

COMMONWEALTH OF THE BAHAMAS

2013/CLE/qui/01041

IN THE SUPREME COURT

Common Law and Equity Division

IN THE MATTER OF ALL THAT piece parcel or lot of land situate in the Western District of the Island of New Providence in the Commonwealth of The Bahamas and being portions of Allotments Numbers Four (4) and Six (6) of Gambier such portions respectively being 2.493 acres and 4.227 acres

AND

IN THE MATTER of the Quieting Titles Act, Chapter 393

AND

IN THE MATTER of the Petition of Bahamas Trading Post Inc.

Before: Her Ladyship the Honorable Madam Senior Justice Deborah Fraser

Appearances: Andrew C. Allen for the Petitioner

Travette Pyfrom for the Adverse Claimants

Hearing Date(s): 22nd April 2024, 23rd April 2024, 24th October 2024

Real Property – Quieting Title – Section 3 of the Quieting Titles Act, Chapter 393 -Adverse Claimants – Documentary and Possessory Title

JUDGEMENT

Fraser Snr J

Introduction

[1.] This is a trial of an action brought on behalf of the Petitioner, Bahamas Trading Post Incorporated, who seeks a Certificate of Title pursuant to Section 3 of the Quieting Titles Act Ch 393 (“QTA”) of the subject land detailed herein:

All that piece parcel or lot of land being portions of allotments numbers 4 and 6 of Gambier situate in the Western District of the island of New Providence in the Commonwealth of The Bahamas such portions respectively being 2.493 acres and 4.227 acres which said piece parcel or lot of land is generally bounded as follows: on the North by other portion of the said allotment number 4 and running therein 286.10 feet on the east jointly by allotments numbers 22 and 23 of the said Gambier and running thereon 1,156.24 feet on the south by land the NP Development Company Limited and running therein 264.33 feet and on the west by a 10 foot road reservation leading to West Bay Street and running thereon 1,058.09 feet which said piece parcel or lot of land is more particularly described by the Plan or Diagram filed herewith and therein edged in Pink.

Background

[2.] This action concerns partially uncultivated land located in the area known as Gambier Village situate in the Western District of the Island of New Providence.

[3.] The subject land concerns a tract of land titled Allotment # 4 of 2.493 acres and a tract of land titled Allotment # 6 of 4.227 acres. The Amended Plan, outlining the boundaries of the subject land, dated 15th October 2018 is not disputed by the Petitioner or Adverse Claimants. This Plan was prepared by Donald E. Thompson.

[4.] The Petitioner is a firm duly registered in the Commonwealth of The Bahamas that filed its petition in accordance with the QTA on 10th June 2013.

[5.] The Adverse Claimants are Ms. Annette Kenny and Cheryl A. Kenny who claim that they are entitled to an undivided one-third interest in the subject land. They are nieces of Henry A. Wright and the children of Ms. Marie Kenny, the sister of the late Mr. Wright. The Adverse Claimants act on behalf of Caroline Newton, Patricia Smith, Lorraine Arthur, Deyanne C. Duncombe, Hazel Pinder, Delores Edwards, Bunnicea Rolle and Glenard Holmes.

[6.] The adverse claim of Harold Morris, filed on 3rd November 2014, was withdrawn on 27th March 2017.

[7.] The Petitioner, by an order rendered by Isaacs J (As he then was) on 10th September 2014, advertised its Notice of Petition in The Nassau Guardian and The Tribune according to Section 6 of the QTA.

[8.] Later in these proceedings, the Petitioner sought to strike out the adverse claims on procedural grounds. The Petitioner’s application was dismissed by Winder J (As he then was) in the latter’s 4th March 2022 decision.

Submissions

The Petitioner

[9.] The Petitioner seeks a certificate of title encompassing the subject land on the ground that it is the legal and beneficial owner in possession of the fee simple estate by virtue of documentary and possessory title. Firstly, the Petitioner asserts documentary title over the subject land through a 20th December 2011 conveyance from Henry Wright via his attorneys of the 2nd September 2011 Power of Attorney, and through a conveyance from Harold Morris dated 17th March 2017. The Petitioner alleges this in its Abstract of Title filed 4th April 2018. Secondly, the Petitioner asserts possessory title over the subject land, claiming exclusive possession by itself and its predecessors for a period exceeding twenty years.

[10.] The Petitioner relies on the following: the Affidavit of Henry A. Wright dated 1st December 2009; the Affidavits of Robert Ian Mitchell filed 10th June 2013, 17th February 2016 and 11th September 2017; the Affidavit of Carletha O. Taylor and Theola M. Hepburn dated 11th September 2017; the affidavits of Carletha O. Taylor filed 3rd April 2017 and 25th September 2024; the Affidavit of Birth dated 25th March 2015 of Carletha Taylor; and the Affidavit of Carla Taylor filed 18th January 2019.

