

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2023/CLE/qui/00338

IN THE MATTER OF all that piece parcel or lot of land known as Lumber Cay situate approximately Seven Hundred (700) feet south of Staniel Cay containing Thirty (30) acres and all that piece parcel or lot of land known as Jim Cay containing Eight (8) acres situated North of Lansing Cay, between Musher and Hog Cay, Exuma, one of the Islands of the Commonwealth of The Bahamas.

AND

IN THE MATTER of the Quieting Titles Act, 1959.

AND

IN THE MATTER of the Petition of **Samuel Burrows**

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Mr. Andrew Allen for the Petitioner
Mr. Ashley Williams for the Intended Adverse Claimant

Hearing: On Papers

RULING

**On Application to Admit Adverse Claim
Pursuant to s. 7(1) Quieting Titles Act 1959**

FITZCHARLES J:

Introduction

[1.] This is an application by Ambrose Nixon (the “Intended Adverse Claimant” or “Mr Ambrose Nixon”), that he be permitted to bring an Adverse Claim in these proceedings which were commenced pursuant to the Quieting Titles Act 1959. The application is contested by the Petitioner, Samuel Burrows (the “Petitioner” or “Mr Burrows”), who seeks ultimately to obtain a Certificate of Title in respect of “ALL THAT piece parcel or lot of land known as Lumber Cay situate approximately Seven Hundred (700) feet South of Staniel Cay containing Thirty (30) acres and ALL THAT piece parcel or lot of land known as Jim Cay containing Eight (8) acres situated North of Lansing Cay, between Musha and Hog Cay, Exuma, one of the islands of the Commonwealth of The Bahamas” (the “Subject Property”).

Relevant Events & Background

[2.] Historically, this is not the first battle that the Petitioner and the Intended Adverse Claimant, amongst others, have had over title to the Subject Property.

[3.] Mr Ambrose Nixon, along with his brothers, Wayde Nixon, Troy Nixon and Harvey Nixon, as was shown in Supreme Court Action No. 2018/CLE/gen/00540, are Executors and beneficiaries of the Estate of King Richard Nixon (the “Executors and beneficiaries”). In that Action they claimed to have a beneficial interest in the Subject Property and as such, on the ground of fraud, sought to set aside the Certificate of Title to the Subject Property which was obtained in a prior action (2016/CLE/qui/01247) by Mr Burrows (uncle of the Executors and beneficiaries) and Mr Gardie Nixon (eldest brother of the Executors and beneficiaries). After the Certificate of Title was obtained by Mr Gardie Nixon and Mr Burrows, they purported to sell a portion of the Subject Property on 1 December 2017 to a company called Archipelago Development & Resorts III Co. Ltd., the Third Defendant in Supreme Court Action No. 2018/CLE/gen/00540, and to sell another portion of the Subject Property on 15 October 2017 to a company called Jim Cay Company Ltd, the Fifth Defendant in Supreme Court Action No. 2018/CLE/gen/00540. In that Action, *Winder, CJ* in his 12 September 2022 judgment, granted the relief sought by the Executors and beneficiaries of the Estate of King Richard Nixon against Mr Burrows and Mr Gardie Nixon. The following declarations were made by the Court:

“(1) I declare that the Certificate of Title granted to the First and Second Defendants in 2016/CLE/qui/01247...must be set aside as the same was procured by fraud.

“(2) I declare that the Conveyance dated 15 October 2017 between Gardie [Nixon] and Samuel [Burrows] of the one part and Jim Cay Company Ltd be deemed null and void and of no effect.

“(3) I declare that the Conveyance dated 1 December 2017 between Gardie [Nixon] and Samuel [Burrows] be deemed null and void and of no effect...”.

[4.] Having had his Certificate of Title thus set aside, the Petitioner subsequently brought this fresh action by Petition filed on 4 May 2023, to quiet the title to the Subject Property. The Petition is supported by the Affidavit of Samuel Burrows, the Affidavit of Arlington Percentie and the Affidavit of Wellington Andrews all filed on 4 May 2023. The Petitioner also filed a Plan and an Abstract of Title on 4 May 2023.

