

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2012/CLE/gen/00054**

**IN THE MATTER OF the Fraudulent Conveyances Act Ch. 150 of the Statute Laws of  
the Bahamas**

**AND**

**IN THE MATTER OF the Crown Grants Issued to Armbrister Properties, Limited**

**RICARDO F. PRATT**

**(in his capacity as Administrator of the Estate of Ruel Pratt)**

**Plaintiff**

**AND**

**ARMBRISTER PROPERTIES, LIMITED**

**Defendant**

**BEFORE: The Honourable Justice Petra M. Hanna-Adderley**

**APPEARANCES: Mr. Ricardo Pratt, Pro Se**

**Mr. Ryan Sands on behalf of the Attorney General's Office, the  
Intended 2<sup>nd</sup> Defendant**

**HEARING DATE: December 11<sup>th</sup>, 2018**

**RULING**

**Hanna-Adderley, J**

Application for Joinder of a Defendant

Application for Leave to Amend the Plaintiff's Writ of Summons and Statement of Claim

**Introduction**

1. The Plaintiff, by way of two Summonses filed the 3<sup>rd</sup> April ("the First Summons") and 6<sup>th</sup> November, 2018 ("the Second Summons") respectively, seeks an Order that (i) the

Attorney General of the Commonwealth of The Bahamas be joined as a Defendant in the action; (ii) the Plaintiff be granted leave to commence an action against the Government of the Commonwealth of The Bahamas pursuant to the Crown Proceedings Act and; (iii) the Plaintiff be granted leave to amend his Writ of Summons and Statement of Claim.

2. The Plaintiff's claim as alleged against the Defendant in his Writ of Summons filed on the 5<sup>th</sup> March, 2012 is that in his capacity of Administrator of the Estate of Ruel Pratt he is the owner of 140 acres more or less of land ("John Seymour Tract") situate on the Island of San Salvador, (now known as Cat Island) by virtue of a Crown Grant to John Seymour his heirs and assigns dated the 29<sup>th</sup> October, 1806 and recorded in the Crown Lands Office in Grant Book K at page 155 and in the Registry of Records in Book K-1 at page 93 ("the 1806 Crown Grant") of whom the Plaintiff claims to be an heir and alleges that the Crown Grant dated the 8<sup>th</sup> August, 1968 ("the 1968 Crown Grant") granting the property to Armbrister Properties, Limited is void pursuant to the Fraudulent Conveyances Act on the ground that the Crown knowingly deceived the Defendant that the Crown had a right claim title estate or interest therein.
3. The Plaintiff contends that the issue before the Court is who has the better documentary title between himself and the Defendant to 2.66 acres and 15.63 acres of land situate in the vicinity of Fernandez Bay, Cat Island ("the subject property"), which the Plaintiff claims is a portion of 140 acres or more or less of the John Seymour Tract situate on the Island of San Salvador (now known as Cat Island).
4. The Plaintiff makes various allegations and claims a number of orders against the Defendant, in particular: that he is the legal and beneficial owner of the subject property; that the 1968 Crown Grant and subsequent conveyances are void pursuant to the Fraudulent Conveyances Act; an injunction to restrain the Defendant from purporting to

exercise any rights of ownership, interest or title with respect to the property or any portion thereof; an accounting of all sums of money obtained by the Defendant of profits made from the sale of any portion of the property; and damages for conversion, trespass, wrongful interference, loss of use of property and slander of title.

## **Statement of Facts**

5. The Plaintiff now applies to the Court pursuant to Order 15, Rule 6 (2)(b)(i)(ii) and/ or Order 20, Rule 5 or Rule 9(1) of the Rules of the Supreme Court 1978 ("RSC"); and or Order 31A Rule 18(1)(2)(s) of the Rules of the Supreme Court (Amendment) Rules, 2004; and or under the inherent jurisdiction of the Supreme Court for orders as follows.

