

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPRME COURT

Common Law and Equity Division

2022/CLE/gen/00523

IN THE MATTER OF all that piece parcel or lot of land (hereinafter referred to as the “said land”) containing by admeasurement Seven Thousand (7,000) Sq. Ft. or thereabout being designated Lot No. Fifty-four (54) in the subdivision known as “Yamacraw Beach Estates” recorded in the Department of Lands and Surveys as File No. P8/20 and situate on the eastern side of Cat Island Avenue and approximately 70ft. south of Berry Avenue in the Eastern District of the Island of New Providence in the Commonwealth of The Bahamas. The said land is more accurately described as follows:

Commencing at a point (hereinafter referred as to the point of origin) coordinated N 2.7769, 404.874 (m) E 268,838.659 (m) running in a direction on N 99* 33’ 10” for a distance of One Hundred (100.00) Feet to a point, thence in a direction of N 189* 33’ 10” for a distance of Seventy (70.00) Feet to a point, thence in a direction of N 279* 33’ 10” for a distance of One Hundred (100.00) Feet to a point thence in a direction of N 09* 33’ 10’ for a distance of Seventy (70.00) Feet to the point of origin.

The said land is bounded on the North by Lot No. Fifty-three (53) of the said subdivision, which is said to be the property of Stephanie Ferguson on the EAST by Lot No. Four (4) of Yamacraw Shore Subdivision ownership which is unknown on the SOUTH by Lot No. 55 of the said subdivision which is said to be the property of Stephen and Ladonna Hudson and on the WEST by a public road reservation known as Cat Island Avenue.

The said land has such position, shape, dimensions and boundary marks as shown on plan.

AND

IN THE MATTER OF The Quieting Titles Act, 1959

AND

IN THE MATTER OF the Petition of Candice Dionne Davis and Patricia Ann Johnson

Before: The Honourable Justice Carla D. Card-Stubbs

Appearances: Mrs. Lisa Clarke-Esfakis for the Petitioner

RULING

CARD-STUBBS J

[1.] By Petition filed 6 April 2022 the Petitioners, Candice Dionne Davis and Patricia Ann Johnson, petitioned the court that title to the property described below be investigated, determined and declared by an issuance of a Certificate of Title under the Quieting Titles Act 1959 Chapter 393 of the Statute Laws of The Bahamas “the Act”.

[2.] The Property is described in the Petition as follows: -

“ALL of that parcel of or lot of land (hereinafter referred to as the “said land”) containing by admeasurement Seven Thousand (7,000) Sq. Ft. ot thereabout being designated Lot No. Fifty-four (54) in the subdivision known as “Yamacraw Beach Estates” recorded in the Department of Lands and Surveys as File No. P8/20 and situate on the eastern side of Cat Island Avenue and approximately 70ft. south of Berry Avenue in the Eastern District of the Island of New Providence in the Commonwealth of The Bahamas. The said land is more accurately described as follows:

Commencing at a point (hereinafter referred as to the point of origin) coordinated N 2.7769, 404.874 (m) E 268,838.659 (m) running in a direction on N 99* 33’ 10” for a distance of One Hundred (100.00) Feet to a point, thence in a direction of N 189* 33’ 10” for a distance of Seventy (70.00) Feet to a point, thence in a direction of N 279* 33’ 10” for a distance of One Hundred (100.00) Feet to a point thence in a direction of N 09* 33’ 10’ for a distance of Seventy (70.00) Feet to the point of origin.

The said land is bounded on the North by Lot No. Fifty-three (53) of the said subdivision, which is said to be the property of Stephanie Ferguson on the EAST by Lot No. Four (4) of Yamacraw Shore Subdivision ownership which is unknown on the SOUTH by Lot No. 55 of the said subdivision which is said to be the property of Stephen and Ladonna Hudson and on the WEST by a public road reservation known as Cat Island Avenue.

The said land has such position, shape, dimensions and boundary marks as shown on plan.”

