

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2022/CLE/qui/00002

IN THE MATTER OF ALL THOSE pieces parcels or tracts or lots of land containing by admeasurements: -

Ninety and Two Hundred and Thirteen Thousandths (90.213) Acres situate in the Eastern District of the Island of Rum Cay one of the Islands of the Commonwealth of The Bahamas being property granted to Moses N. Deveaux as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 72RC bounded on the North by land now or formerly owned by David Strachan on the East by land now or formerly owned by John Storr Grant on the South by Port Nelson Lake and on the West by reserved land around the Salt Pond.

Seven Hundred and Forty-Five and Two Hundred and Two Thousandths (745.202) Acres situate in the North-Western District of the Island of Rum Cay aforesaid being property initially granted to Thomas Fraser as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 71RC bounded on the North by the Sea on the East by lands now or formerly owned by Catherine Rucker, Andrew Deveaux and Charles Stewart on the South by vacant Crown Land and land now or formerly owned by Samuel Nesbitt on the West by a tract now or formerly owned by Thomas Fraser.

One Hundred and Fifty-Seven and Six Hundred and Twenty-Two Thousandths (157.622) Acres situate in the Southern District of the Island of Rum Cay aforesaid being property initially granted to Nathaniel Young as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 71RC bounded on the North by vacant Crown Land on the East by land now or formerly owned by William Smith on the South by the Sea and on the West by land now or formerly owned by John Hendrick.

One Hundred and Eighty-Four and Five Hundred and Seventeen Thousandths (184.517) Acres situate in the Southern District of the Island of Rum Cay aforesaid being property initially granted to William Smith as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 71RC bounded on the North by land now or formerly owned by Samuel Nesbitt on the East by land now or formerly owned by Joshua N. Strachan on the South by the Sea and on the West by land now or formerly owned by Nathaniel Young.

Ninety-Four and Nine Hundred and Twenty-One Thousandths (94.921) Acres situate in the Central District of the Island of Rum Cay aforesaid being the

property initially granted to Joseph Dorsett and Benjamin Tynes as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 71RC bounded on the North by land now or formerly owned by Joseph Dorsett and Benjamin Tynes on the East by land now or formerly owned by Sahara Carmichael on the South by land now or formerly owned by Joshua N. Strachan and on the West by land now or formerly owned by Samuel Nesbitt.

Two Hundred and Three and Nineteen Hundredths (203.19) Acres situate in the Central District of the Island of Rum Cay aforesaid being property initially granted to Charles Stewart as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 70RC bounded on the North by land now or formerly owned by Andrew Deveau on the East by land now or formerly owned by Robert Butler on the South by lands now or formerly owned by Samuel Nesbitt and Joseph Dorsett and Benjamin Tynes and on the West by land now or formerly owned by Thomas Fraser.

Two Hundred and Six and Seventy-One Hundredths (206.71) Acres situate in the Central District of the Island of Rum Cay aforesaid being property initially granted to Thomas Knowles as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 69RC bounded on the North by lands now or formerly owned by J. Charlow and Benjamin Russell on the East by land now or formerly owned by B. Russell and James Strachan on the South by lands now or formerly owned by Josiah Tattnall and J.J. Burnside and on the West by land now or formerly owned by Joseph L. Dorsett and Benjamin Tynes.

One Thousand One Hundred and Eighty-Five and Forty-One Hundredths (1,185.41) Acres situate in the Northern District of the Island of Rum Cay aforesaid being property initially granted to Robert Rumer as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 69RC bounded on the North by the Sea on the East by land now or formerly owned by J. Crosskill and Henry Ginton on the South by land now or formerly owned by B. Russell and on the West by lands now or formerly owned by Hector McAllister and Robert Rumer.

Seven Hundred and Ninety and Seventy-Four Hundredths (790.74) Acres situate in the Central District of the Island of Rum aforesaid being property initially granted to Robert Butler as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 70RC bounded on the North by lands now or formerly owned by Benjamin Lord Sr., Benjamin Lord Jr., Andrew Deveau and William Slator Adderley on the East by lands now or formerly owned by Jos. L. Dorsett and Benjamin Tynes and on the West by land now or formerly owned by Charles Stewart.

Sixteen (16) Acres situate in the Northern District of the Island of Rum Cay aforesaid being a portion of property initially granted to Catherine Rucker as

shown on the plan recorded in the Department of Lands & Surveys as Plan Number 71RC bounded on the North by the Sea on the East by land now or formerly owned by Catherine Rucker on the South by land now or formerly owned by Catherine Rucker and on the West by land now or formerly owned by Thomas Fraser.

Two Hundred and Seventy-Six and Seventeen Hundredths (276.17) Acres situate in the Central District of the Island of Rum Cay aforesaid being property initially granted to Benjamin Russell as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 69RC bounded on the North by land now or formerly owned by Henry Ginton and Archibald Taylor on the South by lands now or formerly owned by Thomas Knowles and James Strachan and on the West by lands now or formerly owned by Jos. Charlow and Thomas Knowles.

AND IN THE MATTER of the Quieting Titles Act, 1959

IN THE MATTER of the Petition of Mondevco Limited.

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Mr. Dwyan A.G.R. Rodgers with Mr. Gilbert A. Thompson for the
Petitioner, Mondevco Limited

Mr. Barry A. Sawyer for the First Intended Adverse Claimant, Sunward Holdings Limited

Mr. Phillip McKenzie, KC, with Ms. Glenda Roker for the Second Intended Adverse Claimant, Atlantic Coast Development Limited

Hearing Date(s): 27 September 2023 and 25 October 2023

RULING

FITZCHARLES J:

Introduction

[1.] This is a ruling on an application brought by Mondevco Limited (the “Petitioner”) to strike out two adverse claims filed by Sunward Holdings Limited (the “First Intended Adverse Claimant”) and Atlantic Coast Development Limited (the “Second Intended Adverse Claimant”), respectively (collectively, the “Intended Adverse Claimants”). The Petitioner, in the substantive action, has petitioned the Court pursuant to section 3 of the Quieting Titles Act, Chapter 393 (the “Act”), for the investigation and determination of title pertaining to some eleven pieces, parcels, tracts, or lots of land situate on the tranquil island of Rum Cay, one of the islands of the Commonwealth of The Bahamas, in its quest to obtain Certificates of Title relative thereto (the “substantive quieting titles action”).

[2.] The Petitioner moved the Court on the present application by way of a Summons dated and filed on 20 February 2023. The Petitioner seeks the following relief, namely, that –

- i. the Adverse Claim of Sunward Holdings Limited be struck out pursuant to section 7(2) of the Quieting Titles Act, Chapter 393, and under the inherent jurisdiction of the Court, for failing to file and serve on the Petitioner the requisite pleadings in support of the Adverse Claim within the time limit set by the notice published in the newspapers and before final judgment in this action;
- ii. the Adverse Claim of Atlantic Coast Development Limited be struck out pursuant to section 7(2) of the Quieting Titles Act, Chapter 393, and under the inherent jurisdiction of the Court, for failing to file and serve on the Petitioner the requisite pleadings in support of the Adverse Claim within the time limit set by the notice published in the newspaper and the time limit by The Honourable Madam Senior Justice Indra H. Charles (as she then was) on 20 December 2022;
- iii. the Court give further or such other order as it may deem fit; and
- iv. the Intended Adverse Claimants do pay the Petitioner’s costs to be taxed if not agreed.

[3.] In support of the present application, the Petitioner relied upon the following evidence –

- i. the Affidavit of Gilbert Anselm Thompson¹; and
- ii. the Supplemental Affidavit of Erald C. Thompson².

[4.] Notwithstanding not filing any evidence in opposition to the present application, the present application was keenly contested by the Intended Adverse Claimants.

¹ Dated and filed on 15 August 2022

² Dated 2 October 2023 and filed on 11 October 2023

[5.] For reasons which will be detailed below, the Court, in the exercise of its discretion, and having regard to the evidence filed herein, submissions of Counsel for the Petitioner and the Intended Adverse Claimants, relevant law, and all the circumstances of the present application, is satisfied that the statements of adverse claim filed by the Intended Adverse Claimants ought to be struck out and that the costs of and occasioned by the present application ought to be paid to the Petitioner by the Intended Adverse Claimants to be taxed (if not sooner agreed by the parties).

Factual Background

[6.] Given the nature of the present application, the Court finds it both prudent and necessary to outline the factual and procedural background which pertain to the present application and the substantive quieting titles action. The present application may be sufficiently contextualized and understood from a comprehensive review of the Court's file, the evidence, the pleadings of the parties, and the submissions of Counsel for the Petitioner and the Intended Adverse Claimants.

