

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

2010/CLE/qui/01364

IN THE MATTER of the Quieting Titles Act, 1959

AND

**IN THE MATTER of All those pieces parcels or lots of land comprising Lots 3, 4, 5,
6, 7, 8 and 9, Carlos Village, Alabaster Bay in the Island of Eleuthera
one of the Islands of the Commonwealth of The Bahamas**

AND

**IN THE MATTER of the Petition of F.A.R. LTD., a Company incorporated under
the Laws of the Commonwealth of The Bahamas and therein doing business**

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Richette Percentie for the Petitioner
Kenria Smith for the Adverse Claimant.

Hearing date(s): 18 April 2023, 19 April 2023, 23 May 2023
Closing Submissions: 21 June 2023 and 26 June 2023

JUDGMENT

WINDER, CJ

This quieting action relates to 7 tracks of land identified as Lots Number 3, 4, 5, 6, 7, 8 and 9 (the Property) and measuring a total of 169,301 square feet (3.886 acres) situated in Central Eleuthera in the vicinity of James Cistern. The Petitioner (FAR) prays that its title to the Property be investigated under the Quieting Titles Act, 1959 (the QTA) and a Certificate of Title with respect to the Property, be granted to it. The Crown opposes FAR's Petition.

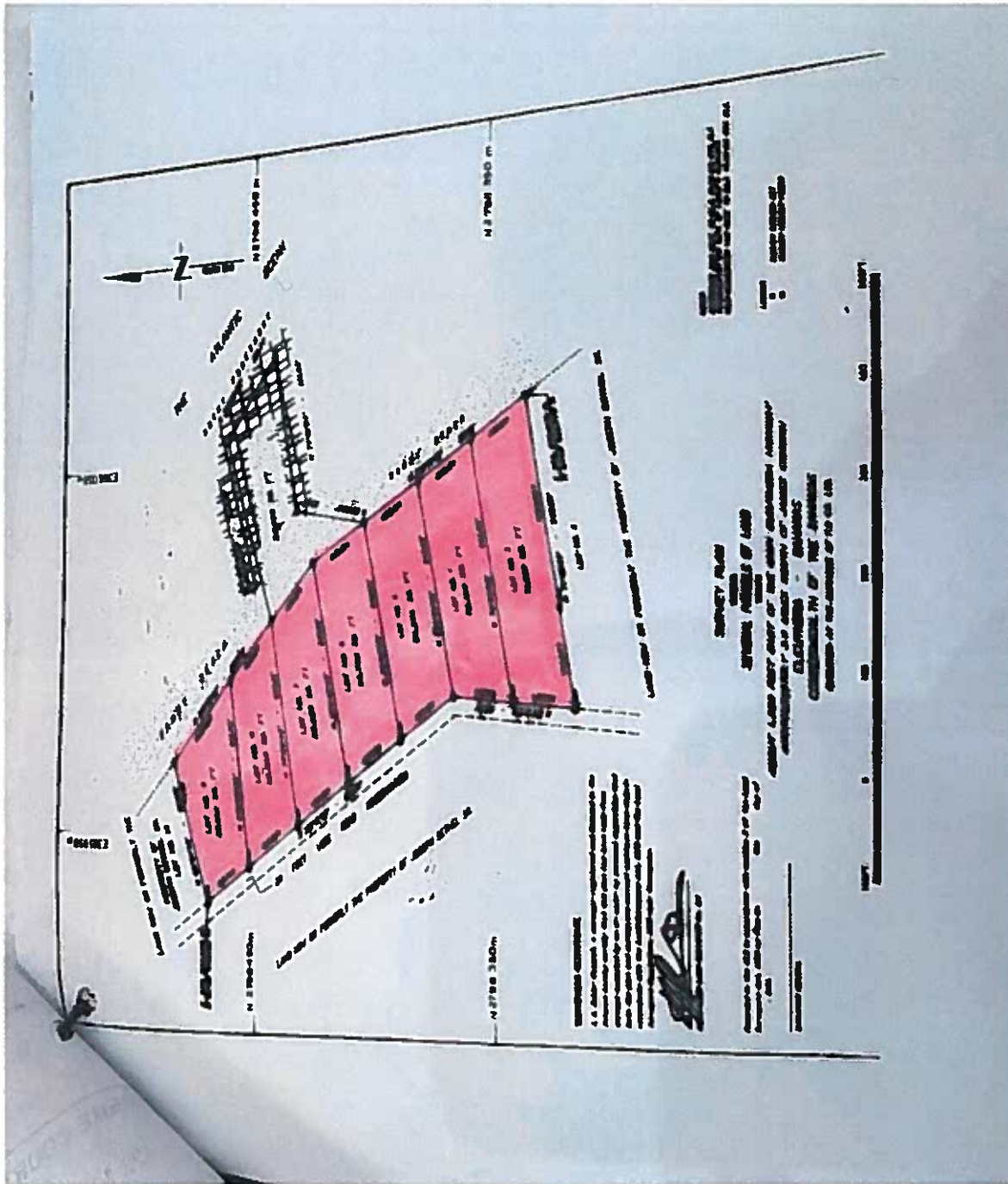
[1.] The Petition was filed on 28 September 2010. Peter Rogers, President of FAR Ltd. swore an affidavit in support of the Petition asserting that FAR is entitled to a possessory and proprietary interest in the Property. In addition to the affidavit, Rogers filed a witness statement on 2 September 2022. FAR's case was also supported by the witness statements of Rupert Bethel, Mr. James Jordan and Jonathan Morris and the affidavit of Linda Stubbs-Haschker.