The Adverse Claimants

[11.] Firstly, the Adverse Claimants submit that the Petitioner advances no evidence that can satisfactorily invoke the Court's powers under the QTA and that Henry Wright does not own the entire interest of the subject land even if the Petitioner's evidence is considered. Furthermore, the Adverse Claimants aver that their family was in possession of one-third interest of the subject land, visited it from 1970 to 2018, and enjoyed the subject land without interference.

[12.] The Adverse Claimants rely on the following: Adverse Claim filed 11th December 2017; the Affidavit of Support filed 11th December 2017; the Abstract of Title ("**Adverse Abstract**") filed 11th December 2017; the Witness Statement of Diane C. Duncombe filed 2nd March 2018; the witness statements of Cheryl A. Kenny filed 2nd March 2018, 3rd August 2021 and her supplemental witness statement filed 17th October 2024; Witness Statement of Patricia L. Smith dated 24th August 2021; and the Affidavit of Cheryl A. Kenny and Patricia L. Smith filed 31st August 2021.

Findings of Fact

[13.] I have considered the testimony of the witnesses. I shall provide my summary of their oral evidence and findings of fact based on such evidence, along with written evidence before me. The only witnesses called were the Petitioner's and the Adverse Claimants'.

Carletha Taylor

[14.] Ms. Carletha Taylor stated the following in her Affidavit of Possession filed 3rd April 2017 that: she is familiar with the subject land for more than twenty years; Mr. Wright was the beneficial owner of the subject land for more than twenty years before he executed a Power of Attorney on 2nd September 2011, wherein she was made an attorney; and Mr. Wright exercised full unencumbered control over the subject land for twenty years. Ms. Taylor, of one part, in the Affidavit of Possession filed 11th September 2017 would state that: she and Ms. Theola Hepburn were appointed as attorneys of Henry Wright via Power of Attorney; and that they conveyed the

subject land to the Petitioner on behalf of Mr. Wright on 20th December 2011 with the purchase price being fully satisfied by the Petitioner. Lastly, Ms. Taylor in her Supplemental Affidavit filed 25th September 2024 advanced evidence that she is a named beneficiary on Henry Wright's Will and that she is his child.

[15.] Ms. Carletha Taylor would then, during trial, state that: Henry Wright is her father but is not a signatory on her birth certificate; she relies on the Will of her father, dated 11th April 1991, to prove her status as a child of Henry Wright; Henry Wright was the beneficial owner of the subject land exclusive of one-third interest in Allotment #4; she was aware of the agreement for sale between her father and Mr. Mitchell; no one interfered with the subject land when Henry Wright was alive; the purchase price agreed between her father and Mr. Mitchell was to satisfy the sale of the subject land so long as said land was uncultivated; while she never lived with her father, he did take her to the subject land when she was a young adult ; she visited the subject land three times over a twenty year period; she knows the adverse claimants tacitly but does not know Mr. Harold Morris or his claim to the subject land; there is no physical demarcation on the subject land to identify allotments #4 and #6; and a gate was erected, from 2011, in front of Allotment #4 by an unknown person (s).

[16.] In reconciling Ms. Carletha Taylor's oral and written evidence, the Court is minded to deem Ms. Carletha Taylor as an unreliable witness because of her lack of recollection of key events. Her reliance on hearsay evidence in her affidavits significantly undermines the credibility of her assertions. Upon such reconciliation, the Court highlights the following inconsistencies in the evidence Ms. Taylor provided: Ms. Taylor cannot speak to whether Henry Wright was in unencumbered possession of the subject land for twenty years; Ms. Taylor cannot recall if Mr. Wright made a statement under oath on 1st December 2009; and Ms. Taylor is unable to recall the purchase price stated in the agreement for sale between Henry Wright and the Petitioner, nor can she confirm whether Henry Wright duly executed all the relevant title documents.

Robert Ian Mitchell

[17.] In summary, Mr. Mitchell's affidavit filed on 10th June 2013 states that he is the principal of the Petitioner and that the Petitioner is the beneficial owner of the fee simple estate in the subject land, based on both its documentary title and over twenty years of possession. In his subsequent affidavit filed 17th February 2016, Mr. Mitchell affirms that he had been acquainted with Henry Wright for twenty years, and that Henry Wright, being the son of the late Florence Wright, continued in possession of the subject land following his mother's death on 30th November 1982. Finally, in his affidavit filed on 11th September 2017, Mr. Mitchell outlines that Mr. Wright conveyed all his interest in the subject land to the Petitioner on 20th December 2011, subject to the payment of the outstanding balance of the purchase price, which was duly satisfied by the Petitioner.