[7.] By Petition³, which was supported by the Affidavit of Erald C. Thompson⁴ and the Affidavit of Bishop Gilbert Arthur Thompson⁵, the Petitioner, who claims to be the owner in fee simple possession of some eleven pieces, parcels, or tracts of land situate on the tranquil island of Rum Cay, one of the islands of the Commonwealth of The Bahamas and totalling some 3,950.695 acres, has petitioned the Court pursuant to section 3 of the Act, to have the titles relative thereto investigated and the nature and extent thereof determined and declared in Certificates of Title to be granted by the Court in accordance with the provisions of the Act (the "Subject Lands"). The Petitioner also filed plans in relation to the Subject Lands⁶.

[8.] By Summons⁷, the Petitioner applied for Notice or Notices of the filing of the Petition to be published and such other orders and directions as the Court deemed necessary.

[9.] By Order⁸, the Honourable Madam Justice Indra H. Charles (as she then was)⁹ ("the Previous Judge") ordered, in part, that –

- i. Notices of the Petition in the usual form be advertised at ten (10) day intervals on three (3) consecutive occasions in The Tribune and The Nassau Guardian newspapers, intimating that copies of the plans filed herein may be inspected at the Registry of the Supreme Court and Chambers of the Petitioner's Attorneys Messrs Meridian Law Chambers;

³ Dated 4 January 2022 and filed on 6 January 2022

⁴ Dated 5 January 2022 and filed on 6 January 2022

⁵ Dated 18 March 2022 and filed on 21 March 2022

⁶ Dated 4 January 2022 and filed on 6 January 2022

⁷ Dated 11 January 2022 and filed on 12 January 2022

⁸ Dated 22 March 2022 and filed on 11 April 2022

⁹ The Honourable Madam Justice Indra H. Charles was conferred with the title of Senior Justice of the Supreme Court of the Commonwealth of The Bahamas on 1 April 2022.

- ii. Adverse Claims shall be filed within thirty (30) days after the date of the last advertisement in the aforesaid Tribune and Nassau Guardian Newspapers;
- iii. A copy of the said Notice be served upon –
 - (a) the Surveyor General in the Department of Lands and Surveys;
 - (b) the Ministry of Works & Utilities;
 - (c) the Ministry of Environment and Housing;
 - (d) the Attorney General's Office;
 - (e) the Treasurer;
 - (f) the adjoining owners/occupiers and occupants of the land (if any);
- iv. A copy of the said Notice and Plans shall be affixed and maintained on the Notice Board of the office of the Administrator of Rum Cay until the Quieting Petition is heard;
- v. the Statement of Facts pursuant to section 4(d) of the Quieting Titles Act, Chapter 393, be dispensed with;
- vi. Trial to be heard by the Honourable Madam Justice Indra H. Charles (as she then was) on 13 – 16 September 2022 at 10:00 am; and
- vii. such further directions as the Court may think fit.

[10.] By the Affidavit of Gilbert Anselm Thompson¹⁰, one of the Petitioner's attorneys, it was stated, in part, as follows, that –

- i. a copy of the Notice of the filing of the Petition was advertised in The Tribune on 12 and 25 April 2022, and 6 May 2022, and in the Nassau Guardian on 12 and 25 April 2022 and 6 May 2022;
- ii. on 21 April 2022 and confirmed via email on 7 June 2022, a copy of the Notice of the filing of the Petition, the Order of the Court dated 22 March 2022, and the plans filed herein were delivered via email to Mr. Earl Campbell, the Island Administrator for the Island of Rum Cay, The Bahamas, requesting that he affix to his Notice Board as the Administrator of the Island of Rum Cay, The Bahamas, the Notice of the filing of the Petition, the said Order of the Court, and plans to be available for inspection by any interested party;
- iii. on 12 April 2022, the Notice of the filing of the Petition and the plans were served on the Department of Lands and Surveys;
- iv. on 13 April 2022, the Notice of the filing of the Petition and the plans were served on the Ministry of Works & Utilities;

¹⁰ Dated and filed on 15 August 2022

- v. on 13 April 2022, the Notice of the filing of the Petition and the plans were served on the Treasurer at the Treasury Department;
- vi. on 13 April 2022, the Notice of the filing of the Petition and the plans were served on the Ministry of the Environment and Housing;
- vii. on 13 April 2022, the Notice of the filing of the Petition and the plans were served on the only adjoining owner/occupier of land that he was aware of, being Dr. Raleigh Butler of the Butler Family;
- viii. on 13 April 2022, the Notice of the filing of the Petition and the plans were served on the Office of the Attorney General and the Ministry of Legal Affairs of the Commonwealth of The Bahamas;
- ix. on 3 August 2022, a letter was received from the Office of the Attorney General and the Ministry of Legal Affairs of the Commonwealth of The Bahamas stating that the Treasurer of The Bahamas, the Director of Civil Aviation, The Bahamas Development Bank, the National Insurance Board, the Broadcasting Corporation of The Bahamas, and the Water and Sewerage Corporation have no interest in the properties which are the subject of the Petition. The letter also stated that the Department of Lands and Surveys and the Department of Housing have indicated that they do have some vested interest in some portions of the properties which are the subject of the Petition, but no details of the interest were provided. The letter finally stated that the Office of the Attorney General and the Ministry of Legal Affairs of the Commonwealth of The Bahamas were awaiting the response from ministries and agencies that were notified; and
- x. to the best of his knowledge, information, and belief, the adjoining properties on the Island of Rum Cay, The Bahamas, were vacant.

[11.] By the Affidavit of Gilbert Anselm Thompson¹¹, one of the Petitioner's attorneys, it was stated, in part, as follows, that –

- i. the Notice of the filing of the Petition was advertised in The Tribune and the Nassau Guardian in compliance with the Order of the Court dated 22 March 2022 and filed on 11 April 2022. There were also exhibited true copies of the publications in the Tribune and the Nassau Guardian; and

¹¹ Dated and filed on 27 June 2022. It is to be noted that this Affidavit was used to support the Summons filed by the Petitioner on 27 June 2022 to strike out the Adverse Claim of Estate of Charles Rogers Nesbitt, which was filed on 12 May 2022 and served upon the Petitioner's Attorneys on 12 May 2022 without an accompanying verifying Affidavit. This Adverse Claim was later withdrawn by a Notice of Discontinuance dated 26 August 2022 and filed on 29 August 2022.

- ii. by the terms of the Notice of the filing of the Petition published in the Tribune and the Nassau Guardian, the last day for the filing of any Adverse Claims was 6 June 2022.

[12.] On 26 October 2022, the trial of the substantive quieting titles action commenced via Zoom before the Previous Judge.

[13.] On 3 December 2022, the Previous Judge conducted a site visit to the Subject Lands on the Island of Rum Cay, The Bahamas, for an inspection.

[14.] On 7 December 2022, the trial of the substantive quieting titles action continued via Zoom before the Previous Judge. At this hearing, an individual by the name of David Strachan appeared with certain documents purporting that he owned the properties seeking to be quieted by the Petitioner. Ms. Glenda Roker, Counsel and Attorney-at-Law, appeared with Mr. Strachan. Ms. Roker stated that she had only been briefed the previous day on the matter. She requested an adjournment to investigate the matter further. Mr. Gilbert A. Thompson, one of the Petitioner's attorneys, stated that he was aware of the Strachan Family and that the properties seeking to be quieted by the Petitioner were not a part of the pieces, parcels, or tracts of land belonging to the Strachan Family. Both Counsel agreed to meet to discuss the matter further. The trial was adjourned to 13 December 2022 at 3:30 pm for a report.

[15.] On 15 December 2022, the trial of the substantive quieting titles action continued via Zoom before the Previous Judge for a report. At this hearing, Ms. Roker appeared with Mr. Strachan, where she informed the Previous Judge that she had filed an adverse claim on 13 December 2022 on behalf of the Second Intended Adverse Claimant and not Mr. Strachan.¹² The adverse claim was sent electronically to the Petitioner's attorneys on the same date; however, it was not physically served on the Petitioner's attorneys until 22 June 2023¹³. Ms. Roker indicated that the Second Intended Adverse Claimant was claiming fee simple documentary and possessory title ownership¹⁴ to a portion of the Subject Lands, seeking to be quieted by the Petitioner, particularly the parcel, piece, or tract of land situate near the Carmichael Pond, Rum Cay, The Bahamas. The Second Intended Adverse Claimant claims some 232.68 acres thereof. Mr. Thompson, one of the Petitioner's attorneys, assisted the Previous Judge in identifying the portion of the parcel, piece, or tract of land being claimed by the Second Intended Adverse Claimant. Mr. Thompson identified that parcel, piece, or tract of land described as –

¹² See a copy of the Court's transcript dated 15 December 2022 which was exhibited as "ECT-1" to the Affidavit of Erald C. Thompson dated 2 October 2022 and filed on 11 October 2022.