[3.] The Petition, filed 6 April 2022, was supported by the Affidavit of the Petitioners, Candice Dionne Davis and Patricia Ann Johnson. A plan and Abstract of Title and Plan were filed 28 June 2022.

[4.] The Notice of Petition and accompanying documents were advertised and served on relevant parties in accordance with Court Orders made on the 13 July 2022, and 13 April 2023 and verified by the Affidavit of Compliance filed 28 February 2023 and a Supplemental Affidavit of Compliance filed 6 April 2023.

[5.] A copy of the Notice of Petition and Plan was affixed and maintained on a conspicuous position on the land for the requisite period in accordance with a Court Order made on 13 July 2022.

[6.] There were no Adverse Claimants in these proceedings.

The Petitioners' Case

[7.] The Petitioners sought to give evidence of possession as follows.

[8.] Ms. Johnson averred, by Affidavit in support of the Petition, that she resided in Yamacraw Beach Estate from 1984 and was surrounded by vacant lots which were undeveloped and bushy.

[9.] Ms. Johnson further averred that from 1980 she began to maintain the subject land by trimming trees, and bushes, removing debris and refuse from the property and by the early 2000's, with the assistance of contracted help, had almost completely cleared down the entire property.

[10.] Ms. Johnson also averred that in 2018 after carrying out an extensive clean up fenced the property.

[11.] Ms. Davis is the daughter of Ms. Johnson. Ms Davis averred that in 2020 she and her mother, Ms. Johnson, began the process to construct on the property and were issued a builder's permit by the Ministry of Works on 26 July 2021 to commence construction. They later obtained approval from the Water and Sewerage Corporation for water supply.

[12.] The Petitioners aver that they have never been approached by any individual or company with regards their possession or development on the land.

Petitioners' Abstract of Title

[13.] The Petitioners filed an Abstract of Title on which they sought to rely:-

No.	Document
1.	By a Crown Grant dated 4 th December 1890 the crown granted to Thomas Dodd Milburne "A tract of Crown land comprising about forty seven acres exclusive of swamp and useless land situate in the Eastern District of the Island of New Providence. Bounded on the north by land granted to the Honorable Lewis Kerr Esq; in the east by land granted to the Honorable Henry M. Dyer Esq; on the south by the sea, and on the west by Fox Hill Road which tract consists of plate rock and land of a very inferior quality.

2.	28 th August 1919-By Indenture of Conveyance between Claude Edward Allan Milburne and Hugh Ernest Spencer Milburne of the one part Minnie Beatrice Albury, wife of Stanley Victor Strathmore Albury.
3.	20 th May 1968- By a Confirmatory Conveyance between Sheila Edith Milburne, Robert Fulton Walker, Executors and Trustees of the estate of the late Thomas Dodd Milburne of the first part Robert Fulton Walker and John Russell Duguid Walker, Executors and Trustees of the late Norman Duguid Walker of the second part, and Ocean Estates Limited of the other Part, the Vendors conveyed to the Purchasers [A tract formerly of Crown Land comprising about Forty-seven (47) acres exclusive of swamp and useless land and situate in the Eastern District of the said Island of New Providence bounded on the North by land granted to the Honorable Lewis Kerr Esq. on the East by land granted to the Honorable Henry M. Dyer, Esq. on the South by the Sea and on the West by Fox Hill Road which land consists of plate rocks and land of a very inferior quality and which said land hereby conveyed has the shape and dimensions set forth and delineated in a diagram thereof drawn by the Surveyor General of the Bahama Islands bearing date the 2 nd day of December in the year of our Lord one thousand Eight hundred and Ninety and attached to a Crown Granted dated the 4 th day of December A.D. One Thousand Eight Hundred and Ninety to the said Thomas Dodd Milburne...”
4.	31 st July 1969- By an Indenture of Conveyance between Ocean Estates Limited of the one part and Yamacraw Beach Estates Limited of the other part the Vendor conveyed to the Purchaser “All that lot of land comprising 156.53 acres and is bounded North by Yamacraw Road, East partly by land now or formerly the property of Alexis Nihon and East and South partly by land originally granted to Henry Dyer, South by the Sea and West by Fox Hill Road.”
5.	1 st August 1969- BY Indenture of Mortgage between Yamacraw Beach Estates Limited of the first part, Amalgamated Investments and Property Company Limited of the second part and Amenca Trading Company Limited of the third part, the Mortgagors mortgaged to the Mortgagee “All that tract of land situate in the Eastern District of the said Island of New Providence found on the resurvey to contain One Hundred and Fifty-Six and Thirty-five hundredths of an acres (156.53) and bounded on the North by Yamacraw Road on the West by Fox Hill Road continued South beyond Yamacraw Road on the South by the Sea and on the East and South partly by land originally granted to Henry Dyer and on the East partly by land now or formerly the property of Alexis Nihorn which tract of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the thirty-first day of July 1969, made between Ocean Estates of the one part and the Borrower of the other part...”

