

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2019/CLE/gen/01509

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

BETWEEN

RICARDO PRATT

**(In the capacity as Administrator of the Estate of George Johnson Bootle)
Plaintiff**

AND

LRA-OBB, LIMITED

(formally known as Ginn-La OBB, Limited)

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Ricardo Pratt, pro se

Dwayne Fernander with Adrian Hunt for the Defendant

25 and 26 November 2021, 3 March 2022, 3, 5 and 9 May 2022

JUDGMENT

WINDER, CJ

This is a title dispute. The plaintiff, who sues in a representative capacity, claims to have a better title than the defendant to several tracts of land situated in Western Grand Bahama, The Bahamas.

[1.] The action was commenced by Specially Indorsed Writ of Summons. In the Statement of Claim indorsed thereon, the plaintiff seeks the following relief:

- (1) That the Plaintiff, in reliance on the Crown Grant to John Bootle his heirs and assigns or other documents of title, has a better documentary title to the 1,450.0 acre John Bootle Tract, than LRA-OBB, Limited and its purported predecessors in title or successors in title;**
- (2) An Order, that LRA-OBB, Limited and none of its purported predecessors in title or successors in title have never had and do not now have any right title nor interest in no portion of the tract of land which was originally granted by the Crown to John Bootle his heirs and assigns by a Crown Grant dated December 1818 and recorded in the Registry of Records in Book L1 at page 193 and which was owned in fee simple by the late George Johnson Bootle at the date of his death;**
- (3) An Order, that the Plaintiff has a better documentary title to the 146.0 acre John D. Smith Tract and the 500 acre John D. Smith Tract than LRA-OBB, Limited and its purported predecessors in title or successors in title;**
- (4) An Order, that LRA-OBB, Limited and none of its purported predecessors in title or successors in title, have never had and do not now have any right title nor interest in no portion of the tracts of land which was originally granted by the Crown to John D. Smith his heirs and assigns by a Crown Grant dated 8th May 1818 and recorded in Volume L1 at page 146 or the Crown Grant dated 12th June 187 [sic] and recorded in Volume L1 at page 122 and which was owned in fee simple by the late John D. Smith;**
- (5) An Order that the purported Indenture of Conveyance dated 29th January 2009 and made between LRA-OBB, Limited and Ginn-LA West End, Limited and recorded in the Registry of Records in Volume 10722 at pages 498 to 535 is a forged document of title for a 365.24 acre tract of land which forms a part of the 810.8 acre Eastern portion of the [late] John Bootle Tract and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act;**
- (6) An Order, that the purported Supplemental First Legal Mortgage dated 16th February 2011 and made between Ginn-LA West End, Limited and Credit Suisse AG, Cayman Islands Branch and recorded in the Registry of Records in Volume 11311 at pages 381 to 409 is a forged document of title**

for a 365.24 acre tract of land which forms a part of the 810.8 acre Eastern portion of the John Bootle Tract and the purported mortgage and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act;

- (7) An Order, that the purported Indenture of Conveyance dated 27th April 2006 and made between Grand Bahama Hotel Company and Ginn-LA West End, Limited and recorded in the Registry of Records in Volume 9644 at pages 457 to 475 is a forged document of title for the John Bootle Tract and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity, and or are all void pursuant to the Fraudulent Conveyances Act;
- (8) An Order that the purported Indenture of Conveyance dated 1st July 1997 and made between Grand Bahama Hotel Company and West End Resorts, Limited and recorded in the Registry of Records in Volume 7194 at pages 426 to 433 is forged a document of title [sic] for the 146.0 acre John D Smith Tract and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act;
- (9) An Order, that the purported Indenture of Conveyance dated the 31st December, 2007 and made between West End Resorts, Limited and LRA-OBB, Limited and recorded in the Registry of Records in Volume 10319 at pages 1 to 49 is a forged document of title for portions of the John D. Smith Tracts and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act;
- (10) An Order, that the purported Indenture of Conveyance dated the 4th May, 1959 and made between Grand Bahama Properties, Limited and Charles Sammons and recorded in the Registry of Records in Volume 184 at pages 118 to 135, is a forged document of title for portions of the John Bootle Tract, and the John D. Smith Tracts and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act;
- (11) An Order, that the purported Indenture of Conveyance dated the 28th June, 1960 and made between Grand Bahama Properties, Limited and Charles Sammons and recorded in the Registry of Records in Volume 314 at pages 317 to 329, is a forged document of title for land and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act;

