

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division

2016/CLE/gen/01346

BETWEEN

DELAPORTE POINT LIMITED

Plaintiff

-AND-

(1) KING ENTERPRISES LIMITED

First Defendant

AND

LEONETTE FERGUSON

Second Defendant

Before: The Honourable Madam Senior Justice Indra H. Charles

Appearances: Mrs. Eugeina Butler of Providence Law for the Plaintiff
Mr. Keith Major Jr. and Mr. David Hanna of Higgs & Johnson for the
Second Defendant
The First Defendant not participating as a result of a Judgment on
Admission already entered against the Company on 21 July 2017

Hearing Dates: 13 May 2021, 22 September 2021

Civil – Plaintiff seeks management fees against owner of condominium unit – Judgment in admission entered against First Defendant (owner on record) in the presence of Second Defendant – No objection from Second Defendant – First Defendant defaulted - Judgment debt unsatisfied – Receiver appointed - Receiver moved in to sell Unit – Second Defendant intervened with unstamped and unrecorded conveyance claiming to be owner – Onus on Second Defendant to prove ownership of Unit – Section 38 (H) of the Value Added Tax Act, 2014, s 38 (as amended) – Registration of Record Act, Ch. 187 s. 10

The Plaintiff commenced this action against the Defendants (both assert to be the owner of Unit H-9B (“the Unit”) of its condominium complex) claiming the payment of management fees of the Unit assessed as at 5 September 2016 to be \$36,849.19 as well

as unrestricted access to the Unit to effect necessary repairs so that it does not negatively impact the adjoining units and the entire Condominium community.

In their Defence, both Defendants admit that the First Defendant is the owner of record of the Unit. Further, the Defendants neither admit nor deny that the Second Defendant is the current owner save to the extent of confirming that she has advanced funds to the First Defendant in respect of the Unit.

On 21 July 2017, in the presence of the Second Defendant, the First Defendant, through its Counsel, admitted the judgment debt (“Judgment on Admission”). Judgment on Admission was therefore entered against the First Defendant. The Second Defendant, who was previously represented by the same Counsel as the First Defendant, appeared pro se on this day and did not object to Judgment being entered against the First Defendant. Subsequently, the Plaintiff applied to discontinue the action against the Second Defendant.

After the First Defendant defaulted, the Plaintiff came back to Court seeking the appointment of a Receiver to sell the Unit. As the Receiver was negotiating a sale, the Second Defendant intervened claiming ownership of the Unit. She presented an unstamped and unrecorded conveyance made in February 2015 between the President and Director of the First Defendant and her. It also appeared from the Plaintiff’s evidence that the First Defendant’s conveyance from its Vendor on 15 January 1990 may also have been unstamped and unrecorded.

The Plaintiff, in a quandary to recover its management fees from “the owner”, approached the Court seeking (i) a Declaration to reinstate the Second Defendant to the action; (ii) a Declaration that the Second Defendant is the legal and beneficial owner of the Unit and (iii) Judgment to be entered against the Second Defendant for the outstanding management fees, accumulated interest and costs.

HELD: Dismissing the Plaintiff’s Summons to declare the Second Defendant the owner of Unit No. H-9B and finding that the Plaintiff is entitled to proceed with the sale of the Unit through the Receiver unless the Judgment on Admission dated 21 July 2017 (which continues to accrue from the date of judgment to the date of payment) against the First Defendant is satisfied on or before 31 October 2022.

1. This Court is not *functus officio* to hear the Plaintiff’s Summons filed 6 May 2019 seeking, (i) a Declaration to reinstate the Second Defendant to the action; (ii) a Declaration that the Second Defendant is the legal and beneficial owner of the Unit

and (iii) Judgment to be entered against the Second Defendant for the outstanding management fees, accumulated interest and costs.