[2.] FAR lodged an Abstract of its title, in support of its Claim, which provides as follows:

1.	28 th July 1821	Last Will and Testament of Noah Bethel recorded in Registry of Records, Nassau, New Providence, Bahamas In Book L3 at page 256 whereby the late Noah Bethel Late of the Settlement of James Cistern, Eleuthera did Devise and bequeath the hereditaments the subject of this Petition unto and to the use of Thomas Bethel, his brother And Executor for the term of his natural life and thereafter (sic) To his heirs and assigns The late Noah Bethel died seised In fee simple possession of approximately 168 acres of land at Alabaster Bay, south of the Settlement of James Cistern, Eleuthera.
2.	23 rd January 1823	Last Will and Testament of Noah Bethel proved in the Supreme Court of The Bahamas
3.	on or about 6 th January 1861	Thomas Bethel died intestate survived by his son William Henry Bethel, his survivor and heir at law
4.	on or about 16 th March 1896	William Henry Bethel died intestate survived by his Son, William Thomas Bethel, his survivor and heir at law
5.	on or about 11 th April 1949	William Thomas Bethel died survived by Madge White, Hannah Johnson, Grace Rolle (his daughters) and Joseph Bethel, his only son and heir at law
6.	26 th April 1971	Affidavit in support of ownership: Elijah Mackey Recorded in Volume 7056 at pages 4 to 6
7.	6 th October 1971	Affidavit in support of ownership: Robert H. Johnson And Lawrence Rolle

8.	14 th February 1975	Joseph Bethel died
9.	30 th October 1975	Letters of Administration in the Estate of Joseph Bethel (Sr) issued in favour of Alice Leuse Bethel designated as Probate #196 of 1975
10.	8 th December 1975	Deed of Power of Attorney Alice Leuse Bethel to Rupert Alvin Bethel, "in any and all matters relating to the Estate of Joseph Bethel"
11.	1 st September 1986	Deed of Assent issued in the Estate of Joseph Bethel (Sr) Alice Leuse Bethel to Rupert Alvin Bethel, her son, Recorded in Volume 4539 at pages 359 to 361, the said Alice Leuse Bethel assented to a devise of the entire Estate in favour of Rupert Alvin Bethel, her son.
12.	16 th October 1986	Affidavit of Ownership: Elijah Mackey and Eustace Johnson Recorded in Volume 5985 at pages 400 to 401.
13.	13 th April 2000	Indenture of Conveyance between Rupert Alvin Bethel To FAR Limited - Lot 3, Carlos Village, Alabaster Bay, Eleuthera Recorded in Volume 11037 at pages 540 to 550
14.	13 th April 2000	Indenture of Conveyance between Rupert Alvin Bethel To FAR Limited Lot 4, Carlos Village, Alabaster Bay, Eleuthera.
15.	19 th September 1997	Indenture of Conveyance between Rupert Alvin Bethel And Kenneth Snyder and Paula Snyder Lot 5, Carlos Village, Alabaster Bay, Eleuthera Recorded in Volume 7434 at pages 148 to 157.
16.	18 th April 2000	Indenture of Conveyance between Kenneth Snyder and FAR Limited Lot 5, Carlos Village, Alabaster Bay, Eleuthera.
17.	13 th April 2000	Indenture of Conveyance between Rupert Alvin Bethel To FAR Limited Lot 6, Carlos Village, Alabaster Bay, Eleuthera.
18.	3 rd May 2002	Indenture of Conveyance between Rupert Alvin Bethel To FAR Limited Lot 7, Carlos Village, Alabaster Bay, Eleuthera Recorded in Volume 9799 at pages 143 to 152.
19.	3 rd May 2002	Indenture of Conveyance between Rupert Alvin Bethel To FAR Limited - Lot 8, Carlos Village, Alabaster Bay, Eleuthera Recorded in Volume 9799 at pages 171 to 180.
20.	3 rd May 2002	Indenture of Conveyance between Rupert Alvin Bethel to FAR Limited - Lot 9, Carlos Village, Alabaster Bay, Eleuthera Recorded in Volume 9799 at pages 153 to 162.
21.	February 11 th 2004	Investment Permit authorisation letter.