6. In his First Summons the Plaintiff seeks an order: -

" 1. That the Attorney General of the Commonwealth of the Bahamas be joined as a Defendant in this action, for and on behalf of the employee servant or agent of the Government of the Commonwealth of the Bahamas, the Director of the Department of Lands and Surveys on the ground(s) including:-

- (i) Wrongful interference with the Plaintiff's rights and use and enjoyment of property including the 140.0 acres of land originally granted by the Crown to John Seymour his heirs and assigns dated 29<sup>th</sup> October, 1806 and recorded in the Registry of Records in Volume K-1 at page 93 and in the Department of Lands and Surveys in Grant Book K at page 155
- (ii) Unlawful conspiracy; by virtue of implicitly agreeing and purporting to survey and or grant to Armbrister Properties, Limited, a 2.66 acre and 15.63 acre portion of the 140.0 acre John Seymour Crown Grant and or creating the purported Crown Grant dated 8<sup>th</sup> August, 1968 and recorded in Grant Book E2 at page 14 in the Department of Land and Surveys.

2. That the Attorney General of the Commonwealth of the Bahamas be joined as a Defendant in this action, for and on behalf of the Government of the Commonwealth of the Bahamas and or its former employee servant or agent the Minister of Internal Affairs on the ground(s) including:-

- (i) Wrongful interference with the Plaintiff's rights and use and enjoyment of property including the 140.0 acres of land originally granted by the Crown to John Seymour his heirs and assigns

dated 29<sup>th</sup> October, 1806 and recorded in the Registry of Records in Volume K-1 at page 93 and in the Department of Lands and Surveys in Grant Book K at page 155

- (ii) Unlawful means conspiracy; by virtue of implicitly agreeing and or approving the purported Crown Grant to Armbrister Properties, Limited, of a 2.66 acre and 15.63 acre portion of the 140.0 acre John Seymour Crown Grant and or creating the purported Crown Grant dated 8<sup>th</sup> August, 1968 and recorded in Grant Book E2 at page 14 in the Department of Lands and Surveys, being at all material times, a forged document of title for land.

3. That the Plaintiff be granted Leave to amend the Writ of Summons and Statement of Claim filed in this action on the 5<sup>th</sup> March, 2012.”

- 7. In the Second Summons the Plaintiff makes his application pursuant to the same provisions of the RSC as in the First Summons and seeks an Order “1. That the Plaintiff be granted Leave to commence an action against the Government of the Commonwealth of the Bahamas, pursuant to the Crown Proceedings Act. 2. That the Plaintiff be granted Leave to amend the Writ of Summons and Statement of Claim filed in this action on the 5<sup>th</sup> March, 2012.”
- 8. The Plaintiff in support of his application filed an Affidavit on the 6<sup>th</sup> November, 2018 with a draft Amended Writ of Summons and Statement of Claim.

## **Issue**

- 9. The two issues before the Court are:-
  - i. Whether joining the Attorney General as a party is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon;
  - ii. Whether there exists between the Plaintiff and any party a question or issue arising out of or relating to or connected with any relief or remedy

claimed which in the opinion of the Court it would be just and convenient to determine as between the applicant and that party.

## **Analysis and Discussion**

### **Joinder Application**

#### **The Law**

10. Order 15, Rule 6(2)(b)(i)(ii) of the RSC states:-

“(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application

(b) order any of the following persons to be added as a party, namely —

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter,

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.”

11. The purpose of the above provision is to allow the Court to join a party to the proceedings where it is deemed necessary “to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon” or where such joining is just and convenient. When determining whether it is necessary to join the intended party the Court must decide if the intended party has a legal interest in the result of the proceedings. Further, if such an addition would ensure that all issues related to the Plaintiff’s case are adjudicated upon and if such addition would prevent satellite proceedings by the Plaintiff.