2. It is trite law that the court becomes *functus officio* once a judgment or final order disposing of the dispute has been entered (unless the same is under appeal). However, the Court still retains the inherent jurisdiction to make any order which is just if there are exceptional circumstances. In the present case, it is the Second Defendant who caused the Receiver not to conclude the sale of the Unit when she intervened and presented her unstamped and unrecorded conveyance. Put another way, she re-opened the case. In any event, it is too late in the day to complain.
3. The First Defendant is the owner of record of the Unit. However, the Second Defendant seeks to displace that ownership so the onus is on her to prove it.
4. The law relating to unstamped conveyances is clear: no such instrument shall be pleaded in evidence unless the instrument shall be duly stamped and the taxes relative to that instrument have been paid: sections 38G and 38J of the Value Added Tax (Amendment) Act, 2019 and the Value Added Tax (Amendment) Act, 2022.
5. The fact that the First Defendant's conveyance may also be unrecorded is not a matter for this Court. In separate proceedings, the Second Defendant has sued the First Defendant. The status of that matter was not disclosed to this Court. The crux of the matter before me relates to management fees to be paid by the "owner" of the Unit and the Second Defendant fell woefully short of proving her ownership of the Unit. Further, if the Court has to decide the issue of two allegedly unrecorded conveyances, it seems to me that the one which was first executed may prevail: **Section 10 of the Registration of Records Act, Ch. 187** and **Brown v Bahamas Electricity Corp.** [2002] BHS J. No. 64 considered.

JUDGMENT

Charles Sr J:

Introduction

- [1] By Summons filed 6 May 2019, the Plaintiff ("Delaporte"), a company which carries on the business of the management of all matters related to the Delaporte Point Condominiums, sought (i) a Declaration to reinstate the Second Defendant to the action; (ii) a Declaration that the Second Defendant is the legal and beneficial

owner of the Unit and (iii) Judgment to be entered against the Second Defendant for the outstanding management fees, accumulated interest and costs.

- [2] At the heart of this dispute is whether the Second Defendant (“Ms. Ferguson”) owns Unit H-9B (“the Unit”) located in Delaporte in the Western District of New Providence.

Procedural history

- [3] This matter has a long and checkered history which is worth rehashing so as to have a better understanding of it.
- [4] By a Specially Indorsed Writ of Summons filed on 14 September 2016, Delaporte seeks from the Defendants (both of whom claim to be the owner of the Unit), the payment of management fees on the Unit assessed as at 5 September 2016 to be in the sum of \$36,849.19 as well as unrestricted access to the Unit to effect necessary repairs to it so that it does not negatively impact the adjoining units and the entire Condominium community as a whole.
- [5] The crux of Delaporte’s allegation is that (i) King Enterprises is the owner of record of the Unit and still asserts that it is the rightful owner and (ii) Ms. Ferguson claims to be the current owner of the Unit and has produced a copy of an unstamped and unrecorded conveyance executed by the President and Director of King Enterprises. Therefore, Ms. Ferguson’s claim to ownership is likewise bound by the Lease of Easements for the Condominiums (“the Lease of Easements”).
- [6] On 25 October 2016, the Defendants filed a Joint Defence. At paragraph 2, they admit that King Enterprises is the owner of record of the Unit. At paragraph 3, the Defendants neither admit nor deny Ms. Ferguson’s allegation that she is the current owner save to the extent of confirming that she has advanced funds to King Enterprises in respect of the Unit, as authorized by its beneficial owner. Thereafter, they neither admit nor deny most of the allegations in the Statement of Claim and puts Delaporte to strict proof of them.

[7] Delaporte filed a Reply to Defence on 30 November 2016 and, before the matter came up for Case Management Conference, Delaporte filed an application on 20 February 2017 seeking Summary Judgment against both Defendants for the principal sum of \$52,682.43, interest and costs. Delaporte also sought an order that it be allowed unrestricted access to the Unit to effect necessary repairs in order to prevent the risk of electrical, fire or flooding.

[8] On 21 July 2017, in the presence of Ms. Ferguson, King Enterprises, through its Counsel, admitted the judgment debt ("Judgment on admission"). The Court made the following order:

- i. Judgment on admission for the sum of \$61,184.64 plus interest pursuant to the Civil Procedure (Award of Interest) Act, 1992 from the date of judgment to the date of payment;
- ii. An Order that the Plaintiff be allowed unrestricted access to the Unit to effect the necessary repairs to the Unit and those affecting the adjoining units;
- iii. That the Plaintiff shall recover the reasonable costs related to carrying out the essential repairs to the Unit from the First Defendant;
- iv. That the First Defendant shall pay costs in the sum of \$8,000 to the Plaintiff on or before the close of business on Thursday 31st day of August 2017;
- v. That Summary Judgment against the Second Defendant is adjourned to Case Management as the Second Defendant was not represented by Counsel.