[5.] Pursuant to a Summons for Directions filed on 4 May 2023, and being aware of the previous judgment in Action No. 2018/CLE/gen/00540, the Court gave directions to Mr Allen on 19 July 2023, in part, as follows:

1. “That notice in the usual form be advertised at ten (10) day intervals on three consecutive occasions at least one week apart in the Nassau Guardian and Tribune intimating that copies of the plan filed herein may be inspected at the Registry of the Supreme Court and at the Chambers of Attorney for the Petitioner (202 Church Street, Sandypoint, Nassau, The Bahamas.
2. “That Notice of Adverse Claims are to be filed by the 30th day after the last day on which the advertisement appears in the newspapers.
3. “That a copy of the said notice be served upon:
 - (a) The Department of Lands and Surveys
 - ...
 - (c) The adjoining owners / occupiers and occupants of the land, if any;
 - ...
 - (g) The Plaintiffs in Action No 540/2018 namely Wayde Nixon, Troy Nixon, Ambrose Nixon and the Estate of King Nixon...”.

[6.] The Petitioner complied with the advertisement Order made pursuant to section 6(1) of the Quieting Titles Act in that he posted a Notice of the proceedings and for adverse claims in The Tribune on 25th July 2023, 4th August 2023 and 14th August 2023 and in the Nassau Guardian on 2, 11 and 22 August 2023. This is gleaned from the Amended Affidavit of Compliance filed on 27 February 2024. Based on the date of the final publication of the notice, 22 August 2023, adverse claims were due to be filed by Thursday 21 September 2023. However, the Court also ordered that certain specified persons be served personally by the Petitioner with the notice. Amongst those persons to be served personally were adjoining owners / occupiers and occupants of the Subject Property, if any...and the Plaintiffs in Action No 540 / 2018 namely Wayde Nixon, Troy Nixon, Ambrose Nixon and the Estate of King Nixon, which also included Harvey Nixon.

[7.] In relation to the personal service ordered by the Court, by an Affidavit of Service filed on 27 February 2024, sworn by Inspector Trevor Curtis of Staniel Cay, Exuma, the affiant confirmed that Wayde Nixon was served on 8 August 2023 with the Notice, Order of the Court and the Plan filed in this matter. Further, by an Affidavit of Service filed on 27 February 2024, sworn by PC1860 Evans, the affiant confirmed that on 2 August 2023, he intended to serve personally Mr Harvey Nixon, Mr Troy Nixon and Mr Ambrose Nixon with the Notice, Order and Plan, but succeeded in serving only Troy Nixon at that time at what the affiant called “their family residence.” The affiant went on to state, in material part:

“2. That only Troy Nixon was present at the time and accepted the documents.

...

“5. That I have been unable to locate Harvey Nixon and Ambrose Nixon despite my numerous efforts and in my opinion they are seeking to evade service.”

[8.] The Petitioner invites the Court to accept that numerous efforts have been made to serve each plaintiff in Action No. 2018/CLE/gen/00540 and the Estate of King Nixon and that such persons have sought to evade service. This allegation of evasion of service is contested by the Intended Adverse Claimant who, by the Third Affidavit of Ambrose Nixon sworn by the Intended Adverse Claimant and filed on 19 April 2024, stated:

“6. That in the preparation of this my Third Affidavit I also reviewed the Affidavit of Compliance filed by Mr Andrew C Allen, Counsel for the Petitioner herein and note that the Court directed that myself and the other Personal Representatives of the aforementioned Estate be personally served with Notice of the quieting action. I can state unequivocally that I have never been served with any such notice nor have I been evading the personal service of any such notice upon myself despite certain allegations which were made to the Court by Mr Andrew C Allen.”

[9.] On 17 August 2023, the Intended Adverse Claimant published the following notice on page 7 of The Tribune:

“The Estate of King Richard Nixon hereby informs the General Public that Attorney Andrew C Allen, Gardie Richardson Nixon, Gulon Justice Nixon, and Samuel Burrows do not possess the legal authority to represent the Estate of King Richard Nixon. Any transactions whether past or present, involving property purportedly belonging to the Estate of King Richard Nixon and conducted by the aforementioned individual are unauthorized by the estate’s legal Executors. These actions are alleged to be carried out illegally and without the consent of the estate’s legitimate Representatives. We urge all concerned parties to exercise caution and refrain from engaging in any transactions with the aforementioned individual relating to the Estate and properties of King Richard Nixon. Kindly note that the Executor of the King Richard Nixon Estate has not been involved in the sale or leasing of any properties within the Estates. Furthermore we would like to inform the Public that anyone occupying property belonging to the Estates of King Richard

Nixon located throughout The Bahamas Islands and Cays without prior permission from the legal Executors is engaging in an unauthorized and illegal act, and the Estate will pursue legal actions to secure the Estates assets and remove all trespassers. Mr Ambrose Nixon, Executor, 1-242...”.