12. Ultimately, my power when granting such an order is discretionary.

13. In the Plaintiff's Writ of Summons and Statement of Claim the Plaintiff's claim as against the Crown is particularized under the heading "Particulars of Deceit". In particular, he claims at paragraph 6 under the said heading that **"the Crown knew by virtue of the 1806 Crown Grant that it was not seised in fee simple of the Property nor had any right claim title estate or interest thereto, when it knowingly and falsely represented and stated to APL in the 1968 Crown Grant:-...this is our present grant ... have given and granted and by these presents, for us, our Heirs and Successors, do give and grant unto the said ARMBRISTER PROPERTIES LIMITED...ALL THAT...TWO ACRES AND SIXTY-SIX HUNDREDTHS OF AN ACRE....and,....ALL THAT FIFTEEN ACRES AND SIXTY-THREE HUNDREDTHS OF AN ACRE...To have and to hold the land, and all and singular other premises hereby granted...forever. Knowing the same to be false or untrue"; "The Crown, by knowingly and falsely representing and stating to APL in the 1968 Crown Grant that:- "... this is our present grant... have given and granted by these presents, for us, our Heirs and Successors, do give and grant unto the said ARMBRISTER PROPERTIES LIMITED...ALL THAT...TWO ACRES AND SIXTY-SIX HUNDREDTHS OF AN ACRE....and,....ALL THAT FIFTEEN ACRES AND SIXTY-THREE HUNDREDTHS OF AN ACRE...To have and to hold the land, and all and singular other premises hereby granted...forever. intended for APL to act in reliance on the said untrue statement which the Crown knew to be false.";**

14. In his prayer for relief in the said Writ of Summons and Statement of Claim the Plaintiff seeks an order that the Crown did not have any right claim title estate or interest in the 140.0 acres more or less as granted in the 1806 Grant.

15. During the hearing on the 11<sup>th</sup> December, 2018 the Plaintiff in his oral submissions to the Court submitted that officers of the Crown without any right, title or interest arbitrarily created a document of title by issuing a second Crown Grant and collected the sum of \$11,000 which the Plaintiff should have been compensated for the loss of his land (Transcript page 2 at lines 31-32, page 3 at lines 1-5). Therefore, he submitted that the Crown is vicariously liable for these acts of its officers and subsequently are vicariously liable in constitutional damages as the Crown violated his constitutional right to not be deprived of his property without compensation. (Transcript page 3 lines 15-18, lines 27-31). The Plaintiff further contended that the Defendant and officers of the Crown wrongfully interfered with his use and enjoyment of the said property and obtained a financial benefit from the continuing trespass and obtained money for the use of the said property with his permission (Transcript page 7, lines 24-30).
16. Counsel for the Office of the Attorney General, Mr. Ryan Sands opposed the Plaintiff's applications and noted that there were preliminary objections that should be considered before he addressed the Plaintiff's applications.
17. Mr. Sands' most relevant submission is that the provisions of the Limitations Act would apply in particular Section 16 which deals with the limitation of matters for the recovery of land (Transcript page 11, lines 11-16).
18. He submits that the Government's involvement in this action which stems from the Crown Grant of 1968 goes beyond the limitation periods provided by the said Act and states that the Plaintiff is time barred from bringing such an action against the Government of the Commonwealth of The Bahamas (Transcript page 11, lines 21-29). Moreover, he submits that the Government's involvement stems from the 1968 Crown Grant which is far beyond the limitation period offered by the said Act.

19. While it is noted that the provisions of the Limitation Act are a plausible defence for the Intended Defendant to rely upon in this matter, it is not an issue to be determined at this stage.
20. Counsel for the Attorney General's Office also submitted that the Plaintiff's attempt to now join the Crown as a party is an abuse of process. He relies on Order 18, Rule 19 of the RSC firstly on the basis that this provision gives the Court the power to strike out and amend pleadings due to different factors, one being an abuse of process. He also relies on Order 31A, Rule 20 of the RSC which gives the Court the power to strike out any pleading it determines to be an abuse of process or likely to obstruct the just disposal of proceedings. In support of this submission he referred the Court to the case of **AG v Barker 2000 2 FCR 1** whereby it was determined that where the party seeks a collateral advantage beyond the proper scope of the action, or because they are bringing the proceedings not to achieve vindication but to cause the defendant problems beyond that ordinarily encountered in litigation, it can amount to an abuse of process.
21. Therefore, he submits that the joinder of the Government of The Bahamas or the Attorney General is not an exercise in vindicating the issues between the Plaintiff and a private entity (i.e. Armbrister Properties) but rather an attempt to have the Government provide research, look into historical records that other parties may not have access to as opposed to the proper reasons for having them added as a litigant to the application.
22. It is not disputed that the correct provision under which an action can be brought as against the Crown through the Office of the Attorney General is Section 12(1) of the Crown Proceedings Act.
23. However, the application before me is to determine whether the Attorney General on behalf of the Crown should be joined as a Defendant in this action.



