

IN THE SUPREME COURT

Common Law & Equity Division

IN THE MATTER of the Quieting Titles Act, Chapter 393 Statute laws of The Bahamas

AND

IN THE MATTER OF ALL THOSE pieces, parcels or lots of land containing 34.756 acres of the Flowers Estate Subdivision, being a portion of the 440-acre tract of land granted to Daniel Driggs by the Crown Grant on the 22nd July, 1818 and situated in the Settlement of Griggs Hill in the Southern District of the Island of Andros, one of the Island in the Commonwealth of The Bahamas.

AND

IN THE MATTER of the Petition of Palm Beach Andros Company Limited, Gerard Maurice Cussen, Rashna Cussen, Gerard Maurice Cussen and Rashna Cussen in their capacity as lawful attorneys from James Cussen, Sheena Cussen, Sarosh Nanavarti and Martin Sumner.

Heard before: The Honourable Madam Justice Ruth Bowe Darville

Appearances: Philip McKenzie and Glenda Roker for the Petitioner with Creswell Sturup

Damien Gomez, QC with Owen Wells for Adverse Claimant – South Andros International Company Ltd.

Vann Gaitor with Karen Brown and Denise Newton for Adverse Claimant – Grand Bahama Development Co. Ltd.

Dates Heard: 26th April, 27th May, 2021

Quieting Petition/Strike out of petition/Notice/Company-piercing the corporate veil

*******RULING*******

1. On the 27th May, 2021 at the close of the cross-examination of the Petitioner's 2nd witness, Michael

Flowers Sr., and there being no re-examination counsel for the First Adverse Claimant made an application to strike out the Petition.

2. The application made by counsel appears at p. 69 et seq of the transcript. Counsel made specific reference to Action No. 2006/Cle/gen/1303 in which Michael Flowers St. and Flowers Development Co. were the Defendants. An injunction was ordered in that action on 18th December, 2006. The specific term of the injunction was:

“1. The Defendants be restrained, whether by themselves or by their servants, agents or otherwise by injunction until judgment in this action or further order from trespassing; interfering; excavating; or advertising for sale fill, sand or soil on or from the property; subdividing; surveying; advertising the property for sale the land the subject of this action situate in the Southern District of Andros one of the Islands of the Commonwealth of the Bahamas; until this Honourable Court has had an opportunity to investigate the claim of the Plaintiff or until such further order from the Court.”

3. As such Michael Flowers Sr. was enjoined from executing any conveyance to the Petitioner post the Order. Yet Conveyances were executed although none had been stamped and recorded until after 2006.

4. By Summonses filed 5th February, 2007 and 19th April, 2007 Michael Flowers Sr. applied to have the Order of 18th December, 2007 set aside/discharged and for the Defendant Michael Flowers Sr. to be removed as

he was an improper party. These summonses were supported by the Affidavit/s of Michael Flowers' Sr. In this action the Defendants placed reliance on the Indenture of Conveyance of Michael Flowers to Flowers Development Company Limited of 20th November, 1989 recorded in Book 5482 at page 291. This application was in respect of 4.855 acres and 9.589 acres.

5. The Injunctive Order drawn was served on Michael Flowers Sr.. He admitted having notice of the same. The Petitioner's witness, Mrs. Cussen also admitted that she had knowledge of the injunction and that she too sought legal advice. He maintains that he was advised that this 2006 Order did not pertain to him and as such he was not restrained from dealing with the land the subject of the 2006 action or in the present action.

6. To date Michael Flowers Sr. has not progressed the application to set aside the injunction or have it discharged. The Affidavit of Kent Reid speaks to Michael Flowers Sr.'s noncompliance with the Order.

7. From these proceedings there are several persons/entities involved with the land the subject of this action. They are (1) Michael Flowers Sr. (ii) Michael Flowers Jr., (iii) Flowers Development Company Limited, (iv) Three M's Company Limited, and (v) Flowers Estate Homeowners Association Limited.

8. In reviewing the introductory paragraphs to the several affidavits filed there is no doubt that Michael Flowers was the purported owner/president/director/the alter ego/the real persona behind the several entities noted above. Michael Flowers Sr. was the directing mind of the several companies but now he asserts that he and the companies are separate entities

as per **Salomon v Salomon & Co. Ltd (1895-1899)** all E.R. Rep.33. This is, however, rather mindful of the dicta cited in **Wolfson v Strathclyde Regional Counsel (1978) UKHL5**. There are special circumstances which lend themselves to the proverbial “Piercing of the corporate veil”. The creation of the noted companies is incestuous in nature; their genesis being in the Deed of Assent to Michael Flowers Sr. There is also the evidence of Directorship and Presidency of the companies, not to mention the obvious signature of Michael Flowers Sr. on all the documents, save that of Conveyance to Flowers Estate Homeowners etc., signed by Michael Flowers Jr. . The legal principle in **Salomon** is undermined by Michael Flowers Sr. and any reliance on it is useless in the present circumstances. At most the line of companies is but a mere façade for concealing the true fact the Michael Flowers Sr. is the same as the several companies.