[10.] The Petitioner refers to this publication by the Intended Adverse Claimant (the “advertisement”) as an actual acknowledgement of notice of this action. Therefore the question arises whether the advertisement provides adequate proof the Intended Adverse Claimant was notified of this action and whether it satisfies the compliance requirement with terms of the Order of the Court made on 19 July 2023 for personal service of the Notice on the Intended Adverse Claimant.

[11.] For the Petitioner, Counsel also points out in the Amended Affidavit of Compliance, a news item published in The Tribune on 18 August 2023, on the basis of which he contends that the Intended Adverse Claimant acknowledged notice of these proceedings. The article set out that remarks were made by the Intended Adverse Claimant to the effect that these proceedings are a “mockery of justice” and a “waste of the court’s time...given the previous reversal the duo [the Petitioner and Mr Gardie Nixon] suffered at the Chief Justice’s hands.” The article also set out that “[p]ointing to the time and money spent by King Nixon’s estate in dealing with rival land ownership claims, Ambrose Nixon told this newspaper that the estate will now file an adverse claim in response to Mr Burrows’ action and seek to have the matter struck out.”

[12.] The Intended Adverse Claimant states in the Third Affidavit of Ambrose Nixon that it was only as a result of being contacted by Mr Hartnell of The Tribune that he became aware that the Petitioner had commenced another action relating to the Subject Property. He claims he was never personally served with any notice as directed by the Court, and contends that the Court should adopt the approach to give a time limit to bar any adverse claim after the Petitioner has fully complied with the Order of the Court.

[13.] On 13 February 2024 the Intended Adverse Claimant filed an adverse claim, which was subsequently served on Counsel for the Petitioner on 16 February 2024. Also on 13 February 2024 the Intended Adverse Claimant filed an application to strike out the Petition on the grounds it is frivolous, vexatious, scandalous or an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings. In his supporting Affidavit filed on 13 February 2024, the Intended Adverse Claimant exhibited the Certificate As To Grant Probate issued to himself and his brothers Harvey Nixon, Troy Nixon and Wayde James Nixon as Executors of the Estate of King Richard Nixon. It also exhibits a copy of the Judgment of *Winder CJ* in 2018/CLE/gen/00540. The adverse claim of Mr Ambrose Nixon is set out as follows:

“ AMBROSE NIXON in his capacity as Personal Representative of King Richard Nixon claims that the Estate of King Richard Nixon claims to be the owner in fee simple absolute of ALL THAT piece parcel of (sic) of land known as Lumber Cay situate approximately seven hundred (700) feet south of Staniel Cay containing Thirty (30) acres and ALL THAT piece parcel or lot of land known as Jim Cay

containing Eight (8) acres situated North of Lansing Cay, between Musher and Hog Cay, Exuma, one of the Islands of the Commonwealth of The Bahamas.

Dated 13th day of February, A.D. 2024...”.

[14.] Subsequently, on 22 February 2024 an adverse claim was also filed by the Office of the Attorney General on behalf of the Department of Crown land in the following terms:

“TAKE NOTICE THAT THE CROWN/MINISTER with responsibility OF LANDS claims to be beneficial owner of the fee simple to all that piece parcel or lot of land being Lumber Cay of the said Petition by virtue of documentary and possessory title.

Dated this 13th day of February A.D. 2024”.

[15.] In relation to the questions now before the Court, in addition to the affidavits referred to above, the evidence presented to the Court includes the following:

- (1) the Affidavits of Ambrose Nixon filed on 13 February 2024, 22 March 2024 and 19 April 2024 all filed for the Intended Adverse Claimant; and
- (2) the Affidavit of Compliance filed on 26 February 2024, the Amended Affidavit of Compliance filed on 27 February 2024, the Supplemental Affidavit of Markera Munroe filed on 3 May 2024, the Amended Supplemental Affidavit of Markera Munroe filed on 7 May 2024 and the Supplemental Amended Affidavit of Compliance filed on 16 January 2026 all filed for the Petitioner.

Broad Issue

[16.] The main issue is whether the Court can, and if so, should, allow the Intended Adverse Claimant to proceed with an adverse claim in these proceedings.