- (12) An Order, that the devise(s) in the unrecorded purported Last Will and Testament of the late Horatio Wilchombe dated the 24th January, 1906 are void on the ground(s) that it offends the Rule against Perpetuities and the purported Last Will fails; and the late Horatio Wilchombe was not the owner in fee simple in possession of no portion of the John Bootle Tract nor the John D. Smith Tracts at the date of his death, and the Wilchombe Will cannot form a good root of title to the John Bootle Tract nor the John D. Smith Tracts or any portion thereof;
- (13) An Order, that the purported Indenture of Conveyance dated 1st July, 1919 and made between Horatio Nelson Wilchombe (the Younger) et al and George Jonas and recorded in the Registry of Records in Book 1.11 at pages 136 to 144, in reliance on the false devise contained in the purported Last Will and Testament of the late Horatio Nelson Wilchombe, and all subsequent deeds, conveyances or agreements for sale for the tract of land granted by the Crown to John Bootle his heirs and assigns by a Crown Grant dated December, 1818, and owned by the late George Johnson Bootle and his heirs; and the purported conveyance and all subsequent conveyances are all null void and of no effect in law or in equity; and or are all void pursuant to the Fraudulent Conveyances Act.

[2.] The defence of the defendant is captured in paragraphs 11, 12 and 13 of the Defence, which provides:

11. As to Paragraph 3 of the Statement of Claim, save that John Bootle was the original Crown Grantee of the property described in the Crown Grant dated 15th December 1818, containing 960 acres more or less ("the John Bootle Tract") the Defendant denies the allegations set out therein and, in the Particulars thereto. ...
12. Paragraph 4 of the Statement of Claim is denied. The Defendant avers that by virtue of an Indenture of Conveyance dated 27th April, 2006 and made between Grand Bahama Hotel Co. and Ginn-LA West End, Limited ("Ginn") and now recorded in the Registry of Records in Volume 9644 at pages 457 to 475, and by virtue of a Certificate of Title dated the 26th May, 2006 issuing out of Equity Action No. 511 of 2005, and now recorded in the said Registry of Records in Volume 9697 at pages 466 to 470, Ginn became seised in fee simple in possession of all of the lands therein conveyed all of which said land is the subject of this Action. Further, the Defendant avers that on the 11th May, 1847 George J. Bootle under the provisions of the Act 9 Victoria Chapter 10 commuted the Bootle Tract (containing Nine hundred and Sixty acres) situate near the Western End of the Island of Grand Bahama originally granted to John Bootle.

13. Paragraph 5 of the Statement of Claim is denied save that the Defendant by virtue of an Indenture of Conveyance dated 28th January 2009 and made between ("Ginn") and the Defendant, and recorded in the Registry of Records in Volume 10722 at pages 498 to 535 [the Defendant] became seised in fee simple of all that parcel of land described in the Schedules thereto. The Defendant repeats paragraphs 11 and 12 of the Defence.

[3.] The defendant also sought, in the Defence, to reserve a right to make an application for the Writ of Summons to be struck out on the grounds that the claim is frivolous, vexatious and an abuse of the process of the Court or alternatively on the basis of the Limitation Act. However, no such application was made by the defendant prior to the trial of the action.

[4.] In his Reply to the Defence, the plaintiff asserted at paragraphs 1, 3(iv) and 4(i) as follows:

1. The Plaintiff repeats and relies on Paragraph(s) 1 to 29 of the Statement of Claim (hereinafter "SC") in its entirety; and or Section 30 of the Limitation Act; and or Section 50(1)(2) of the Administration of Estates Act, 2010 on the grounds that this is an action for trespass and or the recovery of land owned in fee simple by the Estate of George Johnson Bootle.
2. ...
3. No reply to the Defendant's Statement in paragraph 3 of the Defence Paragraph(s) 1 through 2 is repeated herein
(i)...
...
(iv) This action is for the recovery of land; and for the determination of who has the better documentary title to various portions of the 1,450.0 acre John Bootle Tract and the other subject land.
4. (i) None of the 29 claims in the Statement of Claim and the prayer for relief sought by this action, is in respect of Section 27 of the Quieting Titles Act, 1959 nor in respect of any Certificate of Title being obtained by fraud by Ginn-LA West End, Limited ("Ginn"); ...

[5.] The plaintiff says that this action relates to two tracts totaling 2,000 acres which have been purportedly acquired by the predecessors in title of the defendant, namely the John Bootle Tract (purportedly comprising the 1,450 acres) and the John D. Smith Tracts (purportedly made up of 146 acres and 500 acres respectively).

[6.] The plaintiff has pleaded that his claim based upon his alleged heirship to the Crown Grantee John Bootle and a purported Agreement for Sale to purchase the John D Smith Tracts from the Estate of one Julia Ann Ash. The defendant relies on Certificates of Title issued to its predecessors in title: (1) Ginn-La West End Limited in Equity Action No. 511 of 2005; and (2) Grand Bahama Properties Limited in Equity Action 121 of 1960.