[9] Ms. Ferguson, who was previously represented by the same Counsel as King Enterprises, appeared pro se on that day and did not object to the Judgment on

Admission against King Enterprises. Subsequently, Delaporte applied to discontinue the action against Ms. Ferguson.

- [10] To date, the Judgment on Admission remains wholly unsatisfied. Over the years, there had been an avalanche of applications including the appointment of a Receiver to sell the Unit and changes of attorneys by the Defendants. Notably, on 21 November 2017, the law firm of Cedric L. Parker & Co. filed a Notice of Change of Attorney for King Enterprises replacing Miriam J. Curling & Co. Belatedly, the law firm of Higgs & Johnson was appointed to act in place of Dunmore Law Chambers for Ms. Ferguson.
- [11] In the intervening period, on 30 August 2017, Ms. Ferguson instituted Action No. 2017/CLE/gen/00999 in the Supreme Court against King Enterprises and Paul King. The Court is not privy to this action and Ms. Ferguson has not updated the Court with respect to its status.
- [12] After many unsuccessful attempts to obtain the “fruits of victory” of the Judgment on Admission, Delaporte once again turned to the Court, this time armed with a Summons, filed on 6 May 2019, pursuant to RSC Order 31A rule 18(2)(s), (i) to reinstate Ms. Ferguson to the action; (ii) a Declaration that she is the legal and beneficial owner of the Unit and (iii) Judgment be entered against her for the full amount owed to Delaporte for outstanding management fees, accumulated interest and costs.
- [13] On 15 July 2019, the Court heard the first limb of the application and reinstated Ms. Ferguson as the Second Defendant in this action. This is because she asserts that she is the owner of the Unit and that she has a conveyance.
- [14] The matter was next adjourned to 11 September 2019 and then 20 November 2019. On 20 November 2019, after some discussion, both Mr. Oscar Johnson (now Queen’s Counsel) of Higgs & Johnson and Ms. Butler of Providence Law agreed that the Court should make a Declaration that Ms. Ferguson is the legal and beneficial owner of the Unit. As the Court was about to formalize that Consent

Order, Mr. Johnson recanted. The Court then gave detailed directions for an expedited trial to take place on 11 to 13 March 2020 and any pending application(s) to be heard on 15 January 2020.

[15] In addition and, during the intervening period, Ms. Ferguson through her new attorneys, filed a handful of applications namely: (1) Summons filed 20 November 2019 for damages for lost rental income in respect of the Unit; such damages to be assessed; (2) Summons filed 20 November 2019 opposing the application for Judgment and costs; (3) Summons filed 20 February 2020 seeking leave for the Second Defendant to enter Counterclaim and (4) Summons filed 3 March 2021 seeking reconsideration and/or relief from sanctions with Certificate of Urgency.

[16] On 14 January 2020, Mrs. Butler for Delaporte wrote to the Court and copied to Attorney Keith Major of Higgs & Johnson stating:

“...[W]e note that the Second Defendant’s application to file counterclaim is fixed for Wednesday the 15th January, 2020 at 10:00 a.m.

Please note that the parties have commenced settlement discussions and hereby request that the aforementioned hearing date be vacated to allow for the continuation of negotiations towards settlement.

Notably, the next fixture in this matter is scheduled for Tuesday the 18th February, 2020 at 9:30 a.m.” [Emphasis added]

[17] On 18 February 2020, this Court granted leave to Ms. Ferguson to file and serve a Counterclaim by 21 February 2020. The hearing of the Counterclaim and Further Case Management was fixed for Monday 20 April 2020 at 2.30 p.m.

[18] There was no hearing on 20 April 2020 as the world was battling a global pandemic. As Covid-19 took hold, countries and cities across the world came to a halt. The Courts of The Bahamas were also affected.

[19] The matter commenced on 13 May 2021 and a few preliminary issues arose surrounding the Counterclaim. The Court then ordered that the Summons filed 3

March 2021 to file and serve a Counterclaim be dismissed with costs to Delaporte to be taxed if not agreed.

The issues

[20] The following issues arise for determination namely:

1. Whether or not Ms. Ferguson has good title and ought to be declared the rightful owner of the Unit;
2. Who is the owner of the Unit and;
3. Whether management fees are owing to Delaporte by the owner of the Unit?

