and that it was not on her radar when she issued her report. She was not aware of those duties at the

time of writing her report. This was her first time testifying in court. In these circumstances, it cannot be assumed or inferred that she knew her duties as an expert when she prepared her report. Mr. Brewer signed his acknowledgement the same month he prepared his report. His contemporaneous acknowledgment of his duties as an expert is another reason I prefer his evidence. Ms. Taylor acknowledged that her report makes clear that it was not prepared to the standard required in a court proceeding. By contract, Mr. Brewer's report makes clear that the authorized use of his report is to provide an opinion in this civil court case. The intended purpose of his report was clear from the outset.

[126] Ms. Taylor understood that three studies had been done on the Property between 2017 and the purchase of the Property by the Plaintiff - a geotechnical assessment, a nitrate loading assessment and an archeological assessment. No evidence was presented at trial as to how much, if any, these assessments would have increased the value of the Property. I cannot assume or infer that they did. Ms. Taylor also agreed in cross-examination that the nitrate loading assessment was draft and not final.

[127] Ms. Taylor's position was that the Official Plan designation would support potential development. She did acknowledge however that the Property did not have future residential zoning like some of the comparable properties she used.

[128] I prefer Mr. Brewer's method of valuing the Property given its current state as rural agricultural property, particularly when no evidence was presented that the Property was close to being developable. As Ms. Taylor acknowledged, the Property is designated for investigation for future development and is not an infill property, as opposed to the comparable properties she used. Mr. Brewer used comparables more similar to the Property in terms of zoning, Official Plan

designation, and location (not next to community). I agree with Mr. Brewer that Ms. Taylor's comparables are all within a community boundary where change is expected, unlike the situation with the Property. One of Mr. Brewer's comparable properties was zoned agricultural, which he said is very similar to rural zoning in terms of permitted uses.

[129] Ms. Taylor refers several times in her report to the Property with the phrase "severed as proposed". She called this a typo. The Property has not been severed. This is a significant error. Ms. Taylor also made an error in her report about the purchase price the Plaintiff paid for the Property.

[130] Ms. Taylor in her report called the sale of the Property by the Plaintiff illegal. In my view this far exceeded her mandate.

[131] Ms. Taylor acknowledged that the comparable properties she used were in the area of minor expansion or infill. The Property is not and does not abut an existing community. The comparables Mr. Brewer used were more aligned with the description of the Property. There were no applications for rezoning or to amend the Official Plan.

[132] Mr. Brewer was asked in cross-examination about the comparable properties he used being farther away from Sauble Beach than the Property. I accept his explanation that this did not mean they were not good comparables as the properties he chose reflected the purchaser profile - a rural property for one house.

[133] I accept Mr. Brewer's evidence that the studies that were done on the Property did not impact his appraisal. There had been no application for rezoning or an Official Plan amendment. In his view these studies were more the type of thing people do to determine if they can do something more with the Property and maybe nothing will happen from them. There has been no application for rezoning or to amend the Official Plan. The studies would not materially impact his appraisal.

[134] There is a slight difference between Mr. Brewer and Ms. Taylor in regard to the exact acreage. Mr. Brewer used the Municipal Property Assessment Corporation record whereas Ms. Taylor used the acreage on the Land Titles Registry - GeoWarehouse. The difference is slight and not relevant to my analysis.

[135] In conclusion, for many reasons I accept the evidence of Mr. Brewer over that of Ms. Taylor and find therefore that the value of the Property in May of 2021, when the Plaintiff offered to purchase the Property for \$375,000, was in the range of \$339,000 to \$415,000. The offer of \$375,000 was clearly in the range. The consideration paid cannot be paid considered “grossly inadequate.”

iv) Other evidence

[136] It is clear that some studies were done on the Property in between 2016 and 2021. I received no direct evidence (e.g., invoices) for the costs of such studies. Ms. Stolp’s position was that considerable funds were spent. She produced no invoices, even though her evidence was that she was heavily involved in the development steps that were taken.

[137] Ms. Stolp’s counsel did cross-examine Mr. Stolp extensively on this issue of the funds spent on these reports and consultants in the process of commencing development on the Property. Mr. Stolp was shown his transcript from questioning in the family law proceeding, wherein he had stated that the purchase price and development expenses totalled around \$550,000.

[138] In my view what was or was not spent is of very limited probative value. As set out above, I have accepted the evidence of Mr. Brewer as to the value of the Property, which includes his evidence that the studies that were done on the Property did not impact his appraisal. In his opinion

the studies were the type people do to determine whether they can do something more with a property.

[139] This is consistent with Mr. Jain's evidence, which I have accepted, as outlined below, when he was asked in cross-examination whether the studies done on the Property before the Plaintiff purchased the Property should have increased the purchase price. Mr. Jain agreed that the soil study was helpful but would not have cost a lot to be done. In his view, the archaeological study was unnecessary. In Mr. Jain's view, the plan Mr. Stolp had put together for the Property was the wrong plan for the Property - the implication being that what Mr. Stolp did was not of value to him.

B. Did the Plaintiff, at the time of purchase, act in good faith, without notice or knowledge of Mr. Stolp's intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures?

[140] It is the Plaintiff's position that the Plaintiff was a *bona fide* good faith purchaser with no knowledge or notice of fraud. Ms. Stolp takes the opposite position. It is the Plaintiff's position that they had no knowledge or notice of any alleged forgery of the direction regarding title in 2016 or of the non-depletion order. Ms. Stolp was not able to provide any evidence in regard to what the Plaintiff knew or did not know, as she had no role in the sale of the Property to the Plaintiff, and was not aware of the transfer of the Property to the Plaintiff until after the transaction was closed.