[18.] Then, Mr. Mitchell stated in his oral testimony that: he is the beneficial owner of the Petitioner; he first met Henry Wright in 1999; he and Henry Wright belonged to the same lodge, the Royal Eagle Lodge; the Petitioner bought the subject land from Henry Wright's estate; and the

subject land was in the possession of Mr. Wright for twenty years before the Power of Attorney was executed in 2011.

[19.] Mr. Mitchell would then state that the subject land was a focal point of contention within the community:

“there are people in Gambier that tell me to get off the property”

“[Persons associated with the Catholic Church] have interfered with the property, claiming its theirs”

[20.] Furthermore, in his testimony, Mr. Mitchell stated that: Henry Wright used to farm and cultivate portions of the subject land; an unknown person(s) installed a gate across the entrance of Allotment #4; he is aware of a Virginia Seymour through perusing the original title documents of the subject land; none of the adverse claimants said “this is my property, not yours, get off”; Mr. Wright’s sister had a one-third interest in Allotment #4 and that Henry Wright conveyed the property to the Petitioner on 20th December 2011; Mr. Wright conveyed 100% of Allotment #6 to the Petitioner; the Petitioner was in possession of the subject land before the filing of the petition ; the purchase price was not specified in the Indenture of Conveyance due to a title issue, and no question was raised prior to trial regarding whether the Petitioner had fulfilled the terms of the agreement for sale; Henry Wright never undertook the subdivision of Allotment # 4 in response to the one-third interest in the subject land claimed by the Adverse Claimants; acting in his capacity as principal of the Petitioner, he placed survey markers on the subject land without interference; he was not prevented from carrying out any activity on the subject land; no agents acting on behalf of the Petitioner engaged in any activity on the land; he commissioned Mr. Donald Thompson to draft a survey plan of the subject land; and the obligation under the agreement for sale dated 14th December 2011 to construct a duplex on the subject land was subsequently amended, and the duplex was never constructed.

[21.] In reconciling Mr. Mitchell’s oral and written evidence, the Court finds him to be a credible witness, though not entirely reliable. Upon reconciliation of the evidence, the Court reaches the following conclusions regarding the identified inconsistencies: the Petitioner, as vendor, failed to comply with the conditions stipulated in the agreement for sale dated 14th December 2011; and Mr. Mitchell commissioned Mr. Donald Thompson to prepare a survey plan but cannot produce proof of payment.

Cheryl A. Kenny

[22.] In summary, Ms. Kenny stated the following in a joint affidavit filed 11th December 2017: she and Ms. Annette Kenny are attorneys of a Power of Attorney acting on behalf of the other adverse claimants; and that the adverse claimants are entitled to one-third interest in the subject land.

[23.] Ms. Kenny sets out in her Witness Statement filed 2nd March 2018 that: in the late 1970s, she and Mr. Wright toured the subject land after a funeral; she and her family visited the subject land every year from 1970 to 2018; she witnessed Mr. Wright accompanied by Mr. Mitchell harass her mother over the latter’s right to the subject land passed down from Ms. Florence Wright in 1992; she and her family visited the properties from 2005 to 2018 and the land bore no evidence

of it being disturbed; she and her family conducted a survey in 2006 and an appraisal in 2007 of the subject land; and she discovered that a fence was erected on certain parts of the subject land in 2015.

[24.] In her Supplemental Witness Statement filed on 3 August 2021, Ms. Kenny provided additional evidence in response to the Petitioner's unsuccessful strike-out application filed on 29 July 2021. In her statement, Ms. Kenny asserted the following: that Mr. Wright has a history of attempting to seize all of the real property left by Mrs. Florence Wright; that Mr. Wright has never cultivated any of the said property; and that the Adverse Claimants have presented a valid and unbroken chain of title.

[25.] Lastly, in the joint affidavit of Ms. Kenny and Ms. Patricia L. Smith, filed on 31 August 2021 in support of the Adverse Claimants' application to set aside the Petition, the affiants averred that: the Petitioner's amended abstract of title contains errors; the Adverse Claimants have been in possession of the subject land since 1 December 2009; and Allotment #4 of the subject land was never partitioned.

[26.] In her oral testimony, Ms. Kenny stated that: Henry Wright and Mr. Mitchell on a day in 1992 attempted to coerce her mother Ms. Maria Kenny into signing her interest in the subject land and other property inherited from Mrs. Florence Wright to Mr. Wright; Mr. Wright desired to acquire all real property left by Mrs. Florence Wright; she and her siblings would acquire one-third interest while Mr. Wright was due one-third interest in Allotment #4 of the subject land; she does not know Ms. Carletha Taylor personally and disputes the latter's familial relationship with Mr. Wright; and she recalls Mr. Wright expressing in the past that he had a granddaughter.

