

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common law and Equity Division

2021/CLE/qui/01121

IN THE MATTER OF a parcel of Land containing 5,465 square feet situate on the Eastern Side of Pine Sea Wind Drive approximately 100 feet North of Pine Yard Road in the Eastern District of the Island of New Providence

AND

IN THE MATTER OF the Quieting Titles Act, 1959

AND

IN THE MATTER OF the Petition of Stephanie Ivoire Morley

Before: The Honourable Madam Justice Carla D. Card-Stubbs

Appearances: Mr. Shadrach A. Morris Jr. for the Petitioner

RULING

CARD-STUBBS J

[1.]By Petition filed 24 September 2021 the Petitioner Stephanie Ivoire Morley petitioned the court that title to the property described below be investigated, determined and declared by an issuance of a Certificate of Title under the Quieting Titles Act 1959 Chapter 393 of the Statue Laws of The Bahamas “the Act”.

[2.]The Property is described in the Petition as follows: -

“ALL of that parcel of Land containing 5,465 square feet running to the North 100 feet bounded by parcel F running to the East 57.79 feet bounded by a Lot No.27 now or formally the Property of A. Ferguson running to the South 100 feet bounded partially by a position of parcel C-2 the property of Mr. Rudy Rolle

and partially by parcel C-1 and also by Pine Yard Road and running to the WEST 57.79 100 feet and by Pine Sea Wing Drive situate in the Eastern District of New Providence one of the Islands of the Commonwealth of The Bahamas.”

[3.]The Petition, filed 24 September 2021, was supported by the Affidavit of the Petitioner, Stephanie Ivorie Morely. A Plan and Amended Abstract of title were also filed.

[4.]The Notice of Petition and accompanying documents were advertised and served on relevant parties in accordance with a Court Order made on the 25 October 2021 and verified by the Affidavit of Compliance filed 14 September 2021.

[5.]A copy of the Notice of Petition and Plan was affixed and maintained on a conspicuous position on the land for the requisite period in accordance with a Court Order made on 25 October 2021. Adjoining landowners were served with notice of the petition and plan.

[6.]There were no Adverse Claimants in these proceedings.

The Petitioner’s Case

[7.]The Petitioner sought to give evidence of possession as follows.

[8.]The Petitioner avers, by affidavit in support of the Petition, that in 2002 there was a piece of unkept abandoned property overgrown with bushes and garbage through the corner opposite her residence. She stated that the property also had an unfinished building which seemed to be neglected for a long period of time.

[9.]She further avers, after consultation with a lawyer, and not being able to identify an owner of the property, she did Petitioner did some work on the property in 2002. In 2003 she consistently started to maintain the property to avoid further deterioration.

[10.] The Petitioner avers that she later contracted help to remove debris and produced receipts to that effect.

[11.] The Petitioner maintains that she planted fruits and vegetables such as cassava, sugar apple, okra etc. and gave the neighbors fruits which she had planted. She further asserts that she fenced the Northern side of the property in 2017 and in 2022 fenced off the front of the property.

[12.] The Petitioner avers that she neither any person working on the property have ever been approached by anyone claiming ownership.

Petitioner’s Abstract of Title

[13.] The Petitioner filed an Amended Abstract of Title on which she sought to rely:-