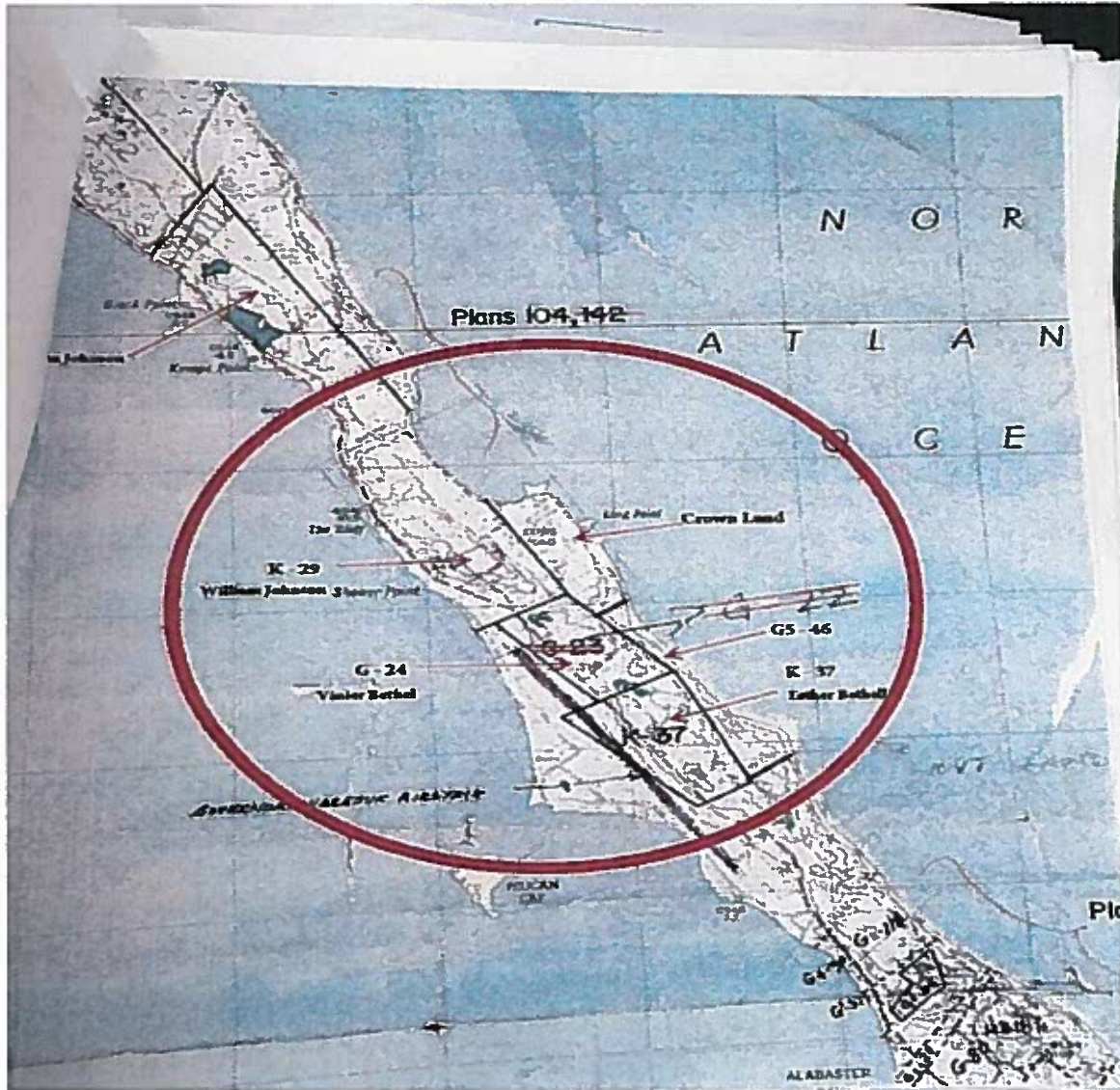
[3.] The Property is described in a Plan filed by FAR and is shown below:



[4.] Notice of the Petition was duly advertised pursuant to the Directions Order filed in the Court.