9. No evidence has been adduced that Michael Flowers Sr. incorporated Three M’s Limited as a vehicle to evade the Order of 18th December, 2006. **[See Jones and Anor v Lipmann and Anor (1962) 1 All ER.442]**. The companies are all a cloak for Michael Flowers Sr. . The court can go further to say that this was Michael Flowers Sr.’s way of removing himself from the front line of liability.

10. One cannot assert otherwise than the fact that Three M’s Limited is bound by the Injunction of 18th December, 2006. Those enjoined by the order proper were Michael Flowers Sr. and Flowers Development Company Limited. Michael Flowers had actual notice and such notice was imputed each and every entity with which he was involved. It is noted that the said Order had no Penal Notice endorsed on it giving notice to the directors, officers, servants and/or agents of

the Defendant/s. Neither did it have a notice endorsed on it which was Notice to anyone which knows the Order. Notice of the injunction would have been to any person knowing of the injunction and disobeys it or does anything which helps or permits any person to whom the Order applies to breach the terms of the Order. That person so breaching is in contempt of Court and may be liable to a fine or imprisonment. It is the law that any and everyone who has notice of the Injunction, and in the instant case Michael Flowers Sr., is bound by the Order **[see *Shawn Riley et al v The Estate of Donald Fritzhusen (2020) IB45 J.No.3.*]** By way of Michael Flowers Sr.'s involvement with Three M's Enterprises Limited, it is deemed to have notice of the Injunction and was bound by it. There is no denying that Michael Flowers Sr. knew of the Injunction and failed to abide by it. It has been fourteen (14) years since his application for the setting aside/discharge and nothing has been done. Michael Flowers Sr. simply continued to sell lots in his purported subdivision.

11. What constituted the purported agreement for sale of the subject property? A proper agreement for the sale of the property is not before the Court. Delivery of the duly executed conveyance is sufficient to evidence the transfer of real property. The stamping and recording safeguard the transfer of land and gives notice to the whole world that the land had been transferred. There are many questions arising, however, as to the Petitioners' exercise of due diligence despite their repeated insistence that their attorneys conducted title searches. The title searches noted in the Bundle of Documents reveal the following:

- i. the scope of the requested search was with reference to Lots 2 and 22 of Flowers Estate Subdivision Limited; and
- ii. The Oath for the Administrator in the Probate action of Job Flowers (21st October, 1988 to Bertram Flowers) did not list the Crown Grant (30th October, 1918) in favour of Job Flowers

12. The Injunction Order was filed in the Supreme Court Registry and was available for inspection. The presence of the Injunction was a notice to the whole world that the title to the land was questionable and therefore not marketable.

[See *Dunkley and in Re Harris (1998) BHS J. No. 182*]. Counsel for the second Adverse Claimant rightly submitted that S.52 of the Conveyancing and Law of Property Act 1909 is applicable. The Court noted at “constructive notice is implied to a purchaser of any matter which is within his knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him. As such the claim of bona fide purchaser for value without notice cannot be made.

13. The application for striking out is based on the usual provision of Order 18/19 RSC grounded on the assertion of it being scandalous, frivolous, vexation and an abuse of the process of the court due to Michael Flowers breach of the Injunction by executing Conveyance in respect of the subject land.

14. Both counsel for the Adverse Claimants refer to the long list of conveyances made by the Three M’s Enterprises Limited post the 2006 Injunction. The consolidated Bundle of documents refers to the items No.7-20 and 28-32. The Court notes that items seem to be copy documents in some instances. It is

notable, however, that the conveyances at items 64-68 ate to the Petitioners' family members. Of those Conveyances only items 64, 65, 66 and 68 are valid as having been executed and delivered prior to the Injunction Order of 18th December, 2006. **All other conveyances made post 2006 cannot be relied on in the support of the Petition, namely those from Three M's Enterprises to Palm Beach Andros Co. Ltd.**

15. The Petitioners' Counsel submitted that "*The Petition discloses some chance of success and some cause of action and raises some question fit to be decided by the Court*", and as such the Petition should not be struck out.

16. The present application, if successful, would have serious economic consequences for the Petitioners and Michael Flowers Sr., the extent of which have yet to be assessed. The Court is mindful of imposing such a draconian measure as an Order under Order 18/19. Given the very nature of a Quieting action which is for the most part investigative, it is important to put the application in its rightful context. This is a matter of great public importance to the community of South Andros and to the foreign purchasers of land in the Flowers Estate Subdivision. The land claimed by the parties encompasses vast tracts of land in South Andros.

17. The Court also considers Order 31A (20) of the Rules of the Supreme Court

20. (1) In addition to any other powers under these Rules, the Court may strike out a pleading or part of a pleading if it appears to the Court —

(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the Court in the proceedings;

(b) that the pleading or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings;

(c) that the pleading or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or

(d) that the pleading or the part to be struck out is prolix or does not comply with the requirements of any rule.

(2) Where —

(a) the Court has struck out a plaintiff's pleading;

(b) the plaintiff is ordered to pay costs to the defendant; and (c) before those costs are paid, the plaintiff starts another claim against the same defendant based on the same or substantially the same facts, the Court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid

18. The Court exercises its discretion pursuant to Order 31A (20) and the Petition is hereby struck out with costs to the Adverse Claimants to be taxed if not agreed.

Dated this 16th June, 2021



Ruth M. L. Bowe-Darville

Justice of the Supreme Court