6.	1 st August 1969- By Indenture of Sub-Mortgage between Amenca Trading Company Limited Property Company Limited of the first part, Yamacraw Beach Estates Limited of the second part, Amalgamated Investments of the third part and the Royal Bank of Canada of the forth part, the Mortgagors sub-mortgaged to the Mortgagee ““All that tract of land situate in the Eastern District of the said Island of New Providence found on the resurvey to contain One Hundred and Fifty-Six and Thirty-five hundredths of an acres (156.53) and bounded on the North by Yamacraw Road on the West by Fox Hill Road continued South beyond Yamacraw Road on the South by the Sea and on the East and South partly by land originally granted to Henry Dyer and on the East partly by land now or formerly the property of Alexis Nihorn which tract of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the thirty-first day of July 1969, made between Ocean Estates of the one part and the Borrower of the other part...”
7.	10 th August 1973- By Satisfaction of Mortgage between Amenca Trading Company Limited of the one part and Yamacraw Beach Estates Limited and Amalgamated Investments and Property Company Limited of the other part the Mortgage at item 5 above is satisfied.
8.	10 th August 1973- By Satisfaction of Mortgage between Royal Bank of Canada of the one part and Amenca Trading Company Limited, Yamacraw Beach Estates Limited and Amalgamated Investments and Property Company Limited of the other party the Sub-Mortgage at item 6 above was satisfied.
9.	5 th August 1975- By an Indenture of Conveyance between Yamacraw Beach Estates Limited of the one part and Maltin L. Storr of the other part, the Vendor conveyed to the Purchaser “ALL THAT piece of lot of land situate in the Eastern District of the island of New Providence and forming part of the Subdivision known as Yamacraw Beach Estates being lot numbered Fifty-four (54)...and having such position boundaries shape marks and dimensions as are shown on the said plan.”
10.	2 nd January 1986- By an Indenture of Conveyance between Maltina Louise Storr of the one part and Edwin Stevenson of the other part, the Vendor conveyed to the Purchaser, “ALL THAT piece of lot of land situate in the Eastern District of the island of New Providence and forming part of the Subdivision known as Yamacraw Beach Estates being lot numbered Fifty-four (54) and having such position boundaries shape marks and dimensions as are shown on a plan of the said Subdivision filed in the Registered Office of Yamacraw Beach Estates Limited.
11.	16 th March 2022- Affidavit of Possession of Ethel Munroe

12.	16 th March 2022- Affidavit of Possession of Linda Patricia Gomez
13.	17 th March 2022- Affidavit of Candice Dione and Patricia Ann Johnson

Supporting Evidence

[14.] The Petition is supported by the Affidavits of Daniel F. Wilkinson, Linda Patricia Gomez, and Ethel Munroe.

Daniel F. Wilkinson

[15.] Mr. Wilkinson, a surveyor, avers that sometime in January of 2021 he carried out an inspection and boundary survey on the subject property and observed that it was vacant with trees and foliage thereon.