¹³ The Affidavit of Service of Vanessa Sands dated 27 June 2023 and filed on 28 June 2023.

¹⁴ The Second Intended Adverse Claimant claims fee simple documentary and possessory title ownership to 232.68 acres of the Disputed Land by (i) Indenture of Conveyance dated 9 June 2006 between Newport Harbour Limited and Atlantic Coast Development Limited and recorded in Volume 10763 at pages 196 to 200; (ii) Deed of Rectification dated 30 May 2017 between Newport Harbour Limited and Atlantic Coast Development Limited and recorded in Volume 12831 at pages 569-574; and (iii) Supplemental Deed of Rectification dated 30 September 2021 between Newport Harbour Limited and Atlantic Coast Development Limited and recorded in Volume 13701 at pages 242 to 247.

Seven Hundred and Forty-Five and Two Hundred and Two Thousandths (745.202) Acres situate in the North-Western District of the Island of Rum Cay aforesaid being property initially granted to Thomas Fraser as shown on the plan recorded in the Department of Lands & Surveys as Plan Number 71RC bounded on the North by the Sea on the East by lands now or formerly owned by Catherine Rucker, Andrew Deveaux and Charles Stewart on the South by vacant Crown Land and land now or formerly owned by Samuel Nesbitt on the West by a tract now or formerly owned by Thomas Fraser (the “Disputed Land”).

[16.] While the Second Intended Adverse Claimant would have filed what is called a statement of an adverse claim, it did not file the necessary documents to support the adverse claim, that is, the verifying affidavit, plan(s), and abstract of title. Ms. Roker requested additional time to file and serve those documents. The Previous Judge, in part, ordered¹⁵ as follows, that –

- (i) the Petitioner is to erect conspicuous billboards measuring six (6) feet by four (4) feet to be placed on the Subject Lands, and the said billboards are not to be removed until further order of the Court;
- (ii) the Second Intended Adverse Claimant is to file and serve its verifying affidavit(s), plan(s), and abstract of title to support the Adverse Claim by 30 December 2022;
- (iii) the parties are to provide written submissions by 20 January 2023; and
- (iv) the Hearing of the Petition in relation to the Second Intended Adverse Claimant is to be heard before the Honourable Madam Justice Indra H. Charles (as she then was) on 30 January 2023 at 10:00 am.

[17.] On 20 December 2022, the substantive quieting title action continued via Zoom before the Previous Judge. At this hearing, the Previous Judge revoked her previous Order requiring the Petitioner to erect the conspicuous billboards on the Subject Lands after having been satisfied that the Petitioner had already gone through that exercise. At this hearing, the Previous Judge granted Certificates of Title to the Petitioner, subject to the usual reservations and in the prescribed form, in relation to the Subject Lands, excluding the Disputed Land being claimed by the Second Intended Adverse Claimant. The hearing of the Petition in relation to the Second Intended Adverse Claimant is to be heard in accordance with the directions provided by the Previous Judge. The

¹⁵See a copy of the Court’s transcript dated 15 December 2022 which was exhibited as “ECT-1” to the Affidavit of Erald C. Thompson dated 2 October 2022 and filed on 11 October 2022. It is to be noted that this Court Order was supposed to be drafted and filed by the Petitioner’s attorneys. There is no evidence that this Court Order was ever drafted and/or filed.

Certificates of Title granted to the Petitioner in relation to the Subject Lands included the following pieces, parcels, and lots of the Subject Lands¹⁶ –

PLAN NUMBER	NUMBER OF ACRES
72RC	90.213
71RC	157.622
71RC	184.517
71RC	94.921
70RC	203.19
69RC	206.71
69RC	1,185.41
70RC	790.74
70RC	16
69RC	276.17
TOTAL ACRES	3,205.493

[18.] The Second Intended Adverse Claimant filed a plan in relation to the Disputed Land dated 24 February 2023 on 24 February 2023. This plan was not served on the Petitioner's attorneys until 28 February 2023.

[19.] The Affidavit of Arnold Johnson, dated 8 March 2023, was filed on 21 March 2023 in support of the Second Intended Adverse Claimant's Adverse Claim. The Affidavit of Arnold Johnson was not physically served on the Petitioner's attorneys until 23 March 2023¹⁷.

[20.] On 25 January 2023, the First Intended Adverse Claimant filed a Summons seeking to set aside the Certificates of Title granted to the Petitioner by the Previous Judge. The Affidavit of Kenneth A. Toppin, which supported the Summons, was also filed on the same date. Exhibited to the Affidavit of Kenneth A. Toppin was a statement of an adverse claim filed on 23 August 2022. There is no evidence that this statement of adverse claim was brought to the attention of the Previous Judge or that it was accompanied by any verifying affidavit(s), abstract of title, or plan being filed in the Supreme Court Registry or served on the Petitioner's attorneys. The statement of adverse claim also did not indicate any specific portion of the Subject Lands being claimed by the First Intended Adverse Claimant.

[21.] In May 2023, the Previous Judge demitted office as a Judge of the Supreme Court of the Commonwealth of The Bahamas. Prior to her retirement, on 1 February 2023, the Previous Judge was appointed an Acting Justice of the Court of Appeal of the Commonwealth of The Bahamas. She was confirmed as a substantive Justice of the Court of Appeal on 1 May 2023. As a result, this matter was transferred to another Justice of the Supreme Court and was subsequently transferred before the Court.

¹⁶ See the Court Order dated 20 December 2022 and filed on 21 December 2022.

¹⁷ The Affidavit of Service of Dwayne Tinker dated 27 March 2023 and filed on 3 April 2023.

[22.] On 21 June 2023, the parties appeared before the Court for directions regarding the present application. It was ordered, in part, as follows, that –

- (i) the First Intended Adverse Claim shall prepare a Supplemental Affidavit in Support of its Adverse Claim and file and serve the same on the Petitioner and the Second Intended Adverse Claimant on or before 31 July 2023;
- (ii) Skeleton Arguments shall be prepared by the Petitioner and the Intended Adverse Claimants and exchanged between these parties on or before 18 August 2023;
- (iii) the Summons filed herein on 20 February 2023 by the Petitioner seeking an Order of the Court to have the Adverse Claims of the Intended Adverse Claimants struck out shall be heard by the Honourable Madam Justice Simone I. Fitzcharles on 27 September 2023 at 2:30 pm; and
- (iv) such further directions as the Court may think fit.

[23.] However, upon a review of the Order made on 21 June 2023 in contrast to the notes of the Court in the record, it has become apparent that paragraph 1 of that Order as perfected contains clerical errors in that the Court did not order that a supplemental affidavit be filed, but rather an affidavit. Further, that affidavit was to be in support of the First Intended Adverse Claimant's opposition to the current strike out application and not in support of the Adverse Claim of the First Intended Adverse Claimant, which latter application was not yet being dealt with by the Court. There is no evidence before the Court that this direction was complied with by the First Intended Adverse Claimant.

[24.] On 27 September 2023 and 25 October 2023, the Court heard the parties on the present application, *inter alia*, reserved its decision, promising to deliver the decision at a later time. This ruling serves as the Court's decision on the present application.

Submissions

[25.] Each of the parties laid over written submissions and made oral submissions, which set out their respective positions regarding the present application. While those submissions were fully considered by the Court, they will not be reproduced in detail. The main contentions advanced by the parties may be summarised as set out below. The Court wishes to thank Counsel for the Petitioner and the Intended Adverse Claimants for their helpful submissions.

Submissions of the Petitioner/Applicant

[26.] In principle, the Petitioner asserts that the Intended Adverse Claimants have failed to comply with the directions and/or time limits ordered by the Previous Judge for the filing of an adverse claim in the present substantive quieting titles action. The directions and/or time limits were ordered by the Previous Judge in accordance with sections 6(1) and 7(1), respectively, of the Act. As a consequence of such failure, the Petitioner argues that the respective adverse claims filed by the Intended Adverse Claimants in the present substantive quieting titles action ought to be struck out and that the costs of and occasioned by the present application should be paid by the Intended Adverse Claimants to the Petitioner to be taxed (if not sooner agreed by the parties). Further, the Petitioner argues that the Intended Adverse Claimants ought to be barred from claiming any interests in the Subject Lands.