The Litigation history of the subject property

[7.] The property, with which this action is concerned, has been the subject of attention by these courts at the instance of Mr Ricardo Pratt whether in his personal capacity or on behalf of the estate of Ruel Pratt. In this action he now pursues the claim on behalf of the Estate of George Johnson Bootle. The Defence sets out much of this litigation history at paragraphs 3-8 as follows:

...

3. Further, the Defendant avers that the matters complained of and alleged by the Plaintiff are matters that have been ventilated previously before the Supreme Court of The Bahamas and before the Court of Appeal. The Defendant avers,

(i.) That by Supreme Court Action 2011/CLE/GEN/00118, the Court handed down its Decision with respect to a claim advanced by the said Ricardo F. Pratt in his capacity as Administrator of the Estate of Ruel Pratt against Ginn-La West End Limited and G-La Resorts Holdings (Bahamas) Limited under the provisions of Section 17 and 27 of the Quieting Titles Act, 1959 Ch 393 of the Statute Laws of The Bahamas and the Fraudulent Conveyances Act Ch 150 of the Statute Laws of The Bahamas. The claim asserted in that case was for ownership of the following property:

(1) All that piece parcel or tract of land containing 960 acres more or less situated in the settlement of West End in the island of Grand Bahama and being the entire parcel or tract of land granted to John Bootle his heirs and assigns by virtue of a Crown Grant dated 15th December 1818 ("the 1818 Crown Grant") and recorded in the Registry of Records in Book L1 at pages 193 ("the John Bootle Tract").

(2) All those pieces parcels or tracts of land containing 179.81 acres and 28.59 acres more or less also situated in the settlement of West End in the Island of Grand Bahama aforesaid and being portions of the John Bootle Tract ("the Property").

(ii.) The plaintiff therein claimed as descendant and heir of the late John Bootle, the Crown Grantee and or through the late George Johnson Bootle.

(iii.) Additionally, the plaintiff therein also sought, inter alia, declaratory relief from the Court that the Certificate of Title issued in Supreme Court Action

No. 2005/CLE/qui/00511 to Ginn-La West End Limited was obtained by fraud in violation of Section 27 of the Quieting of Titles Act and that it should be declared null and void;

4. The Defendant avers that by the Judgment delivered in Supreme Court Action 2011/CLE/GEN/00118, the Supreme Court conclusively determined that the Certificate of Title issued in Equity Action 00511 of 2005 was not obtained by fraud or fraudulent means and dismissed all of the said plaintiff's claims on the basis that either the said plaintiff's case was without merit or that no evidence had been adduced to prove the allegations.

5. The Defendant further avers that by a Notice of Appeal filed by the plaintiff, SCCiv No. 58 of 2017, the plaintiff challenged the whole of the Judgment made in Supreme Court Action 2011/CLE/GEN/00118. That Notice of Appeal was subsequently withdrawn by the plaintiff and therefore the findings of fact made by the Court are unchallenged and conclusive.

6. The Defendant further avers that prior to SCA 00118 of 2011, the Decision of the Supreme Court to issue the Certificate of Title issued in Equity 00511 of 2005 was also appealed to the Court of Appeal in SCCiv No. 112 of 2008. In that appeal, it was held that the allegation that the Certificate of Title had been obtained by fraudulent or improper means was without merit and dismissed. It was this Decision of the Court of Appeal that was also referred to by the learned Judge in Supreme Court Action 2011/CLE/GEN/00118.

7. Additionally, the Defendant avers that in Supreme Court Action 2013/CLE/gen/FP/00215 commenced by Ricardo F. Pratt (in his capacity as Administrator of the Estate of Ruel Pratt) in which the Defendant in these present proceedings was the 5th Defendant, the plaintiff therein alleged in substantially the same terms, allegations of fraud and forgery as against, inter alia, the 5th Defendant, who is the Defendant in these proceedings. That Action remains extant, the plaintiff in that Action having filed and served a Notice of Intention to proceed on 16th October 2019, which is 12 days prior to proceedings being filed in the instant Action. The Defendant will refer more particularly to those pleadings during these Proceedings and at trial as evidence of conduct that is frivolous, vexatious, and/or amounts to an abuse of process.

8. The Defendant avers nevertheless that the Plaintiff's claim is res judicata as the seminal issues alleged to be determined herein have already been ventilated before the Supreme Court of The Bahamas and conclusively determined.

