

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Side  
2018/CLE/qui/01157

IN THE MATTER OF THE QUIETING TITLES ACT 1959

AND

IN THE MATTER of the Petition of JAMES McCARTNEY of the Southern District of the  
Island of New Providence, The Bahamas

AND

IN THE MATTER of ALL THAT piece parcel or lot of land labeled parcel D of  
admeasurements 4.35 Acres on the Western side of Miller Road and being 1182 feet  
south of Carmichael Road in the Western District of the Island of New Providence

AND

All that piece parcel or lot of land labeled parcel E and measuring 2.60 Acres and  
situate on the Western side of Miller Road and being approximately 1182 feet south of  
Carmichael Road in the Western District of the Island of New Providence

AND

All that piece parcel or lot of land labeled parcel F and being of admeasurements 0.68  
Acres and situate on the Western side of Miller Road and being approximately 1182 feet  
south of Carmichael Road in the Western District of the Island of New Providence

**Before Hon. Chief Justice Sir Ian R. Winder**

**Appearances: V Alfred Gray for the Plaintiff**  
**Kenria Smith for the Adverse Claimant**

**JUDGMENT**

## WINDER, CJ

This quieting action relates to three tracts of land situated in southwestern New Providence on the Western side of Millar's Road and South of Carmichael Road. The tracts identified as Parcels D, E and F on a plan prepared by the late Hubert Williams. The Petitioner (McCartney) prays that his title to the property be investigated under the Quieting Titles Act, 1959 (the QTA) and a Certificate of Title with respect to that land be granted to him. At the conclusion of the inquiry, McCartney withdrew his claims to Parcels D and E and maintained the claim against F only comprising approximately 0.68 acres.

[1.] The Petition was filed on 10 October 2018. McCartney filed an affidavit for himself as well as the affidavits of Patrick Ferguson, and Shervin Seymour to support his claim to a possessory title to the property. McCartney's Abstract of Title, filed on 10 October 2018 simply cited that since 1986 *"the said parcel or lots of land was occupied and taken into possession by [McCartney] and [he] has planted corn, peas, fruit trees and generally keeping the land cultivated for over Thirty-two (32) years, and I have lived on a piece adjacent to the parcel for over Twenty-eight years."*

[2.] Notice of the Petition was duly advertised pursuant to the Directions Order filed on 29 November 2018.

[3.] An Adverse Claim was filed by the Minister of Housing/The Crown on 23 November 2020. The Crown's Adverse Claim cites that it claims to be the beneficial owner to the fee simple to all that piece parcel or lot of land the subject matter of the said Petition by virtue of documentary and possessory title.

[4.] The Crown relies on the evidence of Joel Lewis, Permanent Secretary in the Ministry of Agriculture.

Law, Analysis and Disposition

[5.] 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.

An investigation must therefore be conducted into the competing claims. This *investigation* is being conducted by the Court pursuant to the QTA. By section 8 of the QTA it is provided that:

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.

[6.] The appropriate starting point in considering competing claims remains the Privy Council decision in *Ocean Estates Ltd. v. Pinder* [1969] 2 AC 19. In that decision Lord Diplock opined at page 25 paragraph A, as follows:

"Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser."

[7.] The law therefore is that in order to succeed in his claim, a party must demonstrate a documentary title or that, he or his predecessor went onto the land as a trespasser and by virtue of such possession beyond the limitation period, had extinguished the

documentary title of his opponent or its predecessors in title. In considering the meaning of *possession*, Slade J. in *Powell v. McFarlane* (1977) 38 P & CR p452 at 470 held that:

(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question of what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and use must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v. S. Don Manis Appu* the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the *Red House Farms* case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.JJ. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College* (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realise that, at

least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

[8.] The principles enunciated in *Powell v. McFarlane* have been approved in the Privy Council decision of *Armbrister et al. v. Lightbourn et al.* [2012] UKPC 40.