[27.] Counsel for the Petitioner, Mr. Dwyan Rodgers, contends that the First Intended Adverse Claimant's statement of an adverse claim ought to be struck out on the ground that the First Intended Adverse Claimant failed to file and serve, on the Petitioner or the Petitioner's attorneys, the statement of an adverse claim along with the requisite pleadings in support thereof within the time limit specified in the Order dated 22 March 2022 and filed on 11 April 2022 as ordered by the Previous Judge and stated in the newspapers' advertisements/notices. Counsel contends that the newspaper advertisements/notices were issued in accordance with section 6(1) of the Act, and represented notice to the world. By the newspaper advertisements/notices, the last day for filing of an adverse claim in the substantive quieting titles action was 6 June 2022. The First Intended Adverse Claimant filed its statement of an adverse claim on 23 August 2022. The statement of an adverse claim is skeletal as it does not specify the property or properties or the claim of ownership to the property or properties, that is, documentary or possessory, being claimed by the First Intended Adverse Claimant relative to the Subject Lands. Counsel further compounded that the statement of adverse claim was not accompanied by any verifying affidavit, plan, or abstract of title.

[28.] Mr. Rodgers states that despite filing the statement of adverse claim on 22 August 2022, the First Intended Adverse Claimant failed to insert itself into the substantive quieting titles action and failed to attend any of the hearings prior to the Previous Judge granting the Certificates of Title for ten out of the eleven pieces, parcels or lots of land seeking to be quieted by the Petitioner. The Certificates of Title were granted by the Order of the Previous Judge dated 20 December 2022 and filed on 21 December 2022. Counsel argues that none of the parties or the Court was aware of the First Intended Adverse Claimant's statement of an adverse claim until the Affidavit of Kenneth A. Toppin exhibiting the statement of an adverse claim was served on the Petitioner's attorneys, and Counsel for the First Intended Adverse Claimant, Mr. Barry A. Sawyer, attended before the Supreme Court on behalf of the First Intended Adverse Claimant in or about January 2023. The Affidavit of Kenneth A. Toppin was filed on 25 January 2023 in support of a Summons application filed by the First Intended Adverse Claimant on the same date, seeking to set aside the Certificates of Title granted to the Petitioner by the Previous Judge. That application remains extant and is not

before the Court. Moreover, the First Intended Adverse Claimant has not made an application to file and serve the relevant pleadings in support of its statement of an adverse claim out of time.

[29.] Mr. Rodgers advances that the Second Intended Adverse Claimant's statement of an adverse claim ought to be struck out on the ground that the Second Intended Adverse Claimant failed to file and serve, on the Petitioner or the Petitioner's attorneys, the statement of an adverse claim along with the requisite pleadings in support thereof within the time limit set by the Order of the Previous Judge made at the continuation hearing of the substantive quieting titles action on 15 December 2022. By that Order, the Second Intended Adverse Claimant was to file and serve file and serve its verifying affidavit(s), plan(s), and abstract of title to support the statement of an adverse claim by 30 December 2022. The Order was made in accordance with section 7(1) of the Act, and despite the passing of the previous time limit of 6 June 2022 deadline for all adverse claims to be lodged with the Supreme Court as per the newspaper advertisements/notices. Moreover, despite the clear directions of the Previous Judge, issued pursuant to section 7(1) of the Act, the Second Intended Adverse Claimant –

- i. filed its statement of an adverse claim on 13 December 2022 and emailed the same to the Petitioner's attorneys on the same date, but did not physically serve a hardcopy of the same on the Petitioner's attorneys until 22 June 2023;
- ii. filed a plan on 24 February 2023 and served the same on the Petitioner's attorneys on 28 February 2023;
- iii. filed an Affidavit of Arnold Johnson on 21 March 2023 and served the same on the Petitioner's attorneys on 21 March 2023;
- iv. to date, despite the Court's clear direction and Counsel's undertaking to file and serve an Abstract of Title on or before 30 December 2022, such Abstract of Title has not been served.

The filing and service of the above-mentioned pleadings were clearly outside of the time limit set by the Previous Judge. To date, no application has been made on behalf of the Second Intended Adverse Claimant to extend the time in which to comply with the Previous Judge's directions.

[30.] Counsel drew the Court's attention to sections 6(1) and 7(1) and (2) of the Act. He contends that these statutory provisions are plain and mandatory. No rule, or even the inherent jurisdiction of the Court, can be relied upon to extend the respective time limits fixed by the Previous Judge in relation to the Intended Adverse Claimants. Even if that was not the case (which he does not argue), it is recognized and appreciated that the issue of prejudice should always be considered when assessing whether to extend the time in which a party to proceedings should do something. Counsel drew support from the authorities of **True Blue Co. Ltd. v Moss and others (1965-70) 1 LRB 250** and **South Shore Investment Co. Ltd. v Hanley and others (Nos. 2 and 6/1996) (1965-70)**

2 LRB 73 to buttress his position on the lack of the Court's jurisdiction to extend the time limit issued to potential adverse claimants in accordance with sections 6(1) and 7(1) of the Act.

[31.] Mr. Rodgers explains once more that the pertinent advertisements/notices published in the Tribune and the Nassau Guardian were notices published to the world, and the Intended Adverse Claimants failed to file and serve all the pertinent documents within the time limit stated in the newspaper advertisements/notices. Nevertheless, the Previous Judge recognized that she had the jurisdiction to allow, at least, the Second Intended Adverse Claimant to file and serve its relevant documents to support its statement of an adverse claim pursuant to section 7(1) of the Act. The Second Intended Adverse Claimant failed to do so. Counsel submits that this failure is fatal to any potential adverse claim the Second Intended Adverse Claimant may have to a portion of the Disputed Land. The Second Intended Adverse Claimant was already provided with its opportunity to place an adverse claim properly before the Supreme Court, and it failed to do so within the prescribed time limits. Mr Rodgers argues that the Second Intended Adverse Claimant should not be given another such chance as there is no application before the Court by them for a second chance, nor is there any authority in law that supports a second chance to get it right.

[32.] As it relates to the First Intended Adverse Claimant, Mr Rodgers contends that the First Intended Adverse Claimant ought not to be provided the opportunity to file and serve its statement of an adverse claim and the requisite pleadings in support thereof, on the Petitioner or its attorneys, in accordance with section 7(1) of the Act. The First Intended Adverse Claimant has failed to demonstrate that it has a *bona fide claim of substance* to the Subject Lands. At the very least, the First Intended Adverse Claimant was aware of the substantive quieting titles action in August 2022, when it filed the statement of an adverse claim with the Supreme Court Registry. Thereafter, this document, despite naming the Petitioner's attorneys in it, was never served on the Petitioner's attorneys, and the First Intended Adverse Claimant elected to sit back and do nothing until filing its application to set aside the Certificates of Title granted to the Petitioner by the Previous Judge. That application was filed in January 2023. Moreover, Counsel argues it is pellucid that no adverse claim can be made or admitted in respect to the Subject Lands granted to the Petitioner in the Certificates of Title, as there has already been a final judgment.

[33.] Counsel ultimately submits that there are no proper adverse claims before the Court in relation to the Intended Adverse Claimants. In order for an adverse claim to be valid, it must be supported by the requisite pleadings in support thereof, that is, the verifying affidavit, plan(s), and abstract(s) of title. The adverse claim, along with the requisite pleadings in support thereof, must be filed and served on the Petitioner or his attorneys and any other adverse claimant in the proceedings within the time limits stipulated by the Court in accordance with the Act. The First Intended Adverse Claimant has not filed any verifying affidavit, abstract of title, or plan. The Second Intended Adverse Claimant filed and served its verifying affidavit and plan outside of the time limit prescribed by the Previous Judge and did not file and serve any abstract of title. Properly, there is no adverse claim before the Court by either of the Intended Adverse Claimants. The authorities of **Re Musgrove and others (No. 29/1968) (1965-70) 2 LRB 292** and **Mount Gottonburg Ltd. v Ryan (No. 41/1968) (1965-70) 2 LRB 333** were relied upon.

Submissions of the First Intended Adverse Claimants/ First Respondent

[34.] In principle, the First Intended Adverse Claimant advances that the Certificates of Title granted to the Petitioner by the Previous Judge ought to be set aside for the following reasons, namely – (i) the Act requires that the Petitioner establish that it has been in exclusive and undisturbed possession of the Subject Lands for the prescribed limitation period, that is, a period of twelve years, (ii) the Petitioner cannot and has not established that it had been in exclusive and undisturbed possession of the Subject Lands for twelve years, (iii) the Petitioner and its attorneys did not make the Previous Judge aware of a previous action relative to the Subject Lands, (iv) it is clear that had the Previous Judge been made aware of the previous proceedings in its investigative capacity, the Previous Judge would have directed the Petitioner to invite the First Intended Adverse Claimant or its predecessor in title to participate in the proceedings, and (v) the Court becoming aware that the Petitioner was not in undisturbed possession of the Subject Lands, the Certificates of Title ought to be set aside.