Issues

[8.] The following issues arise for determination in this action:

- i. Does the Plaintiff have standing to bring a claim for property pursuant to the Agreement for Sale made between Samuel Smith (in his capacity as Heir-at-Law and Administrator of the Estate of John S. Smith) and Ricardo F. Pratt in his personal capacity for the purported sale of 146 acres and 500 acres more or less situate in West End alleged to be in the Estate of John D. Smith?
- ii. Is the *Fraudulent Conveyances Act* applicable?
- iii. Is the Plaintiff's claim by virtue of section 30 of the Limitation Act for the recovery of land by an administrator of the estate of a deceased person, namely George J. Bootle, statute barred?
- iv. Given the admission by the Plaintiff that there is no challenge to the Certificates of Title issued in 1960 and in 2006 respectively by the Supreme Court of The Bahamas, are the Certificates of Title conclusive as to the documentary title in fee simple of the Defendant's predecessors in title.
- v. Or in the alternative, is the Assignment made between Ricardo F. Pratt in his personal capacity and Ricardo F. Pratt in his capacity as the Administrator of the Estate of George J. Bootle legally viable.
- vi. Is the Plaintiff's claim by virtue of the heirship claimed to the estate of George J. Bootle by Franklin J Pratt by power of attorney given to his agent Ricardo F. Pratt res judicata?
- vii. Are the Plaintiff's claims in this Action frivolous and without merit and should they therefore be struck out as a preliminary issue?
- viii. Which party has the better title.

[9.] It is my considered view that this action may be adequately resolved by a proper consideration of issues (i.) and (iv.). These involve the question of the plaintiff's standing as well as the efficacy of the 1960 and the 2006 Certificates of Title and the ensuing litigation relative thereto.

Does the Plaintiff have standing?

[10.] The plaintiff's claim to the property in the John D Smith Tracts is brought purportedly pursuant to his rights under an Agreement for Sale for the purchase of 146 acres and 500 acres respectively from the Estate of one Julia Ann Ash. He says at paragraph 13 of his Statement of Claim as follows:

13. The Plaintiff, by virtue of various documents of title including Agreements for Sale and or Assignments of Agreements for Sale, has a better documentary title to the 146.0 acre John D. Smith Tract and the 500.0 acre John D. Smith Tract or portions thereof than LRA.

PARTICULARS

(i) By an Agreement for Sale made between Anthony Cooper (in his capacity as Administrator of the Estate of Julia Ann Ash) and Ricardo F. Pratt (in his capacity as Administrator of the Estate of George J. Bootle) dated 19th September, 2019, the Estate of Julia Ann Ash sold all of the right of title and interest of the Vendor in the 146.0 acre John D. Smith Tract and the 500.0 acre John D. Smith Tract.

[Emphasis added]

[11.] Notwithstanding the reference to the word "sold" in the above pleading, this could only have been "agreed to sell", as reflected in the nature of the document and the document itself.

[12.] During the course of the trial, the plaintiff, in his evidence, sought to rely on a purported assignment dated 25 June 2021, of his personal interest in an earlier 2011 Agreement for Sale, to the Estate of George Johnson Bootle apparently with respect to the same property in the John D. Smith Tract. As it relates to that Assignment, the defendant make the following submissions:

- (a) The facts clearly demonstrate that it was not until the defendant's Statement of Facts and Issues were filed and served on the Plaintiff that Ricardo F. Pratt, in his personal capacity, purported to sell to the Plaintiff the purported interest alluded to in the June Assignment. This Action was commenced on 28 October 2019 and the purported Assignment is dated 25 June 2021, almost 2 years after commencement and on the eve of the matter coming on for trial. The June 2021 Assignment could therefore only be a brazen sham concocted to mislead this Honourable Court. The Court is invited to draw an adverse inference and, in any event, place no weight to the June 2021 Assignment.**
- (b) Both the purported Cooper Agreement and the June 2021 Assignment are bogus. This is easily demonstrated by assessing the facts. This Court is keenly aware of another claim that has been asserted by Ricardo F. Pratt (in his capacity as Administrator of the Estate of Ruel Pratt) that remains extant but fixed to be heard shortly namely, 2020/CLE/gen/FP/00102. At paragraphs 11 & 12 of the Statement of Claim, the plaintiff asserts a substantially identical Cooper Agreement save and except that it is the Estate of Ruel Pratt and not the Estate of George J. Bootle that is a party to that Agreement. As such the Court should place absolutely no weight on the June 2021 Assignment and the Cooper Agreement and make a finding that the Plaintiff has no standing to bring any claims in relation to the John D. Smith Tracts.**
- (c) In any event the Estate of John D. Smith has no remaining claim to the 146 acres and 500 acres originally granted to John D. Smith as the same was acquired by the defendant's predecessors in title as acknowledged by the**

plaintiff in his pleadings, although he alleged without proof that it was fraudulently acquired.

[13.] As this purported assignment did not form a part of the pleaded case I have not considered this evidence as relevant at all. Having been executed after the commencement of this action it could not be the assignment referred to in Paragraph 13 of the Statement of Claim. In any event any such right or interest conferred under such an assignment would only confirm that the right or interest did not exist at the time of the commencement of the action.