[141] Two witnesses testified for the Plaintiff regarding this issue, Nitin Jain (owner of the Plaintiff) and Ted Russell (realtor for the Plaintiff). The Plaintiff's position is that they were credible witnesses. Ms. Stolp's position is that they were not. I will summarize each of their evidence and

after each summary, assess their credibility. I will also review Mr. Stolp's limited evidence regarding this issue.

i) Nitin Jain's Evidence

a) In his Affidavit and in-Chief

[142] Mr. Jain is the President of the Plaintiff Corporation. He is the sole director, officer and shareholder. The Plaintiff was incorporated in April of 2018.

[143] The Plaintiff is a holding company for lands to be developed by Crescent Homes Inc. ("Crescent"). Crescent is a building corporation. Mr. Jain is the sole officer, director and shareholder of Crescent.

[144] The Plaintiff owns three properties, one of which is the Property. The other two properties are seven units in Kitchener and 96 units in Kitchener.

[145] Mr. Jain entered the building industry in 2013. He purchased his first property in 2013.

[146] Ted Russell, of the brokerage Trillium West Real Estate Brokerage Ltd., is a real estate agent and has worked with Crescent for ten years. Mr. Russell has brought approximately ten properties to Mr. Jain as development opportunities and Mr. Jain has purchased three.

[147] In 2019 or 2020, Crescent also hired Mr. Russell as a project manager. When Mr. Russell was assisting Crescent in locating properties, Mr. Russell was working in his capacity as a realtor with Trillium West.

[148] Mr. Russell received a commission when the purchase of the Property by the Plaintiff closed.

[149] In January of 2020, Mr. Russell presented to Mr. Jain an opportunity to purchase the Property.

[150] Mr. Jain has never had any communication with 254 or Mr. Stolp except through counsel in this litigation.

[151] Mr. Jain thought the Property looked like a good opportunity. He was aware that a lot of work needed to be done to prepare the lands for development. He wanted to bring services to the Property - sewage, water and hydro.

[152] Soon after, Mr. Russell and Mr. Jain drove to inspect the Property. Mr. Jain was interested but wanted to get an opinion from a planner and an engineer. He first reached out to a planner in Kitchener, then after some months engaged the planner that 254 had been working with, Ron Davidson Land Use Planning Consultant Inc. ("Davidson").

[153] Mr. Jain set up meetings with Davidson in Owen Sound and with engineer Laura Swanson in Owen Sound. The Plaintiff paid the engineering firm a retainer. Mr. Jain remained interested in the Property but understood that bringing services to the Property would be very expensive.

[154] The Property did not have municipal services. If he bought the land, Mr. Jain wanted to build the most residences on the Property that he could. This would require services to be brought to the Property. This would also require a pumping station.

[155] Mr. Russell handled all the negotiations and communications with 254.

[156] Mr. Russell recommended to him the purchase price based on Mr. Russell's expertise and Mr. Russell's discussions with Mr. Stolp.

[157] In May of 2021, Mr. Jain was ready to make an offer and Mr. Russell advised him that the purchase price sought by 254 was \$375,000. Mr. Jain instructed Mr. Russell to prepare the offer, which he did, and the Agreement of Purchase and Sale (“Agreement”) was dated May 26, 2021 and signed via Docusign. The Agreement provided a provision for the Plaintiff to extend the closing to provide more time for due diligence.

[158] On August 26, 2021, the Agreement was amended to extend the conditions date to September 15, 2021 and the closing date to November 15, 2021.

[159] The Plaintiff extended the conditions date and closing date one more time by amendment signed November 5, 2021. The closing date was set for November 25, 2021 and the purchase price was increased by \$10,000 to \$385,000. A provision for a vendor take-back mortgage (“VTB”) was added for \$335,000.

[160] The VTB was necessary for the Plaintiff to close the deal. Mr. Jain’s evidence was that in all of his development land purchases he tries to obtain a VTB with low or nil interest.

[161] The Agreement closed on or about November 26, 2021. At the time there were no encumbrances or other instruments registered on title to the Property.

[162] On February 28, 2022, Ms. Stolp registered a Restriction Order (the 2020 non-depletion order of Fitzpatrick J.) on title. This was without notice to the Plaintiff.

[163] On March 23, 2022, Ms. Stolp’s lawyer wrote to Mr. Jain’s real estate lawyer alleging the Plaintiff’s purchase of the Property was fraudulent.

[164] Mr. Jain maintains that he was completely unaware that the Property was in any way related to Ms. Stolp. All of the negotiations were handled by Mr. Russell. Mr. Russell never mentioned any

non-depletion order to Mr. Jain. Mr. Russell never mentioned anything to Mr. Jain that caused him any concern about the purchase of the Property.

[165] Mr. Jain caused to be paid into court the amounts owing to 254 under the VTB.

[166] Mr. Jain said the reports Mr. Stolp had done in regard to the Property were definitely of value but did not necessarily increase the value of the land. The seller always tries to showcase their land and the reports do this. Ultimately, Mr. Jain had one meeting with Mr. Stolp's consultant and has not started the development process. The process is at a standstill because of the Order on title. Mr. Jain said with the passage of time new reports would now be required.

b) Assessment of Mr. Jain's Credibility

[167] Mr. Jain's evidence in chief was by affidavit and then he was extensively cross-examined. Overall, I found him to be a credible witness. He responded to questions asked in cross-examination in a straightforward manner. His answers were internally consistent. He never wavered in his evidence that he did not know that Ms. Stolp had ever been involved in the Property, did not know of the non-depletion order and did not know of the Stolps' divorce.

