

1989, chapter 100

AN ACT RESPECTING CERTAIN IMMOVABLES OF THE CADASTRE OF THE CITY OF MONTRÉAL (SAINTE-ANNE WARD)

Bill 250

Introduced by Mr Maximilien Polak, Member for Sainte-Anne

Introduced 31 November 1988

Passage in principle 6 April 1989

Passage 6 April 1989

Assented to 12 April 1989

Coming into force: 12 April 1989

Act amended: None





CHAPTER 100

An Act respecting certain immovables of the cadastre of the city of Montréal (Sainte-Anne ward)

[Assented to 12 April 1989]

Preamble

WHEREAS on 22 August 1987, by a deed of sale registered in the registry office of the registration division of Montréal under number 3921578, Société en commandite Tristan acquired from 138013 Canada Inc. and from Stella Venditi *et al* an immovable comprising lots 1915 and 1916 of the cadastre of the city of Montréal (Sainte-Anne ward), the parts of lots 1057 and 1058 of the same cadastre described in the said deed, and an immovable with no cadastral designation bounded by some of the above-mentioned lots or parts of lots;

Whereas upon the coming into force of the cadastre of the city of Montréal (Sainte-Anne ward) on 3 January 1870, the said immovables and a contiguous immovable were designated as lots 1056, 1057, 1058 and 1059, a tailrace with no cadastral designation separating lots 1057 and 1058 from lots 1056 and 1059, and a lane, with no cadastral designation, perpendicular to the tailrace and situated on both sides of it, separating lot 1057 from lot 1058 on the one hand, and lot 1056 from lot 1059, on the other hand;

Whereas the immovable known as lot 1057 upon the coming into force of the cadastre was the subject of a lease registered on 13 December 1853 in the registry office of the registration division of Montréal-Ouest under number 12 624, whereas the lease was, after the expiry of its 21-year term, to be renewed for every subsequent period of 21 years thereafter in consideration for a rent negotiated between the parties and, whereas under the lease, the lessee was required to see to the maintenance of the tailrace and of its banks;

Whereas lots 1056 and 1059, part of lot 1058 and certain immovables not contemplated by this Act were the subject of deeds

of sale registered on 31 December 1921 and 20 January 1922 in the registry office of the registration division of Montréal-Ouest under numbers 168 874 and 168 964 and, whereas the purchaser is required, under the deeds, to see to the maintenance of the tailrace and of its banks;

Whereas it appears that the tailrace was never used for navigation and was built mainly for the purpose of conveying to the factories situated in the vicinity the water which was used to operate various machines;

Whereas the tailrace and the part of the lane situated southeast of the tailrace were the subject of a judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 15 December 1961 (number 7727 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 20 December in the same year in the registry office of the registration division of Montréal under number 1 574 714;

Whereas the part of the lane situated northwest of the tailrace was the subject of a judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 21 December 1962 (number 8450 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 24 May 1963 under number 1 673 376;

Whereas after the aforementioned judgments were rendered, a cadastral designation was assigned to immovables which, until then, had been shown on the subdivision plan as the tailrace and the lane, and whereas those immovables became part of lot 1915 in the case of the tailrace, part of lot 1915 and of lot 1913 in the case of the southeast part of the lane and part of lot 1915, and lot 1916 in the case of the northwest part of the lane, and whereas the new lots are not in the nature of a tailrace or lane;

Whereas, however, lot 1915 includes two parts of the lane, described in Schedules A and B, situated on both sides of the tailrace, which were not contemplated in the two judgments recognizing the right of ownership acquired by virtue of prescription, but which were possessed for over 30 years by the persons who owned or occupied the contiguous immovables, as the owners thereof;

Whereas, however, the judgment registered under number 1 673 376 does not apply to a part, described in Schedule C, of the northwest part of the lane which is not included in lot 1916, which is bound by some of the lots and parts of lots acquired by Société en

commandite Tristan and which, at the time the judgment was rendered, had been possessed for several years by any one of the persons who owned the tailrace, the remainder of the northwest part of the lane or the contiguous part of lot 1057;