The evidence

[21] The evidence on behalf of Delaporte came from Paula De Gannes and the Receiver, Edmund Rahming. They both filed Affidavits which, at the trial, stood as their evidence in chief.

[22] Ms. De Gannes acted as President of Delaporte's Board from November 2014 to October 2018 and she has been involved in this action since its inception.

[23] She asserted that King Enterprises is the owner of record of the Unit and was in actual possession of it. She further asserted that, since September 2016, Ms. Ferguson has been asserting her ownership of the Unit and has produced an unstamped and unrecorded conveyance dated 19 February 2015.

[24] According to Ms. De Gannes, since both Defendants are asserting ownership to the Unit, Delaporte brought the action against both of them for outstanding management fees. She said that Ms. Ferguson made an offer to settle the outstanding fees in early September 2016 by making installment payment over time. Delaporte did not accept her offer of term payments since that would have taken more than a year to settle in full.

- [25] Ms. De Gannes further stated that Attorney Miriam Curling, whose late husband's estate was the majority shareholder of King Enterprises, filed a Defence on behalf of both Defendants. In the Defence, instead of asserting her claim as owner of the Unit, Ms. Ferguson pleaded that she did not "admit or deny" being the owner of the Unit.
- [26] Ms. De Gannes asserted that when King Enterprises asserted to be the owner of the Unit in the Supreme Court on 21 July 2017, Ms. Ferguson was present and did not object to King Enterprises' admittance that it is the owner and its subsequent admittance of the outstanding management fees of \$61,184.64 as at 21 July 2017.
- [27] According to Ms. De Gannes, as the Judgment Order has not been satisfied and remains outstanding, Delaporte sought to have a Receiver appointed to sell the Unit. The outstanding management fees continue to accumulate with the passage of time.
- [28] She maintained that the Unit had been and still is in dire need of repairs for at least the last 6 years as King Enterprises neglected to make basic repairs to it with the consequence that the adjoining units and the entire Condominium community have been negatively impacted.
- [29] Ms. De Gannes further stated that, after a bidding period, the Receiver entered into an agreement to sell the Unit and, during the requisition period, the purchaser's attorney raised the issue of the conveyance which was executed in favour of Ms. Ferguson.
- [30] She asserted that the management fees are still outstanding. Delaporte is seeking the assistance of the Court in addressing the issue of ownership of the Unit so that whoever is the owner can pay the management fees. Ms. De Gannes also stated that Ms. Ferguson has also brought a separate action against King Enterprises for outstanding maintenance fees for the Unit and also a declaration that she is the legal and beneficial owner of the Unit.

- [31] Ms. De Gannes lamented the fact that Ms. Ferguson sat on her laurels and did not assert her right to ownership during the court proceedings against King Enterprises and she now turns around and wants to assert that she is the rightful owner of the Unit and, at the same time, not pay the outstanding management fees.
- [32] In continuing with her evidence, Ms. De Gannes stated that Ms. Ferguson ought not to be allowed to assert ownership of the Unit but refuse to pay the outstanding debt owed to Delaporte. She asked the Court to declare Ms. Ferguson the legal and beneficial owner of the Unit and to enter Judgment against her for all the outstanding fees owed to date.
- [33] Under cross-examination by Mr. Major who represented Ms. Ferguson, Ms. De Gannes asserted that Delaporte considers King Enterprises as the owner of the Unit notwithstanding the fact that King Enterprises also does not have a stamped or recorded conveyance. To her knowledge, a stamped and recorded conveyance was not produced to Delaporte by Ms. Ferguson. She stated that Delaporte's goal was to get payment of its outstanding maintenance fees that was owed on the Unit from the owner. Delaporte's role was not to settle a dispute of ownership. It just wanted to get its payment and bring the account up to date or have a receivership appointed if the owner cannot meet its obligations.
- [34] Ms. De Gannes was asked the question: on what basis Ms. Ferguson was added to this action and she stated that Ms. Ferguson declared that she was the owner.
- [35] Ms. De Gannes was referred to a letter dated 29 March 2016 and one dated 14 September 2016 written by Ms. Ferguson to Merrit Storr, Managing Partner, Chancellor's Chambers. In the second letter, Ms. De Gannes stated that Ms. Ferguson admitted that there are two unstamped conveyances: one dated 15 January 1990 from Shirley Ann Cass to King Enterprises and the other dated 15 February 2015 from King Enterprises to her (Ms. Ferguson). At paragraph 4 of the latter missive, Ms. Ferguson acknowledged that she will assume current and future

indebtedness to Delaporte in respect of outstanding management fees (which as of 5 September 2016 was \$36,849.19).