[168] Ms. Stolp's position that Mr. Jain was not a credible witness is largely tied to the evidence of Mr. Russell. Her position is that Mr. Russell is not a credible witness and since he has a close working relationship with Mr. Jain, it can be inferred that Mr. Russell told Mr. Jain what Ms. Stolp claims Mr. Russell knew. Ms. Stolp raised very few concerns about Mr. Jain's actual evidence itself. I will deal with Mr. Russell's evidence below.

[169] I find that Mr. Jain was forthright about his relationship with Mr. Russell. In his affidavit, Mr. Jain described upfront the nature of his relationship with Mr. Russell, in terms of Mr. Russell's

bringing properties to him in his capacity as a real estate agent. He also detailed Mr. Russell's work as an independent contractor with Crescent Homes. He did not in anyway or manner attempt to hide any aspect of his business relationship with Mr. Russell.

[170] Ms. Stolp submits that because there was a significant delay between Mr. Jain first viewing the Property (in or about February 2020) and the Agreement of Purchase and Sale (May of 2021), it can be inferred that Mr. Jain was told by Mr. Russell that Mr. Stolp was in the process of a divorce and that he knew of the May 15, 2020 non-depletion order. It is uncontroverted that Mr. Russell knew Mr. Stolp was heading into a trial for his divorce in March of 2020. However, there is absolutely no evidence that Mr. Jain knew about the Stolp divorce or that his timing to purchase the Property was anything but a business decision.

[171] Mr. Jain explained that between his first seeing the Property and his signing the APS he tried to reach out to his own planner in Kitchener. He spoke to the planner and engineer Mr. Stolp had consulted. He did a *pro forma*. He said he couldn't remember why it took so long to make an offer but he was firm and unshaken in cross-examination that any delay had nothing to do with Mr. Stolp's divorce, which he knew nothing about.

[172] It is also uncontroverted that the Stolp family law trial did not take place in March of 2020 and that Mr. Stolp told Mr. Russell in a text message on June 28, 2021 that he really needs the deal closed as he has a trial October 4, 2021.

[173] As I have already stated there is no evidence whatsoever that Mr. Jain knew of the divorce between Mr. Stolp and Ms. Stolp. Further, the two times Mr. Stolp told Mr. Russell about the divorce, nothing happened that would be indicative that the Plaintiff knew or ought to have known that Mr. Stolp was transferring the Property in the face of a non-depletion order. No correspondence

between Mr. Russell and Mr. Stolp refers to such an order. The two times Mr. Stolp mentioned heading into a trial did not hasten the deal. The first reference by Mr. Stolp to his family law trial was to it occurring in March of 2020. The offer was not made until May of 2021. The closing of the purchase did not happen until after the next anticipated October 2021 family law trial date. The Plaintiff did not rush to complete the transaction before the anticipated Stolp divorce trial date.

[174] There is no evidence whatsoever that any amendment to the APS was connected in any way to Mr. Stolp telling Mr. Russell that he needed the deal closed as he had an October 4, 2021 trial date. The amendment, on a balance of probabilities, appear to have been driven by the Plaintiff's business needs.

[175] Ms. Stolp asserts that Mr. Jain was not a credible witness because he stated he would never meet with a vendor of any property he was purchasing and there are text messages between Mr. Stolp and Mr. Russell from April of 2021 wherein Mr. Stolp and Mr. Russell are arranging to meet at the Property and Mr. Russell indicates that Mr. Jain would be attending. There is absolutely no evidence that Mr. Jain knew of Mr. Russell's communications with Mr. Stolp in this regard. Mr. Russell and Mr. Jain attended the Property. Mr. Stolp did not. Ms. Stolp submits that the fact that such a meeting was scheduled and that Mr. Stolp did not attend due to a family emergency, suggests that other meetings between Mr. Stolp and Mr. Jain actually took place. I disagree. There is no evidence of any such meeting or meetings. Mr. Jain gave clear, common sense and compelling evidence as to why he would never meet with a vendor of a property and his evidence in this regard is credible. All of his properties have been bought through numbered companies and he always has a realtor interact with the vendor. He does not want to be the face of the transactions.

[176] Ms. Stolp submits that Mr. Jain should not be believed because in his affidavit he states that “In assessing the opportunity to purchase the Property, I prepared a *pro forma* which contained my calculations of the costs and profitability of developing the Property.” A copy of the *pro forma* is attached to Mr. Jain’s trial affidavit. Ms. Stolp points out that the purchase price in the *pro forma* is \$385,000, not the initial purchase price of \$375,000, and that the amount of \$385,000 was only put in the amending agreement in November of 2021. This was months after Mr. Jain had signed an agreement to purchase the Property and therefore the *pro forma* was not prepared as part of his assessing whether to purchase the Property. Mr. Jain provided a clear response in cross-examination. He explained that the initial *pro forma* would have had \$375,000 as the purchase price and he would have updated it to \$385,000 after the closing. He stated that the exhibit to his affidavit is a later *pro forma*, updated after the closing.

[177] Ms. Stolp also seems to suggest that the late addition of a vendor take-back mortgage to the transaction calls into question Mr. Jain’s credibility and the legitimacy of the transaction. In my view, Mr. Jain clearly explained why he as a builder would want a vendor take-back mortgage. Mr. Jain explained that this addition, as well as other extensions to the closing, were made for business and cash flow reasons for the Plaintiff and had nothing to do with a partnership with Mr. Stolp, nor Mr. Stolp’s divorce.

[178] Mr. Jain testified in cross-examination that a vendor take-back mortgage was consistent with other property purchases he had made where a vendor take-back mortgage was part of the transaction. For this Property, the purchase price increased by \$10,000 to cover the interest on the vendor take-back mortgage.