[27.] In reconciling Ms. Kenny oral and written evidence, the Court finds her to be a credible and reliable witness.

Patricia L. Smith

[28.] After reviewing Ms. Smith's written testimony contained in the joint affidavit of Ms. Kenny and Ms. Smith filed on 31 August 2021, her witness statement filed on 24 August 2021, and her oral testimony, the significant parts of her evidence can be summarized as follows: that Mr. Wright and Ms. Maria Kenny were bequeathed interests in Allotment #4 of the subject land by Mrs. Florence Wright in shares of two-thirds and one-third, respectively; and that she does not personally know Ms. Carletha Taylor and disputes Ms. Taylor's claimed familial ties to Mr. Wright.

[29.] Upon reconciling Ms. Smith's oral and written evidence, the Court finds her to be a credible and reliable witness.

Dianne C. Duncombe

[30.] In her witness statement filed on 2 March 2018, Ms. Duncombe stated that she is a beneficiary under the Will of Ms. Marie Kenny and entitled to a portion of the one-third interest in the subject land. She recalled visiting the land frequently with her family since 1962, noting that Allotment #4 remained largely uncultivated, except for occasional light bush clearing, while parts

of Allotment #6 were used for subsistence farming by unidentified relatives. She further stated that in November 2009, Mr. Wright informed her of an agreement for the sale of the land between the Petitioner and himself, although there was disagreement over the purchase price. Lastly, she observed that a fence gate was installed on parts of the land on 21 March 2015.

[31.] In her oral testimony she stated that: Mr. Wright was aware of the one-third interest belonging to the heirs of Ms. Marie Kenny; Mr. Wright and Mr. Mitchell were temporarily at odds with each other over what the purchase price of the 20th December 2011 conveyance should be; Mr. Wright informed her and her sisters that he had to consult with them before conveying the subject land because of their interest in the property; she knew of Ms. Carletha Taylor as the purported daughter of Mr. Wright; She visited the subject land with Mr. Wright on numerous occasions; Henry Wright passed away on 26th June 2012; Ms. Carletha Taylor was present at the funeral of Mrs. Florence Wright and Henry Wright; and in 2015 a fence was erected around parts of the subject land.

[32.] In reconciling Ms. Duncombe's oral and written evidence, the Court finds her to be a credible and reliable witness.

The Locus and Quo

[33.] On 25 October 2024 at 11:00 a.m., the Court conducted a site visit to the subject land and made the following observations: the Adverse Claimants appeared to have greater familiarity with the property and were more adept at identifying the boundaries; several structures were observed on and around Allotment # 6; Allotment # 4 was found to be uncultivated; and the Petitioner did not demonstrate a clear understanding of the subject land or its lot boundaries.

Issues

[34.] The central issues are:

- a) Whether the Petitioner has proven that it has a possessory and documentary title to the subject land in accordance with the law of The Bahamas?
- b) Whether the named Adverse Claimants, have established a valid and legally recognizable interest in a one-third of the subject land sufficient to warrant the issuance of a certificate of title in their favor?

Law

[35.] For ease of reference, the following relevant sections of **the QTA** are set out:

“[S3] 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.”

“[S6] (1) Upon the filing of an application under section 3 of this Act the court shall direct a notice thereof to be published in one or more newspapers within or without The Bahamas or both within and without The Bahamas as the court may think fit. Such notice shall be in such form and shall contain such particulars as shall be prescribed by the rules and shall state the time within which any adverse claims must be filed. (2) No application under this Act shall be heard until after the expiration of the time fixed in the notice referred to in subsection (1) of this section for the filing of adverse claims.”

“[S8] (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.”

“[S17] (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”

[36.] Similarly, sections from **the Conveyancing and Law of Property Act Ch 138** are instructive:

“[S3] (3) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of truth of such facts, matters and descriptions. (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.”

[37.] In *The Matter of the Petition of F.A.R. Ltd [2023] 2017/CLE/qui/01364*, Winder CJ dispensed with a petition concerning Crown land and, in doing so, provided instructive dicta on how the Court should approach contentious quieting of title matters:

“[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.”

[38.] Lord Briggs in *Bannerman Town et al v Eleuthera Properties Limited (Respondent) (Bahamas) [2018] UKPC 27* provides authority on the law and practice of quieting title matters in The Bahamas:

“[25] As in traditional conveyancing of unregistered land between vendor and purchaser, the process of proof of title by a petitioner or adverse claimant in proceedings under the Quieting Titles Act generally requires the preparation of an abstract of title.”