[16.] Mr. Wilkinson concluded and confirmed that the property had no encroachments, survey monuments were permanently affixed to each corner of the property and correlated to the survey plan.

[17.] He further concluded that the survey and plan were correct and carried out within the standards of the Land Surveyors Act and Regulations of 1975 of the Commonwealth of The Bahamas.

Linda Patricia Gomez

[18.] Ms. Gomez avers that sometime in 1980 she observed Ms. Johnson removing debris and cutting down trees on the property. She avers that in 2018 Ms. Johnson fenced in the property and in mid-2000 continued clearing the property. She further stated that by the year 2000 Ms. Johnson had almost completely cleared the property.

[19.] Ms. Gomez indicated that in 2021 she witnessed the Petitioners construct on the property and that the construction was completed in the same year. She further stated that she is unaware of anyone challenging the Petitioners' occupation of the property.

Ethel Munroe

[20.] Ms. Munroe avers that at the time she moved into the community, persons would throw debris onto the subject property and that sometime in 1980 she witnessed Ms. Johnson cleaning the property.

[21.] She further averred that in 2018 Ms. Johnson erected a fence around the property and by the early 2000's, Ms. Johnson had almost cleared the entire property. She further stated that in 2021 the Petitioners commenced construction on the property which now appear to be completed and that the property still remains fenced in.

[22.] She averred that she has never seen or heard of anyone challenging the Petitioners' use of the property.

Oral Testimony and Visit to Locus

[23.] The Petitioner and Affiants were examined by the Court on the evidence laid in the various Affidavits. Survey Plan No. 6057 NP dated January 2020 was also lodged in support of the Petition.

[24.] The Court conducted a visit to the site. During the visit there was evidence that the property had been cleared down and a completed stone structure was built thereon. The property was fully fenced in.

Petitioner's Submissions

[25.] The Petitioners submitted that they have enjoyed open undisturbed, and exclusive possession from 1984 and that the paper owner has failed to assert their ownership to the property. They relied on the case of *Ocean Estates Ltd. Appellants and Norman Pinder Respondent On Appeal from the Court of Appeal For The Bahama Islands* [1969] 2 A.C 19.

[26.] They further submitted that the act of enclosing the property after having started clearing it of debris and tress is one of the strongest forms of possession relying on the case of *Seddon v Smith* (1877) 36 LT 168.

[27.] Counsel submitted that the acts of the Petitioners clearing the property, obtaining building permits and utility services demonstrated their intention to possess the land excluding the world at large. The Petitioners relied on the case of *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30, *Pye v Graham* [2002], and *Powell v McFarlane* (1977) 38 P & CR 452 to demonstrate the intention of the Petitioners to disposes the true title owner by virtue of their activity on the property.

[28.] Counsel further submitted that section 16 (3) of the Limitation Act applies to the Petitioners stating that any documented paper title owner from 2002 is barred for bringing a claim of ownership to the property as the twelve (12) year period ran from the Petitioners existence on the property without interference relying on the case of *Ashe v National Westminster Bank plc.* [2008] 1 WLR 710, *Pye* (supra) and *Bannerman Town, Millars and John Millars Eleuthera Association and others v Eleuthera Properties Limited* [2016] 2 BHS J. No.61.

DECISION

[29.] The Petitioners claim a possessory title over the subject property by virtue of a having open, undisturbed and continuous possession of the land for in excess of 12 years. Counsel for the Petitioners submitted that the acts of the Petitioners were sufficient for a grant of a Certificate of Title. The Court's jurisdiction to issue a Certificate of Title is derived from provisions of the Quieting of Titles Act, 1959 ("the Act").

[30.] The Court, having completed its investigation of the title, can either dismiss or grant the Certificate of Title pursuant to section 17 which provides:-

“ (1) After the court has completed the hearing of an application made under section 3 of this Act it may —

(a) dismiss the application;

(b) dismiss the application and grant a certificate of title in the form prescribed by section 18 of this Act to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act;

(c) grant a certificate of title in the form prescribed by section 18 of this Act to the petitioner;

(d) grant separate certificates of title in the form prescribed by section 18 of this Act to the petitioner and to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act in respect of the whole or separate parts of the land described in the petition.