[179] Ms. Stolp also asserts that Mr. Jain's evidence as to how the purchase price was determined is not credible. Mr. Jain stated that Mr. Russell recommended the purchase price of the Property based on his expertise and based on discussions Mr. Russell had with Mr. Stolp. Mr. Jain testified in cross-examination that he knew of the \$375,000 proposed purchase price when he first went to look at the Property in January of 2020. He was advised by Mr. Russell. Mr. Jain said that he puts the numbers through his *pro forma* and if the numbers work, they work. Mr. Jain was never challenged in cross-examination that he was given the proposed purchase price by Mr. Russell.

[180] Mr. Jain testified in cross-examination that he did not know what 254 had purchased the Property for or when it had purchased the Property. His explanation makes sense. He is not concerned about what the vendor bought the Property for. He wants to know if the purchase price he will be paying fits his *pro forma*. He fully explained why he is not interested in comparing his purchase price to any other purchase price.

[181] It was suggested to Mr. Jain in cross-examination that the studies Mr. Stolp had done on the Property were of value to Mr. Jain and should have increased the purchase price. He agreed the soil study was helpful but added that it would not have cost Mr. Stolp a lot of money. The archaeological study was unnecessary from his perspective. Mr. Jain explained how the plan Mr. Stolp put together was in Mr. Jain's view the wrong plan for the Property and would not yield the maximum results. Mr. Jain's plan for the Property was significantly different.

[182] In my view, Mr. Jain's evidence is credible. From his perspective title to the Property was clear. He could make money developing the property. He had some initial discussions with a planner and engineer. He purchased the Property. He does not do due diligence on the seller. He does it on the land. Mr. Russell received the articles of incorporation for 254. These documents were what

was relied on. In my view this makes sense. The purchaser is primarily concerned with obtaining clear title to a property as Mr. Jain expressed. Mr. Jain explained that he relies on what the other side of a transaction provides and does not search for information on the seller for privacy reasons.

[183] It was suggested to Mr. Jain that his company was in some sort of partnership with Mr. Stolp in regard to the Property. Mr. Jain gave unequivocal evidence that there was never a partnership. This evidence was not weakened in cross-examination. Further, Mr. Jain's evidence was that the Plaintiff owned the two other properties, a 7-unit property in Kitchener and a 96-unit property, also in Kitchener. There is no evidence whatsoever that Mr. Stolp has any connection to these properties. This was not even suggested by Ms. Stolp. Therefore, it would be illogical for the Plaintiff to purchase this Property through a corporation that owns two other properties, if somehow Mr. Stolp was a partner in respect of this Property only.

[184] Mr. Jain was asked about the Docusign bundle for the initial APS referring to 40 pages when the APS itself was only six pages. He was questioned in cross-examination about the other 34 pages. In my view, his answer makes common sense. He said in 2021 they had another project ongoing in Kitchener. It was possible that the other pages were documents related to Kitchener.

[185] Overall, I found Mr. Jain's evidence to be credible and I accept his evidence that he had no knowledge or notice that Mr. Stolp was fraudulently conveying the Property in violation of Fitzpatrick J's order.

ii) Ted Russell's Evidence

a) In his Affidavit and In-Chief

[186] Mr. Russell is a real estate broker with Trillium West Real Estate Brokerage. He acted as the realtor for the Plaintiff on the purchase of the Property.

[187] From 2014 to 2024, Mr. Russell provided realtor services to Crescent Homes. He was the listing agent for approximately 106 properties. He also provided Mr. Jain and Crescent Homes with realtor services to locate and purchase new lands for development.

[188] Mr. Russell stated that Mr. Stolp was an acquaintance of his since college. They had a mutual friend. They saw each other at events involving the mutual friend and never really interacted one on one as friends. For the past 28 years Mr. Russell's contact with Mr. Stolp was extremely limited.

[189] Mr. Stolp contacted Mr. Russell asking if Mr. Russell would have any clients interested in buying the Property. Mr. Russell can't remember if the contact was by a phone or text. He remembers that Mr. Stolp was looking either for a purchaser for the Property or a partner to develop the Property with. Mr. Stolp reaching out led Mr. Russell to investigating the opportunity for the Plaintiff to purchase the Property. Mr. Stolp sent an email to Mr. Russell about the Property on January 24, 2020.

[190] Mr. Russell forwarded the email to Mr. Jain, who responded that they should go to check out the Property as it looked good.

[191] On February 12, 2020, Mr. Stolp sent Mr. Russell an email containing various reports and assessments related to the Property.

[192] Mr. Russell and Mr. Jain viewed the Property but Mr. Jain did not pursue the opportunity at that time.

[193] On March 27, 2021, Mr. Stolp followed up by email. Mr. Russell replied that he would be speaking to Mr. Jain about the Property and that he had another client who may also be interested.

[194] Mr. Russell had a verbal discussion with Mr. Stolp about a possible offer to purchase the Property. Mr. Russell does not recall the details. Based upon his review of emails, Mr. Russell would have discussed the purchase price with Mr. Stolp. On May 11, 2021, Mr. Stolp sent an email to Mr. Russell requesting an offer in the amount of \$375,000.

[195] From May 11, 2021 to May 23, 2021, Mr. Russell requested information about 254, to confirm that Mr. Stolp had authority to sell the Property. Mr. Stolp sent Mr. Russell the Articles of Incorporation.

[196] Mr. Russell reviewed the information and documentation Mr. Stolp provided. Nothing in the documents suggested to Mr. Russell that Mr. Stolp did not have the authority to bind 254 or that his authority was subject to the approval of anyone else. Mr. Stolp was the only named director in the Articles of Incorporation.

[197] Sometime leading up to May 26, 2021, Mr. Jain advised Mr. Russell that the Plaintiff would make an offer to purchase the Property for \$375,000.