Contentions of the Parties

[17.] Mr Ashley Williams, Counsel for the Intended Adverse Claimant contends that the Court has a wide discretionary power to allow adverse claims up to the time that a Certificate of Title is granted. He cites in support of this proposition the judgment of *Charles J* (as she then was) in the **Matter of the Petition of Octavius Efford Kemp** (2012/CLE/qui/01337).

[18.] Mr Williams also directed the Court’s attention to **Adderley v Yamacraw Beach Estates Ltd** BS 1980 CA 6 and points out that the Court directed the Petitioner to effect personal service on personal representatives including Ambrose Nixon. This direction, he contends, was not complied with by the Petitioner. Therefore, the timeline under the Notice has not begun to run, and the Court should exercise its discretion to allow the Intended Adverse Claimant to enter this action.

[19.] For the Intended Adverse Claimant, Mr Williams contends that since the Petitioner filed an Affidavit of Compliance after the Intended Adverse Claimant filed his adverse claim on 12 February 2024, the filing of the Affidavit of Compliance constitutes a fresh step which regularizes the adverse claim. In support of this proposition, Mr Williams relies upon the decision of *Marques J* in **Jeudi v Hanna et al** BS 1995 SC 16.

[20.] Mr Andrew Allen, Counsel for the Petitioner (who was also assisted by Mr Craig Butler) argues Mr Ambrose Nixon is seeking to join this action as an adverse claimant on behalf of the Estate of King Richard Nixon and not in his personal capacity, so the issue as to notice is a narrow one. He states that Troy Nixon was served with all of the relevant documents and that Harvey and Ambrose Nixon were not served, but that the process server attempted to serve them and formed the opinion they were evading service. Counsel contends that the service effected on Troy and Wayde Nixon was effective service on the Estate because there is no requirement in the Quieting Titles Act or the Supreme Court Civil Procedure Rules that service on an Estate must be effected on each Executor or Administrator.

[21.] Mr Allen asserts that the advertisement placed by Mr Ambrose Nixon in The Tribune on 17 August 2023 clearly demonstrates he had notice of the proceedings, despite the fact he was not personally served. It is argued he is now absolutely barred from entering the proceedings as an adverse claimant because the deadline specified in the **section 6(1)** published Notice has elapsed. Mr Allen cites **sections 7(1)** and **7(2)** of the **Quieting Titles Act** and the case of **True Blue Co Ltd v Moss** CA No 3 of 1968 1 LRB (1965-70) page 250. It was contended that the **Octavius Efford Kemp** case and the **Adderley** case relied on by the Intended Adverse Claimant are distinguishable and therefore inapplicable to the present case.

[22.] Finally, Mr Allen also asserts that at this stage, the Intended Adverse Claimant should have established that he has prima facie title to the Subject Property. It is admitted by Counsel that the principle applies to proceedings to set aside a certificate of title, but it is contended that the Intended Adverse Claimant should, before being permitted to file an adverse claim, show that there is a connection between the Subject Property and the Estate of King Nixon in order to demonstrate a prospect of success. It is argued that Mr Ambrose Nixon shows only that in Supreme Court Action No 2018/CLE/gen/00540 he, along with the other Executors and beneficiaries, successfully set aside the Petitioner's Certificate of Title. Mr Allen asserts that this turned on grounds unrelated to the question of the Estate's title to the Subject Property and no finding was made that the said Estate had any such interest. It is further contended that the Intended Adverse Claimant also only shows that the Estate was probated with him as an Executor.

[23.] In support of this point, Mr Allen cites the position adopted by Blake J in **Genesis Investment Ltd v Hanley** [1970-80] 1 LRB 37 at 41 which was enunciated by James Smith J in **Johnson v Exuma Estates Limited** [1965-70] 1 LRB 214, that where the person seeking an order to set aside a Certificate of Title for fraud was not a party to the proceedings under the Quieting Titles Act, such as the appellants in that case, he must establish, amongst other factors, that he has an interest in the land which is likely to defeat that in respect of which a Certificate of Title was granted by the court. Counsel also asks the Court to consider that the Intended Adverse Claimant would need to adduce a good root of title on behalf of the Estate. **Scott E Findeisen et al v Wahoo Resort Foundation** SCCivApp. No. 64 of 2020 is also relied upon. He refers to **Megarry and Wade's Law of Real Property** (4th ed) as to what is required, namely "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...”. Counsel asserts that as the Intended Adverse Claimant has established neither a documentary nor possessory right, he ought not to be allowed time to enter the action as an adverse claimant.