[36] Ms. De Gannes was cross-examined with respect to the outstanding fees. She stated that the fees relate to quarterly association fees, group insurance for homeowners and general maintenance of the units within the community including annual painting of the exterior. She stated that Ms. Ferguson is not a member of the Home Owners Association.

[37] Under re-examination, Ms. De Gannes said that neither of the two Defendants brought the outstanding fees current and, to date, the debt remained unpaid.

[38] When asked by the Court whether Ms. Ferguson was present in Court at the date of the Summary Judgment application when Judgment on admission was entered against King Enterprises, she acknowledged that Ms. Ferguson was present and the preamble of the Order reflected that Ms. Ferguson appeared pro se.

[39] Mr. Edmund Rahming was the next witness called to testify on behalf of Delaporte. By an Order of the Court dated 21 November 2017 and filed 6 December 2017, Mr. Rahming was appointed receiver to sell the Unit by public auction or private contract. He stated that, on 7 December 2017, he conducted an inspection of the Unit and found it to be in a state of disrepair and at risk of further deterioration due to a leaking roof and damaged sliding/patio area. Although steps were taken to protect and secure the Unit, there was a concern with regard to the risk of further damage and also damage to adjacent condominiums.

[40] The Unit was advertised for sale and he received a total of 10 offers. During the bidding process, Ms. Ferguson attended his office without notice and advised that she believed that she was the owner of the Unit. According to Mr. Rahming, she did not provide any evidence of her ownership assertion nor was she willing to pay the outstanding fees owed to Delaporte but rather she placed a bid on the Unit for \$70,000. The bidding process closed on 8 February 2018. The individuals who

submitted the highest offers were contacted. He subsequently accepted the fourth highest bid at \$190,000 as the first three bidders were not minded to proceed.

- [41] Mr. Rahming stated that an agreement to sell was prepared and, during the requisition process, the purchaser's attorney raised the issue of the conveyance which was issued to Ms. Ferguson for the Unit. Mr. Rahming stated that because of discussions with the purchaser's attorney with respect to Ms. Ferguson, he was unable to proceed with the sale.
- [42] Under cross-examination, Mr. Rahming confirmed that he was unable to sell the Unit because of the dispute as to its ownership.
- [43] Ms. Ferguson was called to testify on her own behalf. She filed a witness statement on 12 March 2021 which stood as her evidence in chief. In paragraph 4 of her witness statement, she stated that *"at all material times I declared and maintained my ownership of the Unit and advanced this position in writing as early as the 29th March 2016. A copy of the said letter declaring my ownership to the Plaintiff through their Counsel is exhibited to Tab 13 of the Second Defendant's Bundle of Documents."*
- [44] In paragraph 7, she stated that *"By order of the Court made on the 21st July 2017 and filed on the 27th July 2017, Judgment was originally entered against the Second Defendant without the issues herein being fully ventilated in this matter but rather on the basis of an admission of the First Defendant."*
- [45] In paragraph 11, Ms. Ferguson itemized her losses to be in excess of \$128,000 none of which was ever pleaded. It is trite law that she is bound by her pleadings: **Bahamas Ferries Ltd v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018.
- [46] Under cross-examination by Mrs. Butler, she stated that title to the Unit was conveyed to her by way of a conveyance executed on 19 February 2015. She said that since she had taken ownership of the Unit, she has not paid any maintenance fees because Delaporte had not sent her the statement for fees.