[198] In Mr. Russell's view, \$375,000 was a reasonable price for the Property because it did not have municipal water and sewage. The Plaintiff would need to spend considerable time and money to complete the planning process and to have the Property serviced. Mr. Stolp had been working on planning approvals for years and had not received them.

[199] On May 26, 2021, Mr. Russell prepared an offer on behalf of the Plaintiff to purchase the Property from 254 on the instructions of Mr. Jain. Mr. Russell sent it to Mr. Stolp and Mr. Jain by Docusign. Mr. Stolp signed the APS electronically on May 27, 2021. Mr. Jain signed electronically on June 1, 2021.

[200] On August 26, 2021, the Plaintiff extended the conditional period to October 15, 2021 and the completion date to November 15, 2021.

[201] On November 11, 2021, the APS was amended a second time. The completion date was extended to November 25, 2021. The amended APS also added that 254 would provide a vendor take-back mortgage to the Plaintiff for \$335,000.

[202] The transaction closed on November 26, 2021. Mr. Russell received his commission in accordance with the APS.

[203] Mr. Russell states that Mr. Jain had no direct dealings with Mr. Stolp regarding the Plaintiff's purchase of the Property. Mr. Russell's evidence is that he communicated with Mr. Stolp at all times and relayed information back to Mr. Jain, as required.

[204] Mr. Russell maintains that at no time did Mr. Stolp indicate to him in any manner that Ms. Stolp was in any way involved in 254 or the Property. Mr. Stolp always represented to him that he had full authority to sell the Property.

[205] Before the offer to purchase was made, Mr. Russell reviewed the Articles of Incorporation for 254, which listed Mr. Stolp as the sole director of the company.

[206] Mr. Russell states that he was 'generally aware' that Mr. Stolp was involved in a divorce. He indicated that he may have heard the information that Mr. Stolp was involved in a divorce through their mutual friend or through the community. Mr. Russell, in his trial affidavit, states that he questioned Mr. Stolp about the divorce proceedings and that Mr. Stolp assured him that the Property was not part of the marital assets.

b) Assessment of Mr. Russell's Credibility

[207] Mr. Russell's evidence in-chief was by affidavit and then he was extensively cross-examined.

[208] After careful consideration, I accept Mr. Russell's evidence that he did not know that Ms. Stolp had ever been involved with the Property, did not know of the non-depletion order, did not have any reasons to believe that Mr. Stolp was transferring the Property in violation of the non-depletion order, and did not engage in a plan with Mr. Stolp to defeat Ms. Stolp's interest. I find that Mr. Russell did not have knowledge or notice of any intention by Mr. Stolp or 254 to defraud Ms. Stolp.

[209] Ms. Stolp strenuously argued that Mr. Russell was not a credible witness. I disagree. Mr. Russell's evidence that he believed that Mr. Stolp had the authority on behalf of 254 to sell the Property is supported by the following documentary evidence.

1. The Seller Customer Service Agreement

[210] The Seller Customer Service Agreement was signed by Mr. Russell and Mr. Stolp on May 27, 2021, contemporaneously with the Agreement of Purchase and Sale. The Agreement contains the following provision:

The Seller hereby represents and warrants that the Property is not listed for sale or lease with any other real estate brokerage and that the Seller has the sole and exclusive authority to execute this Agreement and to offer the Property for sale or lease.

2. The Agreement of Purchase and Sale

[211] The Agreement of Purchase and Sale includes a specific provision from the Seller, 254, that spousal consent was not required for the sale of the Property. Paragraph 22 of the Agreement of Purchase and Sale provides as follows:

22. FAMILY LAW ACT: Seller warrants that spousal consent is not necessary to this transaction under the provision of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.

[212] It is uncontroverted that Ms. Stolp did not sign the Agreement of Purchase and Sale or any consent for the sale of the Property to the Plaintiff.

3. The Articles of Incorporation of 254

[213] Mr. Russell asked for information about Mr. Stolp's corporation to confirm that Mr. Stolp had authority to sell the Property. Mr. Russell reviewed the information provided. Mr. Stolp provided the Certificate and Articles of Incorporation. Mr. Stolp was the only named director. Mr. Stolp is named as the only incorporator of the corporation. Nothing in the documents suggests to the reader that Mr. Stolp does not have sole authority to bind 254 or that his authority was subject to approval of anyone else.

[214] It was reasonable for Mr. Russell to rely on these three documents. It is not reasonable to expect an agent for a purchaser to go behind these documents and inquire as to whether the seller has a spouse who might have an interest in the Property. Ms. Stolp had not registered the Fitzpatrick J. order on title until after the transaction closed. There was no caution on title. There was no Certificate of Pending Litigation on title. Mr. Russell was not on any notice that Ms. Stolp might be claiming an interest in the Property. There is no evidence whatsoever that Mr. Russell was ever aware of the Justice Fitzpatrick order. There is also no evidence whatsoever that Mr. Russell had any knowledge that Ms. Stolp was initially on the Agreement of Purchase and Sale when the Property was initially purchased in 2016.

[215] It is uncontroverted that Ms. Stolp knew that the Property was owned by 254 in or around September of 2018. That was over 3 years before the transaction closed wherein the Plaintiff

purchased the Property. Ms. Stolp did nothing to alert any prospective purchaser of any interest she claimed in the Property. Her failure to do so greatly weakens her submission that the Plaintiff and/or Mr. Russell ought to have known of her perspective interest, or of the non-depletion order, or of Mr. Stolp's intention to transfer the Property contrary to the non-depletion order.