[5.] An Adverse Claim was filed by the Minister responsible for the Acquisition & Disposition of Land (the Crown). The Crown's Adverse Claim asserts it is the beneficial owner to the fee

simple to the Property which it describes as “ungranted crown lands”. The Crown filed a Plan as shown below:



[6.] The Crown relies on the evidence of the Brian Bynoe.

Law, Analysis and Disposition

[7.] 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.

[8.] 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 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.

[9.] 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 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.

[10.] 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.

[11.] FAR claims to have purchased the interest of Rupert “Carlos Santana” Bethel (Bethel), the Vendor in each of their conveyances to lots 3-9 of Carlos Village. It is not disputed that, notwithstanding the delineation into lots, the lots sold to FAR by Bethel were not laid out in an approved subdivision.

[12.] FAR, through Bethel, claims that the Property formed a part of the William Johnson Crown Grant. Bethel says that he is the personal representative and heir to the Johnson Estate. Putting aside the question as to whether Bethel is properly the personal representative or heir to William Grant, I did not find Bethel’s claims to be accurate that the Property was located within the William Johnson grant.

[13.] The only surveyor to give evidence was Bynoe, the Surveyor General. Section 3 of The Land Surveyors Act provides:

3. (1) There shall be a Surveyor-General who shall be a surveyor and who shall, subject to the provisions of this Act and of the regulations —

- (a) direct and control all surveys for public purposes;
- (b) examine all general and particular plans and diagrams of surveys before any registration of any land is effected in accordance with the provisions of any Act regulating the registration of such land, and approve such plans and diagrams if satisfied that such Surveys have been carried out, and the plans and diagrams have been prepared in accordance with the regulations;
- (c) take charge of and preserve all survey plans and records;
- (d) cancel or amend or require any surveyor to amend, in accordance with the provisions of any law, any survey, plan or diagram found to be incorrect, outdated or inadequate;

...

(4) The Surveyor-General shall be the authority for the preparation and publication of the official topographical and general maps of The Bahamas, and no other person shall, without the licence in writing of the Surveyor General, use any material which has been prepared or published under his authority in the preparation or publication of any other map.

[14.] Bynoe’s evidence was that the William Johnson Crown Grant is in a different location from where Lots 3-9 of Carlos Village is located, i.e. where FAR now occupies. Additionally, the Plan filed by the Crown shows that William Johnson Crown Grant is to the north and west of the Property. I accepted this evidence, which was not challenged by any other expert. Bynoe was able to demonstrate this opinion by virtue of nearby land features, such a ponding and the contours of the coastline.

[15.] Bynoe’s evidence was also that the Property, i.e. where FAR now occupies, is situated in a block of undistributed Crown Land. According to Bynoe:

That the Crown has vested interest in the subject land. The subject parcels or lots of land containing 169225 sq. ft. or 3.885 Acres being a portion of a tract of Crown Land situate in the vicinity of Long Point/Kemps Pond between Governors Harbour and James Cistern on the Northeastern side of the Main Public Highway approximately Two (2) miles South of James Cistern in the Island of Eleuthera.

Our investigation into the property matter reveals that the aforementioned parcels are the property of the Crown (Crown Land).

[16.] I also accepted this evidence and find that the Property is Crown land. Notwithstanding the Crown produces no documentary title, once property in The Bahamas has not been granted from the Crown, or otherwise lost through adverse possession, that property remains vested in the Crown. Indeed, where land ceases to have a lawful owner it returns to the Crown (See: *Armbrister et al v. Lightbourn et al* [2012] UKPC 40). I also adopt the helpful discussion of Hilton J in *The Quieting Petition of Thomas Frazier* [2017] BHS J. No. 143:

A Petition in respect of land in Rum Cay stated that he found it interesting and helpful a 1998 Article by Thomas Katheder in *The University of Miami Inter-American Law Review* entitled “Purchasing Real Estate in The Bahamas”. He stated that in Chapter III of the article headed “Real Property – Background and History” pages 204-207 briefly details the historical background of land tenure and transfers in (sic) the 17th through 19th Century in Bahamas as set out “Thought the practical significance of tenure in The Bahamas, as elsewhere in the Commonwealth Nations is virtually nil, all land in the Bahamas continues to be held, mediately or immediately (i.e. directly or indirectly) of the Crown”.