[14.] I also give no consideration to the 25 June 2021 Assignment on the basis that it could not be placed into evidence, in accordance with the requirements of the Stamp Act. Section 18 of the Stamp Act provides that *"No instrument which is required by any Act to be stamped shall be pleaded or given in evidence in any court unless the said instrument shall be duly stamped and the stamps thereon cancelled, except as hereinafter provided."* The plaintiff acknowledges this impediment but says that he ought to be permitted to rely on the unstamped document, in the interest of fairness, as the petitioner in the case before Thompson J (Equity Action 59 of 2005) was able to. Respectfully, even of the averment was accurate, this Court could not ignore the force of the clear statutory enactment.

[15.] I have also resisted the strong temptation of asking the obvious question as to why would the remit of any Executor, such as the plaintiff, include the entering into of such an Agreement for Sale or Assignment for the acquisition of hundreds of acres of land and more surprisingly, for a closing which could extend (as per the agreement) for as much as 30 years.

[16.] The main legal issue which arise however, is whether the plaintiff, as a purchaser under an agreement for sale, could bring proceedings on behalf of the seller (Estate of Julia Ash) or alternatively to claim the John D. Smith Tracts purported to be in the Estate of Julia Ash.

[17.] An Agreement for Sale is not a conveyance or transfer of title to property, as provided in the *Conveyancing and Law of Property Act* ("the CLPA"). Section 2 of the CLPA provides;

"conveyance" includes assignment, appointment, lease, settlement and other assurance, and covenant of surrender, made by deed, on a sale, mortgage, demise or settlement of any property, or on any other dealing with or for any property; and "convey" has a meaning corresponding with that of conveyance".

In *Malik Momin v February Point Resort Estates Ltd [2022] UKPC 3* the Privy Council highlighted the distinction between an agreement for sale and a conveyance of land.

Notwithstanding that the context in *Momin* concerned *the Planning and Subdivision Act*, the discussion is nonetheless instructive. In the judgment, the Privy Council stated:

21. Ms Hepburn put forward an alternative submission based on equitable title. ... She submitted that, even though legal title had not been conveyed, equitable title had been. She emphasised that the final words of section 62(2) supported that interpretation because the need to protect a person who obtains title against prejudice from there having been no subdivision approval applied equally to a person having equitable, as well as legal, title.

22. The Board rejects that submission for three main reasons. First, the heading of section 62 "Title to property", and the references made in section 62 to both an agreement to convey and a conveyance, strongly indicate that one is concerned throughout section 62 with legal, not equitable, title. A reference to "title to property", without any further amplification, would normally refer to legal title only; and a conveyance, when contrasted with an agreement to convey, marks the point at which, along with any necessary registration, legal, not equitable, title passes to the purchaser.

...

24. Thirdly, the underlying explanation for why a purchaser acquires an equitable title at the time of an agreement to buy land (that is, that there is a constructive trust for the purchaser's benefit from that moment) rests on the premise that the contract is specifically enforceable: see, generally, *Holroyd v Marshall* (1862) 10 HL Cas 191, 209; *Lysaght v Edwards* (1876) 2 Ch D 499, 506-510; Megarry and Wade, *The Law of Real Property*, 9th ed (2019), paras 14-051-14-055; Robert Chambers, "The Importance of Specific Performance" in *Equity in Commercial Law* (eds Simone Degeling and James Edelman (2005), pp 431-462 (cf in the same book, William Swadling, "The Vendor Purchaser Constructive Trust", pp 463-488).

(Emphasis added)

[18.] In my view, no purchaser under an Agreement for sale, albeit he may possess an equitable interest in the property the subject of the agreement, is competent to bring legal proceedings on behalf of the seller, in his own name. The extent of the interest is that there is a constructive trust for the purchaser's benefit, empowering him to specific performance and to call for the purchaser to convey the title.

The Effect of the Certificates of Title and the Prior Litigation

[19.] As indicated, the property, the subject of this action, has had an extremely litigious past. That past has involved two judicial investigations under the *Quieting of Titles Act* (the *QTA*) resulting in two Certificates of Title being issued by the Supreme Court. These certificates reflect that considerable property has been conveyed out of the John Bootle Tract as follows:

- (1) Certificate of Title issued on 20 June 1960 issued to Grand Bahama Properties Limited in Supreme Court Action 1960/CLE/qui/0121 involving over 810.8 acres of land, being a portion of the Bootle Tract.
- (2) Certificate of Title issued on 26 May 2006 to Ginn-LA West End, Limited in Supreme Court Action 2005/CLE/qui/0511 involving 28.59 acres and 179.71 acres respectively being a portion of the Bootle Tract.