“[33] For present purposes the relevant statutory elements are to be found in the Conveyancing and Law of Property Act 1909 (Bahamas) as amended, and the Limitation Act 1995 (Bahamas) replacing earlier statutes of limitation and reducing the relevant limitation period for present purposes from 20 to 12 years.”

“[34] Although the Bahamian Conveyancing Act followed an English lead, the comprehensive English 1925 property legislation was not replicated in the Bahamas. One relevant result is that a legal estate may still be owned by co-owners as tenants in common, each of whom may transfer their undivided shares to anyone, inter vivos or upon death, without the concurrence of the other co-owners.”

“[36] The Quieting Titles Act expressly takes for granted certain common law and statutory provisions and practices about the deduction and proof of title as between contracting vendors and purchasers of land.”

“[38] Nonetheless, the statutory process for obtaining a certificate of title under the Act has both constraints and opportunities which set it apart from the deduction and proof of title as between vendor and purchaser . . . the process of quieting titles is designed to lead to a certificate which, save in cases of fraud, is good against the whole world, in favour of the person or persons (petitioner or adverse claimants) who succeed in proving their title: see sections 19 and 27 of the Quieting Titles Act. Thus, although title to unregistered land is normally thought of in purely relative terms, the issue in any proceedings being who has the better title, a certificate of title confers

something more like absolute title, of the quality conferred by registered title under a system of land registration. For this reason, the court needs to be cautious before certifying title under the Act, as the Board warned in the Armbrister case.

“[41] But none of this means that the court has the duty, or even the power, to create title by use of the machinery conferred by the Act, where in truth no title at all is proved. Section 17 of the Act gives the court a discretion whether to dismiss the application entirely, to dismiss it and grant a certificate of title to an adverse claimant, to grant a certificate of title to the petitioner, or to grant separate certificates of title to different parts of the land to the petitioner and to one or more adverse claimants.”

“[51] Possession of land is generally described as having two elements, factual possession and the intention to possess: see *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419.”

“[75] In the Board’s view, merely keeping boundaries clear and from time to time placing or replacing “private property” signs came nowhere near taking possession of the Property. A fortiori overflying the Property and taking photographs of it cannot possibly have amounted to taking possession.

[39.] As relied upon by the Board in the Privy Council matter of **Bannerman Town [2018]**, the authority on what amounts to possession is set out succinctly by **Robert Walker LJ in *Simpson v Fergus* (1999) 79 P & CR 398** at pages 402-403:

“Possession is a legal concept which depends on the performance of overt acts, and not on intention (although intention is no doubt a necessary ingredient in the concept of adverse possession). It may or may not be sufficient in international law to annex an uninhabited and uninhabitable rock by planting a flag on it. ... but to establish exclusive possession under English law requires much more than a declaration of intention, however plain that declaration is. Actual occupation and enclosure by fencing is the clearest, and perhaps the most classic, way of establishing exclusive possession (though even enclosure is not invariably enough): ... it may well not have been feasible for Mrs Simpson (or for Mr Humphries before her) to have fenced off the parking spaces, although conceivably it might have been possible to do so with some form of moveable barrier, moveable posts, chain or whatever. Had either Mr Humphries or Mrs Simpson attempted to do that, matters might have come to a head much sooner. But to my mind, it is not correct, and would indeed be a serious heresy, to say that because it is difficult or even impossible actually to take physical possession of part of a reasonably busy service road, that simply for that reason some lower test should be imposed in deciding the issue of exclusive possession.”

[40.] The learned authors of **Megarry and Wade’s Law of Real Property (4th ed)** at page 580, sets out what a good root of title should entail:

“A document which describes the land sufficiently to identify it, which shows the disposition of the whole legal and equitable interest contracted to be sold, and which contains nothing to throw any doubt on the title ...”

[41.] The Board of the Privy Council in ***Armbrister et al v Lightbourn et al* [2012] UKPC 40** provides this Court with instructive dicta and obiter on the law of quieting titles in The Bahamas:

“[7] But while the 1959 Act meets an economic and social need, there has also been a warning from a lecturer, familiar with the 1959 Act both as a legislator and as a practicing member of the bar, that bench and bar must be vigilant to prevent the statutory procedure being abused by land thieves (the Hon Paul L. Adderley in an address to the National Land Symposium on 17th March 2001.).”

“[8] Procedure under the 1959 Act is relatively informal. The strict rules of evidence do not apply. . . Each rival claimant must prepare an abstract of title and adduce evidence in support of it.”