Whereas on 19 May 1967, part of lot 1057 was the subject of an order (number 8626 in the records of the Public Service Board) based on the Constitut or Tenure System Act (R.S.Q., 1964, chapter 322), issued by the Public Service Board which, at that time, had jurisdiction over the matter and whereas the order was registered to be equivalent to a valid title to the immovable on 21 June 1967 under number 1 995 207;

Whereas the immovable acquired by Société en commandite Tristan includes part of lot 1057 described in Schedule D, to which the order registered under number 1 995 207 does not apply but which has been possessed for over 30 years by the successive owners of the part of lot 1057 which is contemplated by the order;

Whereas, in the petition for judicial recognition of the right of ownership acquired by virtue of prescription by thirty years in respect of the tailrace and the southeast part of the lane, the petitioner did not apply for the cancellation of the obligation to maintain the tailrace and its banks as stipulated in the deeds registered under numbers 168 874 and 168 964, and whereas the Superior Court did not express its opinion on the matter;

Whereas, in the case of the part of lot 1057 which was the subject of an order of the Public Service Board issued under the Constitut or Tenure System Act, it is doubtful that the Public Service Board was empowered under the said Act to cancel the obligation to maintain the tailrace and its banks as stipulated in the deed registered under number 12 624, whereas the petitioner did not apply for such cancellation, and whereas the Public Service Board did not express its opinion on the matter;

Whereas in the two judgments recognizing the right of ownership acquired by virtue of prescription, no one was impleaded as the owner of the immovables concerned or as the holder of other real rights in respect thereof, whereas the two judgments included an exemption from serving the petition, and no measure appears to have been taken to inform the persons who might have had arguments against the petition, of such petition or judgment, and whereas, consequently, those persons did not have an opportunity to present arguments;

Whereas the only measures taken by the petitioners to inform the lessors or their assigns, of the petition filed with the Public Service

Board and of the order issued by the Board appears to have been the publication of notices in newspapers;

Whereas upon the coming into force of this Act, Société en commandite Tristan intends to acquire lot 1913 of the cadastre of the city of Montréal (Sainte-Anne ward), and the current owner of the immovable, the city of Montréal, has been specially notified of the introduction of this Act and has not raised any objections to the passage thereof;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

Confirmation
of title

1. The title of Société en commandite Tristan to that part of lot 1915 of the cadastre of the city of Montréal (Sainte-Anne ward) which corresponds to the former tailrace and to part of the part of a former lane situated southeast of the tailrace which are contemplated by the judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 15 December 1961 (number 7727 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 20 December in the same year in the registry office of the registration division of Montréal under number 1 574 714, is confirmed to the extent that it could have been contested on the grounds that no owner of the immovables concerned or holder of other real rights in respect of them was impleaded in the petition for judicial recognition of the right of ownership acquired by virtue of prescription, that an exemption from serving the petition was granted, that no measure appears to have been taken to inform the persons who might have had arguments against the petition, of such petition or judgment, and that, consequently, those persons did not have an opportunity to present arguments, or on the grounds that the judgment might be construed as having allowed the petitioner to prescribe against its own title without proving interversion of title.

Confirmation
of title

The same applies to the title of the city of Montréal to that part of lot 1913 of the cadastre of the city of Montréal (Sainte-Anne ward) which corresponds to another part of that part of the former lane which is situated southeast of the tailrace, that other part of the southeast part of the former lane also being contemplated by the judgment registered under number 1 574 714.

Confirmation
of title

The same also applies to the title of Société en commandite Tristan to that part of part of the former lane situated northwest of the tailrace, which is contemplated by a judgment recognizing the right of ownership acquired by virtue of prescription by thirty years,

rendered on 21 December 1962 (number 8450 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 24 May 1963 in the registry office of the registration division of the district of Montréal under number 1 673 376 and now known as lot 1916 of the cadastre of the city of Montréal (Sainte-Anne ward).

Confirmation
of title

2. The title of Société en commandite Tristan to the part of lot 1057 of the cadastre of the city of Montréal (Sainte-Anne ward) which is contemplated by an order of the Public Service Board, based on the Constitut or Tenure System Act (R.S.Q., 1964, chapter 322), issued on 19 May 1967 (number 8626 in the records of the Public Service Board) and registered in the registry office of the registration division of Montréal under number 1 995 207, is confirmed to the extent that it could have been contested on the grounds that the only measure taken by the petitioner to inform the lessors of the petition and the order appears to have been the publication of a notice in newspapers and that, consequently, the persons who might have had arguments against the petition or the order did not have an opportunity to present them.