As reflected in the Defence, these Certificates have been the subject of unsuccessful scrutiny challenges before the Supreme Court and the Court of Appeal. At some point litigation must come to an end and the parties accept the result.

[20.] In order to assess the effect of a certificate of title issued under the *QTA* and the litigation which has ensued, it is necessary to examine the regime under the *QTA*. The application under the *QTA* is in the nature of an investigation, not directed as against any particular person but akin to an *in rem* action. Section 3 of the *QTA* provides that:

3. Any person who claims to have any estate or interest in land may apply to the court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted by the court in accordance with the provisions of this Act.

Section 8 of the *QTA* provides:

8. (1) The court in investigating the title may receive and act upon any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.

(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.

(3) The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court.

Section 19 of the *QTA* provides:

Subject to the provisions of section 27 of this Act and notwithstanding the provisions of any other Act or law, on and from the date of the certificate of title the same shall be —

(a) conclusive as to the accuracy of the contents thereof (including any schedule thereto and any plan annexed thereto) and binding on the Crown and all persons whomsoever; and

(b) conclusive evidence that every application, notice, publication, proceeding, consent and act which ought to have been made, given, taken or done before

the granting of the certificate of title, have been properly, duly and sufficiently, made, given, taken and done.

[Emphasis added]

Section 27 of the **QTA** provides:

If in the course of any proceedings under the Act any person acting either as principal or agent fraudulently, knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact or matter of information, any certificate of title obtained by means of such fraud or falsehood shall be null and void except as against a bona fide purchaser for valuable consideration without notice.

[21.] The clear effect of section 19 of the **QTA** is that a Certificate of Title issued pursuant to the **QTA**, unless successfully challenged pursuant to Section 27 of the Act, is conclusive as to the accuracy of the contents thereof and binding upon everyone. The defendant submits that:

In circumstances where the person seeking an order setting aside a Certificate of Title for fraud, was not a party to the proceedings under the Quieting of Titles Act, such as the Plaintiff herein, he must prove:

- (1) He had an interest in the land in question which if brought to the notice of the Court would have resulted in the Court directing a notice to issue to him under Section 7(1) of the Act.
- (2) The interest in land was such as would be likely to defeat the title upon which the Court has adjudicated and ordered a Certificate of Title to issue.
- (3) His failure to file an adverse claim or to bring the claim to the attention of the Court for the issue of a notice under Section 7(1) was not due to his own fault, but the fraudulent act or omission of the person obtaining the certificate within Section 27.

[22.] I accept this submission. In this case however, the plaintiff specifically pleads that he does not challenge the Certificates of Title. In his Reply to the Defence at paragraph 4 (i) the defendant says that:

none of the 29 claims in the Statement of Claim and the prayer for relief sought by this action, is in respect of Section 27 of the Quieting Titles Act, 1959 nor in respect of any Certificate of Title being obtained by fraud by Ginn-LA West End, Limited.

[Emphasis added]

This is not surprising, as he (albeit as the Executor of the Estate of Ruel Pratt) has already unsuccessfully challenged the grant of these certificates alleging all manner of fraud.

[23.] The plaintiff did, unusually, file an Affidavit on 16 July 2021 in which he attempted to challenge the 2006 Certificate of Title. He sought follow up this challenge in his submissions. I did not, and could not take any note of this evidence, which contradicts the expressed pleadings. In *Montague Investments Limited v Westminster College Ltd. and another 2015/CLE/gen/00845, Charles SJ* (as she then was) provides a useful discussion of this issue of a party advancing evidence which is inconsistent with its pleadings. According to *Charles SJ*:

Purpose of pleadings

[15] The purpose of pleadings in civil cases is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded, because that will come from the affidavits and cross-examination thereon or by oral evidence.

[16] In *Bahamas Ferries Limited v Charlene Rahming SCCivApp & CAIS No. 122 of 2018*, our Court of Appeal held that the starting point must always be the 6 pleadings. At para. 39 of the judgment, Sir Michael Barnett JA (as he then was) stated:

“The starting point must always be the pleadings. In *Loveridge and Loveridge v Healey* [2004] EWCA Civ. 173, Lord Phillips MR said at paragraph 23: “In *McPhilemy vs Times Newspapers Ltd.* [1999] 3 ALL ER 775 Lord Woolf MR observed at 792-793: ‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’

“[Emphasis added]

[17] At paragraph 40 of the Judgment, Sir Michael went on to state:

“It is on the basis of pleadings that the party’s decide what evidence they will need to place before the court and what preparations are necessary for trial.”

[18] Thus, pleadings are still required to mark out the parameters of the case that is being advanced by each party so as not to take the other by surprise. They are still vital to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader and the court is obligated to look at the witness statements to see what are the issues between the parties.