- [47] Ms. Ferguson stated that she made an offer to pay the management fees in September 2016 but it was ignored and since then, she has not made another offer.
- [48] She acknowledged that she was present in Court on 21 July 2017 when King Enterprises admitted the debt owing to Delaporte but she did not object/interject because the representative of the vendor told her not to because they had an understanding.
- [49] She reiterated that since September 2016, she showed a willingness to pay off the debt which was roughly \$37,000 and to accept all responsibilities going forward. She said that she had put forward a financial plan with regard to whatever was outstanding.
- [50] Ms. Ferguson acknowledged at paragraph 11 of her witness statement that she has suffered losses (which was not previously pleaded). She said that both herself and Delaporte suffered losses.
- [51] Ms. Ferguson admitted that she was present in Court when the Judgment on Admission Order was made on 21 July 2017 but she and Mrs. Curling had reached an agreement whereby title was to pass to her free of all encumbrances.
- [52] When asked by the Court, she said that she admitted on 25 October 2016 in the Defendants' Defence that King Enterprises is the owner of record and she claims to be the current owner of the Unit by an unstamped and unrecorded conveyance executed by the President and Director of King Enterprises.

Preliminary issue: Whether the Court is *functus officio*?

- [53] Delaporte has not addressed the issue of *functus officio* which arose, for the first time, in submissions, by Mr. Major.
- [54] Mr. Major submitted that this matter has come to an end when the Court made an Order for Judgment on Admission against King Enterprises on 21 July 2017. As

stated earlier, Ms. Ferguson was present and allowed the Court to enter Judgment on Admission against King Enterprises. As she stated in her evidence, she allowed this to happen because she and Mrs. Curling (who represented King Enterprises) had reached an agreement whereby title was to pass to her free of all encumbrances.

[55] It is trite law that the court becomes *functus officio* once a judgment or final order disposing of the dispute has been entered (unless the same is under appeal) and more so the Order has been perfected, as in this case. But, the Court still retains the inherent jurisdiction to revisit a matter if there are exceptional circumstances. In any event, it was Ms. Ferguson who re-opened the litigation.

[56] The relevant facts of this case are that Mr. Rahming, whose evidence I accept without reservation, attempted to sell the Unit and an agreement to sell was prepared. During the requisition process, the purchaser's attorney raised the issue of the conveyance which was issued to Ms. Ferguson for the Unit. Mr. Rahming stated that because of discussions with the purchaser's attorney with respect to Ms. Ferguson, he was unable to proceed with the sale.

[57] Under cross-examination, Mr. Rahming confirmed that he was unable to sell the Unit because of the dispute as to ownership. In other words, it was Ms. Ferguson's intervention that caused this sale not to proceed which led to Delaporte, being in a quandary as to the payment of management fees, returning to Court to proceed against Ms. Ferguson, who has not resiled from her position that she is the owner of the Unit.

[58] It seems to me that Mr. Major is speaking with a forked tongue when he argued that the fact that the Court granted final judgment and access to Delaporte means that there are no other functions of this Court. That might have been accurate if his client had not intervened in the sale by the Receiver.

[59] Mr. Major also raised the issue of non-compliance by Delaporte with an Unless Order made in March 2021 whereby the Court stated that if Delaporte failed to file

its List of Documents, Bundle of Documents and Witness Statements by 12 March 2021, its claim would be dismissed. In any event, the Court still retains a discretion and normally, if the trial dates are not compromised, the Court may grant relief even if no application for relief from sanctions is filed (which of course is the proper step for a defaulting party to take). That said, this issue should have been canvassed earlier at Case Management Conferences. There were quite a number of such hearings.

[60] In my judgment, the issue of the Court being *functus officio* has no merit. In any event, it is too late in the day to complain and to spring such an issue in submissions.

The issues:

Issue 1- Whether or not Ms. Ferguson has good title to the Unit?

[61] The first issue is whether or not Ms. Ferguson has good title and ought to be declared the rightful owner of the Unit? As she alleges ownership of the Unit, the onus shifts onto her to prove that she is.

[62] Ms. Ferguson claims to be the owner of the Unit and relies on a conveyance which was duly executed in her favour by the President and Director of King Enterprises on 19 February 2015. The conveyance is however unstamped and unrecorded.

The law

Unstamped conveyances

[63] Neither party assisted the Court with respect to unstamped conveyances.