[42.] In ***Kenneth McKinney Higgs Senior v Leshel Maryas Investment Co Ltd et al* [2009] Privy Council Appeal No 0012 of 2009**, Lord Scott was concerned with whether possessory title to a tract of land was established amongst tenants in common. In determining said issue, the Board expressed instructive dicta on the law of quieting titles in The Bahamas:

“[3] It is convenient at this point to notice that the real property law reforms introduced in 1924 and 1925 in England and Wales have never been adopted by The Bahamas, whose real property law remains, so far as relevant to this case, the law as it stood in England prior to the 1924 and 1925 legislative reforms. Accordingly, individual shares in Bahamian land can continue to exist as freehold estates, requiring neither unity of title, interest or time, but only unity of the right to possession (see Halsbury’s Laws of England 4th Ed. Reissue (1998) Vol 39(2) para.207).”

“[15] What is essential is that the claimant to a possessory title can show that he and, if necessary, his predecessors have been in possession of the land for the requisite period.”

“[50] Under common law tenants-in-common of land enjoyed unity of possession. This continues to be the law in the Bahamas – and in other Caribbean jurisdictions. The result of the common law unity of possession of co-owners was that the sole possession by one co-owner of the co-owned land was, prima facie, not adverse to the title of any other co-owners. The co-owner in possession would be accountable to the others for rents and profits received but, although the lapse of time might bar the right to an account (see *In re Landi*, deceased [1939] Ch 828), it would not, without something more than mere possession, bar a co-owner’s title.”

Discussion & Analysis

Issue A Whether the Petitioner has proven that it has a possessory and documentary title to the subject land in accordance with the law of The Bahamas?

[43.] Firstly, the Petitioner avers that the evidence it submitted proves that it has documentary title to the subject land. The Court, mindful of the dicta of Winder CJ in **F.A.R. [2023]**, at paragraph 9, notes that a petitioner must demonstrate some form of documentary title to the land in order to move the Court to grant a Certificate of Title.

[44.] This Court, according to **Section 8(1) of QTA** has considered the evidence of the Petitioner during its investigation of the title to the subject land. More so, the Court has considered the evidence upon a balance of probabilities as required and reiterated by Crane-Scott JA in **Jason Strachan et al v Camperdown Holdings Ltd [2016] SCCiv App No. 224 of 2012** at paragraph 78. While comprehensive and disciplined, the Court’s investigation of title under the QTA is not required to be as stringent as required by other statutory regimes according to Lord Briggs in **Bannerman Town [2018]** at paragraph 36 and reiterated by the Board of the Privy Council in **Armbrister [2012]** at paragraph 8.

[45.] The Petitioner relies on the filed Abstract of Title filed 4th April 2018 to deduce title over the subject land. The Abstract of Title should, as the learned authors propound in **Megarry [4th Edition]**, lay to rest any doubt of the title to the subject land which for ease of reference is summated below:

From the Crown to Elijah Morris in 1859 > From Theophilus Morris, a descendant of Elijah Morris, to Virginia Ann Seymour in 1905 > From Virginia Ann Seymour to Florence Wright via Deed of Assent by Grant of Probate in 1923 > The 1990 Will of Florence Wright bequeathing the subject land to Marie Kenny, Leon Wright and Henry Wright > The 1992 Deed of Assent by Grant of Probate of the estate of Florence Wright > From Henry Wright to the Petitioner via Conveyance in 2011 > From Harold Morris to the Petitioner by Conveyance in 2017

[46.] Mr. Mitchell’s evidence during trial corroborates the transfers of interest in the subject land reflected in the Petitioner’s abstract of title from Florence Wright to Henry Wright to the Petitioner. Similarly, Ms. Cheryl Kenny’s evidence during trial corroborates the transfer of interest in the subject land reflected in the Petitioner’s abstract of title from Florence Wright to Henry Wright. Though her evidence conflicts with the Petitioner’s prayer to acquire all of the subject land on the

sole basis of the documentary title the latter purports. By inference of Henry Wright and Mr. Mitchell harassing Ms. Cheryl Kenny's mother sometime in 1992 over her interest in the subject land, the Petitioner cannot aver that Henry Wright was the beneficial owner of the subject land in its entirety. Lastly, Ms. Patricia Smith and Ms. Dianne Duncombe's evidence during trial corroborates the transfer of interest in the subject land reflected in the Petitioner's abstract of title from Florence Wright to her heirs. The Court, prima facie, has no issues with the Petitioner's abstract of title in any case. The Petitioner on the basis of its documentary title, as set out in its abstract of title, cannot claim the whole interest of Allotment #4 of the subject land.

[47.] The Petitioner, on reliance with its abstract of title, relies on two deeds of conveyance to support its claim of having documentary title over the subject land. These two conveyances are dated 20th December 2011 and 17th March 2017. However, the following issues concerning these deeds of conveyance relied upon by the Petitioner creates too much difficulty for this Court to deem that the Petitioner has established documentary title over the subject land. In the spirit of cautiousness in exercising its power to certify title under QTA, as emphasized by Lord Briggs in **Bannerman Town [2018]**, the Court is guided.