[19] In the present case, Westminster did not plead that it had established any right of adverse possession. Reiterating, it was raised for the first time in the affidavit of Dr. Cooper. In addition, the issue of adverse possession was the focus of submissions raised by Mr. Thompson. Affidavit evidence and submissions of Counsel do not amount to pleadings. Therefore, Westminster will be estopped from raising any right to adverse possession.

[24.] I therefore attributed no weight to the plaintiff's attempt, by affidavit, to challenge the 2006 Certificate of Title which was issued to Ginn in Quieting Action No. 511 of 2005, or in respect of any Certificate of Title issued in relation to land which forms the subject of the present action (including the 1960 Certificate of Title). The plaintiff would be estopped from any attempt to pursue an un-pleaded challenge to the Certificates of Title.

[25.] In any event, these matters were raised, considered and dismissed by Evans SJ in her Judgement delivered in Supreme Court Action 2011/CLE/GEN/00118. At paragraphs 226 and 227 of her judgment she states:

[226] Furthermore, I find the plaintiff's complaint that GBHC deliberately and fraudulently suppressed, withheld and failed to disclose in its amended abstract of title filed in the 2005 Quieting Action the judgment of Lyons J dated 18 August 2005 in Equity Action No. 59 of 2005 in which he made a determination that they were not the owners of the 179.71 acres and 28.59 acres, when he found that the GBHC only purchased 810.8 acres of the 960 acres, the John Bootle Tract to be meritless, and further, that having regard to the other evidence before the judge, the disclosure of that judgment would not have changed the results of the judge's decision to issue the certificate of title.

[227] In summary, then, I make the following findings of fact:

- 1) That George Johnson Bootle died intestate.**
- 2) The plaintiff has adduced no evidence to show that what is set out in the recital in the 1921 indenture was inaccurate.**
- 3) The plaintiff has not proven that George Johnson Bootle had a daughter named Charlotte Seymour, born Bootle on or about 1830, nor has he proven that Charlotte Seymour, born Bootle, was the only child and heir of George Johnson Bootle.**
- 4) The plaintiff has failed to prove that on the date of his death the late George Johnson Bootle was survived by his only child, the late Charlotte Seymour, born Bootle, and his grandson and heir, the late William Seymour, legally and beneficially entitled to the said property and or the John Bootle Tract (less and except those two portions previously conveyed by the late George Johnson Bootle).**

- 5) The plaintiff has failed to prove his claim that the late William Seymour was the lawful son and heir of the Charlotte Seymour who died testate on or about 21 July 1892 as established by her duly proven last will and testament which was admitted to probate on or about 26 July 1892.
- 6) While I am prepared to assume without deciding that the William Seymour who married Jemima Adderley is the William Lewis Seymour who was born on 6 March 1864 to Delegal and Charlotte Seymour, born Bootle, the plaintiff has not, on the evidence adduced, proved that the birth certificate of the female child born to William and Gemima Seymour, born Adderley, on 12 May 1887, was that of Savalita aka Savalitha Pratt born Seymour.
- 7) Even if I am incorrect in that finding, the plaintiff has failed to prove that Savalita aka Savalitha Seymour was the only child of William and Gemima Seymour, born Adderley.
- 8) The plaintiff has failed to prove his allegation that the William Seymour whom he alleges married Jemima Adderley in 1886 is the same William Seymour whose death certificate shows his date of death as 23 November 1941.
- 9) In any event, that date of death is inconsistent with the plaintiff's claim in his re-amended writ of summons that the late William Seymour died on 21 November 1942.
- 10) The plaintiff has failed to prove his claim that the late William Lewis Seymour the son of Delegal and Charlotte Seymour, born Bootle, died on 21 November 1942 and that he died intestate.
- 11) Overall, the plaintiff's pleaded chain of title is so fragmented and or disjointed and contains so many irreconcilable discrepancies that it would be unsafe to find that the plaintiff has proven his claim that he has an entitlement to the John Bootle Tract, including the Property by virtue of his alleged title by descent.
- 12) The plaintiff has failed, on a balance of probabilities, to prove his claim that he is the documentary title holder of the John Bootle Tract, including the Property by virtue of his title by descent/intestacy.
- 13) The estate of Ruel Pratt did not have any interest in the John Bootle Tract or the Property by virtue of the various agreements for sale and assignments of agreements for sale at the commencement of this action as pleaded by the plaintiff in his re-amended writ of summons, or subsequently.
- 14) The estate of Ruel Pratt is not the paper-title owner of the John Bootle Tract, and or the Property by virtue of the various agreements for sale and or assignments of agreements for sale set out in his re-amended writ of summons because the purported vendors and or assignors had no title or interest therein or thereto to sell or agree to sell or to assign to the plaintiff.