[35.] Counsel for the First Intended Adverse Claimant, Mr. Barry A. Sawyer, advances that the Court, at the case management hearing, indicated that it was not minded to set aside the Certificates of Title granted to the Petitioner in relation to the Subject Lands. In the circumstances, Counsel contends that if the Court is not minded to set aside the Certificates of Title, the First Intended Adverse Claimant seeks leave to file an appeal out of time. Counsel states that the First Intended Adverse Claimant only became aware of the Order that granted the Petitioner the Certificates of Title to the Subject Lands sometime in January or February 2023. Once the First Intended Adverse Claimant became aware of the Order, Counsel was instructed to make an application to have the Order set aside, and the same was filed. Due to the vast land involved in the substantive quieting titles action and the likelihood of the Subject Lands being purchased by foreign purchasers, it would be unsettling for the Petitioner to be granted Certificates of Title to the Subject Lands which title thereto has already been challenged in the Supreme Court of the Commonwealth of The Bahamas and rulings were made by the Honourable Justices Adderley and Lyons.

[36.] Counsel argues that the present application by the Petitioner to have the First Intended Adverse Claimant's statement of an adverse claim struck out for procedural deficiencies ought to be disallowed as the First Intended Adverse Claimant's statement of an adverse claim is to address the substantive law and circumstances upon which the Order granting the Petitioner the Certificates of Title to the Subject Lands by the Previous Judge were made.

[37.] Mr. Sawyer ultimately contends that the First Intended Adverse Claimant seeks the following reliefs, namely, that – (i) the Order granting the Petitioner Certificates of Title to the Subject Lands be set aside, (ii) if the Court accedes to the application to set aside the Certificates of Title, directions be given for the matter to proceed, (iii) in the event the Court is not minded to set aside the Order granting the Petitioner Certificates of Title to the Subject Lands, the First Intended Adverse Claimant be granted leave to appeal the grant of the Certificate of Title by the

Previous Judge out of time, and (iv) that the Court disallow the application for the First Intended Adverse Claimant's statement of an adverse claim to be struck out.

Submissions of the Second Intended Adverse Claimant/ Second Respondent

[38.] In principle, the Second Intended Adverse Claimant argues that it should be permitted to file and serve the statement of an adverse claim filed on 13 December 2023, along with the requisite pleadings in support thereof that were filed subsequently after 13 December 2022 and outside of the time limit set by the Previous Judge at the continuation hearing of the substantive quieting titles action on 15 December 2022. The delay in the filings and service was not inordinate or prejudicial to the Petitioner. The Order of the Previous Judge was not an unless order. The Second Intended Adverse Claimant filed the pleadings to comply with the Order of the Previous Judge. Therefore, the present application ought to be dismissed.

[39.] Counsel for the Second Intended Adverse Claimant, Mr. Philip McKenzie, KC, contends, without more, that difficulties arose in obtaining full instructions from the beneficial owners of the Second Intended Adverse Claimant, which prevented the physical service, on the Petitioner or the Petitioner's attorneys, with the Second Intended Adverse Claimant's statement of an adverse claim filed on 13 December 2022 within the time limit set by the Previous Judge at the continuation hearing of the substantive quieting titles action on 15 December 2022. These difficulties also prevented the Second Intended Adverse Claimant's attorneys from filing and serving the requisite pleadings in support of the statement of an adverse claim (which were filed after 13 December 2022) within the time limit set by the Previous Judge at the continuation hearing of the substantive quieting titles action on 15 December 2022.

[40.] Mr. McKenzie, KC, submits that the Previous Judge, having demitted office as a Justice of the Supreme Court of the Commonwealth of The Bahamas and assuming the substantive office of a Justice of the Court of Appeal of the Commonwealth of The Bahamas before hearing and determining the claims made in regards to the Disputed Land by the Petitioner and the Second Intended Adverse Claimant, there was no final determination. Be that as it may, Mr. McKenzie, KC, contends that this matter requires a fresh hearing of the evidence so that it can be heard and determined by a new Justice of the Supreme Court of the Commonwealth of The Bahamas. Consequently, there being no hearing and final determination regarding the Disputed Land by the Previous Judge, there cannot be said to be any prejudice suffered by the Petitioner in having a fresh hearing. Counsel drew support from the authority of **Paul Chen Young et al v Eagle Merchant Bank Limited et al [2018] JMCA App 7**¹⁸ to support the fresh hearing contention.

¹⁸It is to be noted that this decision was appealed to the Judicial Committee of His Majesty's Privy Council in Michael Paul Chen-Young (Deceased) and others v Eagle Merchant Bank Limited (Jamaica) Ltd and others [2022] UKPC 30. However, the appellants appealed on costs and constitutional redress issues. The appellants did not appeal the judgment of the fresh panel of the Court of Appeal, which declared that the judgment of the previous panel of the Court of Appeal in this matter was a nullity and void. This is because that judgment was delivered by the previous panel more than four years after the hearing and after they would have attained the constitutional ages of retirement. Moreover, the previous panel had not received the requisite permission from the Governor General to continue in office for the purpose of completing outstanding work.

[41.] Counsel states that the Petitioner did not appeal the ruling of the Previous Judge, who, in her discretion, allowed for pleadings out of the time prescribed in the Act. Moreover, the Petitioner has acquiesced to the Court's discretion to extend the time to file and serve pleadings. Counsel explains that section 7(1) of the Act allows for notice to be issued to persons with inconsistent claims. Counsel drew support from the authority of **Jack Donovan Johnson v Sealand Investments Limited SCCivApp No. 161 of 2018** to support his contention on the Court's jurisdiction to extend the time to file and serve pleadings out of the time limits issued by the Previous Judge in accordance with the Act.

[42.] Mr. McKenzie, KC, states that the Petitioner failed to place the notice in a conspicuous place on the Disputed Land to properly give notice to the Second Intended Adverse Claimant, who is the documentary title owner to a portion of the Disputed Land. Moreover, the documentary title documents, having been recorded in the Registry of Records, ought to have been brought to the attention of the Petitioner. The Petitioner did not serve notice on the Second Intended Adverse Claimant as an adjoining land owner/occupier. Accordingly, there was material non-disclosure to an interested party. The Petitioner is seeking to use section 7(2) of the Act to penalize the Second Intended Adverse Claimant when section 7(1) was not followed.

[43.] Counsel states that the public notice issue was vague and erroneous, as it gave a general description of the Subject Lands. The Petitioner filed its Petition in January 2022. However, there is a ruling of Justice Neville Adderley (as he then was) dated 29 February 2012, which touches and concerns issues related to the Disputed Land and the title relative thereto. That Court, in its ruling, held that the Estate of Effie Knowles had a superior title as opposed to Moses Deveaux. The Petitioner could not be seen to be notorious, and the unconcealed possession of the Disputed Land for the minimum statutory period of 12 years commencing 1 March 2012, as 12 years had not passed.

[44.] Counsel further adds that the Petitioner is seeking to suggest that Island Acquisitions Limited (Jorge Diaz) and the Second Intended Adverse Claimant are the same company. While the Second Intended Adverse Claimant's attorneys are the registered office for both companies, the beneficial ownership of each company is different. The Second Intended Adverse Claimant's attorneys were not instructed by Jorge Diaz in the substantive quieting titles action. Additionally, the Second Intended Adverse Claimant's attorneys were served with Notice of the Petition filed by the Petitioner as the registered office of the Second Intended Adverse Claimant or Island Acquisitions Limited. Knowledge that comes to the attention of the registered office does not affect service as the registered agent or registered office acts on the instruction of the client.

[45.] Mr. McKenzie, KC, ultimately contends that the Petitioner is seeking to rehash the issue and arguments relating to the superior title of the Estate of Effie Knowles. The present application is being used to penalize the Second Intended Adverse Claimant and seeks to prevent the Second Intended Adverse Claimant from its claims to the described portion of the Disputed Land.

Issue

[46.] Having heard the oral submissions and reviewed the written submissions of Counsel for the Petitioner and the Intended Adverse Claimants, the Court is satisfied that the sole and salient issue in the present application is whether the Court should exercise its discretion and strike out the statements of adverse claim filed on 23 August 2022 and 13 December 2022, respectively, by the Intended Adverse Claimants.