[216] It is clear that Mr. Russell knew Mr. Stolp was going through a divorce. Mr. Stolp told Mr. Russell this on several occasions. I agree with the Plaintiff, that knowledge of a divorce is not knowledge that 254 (Mr. Stolp) is alleged by Ms. Stolp to have fraudulently acquired the Property. Mr. Stolp told Mr. Russell he was going through a divorce. Nothing happened in response. This information did not lead to the purchase being sped up or delayed. The transaction was not hurried along in order to close before an anticipated family law trial between Mr. Stolp and Ms. Stolp. Over 15 months went by before the Plaintiff made any offer. Mr. Russell did not take any action based on his being advised by Mr. Stolp that his family trial was coming up. There is no evidence connecting Mr. Stolp providing this information to any action taken by Mr. Russell or Mr. Jain.

[217] Mr. Stolp told Mr. Russell on March 15, 2020 that he was heading into his divorce trial on March 23. Ms. Stolp says there is an inference or connection to be drawn between this information and the fact that from March of 2020 to May of 2021, Mr. Jain did not actively pursue purchasing the Property. I draw no such inference. There is no evidence that the timing of any step Mr. Russell or Mr. Jain took was related in any way to Mr. Russell's being aware that Mr. Stolp was involved in a divorce.

[218] Ms. Stolp claims that Mr. Russell is not a credible witness because Mr. Russell did not say in his trial affidavit that he and his wife had been employed by Mr. Jain's companies and therefore that Mr. Russell attempted to mislead the court about his true relationship with the Plaintiff. I

disagree. Mr. Jain dealt with this in his trial affidavit served at or around the same time. Duplication of this information was not required. In cross-examination, Mr. Russell did not hesitate to provide details in this regard as had Mr. Jain in his trial affidavit.

[219] Ms. Stolp also says that Mr. Russell is not a credible witness because he did not say in his trial affidavit that Mr. Stolp had done some demolition work for one of Mr. Jain's companies around the same time that Mr. Stolp first told Mr. Russell about wanting to sell the Property. In my view this is not concerning. The demolition work is totally unrelated. I do not see a connection.

[220] Mr. Russell produced a series of texts between him and Mr. Stolp. Ms. Stolp says these texts raise several concerns about Mr. Russell's credibility. I disagree.

[221] First, Mr. Stolp sent a text to Mr. Russell on April 11, 2021 wherein Mr. Stolp asks Mr. Russell when the Zoom meeting with "the others" will take place. Ms. Stolp points out that no meeting was referred to in Mr. Russell's trial affidavit. In cross-examination, Mr. Russell said he does not recall any details of the meeting, or who would have been involved or if it had taken place.

[222] As set out above, Mr. Jain testified that he never met with Mr. Stolp. I do not find this text to be inconsistent with Mr. Jain's evidence. There is no evidence at all that Mr. Jain ever attended a meeting with Mr. Stolp. It is simply conjecture and speculation that Mr. Jain was who Mr. Stolp was referring to as "the others". Further, it is not surprising to me that Mr. Russell would not recall if a Zoom meeting took place four years before he was cross-examined.

[223] There are also text messages between Mr. Stolp and Mr. Russell referring to a meeting that was arranged for April 23, 2021. Mr. Russell indicates that he and Mr. Jain will be there. The meeting never took place. As set out above, Mr. Jain testified that he would never meet with a seller. As I have already set out above, there is no evidence that Mr. Jain knew that Mr. Stolp was supposed

to be attending the meeting or that Mr. Russell advised Mr. Jain of these texts. Mr. Russell did not deny that this text exchange happened. He produced the texts. I draw no inference from these texts about a meeting that did not ever occur.

[224] There may be a gap in the text messages produced between the text on May 5, 2021 and the text on May 14, 2021. They do not align as screen captured and printed. There is no evidence that this was intentional on Mr. Russell's behalf. I draw no adverse inference from this.

[225] Ms. Stolp says there are inconsistencies between Mr. Russell, Mr. Jain and Mr. Stolp's evidence as to how the purchase price was arrived at. Mr. Jain testified that at the time he instructed Mr. Russell to make an offer to purchase the Property, he did not know when 254 had purchased the Property or at what price. Mr. Jain says the purchase price was brought to him by Mr. Russell based in part on Mr. Stolp's expectations. Mr. Russell testified that the purchase price was not negotiated. Mr. Stolp sent him an email on May 11, 2021, requesting an offer from his client of \$375,000. Mr. Russell was aware that this amount was only slightly higher than the 2016 purchase price. Mr. Stolp said he was offered \$375,000 by Mr. Jain, through Mr. Russell, and he accepted it. I do not think there are inconsistencies. Mr. Russell brought the purchase price to Mr. Jain. Mr. Russell knew what Mr. Stolp wanted. Mr. Stolp got the price he wanted and accepted the offer.

[226] Lastly, Ms. Stolp raises an issue about Mr. Russell's credibility because two versions of the initial APS were ultimately provided. Mr. Russell initially provided a copy of the APS wherein Mr. Jain's signature was not dated, although Docusign confirmation was provided. Mr. Russell was recalled as a witness at the trial, having located a Docusign copy of the APS. This was entered as a separate exhibit at trial. This version of the APS was signed by Mr. Jain after the irrevocable date. This issue has already been addressed. The Docusign confirmation referred to 40 pages. Only 6

pages of the APS were produced. Ms. Stolp requests that an adverse inference be drawn because only 6 of 40 pages were produced. Ms. Stolp contends that it is clear, on a balance of probabilities, that there is a partnership deal between the Plaintiff and Mr. Stolp, being concealed from Ms. Stolp and that this explains the discrepancy in the number of pages. I disagree.