- 15) The plaintiff has failed to prove, on a balance of probabilities, that he is the owner of the John Bootle Tract, including and the Property by virtue of the various agreements for sale and or assignments of agreements for sale set out in his amended writ of summons and adduced in evidence.
- 16) The First Amendment to Agreement of Purchase and Sale dated 23 March 2005, between Grand Bahama Hotel Company and G inn-La West End, Limited, as assignee of Ginn Development Company, LLC having been included in the abstract of title which was before the Court, the same was thereby disclosed to the court. Further, that the reference to 25 March 2005 and not 23 March 2005 was an error on the part of the judge In the judgment which, unfortunately, was repeated by the Court of Appeal, as clearly there was no evidence of an agreement dated 25 March 2005 adduced in evidence during the trial.
- 17) The same or similar issues as are raised by the plaintiff against the validity of the 2006 Certificate of Title and the proceedings before Jeanne Thompson J were raised, examined, and considered by the Court of Appeal in the case of Wilbert Bootle et al v Grand Bahama Hotel Company SCCiv No. 112 of 2008, an appeal of the learned judge's decision by Wilbert Bootle, one of the Adverse Claimants in the 2005 Quieting Action, which appeal was dismissed by the Court of Appeal as being without merit.
- 18) That case is persuasive authority to show that the complaints that the plaintiff now makes as to the procedural impropriety in the issuance of the 2006 Certificate of Title to the first defendant instead of Grand Bahama Hotel Company are of no substance or merit.
- 19) The plaintiff's complaint that the judgment of Thompson J was not delivered in open Court on 18 May 2006 is baseless and without merit.
- 20) The plaintiff's complaints and or allegations of fraud are vacuous and arid.
- 21) That the 2006 Certificate of Title was not obtained by fraud and is not a forged document and should not be set aside on the application of the plaintiff.
- 22) That the 18 May 2006 Order of Thompson J in the 2005 Quieting Action was not obtained by fraud and is not a forged document.
- 23) That had the 27 April 2006 conveyance been disclosed to the learned judge prior to her delivery of her judgment on 18 May 2006 she would still have issued the certificate of title in favour of the first defendant.
- 24) The plaintiff's complaint that GBHC deliberately and fraudulently suppressed, withheld and failed to disclose in its amended abstract of title filed in the 2005 Quieting Action the judgment of Lyons J dated 18 August 2005 in Equity Action No. 59 of 2005 in which he made a determination that they were not the owners of the 179.71 acres and 28.59 acres, when he

found that the GBHC only purchased 810.8 acres of the 960 acres, the John Bootle tract to be meritless.

25) In any event, having regard to the other evidence before the judge, the disclosure of that judgment would not have changed the results of the judge's decision to issue the certificate of title.

[26.] The *CLPA* confirms the supremacy of a Certificate of Title in Section 3(4) of the *CLPA* which provides:

(4) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by the Crown or a certificate of title granted by the court in accordance with the provisions of the Quieting Titles Act, whichever period shall be the shorter.

[27.] The Certificates of Title have not been declared as void by any court in The Bahamas and this action does not seek a challenge pursuant to Section 27 of the *QTA*. Consequently, I would be bound to find that pursuant to Section 19 of the *QTA* that the relevant Certificates of Title are conclusive as to the contents.

The Evidence

[28.] Notwithstanding the legal challenges outlined above, which provide a complete answer to the plaintiff's claim, there is an obvious evidential shortfall which the plaintiff could not otherwise have surmounted. Ricardo F. Pratt, the only witness in the case for the plaintiff, gave evidence by filing multiple witness statements and other evidence in support of the case. Attorney Sydney M. Rolle gave evidence on behalf of the defendant putting in the documents relied upon by it.

[29.] The plaintiff has the burden of proving the claims made in this action. He raises claims involving forged documents, deceit, unlawful means conspiracy and other tortious allegations which attract heightened levels of scrutiny as it relates to proof. He has however, led no real evidence to prove any of them. No handwriting or other expert witnesses and no contemporary witnesses to the making of any of the challenged documents. The allegations have been left unproven. In this regard I accepted the defendant's submission that "... allegations of fraud and deceit, the standard of proof, whilst to the civil standard of the balance of probabilities, in a case such as this, the law requires cogent evidence of serious wrongdoing before the standard of proof is satisfied. This is because since allegations of such seriousness are rarely made and even more rarely established, the court looks for strong proof that such unusual and serious matters have come to pass."

Conclusion

[30.] In all the circumstances, I am satisfied that the claim of the plaintiff ought to be dismissed. The defendant shall have its costs to be taxed if not agreed.

Dated the 15th day of September, 2023

A handwritten signature in black ink, appearing to be 'I. R. Winder', written in a cursive style.

Sir Ian R. Winder

Chief Justice