

Real Property

Reprinted with permission from *The Lawyers Weekly*, Volume 20, No. 11

BOUNDARIES - Plaintiff planted trees on his property which were later discovered to be on his neighbour's property - Trees passed with sale of neighbouring property - Plaintiff knew of the sale and did not move the trees or purchase half of the lot - Plaintiff was not the owner of the trees.

Plaintiff sought a declaration that he was the owner of a cedar hedge now located on defendants' property. Plaintiff planted a cedar hedge on one side of his property in 1991. He alleged that he believed the trees to be on his property. His then neighbour applied to sever his property. Surveys prepared indicated that the hedge was on the neighbour's property. The

neighbour advised plaintiff that he could either move the trees or purchase one half of the now severed lot. Plaintiff did neither. The neighbour sold the lot to defendants who believed that the trees formed part of their property. Defendants erected a fence on the actual lot line that enclosed the hedge on their property. Plaintiff sought to move the trees or to be compensated for their value.

HELD: action dismissed. Section 15 of the *Conveyancing and Law of Property Act* (Ont.) provided that every conveyance of land included all trees and hedges belonging to such land. In order to refute the section, plaintiff had to show that he had an honest belief that the land was his own.

Plaintiff had failed to take any reasonable steps when planting the hedge to locate the boundaries between the properties. He mistakenly or negligently planted the hedge. In any event, any claim that plaintiff could have had to the trees was abandoned by him when he failed to move the trees or purchase half of the lot. He not only demonstrated an intention to abandon the trees, but carried that intention into effect when he stood by and watched while the property was developed and sold to uninformed third parties.

Meconi v. Crichton, Ont. Sup. Ct., Jenkins J., June 19/00. Full Text Order No. 20-12-007 (7 pp.)