[227] There is absolutely no evidence that there is or was a partnership. It was an idea that Mr. Stolp initially floated to Mr. Russell. I accept Mr. Jain's evidence that he never contemplated a partnership and wouldn't. Lengthy cross-examinations by Ms. Stolp's counsel did not yield any evidence of a partnership. Further, I accept Mr. Jain's and Mr. Russell's evidence that they often had several real estate deals on the go and the other pages likely related to other transactions. Further, I find nothing suspicious about there being an undated and then dated copy of the APS.

i) Other Evidence

[228] Ms. Stolp did not have any direct evidence to offer as to how the transaction for the purchase of the Property by the Plaintiff took place. She was not aware of the transaction until after it closed.

[229] She had no direct evidence to offer as to the nature of the relationship between Mr. Stolp and Mr. Russell, to contradict their evidence that they were acquaintances who had had minimal contact over the years.

[230] Ms. Stolp's counsel extensively cross-examined Mr. Stolp. His evidence was not shaken that neither Mr. Russell nor the Plaintiff knew anything about the Fitzpatrick J. order, that there was no partnership between the Plaintiff and Mr. Stolp and that Mr. Stolp did not somehow work with the Plaintiff, through Mr. Russell, to defeat any interest of Ms. Stolp in the Property.

iv) Conclusion Regarding This Issue

[231] In conclusion, the Plaintiff is a *bona fide* purchaser for good consideration (as determined above) and in good faith.

[232] The Plaintiff had no notice or knowledge of Mr. Stolp's fraudulent intent to transfer the Property contrary to Fitzpatrick J.'s non-depletion order. I find that the Plaintiff did not have actual or constructive knowledge of Mr. Stolp's fraudulent intent.

Issue 3: Is s. 78(4.1) of the *Land Titles Act* applicable to this case?

[233] Ms. Stolp states in her written submissions that she had plead that the series of conveyances, including the one from 254 to the Plaintiff, amount to a fraudulent conveyance and asserts that in addition to the *Fraudulent Conveyances Act*, ss.78(4) and (4.1) of the *Land Titles Act* apply.

[234] Ms. Stolp's position is that Mr. Stolp forged her signature on the initial closing documents for the purchase of the Property in 2016, thereby fraudulently conveying Ms. Stolp's interest in the Property to 254.

[235] Ms. Stolp claims that under s. 78 of the *Land Titles Act*, 254 is an intermediary of the Property, and accordingly, the Plaintiff was not able to lawfully acquire the Property from 254, which Ms. Stolp refers to as a "deferred intermediary".

[236] The fatal problem Ms. Stolp has in regard to this issue is that she has not commenced any proceeding or sought any relief against the Plaintiff. A careful review of her statement of defence reveals that she disputed the relief claimed by the Plaintiff that it bought the Property for good consideration and in good faith, but made no claims herself.

[237] She sought no relief against the Plaintiff and did not plead the *Land Titles Act*. Quite simply, this claim is not before me.

[238] Counsel did fully argue the issue and so I will address it.

[239] As part of the determination of this issue, Ms. Stolp seeks a factual determination that Mr. Stolp forged her signature on the initial closing documents in 2016. In my view it is unnecessary for me to make this determination in this proceeding. It is an issue best left to be determined in the family law proceeding as it is a matter between Ms. Stolp and Mr. Stolp and does not involve the Plaintiff. I point out that in her Statement of Defence in this case, Ms. Stolp made no claim against Mr. Stolp in regard to the Property. She has done so in the family law proceeding.

[240] It is not necessary for me to make this determination because even if Mr. Stolp did forge Ms. Stolp's signature on the initial closing documents (hypothetically, as I have made no such determination), it does not assist her in this case. Firstly, for the reason set out above that she made no claim against the Plaintiff, and secondly, because even if 254 acquired title to the Property by the use of fraudulent documents, the subsequent transfer to the Plaintiff was not done by way of a fraudulent instrument.

[241] There is no evidence whatsoever that the Plaintiff had any knowledge or notice of any fraud in the initial 2016 closing. Ms. Stolp has not claimed this.

[242] Even if a "fraudulent instrument" was involved in 254's acquisition of the Property, the transfer from 254 is not invalid.

[243] The amendments to the *Land Titles Act* made in 2006 apply only in situations where a "fraudulent person" registered a "fraudulent instrument". The amendments apply in narrow situations where an impersonator forges documents that are registered in the Land Titles system. It requires that an instrument on title is fraudulent. It requires a "fraudulent person".

[244] At best from Ms. Stolp's perspective, she alleges that a fraudulent instrument and fraudulent person were involved in the 2016 transaction buying the Property in the name of 254. Even then, no forged instrument was registered on title – there was only the allegedly forged documents authorizing Mr. La Gamba, the real estate lawyer, to put title in the name of 254. Whether there were forged documents, in my view, is irrelevant to these proceedings because s. 78 provides protection to the Plaintiff's purchase of the Property, even if there was fraud in Mr. Stolp's initial purchase by 254.

[245] This is because of section 78(4.2) of the *Land Titles Act* which provides as follows:

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

[246] Section 78(4.2) provides that any subsequent registered instrument that is not a fraudulent instrument cannot be invalidated. This protects the Plaintiff. I agree with the Plaintiff's submissions that this makes logical sense when considering that the Land Titles regime must be consistent with s. 3 of the *Fraudulent Conveyances Act*. If the Plaintiff's purchase is protected as a *bona fide* purchaser for value under the *Fraudulent Conveyances Act*, there must be equal protection for a *bona fide* purchaser under the *Land Titles Act*.