[64] Previously, the Stamp Act, Ch. 370 governed unstamped conveyances. As I understand it, conveyances are now stamped in accordance with the Value Added Tax Act, No. 32 of 2014 (“the principal Act”), as amended by the Value Added Tax (Amendment) Act, 2019 (“the 2019 Act”) and its Rules. There has been a recent amendment which came into force on 1 July 2022 which is also instructive. The 2019 Act provides some useful guidance with respect to the stamping of conveyances. Section 27(2) of the 2019 Act provides that:

“Any instrument executed before the commencement of this Act which, by virtue of the provisions of this Act, is an instrument for the supply of real property shall be subject to this Act where the instrument has not been stamped under the provisions of the Stamp Act (Ch. 370).”

[65] The “supply of real property” is amended in section 2 of the 2019 Act to read:

““supply of real property” includes the sale, long-term lease, assignment, mortgage or other conveyance, or dealing with, or the transfer of a beneficial or legal interest in real property from one person to another, whether or not for money or money’s worth.”

[66] By the 2019 Act, a Third Schedule has been inserted into the principal Act which was further amended in 2022 (“the 1922 Act”) with the insertion of new sections 38G to 38J into the principal Act. It provides as follows:

“The principal Act is amended by the insertion, immediately after section 38F of the following new sections –

38G. *Unstamped instruments not to be given in evidence.*

No instrument required by this Act to be stamped shall be pleaded or given in evidence in any court unless the said instrument shall be duly stamped, except as provided in section 38H.

38H *Production in evidence of unstamped instrument.*

- (1) Upon the production in evidence in any court of any instrument required by this Act to be stamped which is not duly stamped, the judge or presiding magistrate may request the Comptroller’s advice as to the VAT due for the stamping of the instrument.**
- (2) On payment of the VAT into the court by the party producing such instrument. The said instrument shall be admissible in evidence.**
- (3)**
- (4)**
- (5)**
- (6)**

(7)

[67] The law governing unstamped conveyances is not new. A similar provision is to be found in section 18 of the Stamp Act.

Unrecorded conveyances

[68] Mr. Major submitted that section 10 of the Registration of Records Act, Ch. 187 (“the RRA”) is applicable. Section 10 provides:

“10. If any person after having made and executed any conveyance, assignment, grant, lease, bargain, sale or mortgage of any lands or of any goods or other effects within The Bahamas, or of any estate, right or interest therein, shall afterwards make and execute any other conveyance, assignment, grant, release, bargain, sale or mortgage of the same, or any part thereof, or any estate, right or interest therein; such of the said conveyances, assignments, grants, releases, bargains, sales or mortgages, as shall be first lodged and accepted for record in the Registry shall have priority or preference; and the estate, right, title or interest of the vendee, grantee or mortgagee claiming under such conveyance, assignment, grant, release, bargain, sale or mortgage, so first lodged and accepted for record shall be deemed and taken to be good and valid and shall in no wise be defeated or affected by reason of priority in time of execution of any other such documents:

Provided that this section shall not apply to any disposition of property made with intent to defraud.”[Emphasis added]

[69] The decision of **Brown v. Bahamas Electricity Corp.** [2002] BHS J. No. 64 provides some guidance on unrecorded conveyances but it is not on all fours with the present case. It is however persuasive authority for the proposition that the priority established by virtue of Section 10 of the RRA is applicable in determining validity of two or more conveyances where at least one is recorded. At para 25, Lyons, J stated:

“Mr. V. Brown has both an earlier dated, lodged and accepted conveyance. Until and unless that presumption of a 'good and valid' title is displaced by Mr. and Mrs. Grant (or anybody else) successfully applying the proviso or successfully challenging the validity of the conveyance, he is the owner.” [Emphasis added]

[70] In **Oceania Heights Limited (Appellant) v Willard Clarke Enterprises Limited & others (Respondent)** [2013] 3 BHS J. No. 61, the Privy Council, while commenting that it was a best practice that conveyances should be registered promptly as a matter of course, referred to no authority which held a conveyance to be invalid on the sole basis of it being unrecorded. At para 38, Lord Neuberger had this to say:

“Whatever the correct analysis of section 10, the effect of the Board's conclusion is that anyone who has (i) entered into a contract for the sale, lease or grant of an interest in or over land, or who has (ii) bought, leased or been granted an interest in or over land, would be well advised at once to register their contract, conveyance, lease or grant.”