[47.1] Firstly, upon a review of the conveyances, the Court finds great difficulty with the reality the Petitioner seeks to advance. That the Petitioner was conveyed a fee simple interest as beneficial owner in allotments #4 and #6 twice. The following extracts from both conveyances are illustrated:

Deed of Conveyance dated 20th December 2011

"THE SCHEDULE FIRST HEREINBEFORE REFERRED TO ALL THAT piece parcel or lot of land being a portion of lot Number Four (No. 4) consisting more or less of 2.493 acres situate in Gambier Settlement on the southern side of West Bay Street and opposite Compass Point Beach Club AND ALSO ALL THAT parcel of land known as Lot Number Six (No. 6) of the said Gambier Settlement formerly the property of the late Florence Wright also situate on the southern side of the said West Bay Street opposite the said Compass Point Beach Club AND ALSO THAT 67% undivided interest or share in ALL THAT piece parcel or lot of land with structure or structures thereon located at the end of Collins Wall consisting more or less of 60X100 or 6,000 sq. ft. and being east of Toote Shop Corner off East Street in the Eastern District of the said Island of New Providence."

Deed of Conveyance dated 17th March 2017

"THIS SCHEDULE FIRST HEREINBEFORE REFERRED TO ALL THAT piece parcel or lot of land being a portion of Allotments Numbers Four (4) and the entirety of Allotment Six (6) of Gambier Village situate in the Western District of the island of New Providence in the Commonwealth of the Bahamas which said piece parcel or lot of land is made up of 2.493 acres of Allotment No. 4 and 4.227 acres being Allotment Number Six (6) which said piece parcel or lot of land is generally bounded as follows: on the NORTH by other portion of the said Allotment Number Four (4) and running thereon Two hundred and Eighty-six and Ten hundredths (286.10) feet on the EAST jointly by Allotments Numbers Twenty-two (22) and Twenty-three of the said Gambier Village and running thereon One thousand One Hundred and Fifty-six and Twenty-four hundredths (1,156.24) feet on the SOUTH by land and the NP Development Company Limited and running thereon Two hundred and Sixty-four and Thirty-three hundredths (264.33) feet and on the WEST by a Ten (10) foot Road Reservation leading to West Bay Street and running thereon One thousand and Fifty-eight and Nine hundredths (1,058.09) feet which said piece parcel or lot of land is more particularly described by the Plan or Diagram hereto attached and is thereon edged in Pink."

[47.2] Secondly, the copies of the deeds of conveyance are deficient in that the backing sheets are incomplete.

[47.3] Thirdly, based on the evidence taken at trial, the Court has doubt that the Petitioner complied with key terms of the 14th December 2011 Agreement for Sale ("AFS") that preceded

the 20th December 2011 conveyance. In that Ms. Carletha Taylor, the Petitioner's witness, couldn't recall what the purchase price amount was and if Henry Wright duly executed the relevant original title documents despite Ms. Taylor being an attorney under the 2nd September 2011 Power of Attorney for Henry Wright. Similarly, Mr. Mitchell in his evidence at trial states that the purchase price was not on the conveyance and that the Petitioner failed to construct a duplex on the subject land which is a breach of a term in the AFS. This is compounded by Ms. Patricia Smith's evidence at trial that Henry Wright and the Petitioner were in dispute over the purchase price amount.

[48.] The Petitioner avers that the evidence it submitted proves that it has possessory title to the subject land. The Court, considering Winder CJ's dicta in **F.A.R [2023]** at paragraph 9, is guided to determine if the petitioner demonstrated possessory title over the subject land in order to grant a Certificate of Title.

[49.] This Court, relying on both case law and statute, establishes the criteria that the Petitioner must meet to be duly recognized as the lawful holder of possessory title to the subject land.

[49.1] The Petitioner must show factual possession over the subject land of a nature that is overt for at least twenty-years. For example, the enclosing of a fence around the subject land is considered an overt act; See **Simpson [1999]** & Paragraph 51 in **Bannerman Town [2018]**.

[49.2] The Petitioner must show an intention to possess the subject land; See Paragraph 51 in **Bannerman Town [2018]**.

[50.] Lord Scott in **Kenneth McKinney Higgs Senior [2009]** at paragraph 15 sufficiently encapsulates the above:

“What is essential is that the claimant to a possessory title can show that he and, if necessary, his predecessors have been in possession of the land for the requisite period.”