[247] Ms. Stolp's position is that because 254 acquired the Property through fraud, 254 is the intermediary and an intermediary's transfer of the property to a third party can be set aside. In my view this is not the case. Paragraph 75 of *Froom* provides:

Second, 128's argument rests on a misunderstanding of deferred indefeasibility. 128 essentially argues that because Seligman was the immediate, rather than deferred, encumbrancer, the mortgage is not valid in her favour. The problem with this argument is that the doctrine of deferred indefeasibility concerns fraudulent, and therefore invalid, instruments. It is not the case that any instrument is invalid as against the

immediate person who registers it simply because that person is the first to deal with it. Here, the Legislature, through the 2006 amendments, has delineated what constitutes a fraudulent instrument. For the reasons discussed above, the mortgage is not a fraudulent instrument.

[248] In my view, the transfer from 254 to the Plaintiff was not done by a fraudulent instrument. The registered owner 254 transferred the Property to the Plaintiff. The Plaintiff purchased the Property, as I have determined, in good faith and without any notice of any defect. The Plaintiff's purchase is protected under s.78(4.2).

[249] Ms. Stolp has no case against the Plaintiff. Her claim, if any, is against Mr. Stolp. This is consistent with paras. 77-78 of *Froom*.

[250] In the family law proceeding, the court may address whether the authorization or direction regarding title in the 2016 acquisition of the Property were forged.

[251] In my view, my determination is consistent with the "indoor management rule", which protects outside parties from needing to look inside corporate governance and the "curtain principle", that protects parties relying on the Land Titles system.

[252] The Plaintiff was entitled to rely on the parcel register which identified 254 as the registered owner of the Property. The Land Titles system provides a complete and accurate reflection of ownership. Purchasers do not need to look behind the register. As set out at para. 21 of *Froom*, the register is the source of information regarding title and purchasers are not required to investigate the internal affairs or governance of the corporate owner. The Plaintiff as purchaser for value without notice of any defect was under no obligation to look into 254's acquisition or internal corporate dealings. As stated at para. 14 of *Froom*, third parties are entitled in dealing with a

corporation to rely on the indoor management rule that is codified in s. 19 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

[253] Section 19 provides as follows:

19 A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that,

(a) the articles, by-laws or any unanimous shareholder agreement have not been complied with;

(b) the persons named in the most recent notice filed under the *Corporations Information Act*, or named in the articles, whichever is more current, are not the directors of the corporation;

(c) the location named in the most recent notice filed under the *Corporations Information Act* or named in the articles, whichever is more current, is not the registered office of the corporation;

(d) a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent;

(e) a document issued by any director, officer or agent of a corporation with actual or usual authority to issue the document is not valid or not genuine; or

(f) a sale, lease or exchange of property referred to in subsection 184 (3) was not authorized,

except where the person has or ought to have, by virtue of the person's position with or relationship to the corporation, knowledge to that effect.

[254] As set out in *Froom* at paras. 46-50, where a person is registered as an officer or director and enters into a transaction on behalf of the corporation, a *bona fide* third party is entitled to rely on that authority. The purchaser does not have to look behind the officer or director's apparent authority.

[255] Similar to the innocent mortgagee in *Froom*, the Plaintiff dealt with the registered owner of the Property, relied on corporate records confirming Mr. Stolp's authority to enter into the transfer

and, as I have found, had no knowledge or reason to suspect that the transfer was irregular. There were no encumbrances or instruments on title. I agree with the Plaintiff that to permit a subsequent challenge based on an unregistered private dispute (Ms. Stolp knew that 254 owned the Property in 2018, more than three years before the transfer to the Plaintiff), would undermine the Land Titles system which is based on the mirror and curtain principles and be contrary to the indoor management rule (see *Pichelli*, at para. 4).

Issue 4: Did Ms. Stolp unlawfully register the Restriction Order (Justice Fitzpatrick's non-depletion order on trial)?

[256] In my view, given the findings I have made, it is not necessary for me to determine this issue. The Plaintiff is a *bona fide* purchaser for good consideration and in good faith. The order must be removed from title to the Property and I direct Ms. Stolp to forthwith do so. The funds paid into Court by the Plaintiff shall stay paid into court pending the conclusion of the family law trial between Mr. Stolp and Ms. Stolp.

8. Conclusion:

[257] Judgment shall issue on the following terms:

1. The Plaintiff shall be and the same is hereby declared to be a good faith purchaser of the Property, for good consideration, and without knowledge of any intention to defraud by 254 and Mr. Stolp, protected under s. 3 of the *Fraudulent Conveyances Act*.
2. The Defendant, Ms. Stolp, shall forthwith delete instrument BR 180207 from title to the Property.
3. The money paid into court by the Plaintiff shall remain paid into court until further court order issued in the Stolp family law proceeding.

4. The parties should attempt to resolve the issue of costs on their own. If they are unable to do so, the Plaintiff and Mr. Stolp, as the successful parties in this proceeding, may submit their costs submissions of up to five pages, double spaced, one-inch margins, plus a bill of costs/costs outline and offers to settle within 30 days of release of these reasons. They need not include the authorities upon which they rely so long as they are found in the commonly referenced reporting services (i.e. CanLII, LexisNexis Quicklaw, or WestlawNext) and the relevant paragraph references are included. The Defendant, Ms. Stolp, may respond in kind within a further 30 days. Her submissions may be a total of 10 pages (5 for each successful party), with the same requirements. No reply submissions will be accepted unless I request them. If I have not received any submissions within the time frames set out above, I will assume that the parties have resolved the issue and will make no costs order.

Coats J.

Released: July 6, 2026

CITATION: 2628793 Ontario Corporation v. Stolp, 2026 ONSC 3881

COURT FILE NO.: CV-24-00002440-0000

DATE: 2026 07 06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

2628793 Ontario Corporation

Plaintiff

– and –

Lisette Maria Silva Stolp, 2546603 Ontario Corporation
and Stacy Henricus Christopher Stolp

Defendants

REASONS FOR JUDGMENT

Coats J.

Released: July 6, 2026