Law and Discussion

[24.] The appropriate starting point must be the **Quieting Titles Act, 1959, Chapter 393**, which governs applications to ‘quiet’ or obtain a certificate of title which reflects a title sufficiently proven to exist, whether by way of possession or documents in relation to land. The relevant provisions of the Quieting Titles Act follow:

“3. Any person who claims to have any estate or interest in land may apply to the court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted by the court in accordance with the provisions of this Act.

...

“6. (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.

“7. (1) Where it appears that there is or may be 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 any part of the land mentioned in the petition, the court shall direct a notice to be sent by registered post to or to be served personally on that person, his attorney 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 claims must be filed.

“ (2) Any person having ... an adverse claim or a 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).

[25.] Additionally, the **Quieting Titles Rules** heralded by **section 29** of the Act and made pursuant to the rule-making power conferred by **section 75** of the **Supreme Court Act**, in material part, provide:

“3. Upon filing an application under section 3 of the Act, the petitioner shall apply *ex parte* to the court –

...

“(c) for directions as to the newspaper or newspapers in which a notice of the application is to be filed in accordance with the provisions of section 6(1) or of section 7(1) of the Act;

“(d) for directions as to the persons (if any) to whom notices are to be sent or served in accordance with the provisions of section 7(1) of the Act;

“(e) for directions as to the mode of sending or service of any notices such as are mentioned in subparagraph (d) of this rule;

“(f) for directions as to the time following the publication or sending or service of any notice such as is mentioned above within which adverse claims must be filed;

...

“8. The court may at any stage of the proceedings before the completion of the hearing of an application vary or rescind any such directions as are mentioned above and may make such new or further directions as to any of the matters referred to in Rule 3 as it shall think fit.”

(Emphasis added).

[26.] At the heart of this dispute is the issue whether the Court is satisfied that the Intended Adverse Claimant was notified, not only of these proceedings but also of the deadline prescribed by the Order of the Court made on made on 19 July 2023 and filed on 28 July 2023, for the filing of adverse claims.

[27.] The Petitioner duly advertised the Notice in The Tribune and the Nassau Guardian as ordered by the Court. However, it is accepted that personal service of the Notice as was also ordered by the Court was not effected on Mr Harvey Nixon, one of the Executors of the Estate of King Richard Nixon, or on Mr Ambrose Nixon, the Intended Adverse Claimant.

[28.] The Petitioner contends that Mr Ambrose Nixon’s published advertisement demonstrates that he knew about the proceedings. A review of the contents of the advertisement does not reveal any reference to these proceedings or any existing court proceedings. The advertisement appears to be a notification to the general public, the gist of which is that Andrew Allen, Samuel Burrows and other persons (who are not parties to the current proceedings before this Court), have no permission to represent the Estate of King Richard Nixon and no authority to occupy, sell or lease lands purported to be within the Estate. The public is warned not to engage in any such transactions with those persons concerning land within the Estate because the legal Executors of the Estate have not authorised those activities or transactions. Further, the advertisement warns that all trespassers to such land will be removed and legal action will be taken against them.

[29.] This advertisement in itself does not unequivocally substantiate that Mr Ambrose Nixon was notified of these proceedings or of the deadline for filing an adverse claim as set out in the Notice.

[30.] The Intended Adverse Claimant was also contacted by The Tribune for comments in relation to a newly filed claim for title to the Subject Property by the Petitioner. The Intended Adverse Claimant admits it was at this time that he became aware that these proceedings existed. He gave his comments to the publication. The article sets out that Ambrose Nixon stated that he would file an adverse claim and seek to have the matter struck out. At that time it is purported he complained about the time and expense to which he was put in the former proceedings when the Estate successfully overturned the Petitioner's Certificate of Title to the Subject Property.

[31.] The Court does not consider that the news article which was published in The Tribune on 18 August 2023 is proof positive that the Intended Adverse Claimant had seen the published Notice and was aware of the deadline contained therein for the filing of adverse claims. Put at its highest, one can say that the publication alleges he was aware that proceedings were on foot on the date of the interview. However, there is no indication the Intended Adverse Claimant knew of the specific terms of the Notice inclusive of the filing deadline. It was for the purpose of avoiding such problems and to ensure all parties who claimed to have an interest in the Subject Property were personally notified, that the Court specifically ordered that Mr Ambrose Nixon and each of his brothers who were Plaintiffs in Supreme Court Action 2018/CLE/gen/00540 and the Estate of King Richard Nixon were to be served personally with the Notice in these proceedings.