Law and Discussion

[47.] Land is a precious commodity in The Bahamas. The Bahamas is one of the most desired countries and tourist destinations in the world. It consists of an archipelago of 700 islands and cays renowned for sun, sand, and beautiful beaches. These factors, in part, contribute to the steady appreciation in the value of such land. The issues surrounding land are particularly compounded by the notorious fact that there exists no registered land system in The Bahamas. There exists no absolute ownership of land. Where issues arise as to the ownership of land in The Bahamas, the party who possesses the stronger and better title to the land will succeed notwithstanding that any other party may once have had a stronger or better title than that party claiming the land: **see Ocean Estates Ltd. v Norman Pinder [1969] 2 WLR 1359 at 1363.**

[48.] While the Court may possess the inherent jurisdiction to investigate and determine claims as to the ownership of land in The Bahamas, it does so within the statutory framework of the Quieting Titles Act, Chapter 393 (the “Act”). The Judicial Committee of His Majesty’s Privy Council in **Anthony Armbrister et al v Marion E. Lightbourn et al [2012] UKPC 40**, *inter alia*, explained the purpose and nature of proceedings under the Act, and the necessary caution that must be exercised both by the Court and counsel to prevent abuse thereof. Lord Walker, writing for the Board, expounded at paragraph 7 of that judgment as follows –

[7] The purpose of the 1959 Act is to provide a judicial process for the determination of disputes as to title of land in The Bahamas. The process is initiated by a petition presented by a claimant. The petition is advertised, and adverse claims may be made by rival claimants. The procedure is in the nature of a judicial inquiry, and it ends in judgment in rem, which, subject to appeal, finally settles entitlement to the land, not merely between the parties, but for all purposes. This judicial procedure meets an economic and social need in The Bahamas, where many of the outlying islands were, for much of the Commonwealth’s history, sparsely populated and only sporadically cultivated. Much of the land belonged to landlords who were not permanently resident, and travel was slow. Parcels of land often had no clearly defined boundaries based on comprehensive surveys. 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 17 March 2001). It is no accident that the Judicial Committee has over the years heard many appeals raising questions of title to land in The Bahamas, including *Paradise Beach and Transportation Co. Ltd. v Price Robinson* [1968] AC 1072, *Ocean Estates Ltd. v Pinder* [1969] 2 AC 19, *Higgs v Nassauvian Ltd.* [1975] AC 464 and *Higgs v Leshel Marvas Investment Co. Ltd.* [2009] UKPC 47.

(Emphasis added)

[49.] The Judicial Committee of His Majesty's Privy Council in **Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd** [2018] UKPC 27 again highlighted the necessary caution that must be exercised by both the Court and counsel in proceedings under the Act, to prevent the statutory procedure from being abused. Lord Briggs, writing for the Board, at paragraph 38, adumbrated as follows –

[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 main constraint is that, whereas the vendor and purchaser process affects no one other than themselves, even if a dispute is resolved by the court on a vendor and purchaser summons (for which see section 4 of the Conveyancing Act), the process of quieting titles is designed to lead to a certificate of title which, save for fraud, is good against the whole world, in favour of the person or persons (petitioner or adverse claimants) who succeed in proving 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 like absolute title, of the quality conferred by registered land 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.

(Emphasis added)

[50.] Notably, while the procedure under the Act, is relatively informal and the strict rules of evidence do not apply, directions and time limits fixed by the Court in accordance with the provisions of the Act, particularly, for the filing and service of adverse claims, must be obeyed. The directions and time limits specified by the Court in accordance with the provisions of the Act place an obligation on potential adverse claimants to move with alacrity and due diligence; delay

(however short or long) will defeat the adverse claimant's rival claim to the land seeking to be quieted by a petitioner.

[51.] **Section 6 of the Act** places an obligation on the Court to order that a notice of the petition filed by a petitioner in a claim commenced under the Act to be published in one or more newspapers within or outside of The Bahamas or both as the Court may deem fit. This notice is issued to the world. Once published as directed by the Court, any potential adverse claimant is deemed to have constructive notice of the claim being made by the petitioner under the Act. **Section 6** reads as follows –

6. (1) **Upon the filing of an application under section 3 of the Act the Court shall direct a notice thereof to be published in one or more newspapers within or without The Bahamas or both within or 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 terms within which any adverse claim 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.**

(Emphasis added)

[52.] **Section 7 of the Act**, places an obligation on the Court to order that the petitioner to a claim under the Act notify, by appropriate means, any person, known or unknown, who may have a claim adverse to or inconsistent with that of the petitioner in to or in respect of the whole or part of the land seeking to be claimed by that petitioner. Thereafter, the potential adverse claimant will be deemed to have actual notice of the claim being made by that petitioner under the Act. **Section 7** reads as follows –

7. (1) Where it appears that there is or may be any person, known or unknown, who may have a dower or a right to dower or a claim adverse to or inconsistent with that of the petitioner in to or in respect of the whole or any part of the land mentioned in the petition, the court shall direct a notice to be sent by registered post to or be served personally on that person, his attorneys or agent or to be published in such newspaper or newspapers published either within or without The Bahamas, or both, or to be served in such manner as the court may in any particular case decide. 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 claim must be filed.
- (2) **Any person having dower or a right to dower or an adverse claim or claim not recognised in the petition shall before the expiration of the times fixed respectively in the notices referred to in subsection (1) of**

section 6 of this Act or subsection (1) of this section for the filing of adverse claims, file and serve on the petitioner, or his attorney, a statement of his claim in Form 3 of the Schedule, verified by an affidavit to be filed therewith. The failure of any such person to file and serve a statement of his claim within the time fixed by the respective notices aforesaid shall operate as a bar to such claim.

(Emphasis added)

[53.] The Judicial Committee of His Majesty's Privy Council in **Bannerman Town (supra)**, in highlighting the constraints and opportunities of obtaining a certificate of title under the Act, as opposed to the deduction and proof of title in a vendor and purchaser summons, had a particular observation regarding section 7 of the Act. Lord Briggs at paragraphs 39 and 40 evinced the following observances regarding section 7 of the Act –

[39] ... In sharp contrast with the vendor and purchaser summons procedure, the court is required by section 7(1) of the Act to notify by appropriate means any person, known or unknown, who may have an adverse claim in respect of the whole or any part of the land mentioned in the petition...

[40] Nonetheless the court hearing a petition under the Quieting Titles Act enjoys one major advantage over the court hearing a vendor and purchaser summons. Its power to direct notification and advertisement to potential adverse claimants is coupled by the provision in section 7(2) of the Act that any person's failure to file and serve a statement of an adverse claim within the time specified by the court shall operate as a bar to such claim. This means the court may exercise case management powers to ensure that, by the time of the trial, all persons with a claim can have their claims investigated by the court, or alternatively be barred from pursuing a claim. The result is the court need not be deterred from issuing a certificate of title to the claimant who, among those before the court, appears to have the best title, by any apprehension of a real risk that there may be one or more others, unknown to the court, whose rights in relation to the land would thereby be unjustly infringed. The result is that the court may with confidence grant a certificate of title to a claimant who, in a vendor and purchaser summons, might have failed to prove good marketable title sufficient to justify an order for specific performance, precisely, on the basis that there were unacceptable risks of adverse claims.

[54.] The wording of sections 6 and 7 of the Act was adeptly interpreted and explained by The Bahamas Court of Appeal in **South Shore Investment Co. Ltd. v Hanley and others (Nos. 2 and 6/1966) (1965-70) 1 LRB 73**. In that decision, the Court of Appeal held that sections 6 and 7 are complementary. Section 6(1) provides for public notice to be issued of the fact that there is a

petition to quiet title before the court and for adverse claims to be filed within a specified, whereas section 7(1) provides for individual or particular notice to any person who appear to the court to have a claim inconsistent with that of the petitioner but who are not before the court as adverse claimants. The notice under section 7(1) may be issued at any time up to final judgment. This case concerned five out of eight adverse claimants who had failed to file their respective adverse claims within the time limit set by the notice published in the newspapers under section 6(1) of the Act. Upon applications to extend time, the lower court held that it did not have the jurisdiction to extend the time under section 6(1) of the Act, but ordered pursuant to section 7(1) of the Act that a notice be served on each of the adverse claimants' attorneys stating that his adverse claim must be filed within a specified time. The petitioner appealed against those orders. The appeal was dismissed with costs. Sinclair P at page 74 of that judgment stated as follows –

... I am therefore of the opinion, bearing in mind the object of the statute, that if it appears to the court at any time during the proceedings before final judgment that any person has a claim adverse to or inconsistent with that of the petitioner, the court has a duty to direct a notice to be sent to that person pursuant to section 7(1). That is so whether or not the time limited by the notice published pursuant to section 6(1) has expired. It is method of inviting adverse claims independent of the method prescribed by section 6(1), and failure to file an adverse claim within time under subsection does not operate as a bar to action by the court under section 7(1). It is true that the filing of adverse claims late in proceedings may result in inconvenience, but that is for the legislature to remedy if thought fit.