| No. | Document |
|-----|---|
| 1. | <p>22nd September, 1898- On this date the Supreme Court in Equity Action No. 3 of 1983 re Petition of Paul Clarke granted a Certificate of Title to Mutual Development Limited recorded in the Registry of Records Volume 5293 at pages 358 to 362 of, among others, the following:-</p> <p>ALL THAT piece parcel or tract of land in a subdivision called and known as Sandilands Allotment situate in the Eastern District of the said Island of New Providence of the said Commonwealth of The Bahamas and being a Southern portion of Allotment Number Twenty-six (26) is bounded on the NORTH by the Northern portion of the said Allotment Twenty-six (26) and running thereon Two Hundred and Sixty-four (264) Feet on the EAST by Allotment Number Twenty Seven (27) of the said Subdivision and running thereon Four Hundred and Seventy-three and Thirteen Hundredths (473.13) Feet on the SOUTH by a road called and known as Pine Yard Road and running thereon Two Hundred and Sixty-four (264) Feet and on the WEST by Allotment Number Twenty-five (25) of the said Sandilands Allotments and running thereon Four Hundred and Seventy-one and Eighty-nine Hundredths (471.89) Feet...”</p> |
| 2. | <p>6th November 1989- By way of Conveyance, Mutual Development Limited as Beneficial Owner granted and conveyed to Orange Creek Development Limited in fee simple. The said Conveyance was recorded in the Registry of Records in Volume 5317 at pages 534 to 542.</p> |
| 3. | <p>8th January 1992- By way of Conveyance Orange Creek Development Limited as Beneficial Owner granted and conveyed to Edison Sumner in fee simple the hereditaments. The said Conveyance was recorded in the Registry of Records in Volume 5740 at pages 212 to 217.</p> |
| 4. | <p>Sometime in 2003- The Petitioner, Stephanie Ivoire Morley entered the subject property as an adverse possessor having taken exclusive possession of the subject property</p> |
| 5. | <p>27th August 2021- By sworn Affidavit filed herein Rudolph Rolle of Pine Yard Road attest to the possession and use of the property.</p> |
| 6. | <p>14th September 2021- By sworn Affidavit filed herein Lotasson F. Miller of Pine Yard Road attest to the possession and use of the property.</p> |
| 7. | <p>21st September 2022 By sworn Supplemental Affidavit filed herein Rudolph Rolle of Pine Yard Road attest to the possession and use of the property.</p> |
| 8. | <p>28th September 2022- By way of deposition, Shada Vasalaki Charlton attest to the possession and use of the property.</p> |
| 9. | <p>30th May 2017 – The Petitioner filed a Petition under the Quieting Titles Act Chap 1959 for her rights and interest in the subject property to be determined.</p> |

Supporting Evidence

[14.] The Petition is supported by the affidavits of Rudolph Rolle, Lottason Miller and Shada Vasalaki Charlton.

Rudolph Rolle

[15.] Mr. Rolle avers that in 2003 he noticed that the Petitioner, one of his neighbors, began to clean the property north of his property which contained an unfinished building that was not maintained for years. He avers that the Petitioner hired him to maintain the property which he continues to do. He has assisted with the growing of fruits and vegetables on the property.

Lottason Miller

[16.] Mr. Miller is the Petitioner's brother. He states that sometime in 2002, he noticed his sister cleaning a lot through the street opposite his property called Pine Sea Wind Drive. He identified the property as the second lot on the eastern side of the street.

[17.] He questioned the Petitioner about her activities and she told him that she thought that the property was an eye sore to the community.

[18.] He avers that since then the Petitioner has been maintaining the lot and that she hired Randolph Rolle to assist her with maintaining same. The Petitioner advised him that no one had approached her regarding ownership of the lot.

Shada Vasalaki Charlton

[19.] Ms. Charlton avers that she is familiar with the property in question as she lived close by on Pine Yard Road from approximately 2008 until about 2014/2015 with her family. She has known the Petitioner from 2007 and has known her to be in occupation of the subject property from that time to present date.

[20.] She further avers that the Petitioner had been farming fruits and vegetables on the property and that she was not aware of any disturbances or interference with the Petitioner's occupation on the property.

Oral Testimony and Visit to Locus

[21.] The Petitioner and Affiants were examined by the Court on the evidence laid in the various Affidavits. Survey plan No. 5848NP dated 8th May 2017 was also lodged in support of the Petition.

[22.] The Court conducted a visit to the site. During the visit there was evidence that the land had been possessed and that the parcel of land had been cleared down. There were fruit

and vegetable trees on various parts of the land as well as an incomplete rock structure with small amounts of debris therein. The property was partially fenced.

DECISION

[23.] The Petitioner claims to be the owner in fee simple of the subject land by virtue of a possessory title, having open, undisturbed, and continuous possession from 2003. Counsel for the Petitioner submitted that there were sufficient acts of possession in this case which would cause the Petitioner to be entitled to the order sought.

[24.] The Court's jurisdiction to determine this application and to issue title in a satisfactory case is by way of the Quieting of Tittles Act, 1959 ("the Act"). The Act provides for the investigation of title by the Court (section 3), that thereafter the court may dismiss the application or may issue a certificate (or certificates) of title (section 17).

[25.] Section 17 of the Act provides:-

“After the court has completed the hearing of an application made under section 3 of this Act it may —

- (a) dismiss the application;
- (b) dismiss the application and grant a certificate of title in the form prescribed by section 18 of this Act to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act;
- (c) grant a certificate of title in the form prescribed by section 18 of this Act to the petitioner;
- (d) grant separate certificates of title in the form prescribed by section 18 of this Act to the petitioner and to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act in respect of the whole or separate parts of the land described in the petition. (2) The court may give one certificate of title comprising all the land described in the petition, or may give separate certificates of title as to separate parts of the land.”