[32.] The Court is not satisfied that there is any sufficient evidence that the Intended Adverse Claimant was aware of the contents of the Notice, inclusive of the filing deadline. At best, it appears that during August 2023 he became aware that proceedings were taken out again by the same party whose certificate of title was set aside by the Court.

[33.] The Petitioner further posits that service on two of the Executors was sufficient to serve all Executors of the Estate, and that there is no legal requirement to serve all Executors. No authority is cited by the Petitioner's Counsel to support this argument, but it is asserted that there is no such requirement in the **Quieting Titles Act** or the current rules governing civil procedure.

[34.] The **Quieting Titles Act** and the **Quieting Titles Rules** do not address the issue of service of executors specifically. Even in probate proceedings, there is no general rule in the legislation or case law that deems service on one executor to be effective service on all in contentious proceedings. However, what is of true materiality is that from the provisions of the Quieting Titles legislation set out above, it is clear that the Court has the power to direct how service of the Notice is to be effected. This power was exercised by the Court in this case. The history of the disputes in relation to the Subject Property which culminated in the judgment of *Winder CJ* prompted the Court to make its Order as to service on persons who had an interest. It was anticipated that this matter would or could be vigorously contested. The Order had the effect that the Petitioner was bound to serve all persons or entities enumerated in the Order made on 19 July 2023, in the manner ordered by the Court. This is the short answer to the issue of whether the Petitioner was obligated to serve Ambrose Nixon and his co-Executors.

[35.] The Petitioner argues that the case of **True Blue Company Limited v Arlington Moss et al** No. 3 of 1968, (1965-70) 1 LRB 250 is definitive of the question whether the Intended Adverse Claimant should be allowed to participate in these proceedings. It is submitted that the Intended Adverse Claimant disobeyed the deadline for filing of adverse claims set out in the published Notice. As such, the argument runs that the Court of Appeal’s decision in **True Blue** would apply. The decision is oft-cited in matters involving quieting titles. In that case, the core question was whether **section 7(2)** of the **Quieting Titles Act** is mandatory and has the effect of absolutely barring adverse claims filed after the expiry of the deadline fixed by the notice. There the Court of Appeal opined:

“The language of section 7 of Quieting Titles Act is plain and is intended to be mandatory so that if an adverse claim is not filed within the time fixed by the Notice, there was an absolute bar to that claim proceeding under the Quieting Titles Act. The provisions as to the time limits in section 7(2) were mandatory and there was no inherent power to extend them. No rule or even the inherent jurisdiction of the court could be prayed in aid to extend the time fixed by the notice to enable the claim to be revived.”

[36.] In the Court’s view, the issue in this application is not one of disobedience in relation to the time limit prescribed by the Court. It is one of giving Notice. The Intended Adverse Claimant would have had to be served with the Notice in the manner ordered by the Court so as to be imbued with knowledge of the time limit to file his adverse claim. The Court calls to mind the words of *Winder J* (as he then was) in his 7 December 2021 decision in the matter of the **Petition of Bahamas Trading Post Inc** (2013/CLE/qui/01041), in which the Court stated:

“[11] ...

(3) **True Blue** is not an authority for the proposition that Adverse Claims filed out of time are barred in every circumstance. Rather, the effect of **True Blue** is that where an Adverse Claimant fails to comply with the directions of the Court in a Section 7 Notice, as to the filing and service of its adverse claim, the adverse claim is barred.”

[37.] The position that the Intended Adverse Claimant in this matter disobeyed the time limit has not been adequately made out by the Petitioner. It has been contended that Mr Ambrose Nixon has evaded service, and that “numerous attempts” were made to serve the Notice on him personally as ordered by the Court.

[38.] Some guidance as to the expectation of the Court when a litigant seeks to persuade the Court that a person is evading service may be found in the rubric at paragraph 65/4/5 of the UK Supreme Court Practice 1982 on ‘Evading Service’ as follows:

“The Master will not make an order for substituted service on the mere statement that the defendant is evading service. The grounds for the statement must be given in the affidavit in support, which must state the efforts which have been made to

find the defendant, and the reasons for believing that he is keeping out of the way to evade service.”