[71] By Summons filed on 6 May 2019, Delaporte seeks a Declaration that Ms. Ferguson is the legal and beneficial owner of the Unit and (iii) Judgment be entered against Ms. Ferguson for the full amount owed to Delaporte for outstanding maintenance fees and accumulated interest and legal fees for the Unit and costs. Delaporte opined that since Ms. Ferguson has produced an unstamped and unrecorded conveyance and has maintained throughout this trial that she is the owner of the Unit, the Court ought to make the Declaration sought.

[72] In addition, Ms. Ferguson has not resiled from her stance that she is the owner of the Unit by virtue of an unstamped and unrecorded conveyance which was allegedly executed by the President and Director of King Enterprises on 19 February 2015.

[73] Mr. Major submitted that notwithstanding the executed conveyance albeit unrecorded, Delaporte continues to demonstrate a dismissive attitude towards Ms. Ferguson. In his submissions, he spoke to the consequential losses suffered by Ms. Ferguson due to the denial by Delaporte to accept her title to the Unit. As stated earlier in this Judgment, no such losses were pleaded and it is well established that a party is bound by their pleadings.

- [74] Now, I start off with the basic principle that Ms. Ferguson has the burden of displacing the ownership of the Unit from the owner of record, King Enterprises.
- [75] She seeks to do so by presenting an unstamped and unrecorded conveyance executed by the President and Director of King Enterprises to her on 19 February 2015.
- [76] The law with respect to unstamped conveyances is clear. No such instrument shall be pleaded in evidence in any court unless the instrument shall be duly stamped and the taxes relative to that instrument have been paid.
- [77] In the present case, since the conveyance is unstamped, it cannot be admitted in evidence unless the relevant taxes have been paid. To date, those taxes remain unpaid.
- [78] Ms. Ferguson faces another hurdle in that her conveyance is also unrecorded. She is seeking to displace King Enterprises whom she alleged, sold to her in 2015. It appears from documents exhibited in this trial that the conveyance dated 15 January 1990 from the vendor, Shirley Ann Cass to King Enterprises may also be unrecorded. But this is not a matter for this Court. The crux of the matter before me relates to management fees allegedly owed to Delaporte from the owner of the Unit.
- [79] That said, it appears that Ms. Ferguson's title was derived from a conveyance which may also be unrecorded. If the Court has to decide the issue of two allegedly unrecorded conveyances, it seems to me that the one which was first executed may prevail.
- [80] All things considered, persuasive as her assertions are, until and unless the presumption of a 'good and valid' title is displaced by Ms. Ferguson (or anyone else), King Enterprises is the owner of the Unit.
- [81] The Declaration sought by Delaporte is refused.

Judgment on Admission

[82] On 21 July 2017, King Enterprises admitted Judgment (“Judgment on Admission”) for the sum of \$61,184.64 as at that date. The judgment was filed on 27 July 2017 and it remains unsatisfied. With the passage of time, the sum has indisputably increased. I shall vary that order to read that King Enterprises shall pay to Delaporte the sum of \$61,184.64 as at 21 July 2017 (together with the increased amount), interest at the statutory rate of 6.25% from 21 July 2017 to the date of payment and costs of \$8,000 (as per Judgment on Admission Order).

A way forward

[83] On 21 November 2017, Registrar Darville-Gomez (as she then was) appointed Mr. Edmund Rahming to be the Receiver by way of Equitable Execution to sell by public auction the Unit.

[84] The Order of the Registrar is still effective.

Conclusion

[85] The Order of the Court is as follows:

1. The Summons filed 6 May 2019 by Delaporte to declare Ms. Ferguson to be the owner of Unit No. H-9B located within the Delaporte Point Community situate in the Western District of the island of New Providence, one of the islands of the Commonwealth of The Bahamas is dismissed.
2. Judgment on Admission entered against King Enterprises Limited in favour of Delaporte Point Limited on 21 July 2017 and filed on 27 July 2017 in the sum of \$61,184.64 (and continuing), interest at the statutory rate of 6.25% from 21 July 2017 to the date of payment and costs of \$8,000.
3. King Enterprises is to comply with paragraph 2 of this Order by 31 October 2022 failing which the Receiver is at liberty to sell the Unit. A Penal Notice is to be affixed to this Order.

4. The issue of costs on this Summons is reserved. Both parties will submit written submissions by 15 September 2022.

Dated this 24th day of August 2022

**Indra H. Charles
Senior Justice**