[9.] The unchallenged evidence before the Court demonstrates that the documentary title holder, whom McCartney seek to dispossess, is the Crown. This is further supported by the fact that he sought to lease the property from the Crown in 1991 and in 2000. According to the evidence of the Crown:

*In an application dated 28 January 1991 the Petitioner made an application for 6 acres of land being land bounded North by Lot 64, West by East by Millers for use as a pig farm.*

*On 24 March 2000 the Petitioner wrote the Ministry of Commerce and Agriculture requesting purchase of "a cultivated parcel of (partially) reclaimed agriculture/Crown Land" approximately 5 ½ hectares". Five and one half hectares is approximately 13.560 acres. So when all of the pieces are added together – Parcel D= 4 acres, Parcel E=2.61 acres and Parcel F = 0.68 acres being a total of 7.29 acres.*

*In the said letter dated 24 March 2000 and referring to the 13.560 acres is listed in the Crown Abstract of Title dated 29 November 2021 and is also attached to the Supplemental Affidavit of Joel Lewis filed herein on 29 November, 2021.*

The Crown submitted that when McCartney wrote to apply for approximately 13.560 acres he knew that none of the land belonged to him. Further, he knew that the land belonged to the Crown. They say that McCartney did not have the animus possidendi to dispossess the Crown, as he knew all of the land was the Crown's.

[10.] I accept this submission as it appears that in March 2000, McCartney acknowledged the title of the Crown to this property, in seeking to acquire a lease to it, from them. This would defeat any assertion of an animus possidendi prior to that date.

This therefore is short of the 30 years which McCartney relies upon to defeat the title of the Crown.

[11.] In any event, even if McCartney was able to demonstrate that he had the animus possidendi and factual possession for the grant of a Certificate of Title since 1986, he would need to demonstrate a possessory title for some 60 years and not 30 years. This issue was discussed in the case of *The Petition of Mortgage Holdings Ltd 2018/CLE/qui/00582*, this Court found at paragraphs 20-24 as follows:

[20.] The case is to be resolved on the determination of effective date of this investigation. Mortgage, in reliance on the Limitation Act 1995, asserts that the effective date of the investigation is the thirty year period leading to the date of the filing of the Petition in this claim, namely 17 May 2018. The Crown asserts a limitation period of 60 years.

[21.] Section 16 of the Limitation Act 1995, provides:

16. (1) Subject to subsection (2), no action shall be brought by the Crown to recover any land after the expiry of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person:

Provided that the time for bringing an action to which the provisions of this section apply in respect of a cause of action which has accrued before the commencement of this Act, shall, if it has not then already expired, expire at the time when it would have expired apart from those provisions:

Provided further that the time when the cause of action would have expired as aforesaid shall not exceed thirty years from the date of commencement of this Act.

[22.] I am satisfied however, that the period is not 30 years as Mortgage asserts but the 60 year period relied on by the Crown.

[23.] Mortgage asserts that it entered into possession in 1983, prior to 31 August 1995 (the coming into force of the Limitation Act 1995) the relevant period for consideration would be the period which pertained under the limitation act in place at that time. The Real Property Limitation (Crown) Act 1873 had been in effect up to 31 August 1995. The Real Property Limitation (Crown) Act 1873 provided at section 2:

2. The Queen shall not at any time hereafter sue, impeach, question or implead any person or persons for or in any wise concerning any lands, tenements, rents or hereditaments whatsoever, or for or in any wise concerning the revenues, issues or profits thereof, or make any title, claim, challenge or demand of, in or to the same, or any of them, by reason of any right or title which hath not first accrued and grown, or which shall not hereafter first accrue and grow, within the space of sixty years next before the filing, issuing or commencing of every such action or other suit or

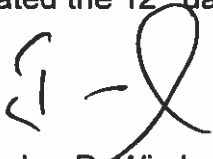
proceeding, as shall, at any time or times hereafter be filed, issued or commenced for recovering the same or in respect thereof.

The limitation period which was in place prior to 1995 was therefore 60 years in accordance with the Real Property Limitation (Crown) Act 1873.

[24.] The cause of action of the Crown, to challenge Mortgage's occupation of the property would have accrued in 1983 (when the occupation is alleged to have initially taken place) and would therefore expire in 2043 (being 60 years from 1983). This is consistent specifically with the Proviso to Section 16 of the Limitation Act 1995 and with the general common law (See Petition of Simon Rodehn 2003/CLE/qui/00931 (Unreported)). The further Proviso to Section 16 does establish a final expiration date of 30 years, to 2025, for actions by the Crown, which would have accrued prior to the 1995. Unfortunately for Mortgage this does not assist its Petition.

[12.] In all the circumstances therefore the Claim of the Petitioner is dismissed with costs to the Crown, such costs to be taxed if not agreed.

Dated the 12<sup>th</sup> day of October, 2023

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

Sir Ian R. Winder  
Chief Justice