24. The Plaintiff in his summons relies on the two limbs of Order 15, Rule 6 (2)(b) of the RSC.

It seems to me, however by his Writ of Summons and Statement of Claim the Plaintiff presupposes that he has established that he has documentary title to the subject property.

25. Therefore, I must look to the said Writ of Summons and Statement of Claim filed on behalf of the Plaintiff to determine what are the matters in dispute as between the Plaintiff and the Crown and what is the question or issue arising out of or relating to or connected with any relief or remedy being claimed that must be determined between the Plaintiff and the Crown. At this stage in these proceedings it is not for me to determine the successfulness of the Plaintiff's claim but whether should the Intended Defendant be joined as a party.

26. The Plaintiff during the hearing of the 11<sup>th</sup> December, 2018 submitted that the issue in dispute before the Court is to who has the better title to the land subject to the 1968 Crown Grant, in light of what he alleges was forged by officers of the Crown (Transcript page 4, lines 17-22).

27. Based on the allegations as contained in the said Writ of Summons and Statement of Claim, the Plaintiff claims that the Crown "knowingly deceived the Defendant" when granting the 1968 grant as it was not seised of the said property by virtue of the 1806 Crown Grant.

28. After a careful review of the Plaintiff's pleadings filed, the proposed amendments as found in his Affidavit filed on the 6<sup>th</sup> November, 2018 and the submissions of both parties during the hearing I now make several observations:-

- a. There exists two Crown Grants, the 1806 Crown Grant which totals the 140 acres of the parcel of land in Cat Island and the 1968 Crown Grant which contains the subject property which forms a part of the 140 acres tract (John Seymour Tract).

- b. That presently no evidence has been adduced to the Court by the intended Defendant, the Crown showing that the 1806 Grant was extinguished and therefore is no longer valid.
  - c. That the inference can be drawn that two grants over the same subject property cannot exist and as such the Plaintiff's pleadings although not specifically pleaded as required by the RSC establishes a prima facie case to an allegation of fraud on the part of the intended Defendant, the Crown.
29. Therefore, in applying the two limb approach as found in Order 15, Rule 6(2)(b)(i) and (ii) I do believe that the joining of the Crown to this action is necessary to ensure all matters in dispute may be effectually and completely determined and adjudicated upon and that it would be just and convenient as there exists a question or issue arising in this matter to be determined between the Plaintiff and the Crown.

### **Leave to Amend**

30. In the Second Summons, the Plaintiff seeks an Order that he be granted leave to amend the Writ of Summons and Statement of Claim pursuant to Order 20, Rule 5 of the RSC.
31. Order 20, Rule 5 of the RSC states:-

“(1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ of the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.”

32. Counsel for both parties did not advance any arguments relative to the Plaintiff’s application for leave to amend.

33. The Court when determining whether to grant leave to amend must consider the established principles as found in **G.L. Baker Ltd. v Medway Building & Supplies Ltd. [1958] 1 W.L.R. and Cropper v. Smith (1883) 26 Ch. D 700 at 710-711 (The Supreme Court Practice, 1999, Volume 1 at page 379 Notes 20/8/6).**

34. In particular, per Jenkins L.J. in **G.L. Baker Ltd (supra)** illuminated that the guiding principle of cardinal importance on the question of amendment is that all such amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings.

35. In particular, per Bowen L.J. in **Cropper v. Smith (supra)** 700 at 710-711 states:-

“It is a well established principle that the object of the Court is to decided the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights...I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace...It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right.”

36. Considering the above principles and the Plaintiff's application for joinder of the Crown being permitted, in the circumstances I will grant leave for the Plaintiff to amend his Writ of Summons and Statement of Claim.

37. In the circumstances, as the Plaintiff's applications were for joinder and amendment the usual penalty imposed for such is that the party seeking leave should pay the costs incurred. Therefore, costs to be paid by the Plaintiff to the Intended Defendant to be taxed if not agreed.

38. The Plaintiff was given leave to appeal the ruling on costs.

This 10<sup>th</sup> day of September, 2020

**Petra M. Hanna-Adderley**  
**Justice**