[39.] Having considered all relevant matters, I am not satisfied with the quality of the evidence produced by the Petitioner as to purported evasion of service by Harvey Nixon and Ambrose Nixon. There is no enumeration of dates upon which the alleged “numerous efforts” were engaged by the affiant. Neither is there any detail provided as to efforts made, places attended and information gleaned or relied upon as to the whereabouts of the persons to be served personally. Lacking also are any details of the events that occurred which convinced the affiant that Harvey Nixon and Ambrose Nixon were avoiding service. The evidence as to how they are evading service has not been produced. Evidence of these factors ought to have been supplied so as to persuade the Court of the accuracy of the opinion of the affiant in relation to his bids to serve those persons personally as ordered by the Court. The Court is merely told that the affiant attended the family home on one occasion – 2 August 2023, to serve the documents and that there have been “numerous efforts”, without more. Further, taking into consideration the actions of Mr Ambrose Nixon thus far, he does not strike the Court as one who is running or who intends to run from the fray. In the circumstances, the Court is not satisfied that the Order it made as to personal service has been complied with completely. Moreover, no application has been advanced by the Petitioner to date for directions as to an alternative mode of service on those persons specifically mentioned in paragraph 3(g) of the Court’s Order made on 19 July 2023. Such an application would be possible pursuant to Rule 3(e) of the Quieting Titles Rules 1959.

[40.] Equally, the Court is not persuaded by the argument that before the Intended Adverse Claimant is permitted to enter the action he must demonstrate that he has title which is likely to defeat other parties in the action. To support this argument, the Petitioner has in part relied upon authorities which relate to proceedings to set aside a certificate of title. It is obvious why the law would require a litigant who seeks to attack a certificate of title, already granted by a court in previous Quieting Titles proceedings to which he was not a party, to demonstrate he has an interest likely to displace that of the owner of such certificate. But in this case, it is erroneous to seek to apply those arguments to the current situation of the Intended Adverse Claimant who has not yet been permitted to enter the action, and as such, has not filed supporting evidence, a plan or an abstract of title. These documents, together with a properly filed statement of his case and verifying affidavit as required by **section 7(2) of the Quieting Titles Act**, would then enable the Court to evaluate the viability of his case alongside other claims in the action. Apart from this, I observe that in relation to the very same property (which I have referred to as the Subject Property in this action), the Court in 2018/CLE/gen/00540 considered the Intended Adverse Claimant and the other Executors and beneficiaries to have demonstrated a sufficient interest to be entertained on the arguments which prevailed to set aside the previous Certificate of Title obtained by the Petitioner and Mr Gardie Nixon.

[41.] As the Court is not satisfied that Ambrose Nixon evaded service, or that the Petitioner served him personally with the Notice in compliance with the Order of the Court, or that it has been proven that the Notice and the time limit therein came to his attention in any other way, the Court is of the opinion that the Intended Adverse Claimant should be given leave to file his adverse claim and supporting documents within a specified time limit so as to be given an opportunity to

advance the case of the Executors and beneficiaries of the Estate of King Richard Nixon. There was no deadline imposed by the Court for service of the Notice upon those who were to be personally served therewith. Clearly, if the Petitioner could not serve those persons with such Notice personally before 21 September 2023, time would be required for any adverse claimant served after that date to lodge an adverse claim, and such person would have had to approach the Court for leave to enter the action.

[42.] In the circumstances, the Court orders and directs that:

- (1) The Petitioner shall serve Mr Ambrose Nixon or his Counsel with the Notice, the Order of the Court made on 19 July 2023 and the Plan filed by the Petitioner on or before 03 February 2026 pursuant to section 7(1) of the Quieting Titles Act;
- (2) Mr Ambrose Nixon shall on or before Tuesday 17 February 2026 file and serve on all other parties to these proceedings, an Adverse Claim with a verifying affidavit, any supporting affidavits and documents upon which the Estate of King Richard Nixon intends to rely, an Abstract of Title and a Plan, unless the Plan to be produced will be a duplication of the Plan relied upon by the Petitioner;
- (3) Costs shall be in the cause;
- (4) The parties shall attend before the Court to receive directions in relation to lodging and service of documents and scheduling of currently extant applications at 10:30 am on 19 February 2026 or so soon thereafter as the matter can be heard.

Dated 26 January 2026



Simone I. Fitzcharles
Justice