(2) The court may give one certificate of title comprising all the land described in the petition, or may give separate certificates of title as to separate parts of the land.”

[31.] The Court in granting a Certificate of Title over property must also be satisfied that the Petitioners have been in exclusive possession over the property for a period of 12 years. This requirement is governed by section 16 (3) of the Limitation Act which provides:-

“(3) No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person: Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.”

[32.] *Pye v Graham* [2002] as relied on by the Petitioners outline the requirements needed for adverse possession. *Lord Bingham of Cornhill* stated:-

“To be pedantic, the problem could be avoided by saying there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ('factual possession'); (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ('intention to possess'). What is crucial is to understand that, without the requisite intention, in law there can be no possession...”

[33.] The Petitioners must also demonstrate animus possidendi. The Petitioners sought to rely on the cases *Powell v McFarlane* 1979 38 P & CR 452 and *Basildon v Charge* [1966] C.L.Y 4929 for this principle.

[34.] The Petitioners also relied *Bannerman Town, Millars and John Millars Elethuera Association and others v Elethera Properties Limited* [2016] 2 BHS No. 61 for the principle of factual possession.

[35.] Once a Court is satisfied of the requisites prescribed by the Act, it has the power to issue a Certificate of Title pursuant to Section 16 of the Act which provides:-

“Without limiting the generality of the provisions of section 3 of this Act, the court shall have power to declare by a certificate of title in the form prescribed by section 18 of this Act that the petitioner is the legal and beneficial owner in fee simple of the land mentioned in the petition in any of the following circumstances —

- (a) where the petitioner has proved a good title in fee simple to a share in land and has proved such possession as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- (b) where the petitioner has proved such possession of land as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- (c) where the petitioner has proved that he is the equitable owner in fee simple of land and is entitled at the date of the petition to have the legal estate conveyed to him.”

[36.] Ms. Johnson began activities on the subject property in the late 1980s and began clearing the property shortly before 2000, as was evidenced by receipts from various trucking companies. Those receipts date back to 1999. The Petitioners have, in this case, demonstrated to the Court their intention to possess the land as well as factual possession of the land. This was demonstrated by the various acts of clearing down trees and bushes, erecting a fence on the boundary of the property, building and maintaining it to date.

[37.] In 2020 the Petitioners determined develop the land and cleared it for the purpose of construction. After clearing the land and fencing the subject property, the Petitioners received

building approval from the Ministry of Works in 2021. Shortly thereafter, utilities were connected to the property as evidenced by a connection invoice and occupancy certificate. Ms. Davis largely funded the construction of a structure, namely a pool house, in which she now resides.

[38.] The oral and written testimonies of Ethel Munroe and Linda Gomez corroborated the evidence of the Petitioners that the Petitioners had in fact cleared and built on the subject property without any interference. The Court found these witnesses to be credible and reliable.

[39.] During the visit to the locus, there was evidence of occupation in a structure which appeared to be the same as described by the Petitioners and Affiants. The subject land was also well-kept and fenced in.

CONCLUSION

[40.] In this case, I am satisfied upon the examination of the Petitioners and the Affiants in support of the Petition, inspection of the locus and review of the documentary evidence provided that the Petitioners have proven the sufficiency of their claim.

[41.] The Court is satisfied that the Petitioners have had open, undisturbed and exclusive possession of the property exceeding the period of twelve (12) years and possessed an intention to exclude the world from entering on to the property.

ORDER

[42.] THE ORDER AND DIRECTION OF THIS COURT IS THAT:
A Certificate of Title in the prescribed form in respect of the land described in the Petitioners and shown on the Plan filed therewith do issue to the Petitioners.

Dated the 25th day of March, 2024

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs
Justice