[51.] Upon evaluating the totality of the evidence on a balance of probabilities, the Court finds that the Petitioner did not establish sufficient possession over the subject land to be granted a Certificate of Title. The Petitioner relies exclusively on Henry Wright's possession over the subject land. This is because, based on the Petitioner's purported documentary title, the period of prima facie possession over the subject land ,from the conveyance dated 20th December 2011 to the filing of the Petition on 10th June 2013, amounts to only two years.

[52.] The Court deems the Petitioner's claim that it and Henry Wright had unencumbered exclusive possession over the subject land for a twenty-year period to be tenuous because of the following: Ms. Carletha Taylor and Ms. Duncombe vaguely recall that Henry Wright gave them a tour of the subject land in their youth; Ms. Taylor , Mr. Mitchell and Ms. Duncombe in their respective evidence at trial recalled seeing a gate erected on parts of the subject land by unknown persons; Mr. Mitchell admits that members of the community disputed the Petitioner's ownership of the subject land; the Court observed during the locus and quo that the subject land was mostly uncultivated; and the principal of the Petitioner, Mr. Mitchell, admitted that the Petitioner never cultivated or operated on the subject land in its capacity as fee simple owner.

[53.] In all, the Petitioner has failed to satisfy the first criterion at paragraph 49.1 and produce evidence that Henry Wright did the bare minimum as described by the Board of the Privy Council at paragraph 75 in **Bannerman Town [2018]**.

[54.] Similarly, the Petitioner has failed to satisfy the second criterion outlined in paragraph 49.2, as its principal at the locus in quo showed no confidence in his knowledge of the subject land. It stands to reason that one cannot form the intent to possess or own something without first being aware of what that something is.

Issue B Whether the named Adverse Claimants, have established a valid and legally recognizable interest in a one-third of the subject land sufficient to warrant the issuance of a certificate of title in their favor.

[55.] Firstly, the Adverse Claimants aver that the evidence it submitted proves that it has documentary title to one-third of the subject land. According to Winder CJ's dicta in **F.A.R [2023]** at paragraph 9, a petitioner must demonstrate some form of documentary title over the land in order to move a Court to grant a Certificate of Title.

[56.] The Adverse Claimants rely on the filed Abstract of Title filed 11th December 2017 to deduce title over the subject land:

From the Crown to Elijah Morris in 1859> From Theophilus Morris , a descendant of Elijah Morris, to Virginia Ann Seymour in 1905> From Virginia Ann Seymour to Florence Wright via Deed of Assent by Grant of Probate in 1923 > The 1949 Will of Florence Wright bequeathing the subject land to Marie Kenny, Leon Wright and Henry Wright > The 1992 Deed of Assent by Grant of Probate of the estate of Florence Wright > Marie Kenny died intestate in 1995 > Cecil Kenny died without revoking his Will executed in 2002 > From Cecil Kenny to his children, the Adverse Claimants, in 2008 via Deed of Assent

[57.] Mr. Mitchell, in giving his evidence at trial did acknowledge the existence of Virginia Seymour when he possessed the original title documents. This corroborates the 1905 and 1923 transfer of interest in the subject land as reflected in the Adverse Claimants' abstract of title. Ms. Cheryl Kenny in her evidence at trial, being that Henry Wright and Mr. Mitchell harassed her mother in 1992 over the latter's interest in the subject land, corroborates the 1949 transfer as reflected in the abstract of title. Furthermore, Ms. Patricia Smith in her evidence at trial would go into detail on the respective interests Henry Wright and Marie Kenny had in Allotment #4 of the subject land which corroborates the 1949 transfer as well.

[58.] The Court deems the 29th October 2008 Deed of Assent of Cecil Kenny and the evidence at trial to be sufficient for the acknowledgment of the Adverse Claimants' documentary title to one-third interest in Allotment #4 of the subject land.

[59.] To dispense with the Adverse Claimants' averment that it has possessory title over the subject land, the Court deems that the Adverse Claimants have failed to satisfy the first criterion at paragraph 49.1. The law regarding possessory title is set out in paragraph 49. The Adverse Claimants have failed to provide evidence of their unencumbered possession of any part of the subject land for a period of twenty-years: unknown persons have installed parts of a fence and a gate on the subject land as seen during the locus in quo , Allotment #4 was uncultivated while some structures were present on and around Allotment #6 of which the Adverse Claimants could

not account for; and the Adverse Claimants during the locus in quo failed to demonstrate a clear or comprehensive understanding of when and how that came about.

Conclusion

[60.] The Court makes the following order -

[61.] The Petitioner's petition for Certificate of Title of the subject land is dismissed.

[62.] The Adverse Claimants are granted a Certificate of Title of one-third interest of Allotment #4 of the subject land.

[63.] The Petitioner shall pay the costs of the Adverse Claimants to be taxed if not agreed.

Senior Justice Deborah E. Fraser

Dated this 5th day of June 2025