[17.] Additionally, the property claimed by FAR appears to fall in the foreshore. Bynoe stated in evidence that there is a Crown reservation spanning the eastern coast of that area of Eleuthera reserved for wet lands where this property falls. He stated in his testimony:

“ Well, if you notice because of the nature of the land in the area, the eastern side of the island you see all the grants were placed on the western side, the eastern side was reserved for wet land because of the sensitive nature of the land. So, from 1790 to 1804 those grants which were issued were all on the western side except for the last grant we issued for Gilbert Straub, which was issued in 1969 which was on the eastern side in that area, that is the last one that was issued”.

[18.] Assuming that the limited activity of FAR, in keeping the land vegetation low, establishing paths to the water and planting coconut trees, was demonstrative of animus possidendi and factual possession for the grant of a Certificate of Title, it would need to demonstrate a possessory title for some 60 years.

[19.] Sections 16 and 24 of the Limitation Act 1995 (the LA), 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.

24. (1) For the purposes of this Act, a right of action to recover land shall not accrue and shall not be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”).

(2) Where under the foregoing provisions any right of action to recover land is deemed to accrue on a certain date and no person is in adverse possession of the land on that date, the right of action shall not accrue unless the land is thereafter taken into adverse possession, in which case the right of action shall be deemed to accrue at the commencement of the adverse possession.

[20.] In the case of *The Petition of Mortgage Holdings Ltd*, 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.

[21.] I am not satisfied that FAR or its predecessors in title has demonstrated possession of the land for the 60 year period required. According to Bethel, his family was in occupation since 1945. He says that his parents farmed the land together. He claims this occurred before he was born in 1945. I did not find Bethel to be an impressive or truthful witness and did not accept his evidence as to occupation by farming. The development by him of the Subdivision represents in my view, the extent of Bethel's activity in this area, perhaps under the mistaken belief that his family had an interest in it, through the William Johnson Crown Grant. I preferred the evidence of Bynoe, relying on aerial photographs, that there was no settlement or agricultural activity on the land (including the recent subdivision area) immediately east and south of Kemps Pond (Crown Land) between 1942 and 1974.

[22.] The occupation of FAR, such as it was, in looking after the land began in 2002 after their purchase from Bethel. That may be seen from the following exchange with Mr. Peter Rogers, President of F.A.R. limited and the Court:

THE COURT: Is anything on the property? Have you done anything on the property?

THE WITNESS: We've cared for it. We planted trees, roads, put up markers and simple fences. No structures.

THE COURT: And this is for all seven lots?

THE WITNESS: What's that?

THE COURT: This relates to all seven lots?

THE WITNESS: All seven lots. Yes. We put in an irrigation system. We did that.

THE COURT: So someone looks after the property, when you're gone?

THE WITNESS: Yes, sir.

THE COURT: And when you commenced doing this?

When did you begin doing this? Looking after the property.

THE WITNESS: Right after we bought it.

THE COURT: When you say after you bought it –


THE WITNESS: Like, 2002.

The action having begun on 28 September 2010, only 8 years after FAR commenced occupation, it must rely on a possessory claim through Bethel. Such a claim must go back 60 years prior to the commencement of the action, to 28 May 1950. Regrettably for FAR, none of the other witnesses brought by it spoke to dealings with the Property or in Carlos Village (or any land claim by Bethel) as far back as 1950. As indicated, I am not satisfied that any farming took place on the Property at all and Carlos Village seems to have come into being around 1990. This is confirmed on Bethel's evidence and that of the first purchasers in Carlos Village, James Jordan and Dieter Haschker who each constructed homes shortly thereafter 1991.

[23.] FAR also sought to rely on the payment of real property tax to support its claim to a possession of the property. Unfortunate as it may be, the payment of taxes in these circumstances does not defeat the claim of the Crown to the Property. The Department of Inland Revenue in The Bahamas does not determine who owns land in the Bahamas but merely the valuation of real property taxes on the land. (See *Mortgage Holdings Ltd. supra*)

[24.] In all the circumstances therefore the Claim of FAR is dismissed with costs to the Crown, such costs to be fixed, if not agreed.

Dated this 23rd day of April 2024



Sir Ian R. Winder
Chief Justice