[55.] Bourke JA further added at page 77 as follows –

... Section 6(1) provides a method of informing members of the public that proceedings have been commenced by a petitioner seeking the grant of a certificate of title to an estate or interest in land. A person having an adverse claim might, for a variety of reasons, including illiteracy, fail to become aware of the impending proceedings from the notice given through the medium of newspapers under section 6(1). So the precaution was provided of allowing for personal service of a notice under section 7(1). There is nothing specific in section 7(1) as to the stage of the proceedings at which such a notice should be served. It is obligatory upon the court to direct the service of such a notice – “Where it appears that there is or may be any person, known or unknown, who may have (an adverse claim). The notice may be served personally, or on the person's attorney or agent, or published in the newspapers, or both, or be served in such a manner as the court may in any particular case decide.

[56.] However, once the individual or particular notice has been issued under section 7 of the Act, any person or persons who fail to file their adverse claims within the time limit specified by that notice, would be barred from claiming an interest to that claim in the proceedings under the

Act. In **True Blue Co. Ltd. v Moss and others (No. 3/1968) (1965-70) 1 LRB 250**, The Bahamas Court of Appeal held that the court has no jurisdiction, inherent or otherwise, to extend the period fixed by the notice issued under section 7(1) of the Act to enable the claim to be revived. In that decision, the adverse claimants had left their respective adverse claims along with the affidavits at the Supreme Court Registry three days after the time limit specified by the notices under section 7(1) of the Act had expired. Upon an application, the lower court judge extended the time for them to file their adverse claims. The petitioner appealed and the appeal was allowed. Sinclair P at pages 253 – 254 pronounced as follows –

To my mind the language is as plain as it could be and is intended to be mandatory so that if an adverse claim is not filed with the time fixed by the notice, there is an absolute bar to that claim in those proceedings. No rule, or even the inherent jurisdiction of the court, can be prayed in aid to extend the time fixed by the notice to enable the claim to be revived.

(Emphasis added)

[57.] However, Bourke JA, in *obiter dictum*, at pages 254 – 255, explored possible alternatives available to adverse claimants who had been barred from proceedings under the Act for their failure to file their adverse claims within the time limit specified by the notice issued under section 7(1) of the Act. Bourke JA remarked as follows –

In the present case the effect is drastic enough for the claimants almost got inside the door before it was closed. They were three days late. It may be, of course, and as to this I express no opinion, that though they can get nowhere as adverse claimants in these proceedings, they can seek a certificate of title in the role of a petitioner under the Quieting Titles Act or as an ordinary plaintiff in a title action *inter partes*. But such course, if open to the respondents in law, would obviously necessitate something in the nature of a successful application for a consolidated inquiry in the first instance suggested (for once a certificate of title is granted there is finality); or an application favourably received for a stay or postponement of the Quieting Titles investigation pending trial and judgment in the title action. But, as is made clear, I venture no firm views on these aspects, which, though interesting, do not strictly arise on this appeal.

[58.] In **Re Musgrove and others (No 29/1968) (1965-70) 2 LRB 292**, The Bahamas Supreme Court held that in order for an adverse claim to be proper and valid, it must be accompanied by a verifying affidavit filed therewith. In that case, the intended adverse claimant had filed a statement of adverse claim on the last day for filing an adverse claim under a notice published under section 6(1) of the Act in a quieting titles action brought by a petitioner, but the affidavit verifying the statement was omitted. The court held that because the statement of adverse claim was not accompanied by a verifying affidavit, no adverse claim was properly before the court. However, Smith J recognized that the claim may be still be admitted under section 7(1) of the Act if an appropriate application was made.

[59.] In **Mount Gottonburg Ltd. v Ryan (No. 41/1968) (1965-70) 2 LRB 333**, The Bahamas Supreme Court held that an adverse claim and its accompanying affidavit must not only be filed within the time specified in the notices, but copies thereof must also, within that same time, be served on the petitioner or his attorneys. The failure to do so operates as a bar to the claim. However, the adverse claim was not struck out on this ground because consideration may be given to directing a notice to issue under section 7(1) of the Act. In that decision, the last day for filing an adverse claim in a quieting titles action brought by the petitioner was 16 July 1968. The adverse claimant filed an adverse claim and affidavit in support on 15 July 1968 but these documents were not served on the petitioners until 23 July 2023. Smith J, in interpreting section 7(2) of the Act, pronounced as follows at page 334 –

The meaning of the subsection is plain and mandatory requiring the adverse claimant not only to file the adverse claim and affidavit in the court within the time specified in the notices, in this instance 16 July 1968, but also within the same time limit to serve copies of both the adverse claim and affidavit on the petitioner or his attorney; and failure to file or failure to serve within the time operates as a bar to the claim. However, if it was apparent to me that the adverse claim disclosed a bona fide claim of substance, I would not strike it out on this ground but would consider directing a notice to issue under s 7(1) of the Act.

[60.] For reasons which will be detailed below, the Court, in the exercise of its discretion, and having regard to the evidence filed herein, the submissions of Counsel for the Petitioner and the Intended Adverse Claimants, the relevant law, and all the circumstances of the present application, is satisfied that the statements of adverse claims filed by the Intended Adverse Claimants ought to be struck out and that the costs of and occasioned by the present application ought to be paid to the Petitioner by the Intended Adverse Claimants to be taxed (if not sooner agreed by the parties).

[61.] The Petitioner commenced the substantive quieting titles action by filing a Petition, which was supported by the requisite pleadings. The Petitioner applied for directions, and the Previous Judge issued the standard directions associated with proceedings commenced under the Act. Those directions, among other things, directed the Petitioner to advertise the Notice of the Petition in the Tribune and Nassau Guardian newspapers at ten (10) day intervals on three (3) occasions, intimating that copies of the plans filed therein may be inspected at the Registry of the Supreme Court and the chambers of the Petitioner's attorneys. Adverse claims were to be filed within thirty (30) days after the date of the last advertisement in the aforesaid Tribune and Nassau Guardian newspapers. This direction to give notice was issued in accordance with section 6(1) of the Act and such notice represented public notice to the world of the substantive quieting titles action commenced by the Petitioner under the Act.

[62.] The Petitioner complied with the directions issued by the Previous Judge. Notice of the Petition filed by the Petitioner was advertised in the Tribune and Nassau Guardian newspapers on 12 and 25 April 2022, and 6 May 2022. Consequently, the Intended Adverse Claimants had until 6 June 2022 to file their respective adverse claims. The Intended Adverse Claimants were deemed

to have constructive notice of the substantive quieting titles action as a result of the notices published in the aforesaid newspapers. The Intended Adverse Claimants subsequently filed statements of adverse claims, albeit out of the time limit specified in the notices published in the aforesaid newspapers. The First Intended Adverse Claimant filed its statement of an adverse claim on 23 August 2022 – some 78 days out of time. The Second Intended Adverse Claimant filed its statement of an adverse claim on 13 December 2022 – some 190 days out of time. The statements of adverse claim, at the time of their respective filings, were not supported by the requisite pleadings. To date, there is no evidence that the First Intended Adverse Claimant has filed the requisite pleadings to support its statement of an adverse claim.

[63.] There is also no evidence that the filing of the First Intended Adverse Claimant's statement of an adverse claim was brought to the attention of the Previous Judge and the Petitioner or its attorneys. The Previous Judge heard the Petitioner on the substantive quieting titles action relative to the Subject Lands and conducted a site visit to the Subject Lands for an inspection thereof. Having been satisfied that the Petitioner had proven its fee simple possession to ten (10) of the eleven (11) parcels, pieces or lots of the Subject Lands and that no adverse claims had been filed relative thereto, the Previous Judge granted the Petitioner Certificates of Title to the ten (10) parcels, pieces or lots of the Subject Lands. The Previous Judge reserved her decision on the remaining parcel, piece, or lot of the Subject Lands, that is, the Disputed Land, after becoming aware of a potential interest thereof by the Second Intended Adverse Claimant.

[64.] Per the evidence, the Petitioner and its attorneys only became aware of the First Intended Adverse Claimant's Adverse Claim when it filed an application by Summons and supported by an affidavit to set aside the Certificates of Title granted to the Petitioner by the Previous Judge. The application was served on the Petitioner's attorneys. Exhibited in the affidavit was the statement of adverse claim. The affidavit did not exhibit the requisite pleadings to support the statement adverse claim.

[65.] While there may be some concern regarding the form and procedure being used by the First Intended Adverse Claimant in its application to set aside the Certificates of Title granted to the Petitioner by the Previous Judge, that application was not heard by the Court and remains extant. Therefore, the reliefs being sought by the First Intended Adverse Claimant in that application cannot be granted without this Court hearing the application and determining whether it has any merit.