[26.] The Petitioner seeking a Certificate of Title by way of adverse possession must prove exclusive occupation to the property in excess of the 12 years. Section 16 (3) of The Limitation Act (1995) provides:-

“No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person:

Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years

from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.”

[27.] The case of *James Wallace & Martha Wallace v. Addington Nairn Jr.* SCCivApp No. 206 of 2015 provides guidance on the required nature of the possession and on the nature of the intention to possess. In that case, *Jones JA* stated:-

“77. Nevertheless, there is a factual presumption that possession of land is retained by the paper owner or by persons claiming through him. Accordingly, any person claiming title to land by adverse possession must show either:

- a) discontinuance of possession by the paper owner followed by possession by the trespasser; or
- b) dispossession by the trespasser, which effectively ousts the paper title of the owner.

“78. These principles were settled in *J. A. Pye (Oxford) Ltd. and others v. Graham and another* (2002) UKHL30 in which the House of Lords stated that legal possession by the adverse possessor requires:

- a) a sufficient degree of physical custody and control (factual possession); and
- b) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (intention to possess, or *animus possidendi*).

“79. In dealing with the question of factual possession Lord Browne-Wilkinson (at para 41) approved the principles stated by Slade J in *Powell v McFarlane* (1977) 38 P & CR 452, 470-471 as follows:

“The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor had been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”

“80. On the question of the intention to possess Lord Brown-Wilkinson at paras 42-43 had this to say:

"In the *Moran* case (1988) 86 LGR 472, 479 the trial judge (Hoffmann J) had pointed out that what is required is not an intention to own or even an intention to acquire ownership but an intention to possess. The Court of Appeal in that case [1990] Ch 623, 643 adopted this proposition which in my judgment is manifestly correct. Once it is accepted that in the Limitation Acts, the word possession has its ordinary meaning (being the same as in the law of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person... in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title.

...In *Powell's* case 38 P& CR 452, 471-472 Slade J...reformulated the requirement (to my mind correctly) as requiring an intention, in one's own name and on one's own behalf, to exclude the

world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow".

[28.] The court has power to declare by Certificate of Title that the Petitioner is the legal and beneficial owner in fee simple in certain cases. Section 16 of the Act provides:

“Without limiting the generality of the provisions of section 3 of this Act, the court shall have power to declare by a certificate of title in the form prescribed by section 18 of this Act that the petitioner is the legal and beneficial owner in fee simple of the land mentioned in the petition in any of the following circumstances —

- (a) where the petitioner has proved a good title in fee simple to a share in land and has proved such possession as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- (b) where the petitioner has proved such possession of land as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- (c) where the petitioner has proved that he is the equitable owner in fee simple of land and is entitled at the date of the petition to have the legal estate conveyed to him.”

[29.] A Petitioner seeking to prove the sufficiency of her claim to ownership must satisfy the Court she was in open, undisturbed and continuous possession of the property exceeding the period of twelve (12) years. She must show actual possession following the dispossession of any other person claiming to be owner or the discontinuance of possession of that person. She must give evidence of physical custody and control as well as an intention to exercise such custody and control.

CONCLUSION

[30.] In this case, I am satisfied upon the examination of the Petitioner and the affiants in support of the petition, inspection of the locus and review of the documentary evidence provided that the Petitioner has proven the sufficiency of her claim.

[31.] The Court by its review of the evidence is satisfied that the Petitioner has proved open, undisturbed and exclusive possession on the parcel of land since 2002. The Court is equally satisfied that the affidavit evidence of Shada Charlton, Rudolph Rolle, and Lottason Miller corroborated the Petitioner’s averments and were consistent with observations made during the visit to the locus.

[32.] Therefore, the Court is satisfied that the Petitioner enjoyed for the requisite period, undisturbed exclusive possession of the property.

ORDER

[33.] THE ORDER AND DIRECTION OF THIS COURT IS THAT:

A Certificate of Title in the prescribed form in respect of the land described in the Petition and shown on the Plan filed therewith do issue to the Petitioner.

Dated 20th day of March, 2024

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a large, sweeping flourish underneath.

Carla D. Card-Stubbs
Justice