Cancellation
of obligation

3. Any obligation to see to the maintenance of a tailrace or of the banks of a tailrace on all or part of the immovables designated in the deed registered in the registry office of the registration division of Montréal under number 3 921 578, including the immovables designated in Schedules A to D, which might derive from the lease registered in the registry office of the registration division of Montréal-Ouest under number 12 624 or from the deeds of sale registered in the registry office of the same registration division under numbers 168 874 and 168 964, is cancelled.

Cancellation
of obligation

Any such obligation is also cancelled in relation to lot 1913 of the cadastre of the city of Montréal (Sainte-Anne ward).

Ownership of
immovables

4. Société en commandite Tristan is hereby declared the owner of the immovables described in Schedules A to D.

Personal
rights

5. The real rights cancelled by this Act shall be replaced by personal rights exercisable against Société en commandite Tristan. The value of such personal rights is equal to the value that the real rights they are replacing had immediately before 12 April 1989 and they are prescribed on the date on which the real rights would have been prescribed were it not for this Act, where such is the case.

Immovables
affected

6. This Act affects the immovable designated in the deed of sale registered in the registry office of the registration division of Montréal

under number 3 921 578, including the immovables described in Schedules A, B, C and D and lot 1913 of the cadastre of the city of Montréal (Sainte-Anne ward).

Registration **7.** Registration of a certified copy of this Act shall be effected by deposit.

Entry At the time of registration, the registrar shall write in the margin of the deeds registered under numbers 1 574 714, 1 673 376 and 1 995 207 the words "Confirmed by the Act registered under number... as regards any defect rectified by that Act".

Coming into force **8.** This Act comes into force on 12 April 1989.

SCHEDULE A

(Sections 3, 4 and 6)

Part of lot 1915 of the cadastre of the city of Montréal (Sainte-Anne ward), irregular in shape, bounded on the northwest, for a distance of 2.3 feet, measured from the point of intersection of the dividing lines of lots 1058, 1915 and 1916 of the same cadastre by part of lot 1916, on the northeast, for a distance of 9 feet, by the immovable described in Schedule C, on the northwest, again, for a distance of 2.3 feet, by part of the immovable described in Schedule C, on the northeast, again for a distance of 11.5 feet, on the southeast for a distance of 4.8 feet, and on the southwest, for a distance of 20.5 feet, by another part of lot 1915. Approximate English measure.

SCHEDULE B

(Sections 3, 4 and 6)

Part of lot 1915 of the cadastre of the city of Montréal (Sainte-Anne ward), approximately square in shape, bounded on the southwest, on the northwest and on the northeast by another part of lot 1915, and on the southeast by part of lot 1913, the line forming the southwest boundary being situated in the extension of the line forming the northeast boundary of that part of the immovable described in Schedule A which is bounded by the immovable described in Schedule C, measuring 6.1 feet along each line. Approximate English measure.

SCHEDULE C

(Sections 3, 4 and 6)

An immovable with no cadastral designation, forming part of the cadastre of the city of Montréal (Sainte-Anne ward), approximately rectangular in shape, bounded on the northwest by part of lot 1916 of the same cadastre; on the northeast, by part of lot 1057 of the same cadastre, described in Schedule D, on the southeast, by part of lot 1915 of the same cadastre and by another part of that lot described in Schedule A, and on the southwest, by part of that lot, described in Schedule A, measuring 17.7 feet along its northwest and southeast lines, 8.6 feet along its northeast line and 9 feet along its southwest line. Approximate English measure.

SCHEDULE D

(Sections 3, 4 and 6)

Part of lot 1057 of the cadastre of the city of Montréal (Sainte-Anne ward), approximately rectangular in shape, bounded on the northwest and the northeast by another part of lot 1057, on the southeast by lot 1915 of the same cadastre and on the southwest by the immovable described in Schedule C, measuring 4.8 feet along its northwest and southeast lines and 8.6 feet along its northeast and southwest lines. Approximate English measure.