[66.] In the Court's view, the First Intended Adverse Claimant has no proper adverse claim before the Court. Firstly, there is no evidence that the statement of an adverse claim filed by the First Intended Adverse Claimant was supported by the requisite pleadings. Secondly, there is no evidence that the statement of an adverse claim was ever served on the Petitioner or its attorneys. To constitute a valid and proper adverse claim, a potential adverse claimant must file and serve on the petitioner or his attorneys in the proceedings a statement of his adverse claim, which ought to be verified by an affidavit and other requisite pleadings. This is not the only flaw with the First Intended Adverse Claimant's statement of adverse claim.

[67.] In oral submissions, Counsel stated that his client is claiming 6 of the 11 parcels. However, the statement of the adverse claim filed by the First Intended Adverse Claimant did not specify the First Intended Adverse Claimant's interest to the Subject Lands nor did it disclose whether the First Intended Adverse Claimant was claiming the whole or a portion of the Subject Lands. Additionally, in the absence of the statutorily-required pleadings to support the statement of an adverse claim, the Court cannot reasonably determine whether the First Intended Adverse Claimant has a *bona fide* claim to the remaining parcel, piece or lot of the Subject Lands, that is, the Disputed Land. Therefore, the Court, at this time, would not exercise its discretion to allow the First Intended Adverse Claimant to file and serve an adverse claim pursuant to section 7(1) of the Act. As it appears from the First Intended Adverse Claimant's submissions, its grievance lies with the parcels, pieces, or lots of the Subject Lands already granted to the Petitioner by Certificates of Title by the Previous Judge. In relation to those 'quieted' parcels, any potential adverse claim to be filed by the First Intended Adverse Claimant would be nugatory. Further, in relation to the Disputed Land (the 11th parcel), any adverse claim would only be good as long as it is filed and served on the petitioner or his attorneys with a statement of the adverse claimant's claim, and that statement is verified and supported by an affidavit and the other requisite pleadings. This must be done before the expiration of the times fixed by the notices issued pursuant to sections 6(1) and/or 7(1) of the Act and before final judgment is entered in the proceedings.

[68.] In my view, as final judgment has already been granted, through the Certificates of Title, concerning the pieces, parcels, or lots of the Subject Lands being disputed by the First Intended Adverse Claimant, an adverse claim is no longer practicable. The First Intended Adverse Claimant which purportedly has a grievance against the Certificates of Title granted to the Petitioner by the Previous Judge, must now engage the Supreme Court, using the proper form and procedure under the Quieting Titles Act to seek to have the Certificates of Title set aside. This course of action is, of course, only available if the First Intended Adverse Claimant has sufficient grounds and cogent evidence to take such a course of action. Cumulatively, it is for these reasons that the Court is satisfied that the statement of an adverse claim filed by the First Intended Adverse Claimant, in the exercise of the Court's discretion, ought to be struck out. For the avoidance of doubt, the First Intended Adverse Claimant's statement of an adverse claim was only struck out, the First Intended Adverse Claimant was not barred from claiming an interest to a portion or the whole of the Disputed Land seeking to be quieted by the Petitioner. If the First Intended Adverse Claimant can show the Court that it has a *bona fide* claim adverse to or inconsistent to the Petitioner's claim regarding the Disputed Land, the Court has the jurisdiction to allow the First Intended Adverse Claimant to file and serve an adverse claim pursuant to section 7(1) of the Act.

[69.] Equally, the Court is not satisfied that the Second Intended Adverse Claimant has a proper adverse claim before the Court. The Second Intended Adverse Claimant, having failed to file and serve its statement of an adverse claim supported by the requisite pleadings on the petitioner or its attorneys within the time limit specified by the public notices advertised in the aforesaid newspapers pursuant to 6(1) of the Act, approached the Previous Judge, before final judgment was entered in the substantive quieting titles action, claiming an interest to a portion of the Disputed

Land. The Previous Judge, exercising her discretion pursuant to section 7(1) of the Act, directed the Second Intended Adverse Claimant to file and serve its statement of an adverse claim along with the requisite pleadings in support thereof by 30 December 2022. The Previous Judge reserved her decision on the Disputed Land. The Previous Judge also directed the Petitioner and the Second Intended Adverse Claimant to provide written submissions by 20 January 2023, and scheduled the hearing of the Petition in relation to the Disputed Land before that Court on 30 January 2023 at 10:00 am.

[70.] There is no evidence that the Second Intended Adverse Claimant ever alerted the Previous Judge at the hearing of 15 December 2022 that the 30 December 2022 deadline would be difficult to meet or that it sought to approach the Court prior to the deadline of 30 December 2022, on an urgency basis or otherwise, to express any such difficulty which may have arisen. The Second Intended Adverse Claimant filed its plan on 24 February 2023 – some 56 days out of time. The plan was not served on the Petitioner’s attorneys until 28 February 2023 – some 60 days out of time. The Second Intended Adverse Claimant filed the Affidavit of Arnold Johnson in support of its statement of an adverse claim on 21 March 2023 – some 81 days out of time. The Affidavit of Arnold Johnson was not served on the Petitioner’s attorneys until 23 March 2023 – some 83 days out of time. There is no evidence before the Court that the Second Intended Adverse Claimant filed and served an abstract of title on the Court or the Petitioner’s attorneys.

[71.] Again, the Second Intended Adverse Claimant failed to file and serve its statement of an adverse claim along with the requisite pleadings in support thereof within the time limits specified by the notices issued in accordance provisions of the Act. The Court is therefore satisfied that it does not have the jurisdiction (inherent or otherwise) to extend the time for the Second Intended Adverse Claimant to file and serve its statement of an adverse claim along with the requisite pleadings in support thereof. The Second Intended Adverse Claimant is therefore barred pursuant to section 7(2) of the Act from claiming a portion of the Disputed Land in the substantive quieting titles action. No rule, or even the Court’s inherent jurisdiction, can be relied upon in aid of extending the time limits fixed by the notices to enable the Second Intended Adverse Claimant to revive its claim. For this reason, the Court, in the exercise of its discretion, is satisfied that the statement of an adverse claim filed by the Second Intended Adverse Claimant ought to be struck out.

[72.] The Bahamas Court of Appeal decision of **Jack Donovan Johnson v Sealand Investments Limited SCCivApp No. 161 of 2018** lends no support to the Second Intended Adverse Claimant’s contentions that the Court has the jurisdiction to extend the time limits fixed by the notices issued in accordance with the provisions of the Act. In that decision, there was never a question of whether the Court had the jurisdiction to extend the time limits fixed by the notices issued in accordance with the provisions of the Act. The language of section 7 of the Act is plain and mandatory. Unless remedied by the Parliament of The Bahamas, an adverse claim not filed and served within the time limits fixed by the notices issued under sections 6(1) and 7(1) of the Act operates an absolute bar to that claim under the Act.

[73.] Moreover, the Second Intended Adverse Claimant's argument that a fresh hearing is required for the hearing of the Petition relative to the Disputed Land is misconceived. It is quite evident from the directions issued by the Previous Judge on 15 December 2022 that there would be a fresh hearing of the Petition in relation to the Disputed Land. Even if that was not the case, the argument does not lend assistance to the Second Intended Adverse Claimant. The Second Intended Adverse Claimant had two opportunities to file and serve an adverse claim to answer the substantive quieting titles action. The Second Intended Adverse Claimant failed to comply with the time limits fixed by the notices issued in accordance with the provisions of the Act. It is irrelevant whether the Second Intended Adverse Claimant's failure was inordinate or otherwise, or whether the Petitioner would suffer any prejudice if the Court allowed the Second Intended Adverse Claimant to file and serve an adverse claim out of time. The Court is of the view that it has no jurisdiction to extend the time limit fixed by the notices issued both in accordance with section 6(1) and 7(1) of the Act. The Second Intended Adverse Claimant is the author of its misfortune. It cannot now seek to have a third chance.

Conclusion

[74.] In light of the foregoing reasons and circumstances, the Court orders that –

- i. the statement of an adverse claim filed by the First Intended Adverse Claimant on 23 August 2022 shall stand as struck out;
- ii. the statement of an adverse claim filed by the Second Intended Adverse Claimant on 13 December 2022 shall stand as struck out; and
- iii. the costs of and occasioned by the present application be paid to the Petitioner by the Intended Adverse Claimants to be taxed (if not sooner agreed by the parties).

[75.] As the next step, further directions are required to be issued by the Court regarding the hearing of the Petition in relation to the Disputed Land. A date shall be fixed for the directions hearing.

Dated 23 September 2025



Simone I. Fitzcharles
Justice