

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/qui/00231

IN THE MATTER of the Quieting Titles Act, 1959

AND

IN THE MATTER of ALL THAT piece parcel or tract of land containing Two Hundred and Seventy-two and Fifty-three Hundredths (272.53) Acres situate in the settlement of “The Hermitage” on the Island of Exuma

AND

IN THE MATTER of the Petition of Margaret Bodie-Thompson

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: J. Michael Saunders for the Petitioner

Hearing date(s): 4 September 2023, 10 October 2023 and 7 March 2024

JUDGMENT

WINDER, CJ

[1.] This is a Quieting Petition made pursuant to section 3 of the **Quieting Titles Act 1959** (“the Act”). It concerns two tracts of land (the Property) comprising a total of 272.53 acres of vacant land situate in the settlement of “The Hermitage” on the Island of Exuma.

[2.] The Petitioner filed this Petition, supported by her affidavit and the affidavits of her son Michael Angelo Munnings, Trevor Derek Bethel and surveyor Emile Joseph Ledee. She claimed to be the owner of the Property and requested that her title be investigated, determined and declared by the Court. Although the claim is not made by way of any personal representation, the Petitioner claims to have succeeded to the possessory and or documentary interests of her father, Rubin Bodie.

[3.] An adverse claim was filed by Melonie Johnson and Marguerite McKenzie-Turnquest but have been subsequently withdrawn.

[4.] In respect of 40 acres of the Property the Petitioner also claims to have been the recipient of a Deed of Gift from her father Rubin Bodie on 28 January 2000. Rubin Bodie is recorded as purchasing the 40 acres from a relative, Peter Bodie, in September 1995 (I have not been given a recorded copy of that conveyance, but if recorded it was so recorded after May 2004 when the conveyance was stamped). On 9 April 1974, Peter Bodie obtained a grant of Probate in the Estate of John Bodie. John Bodie is said to have purchased the property from Mary Clarke in September 1925.

[5.] The claim to a documentary title is severely challenged by the fact that the entirety of the Property was the subject of Quieting Action Equity 22 of 1973 in which a Certificate of Title was issued by the Supreme Court to Jasper Ferguson in 1974. That Certificate of Title has not been set aside. It demolishes the Petitioners claim to a documentary title to the property, the root of which begins in 1925.

[6.] The Petitioner gave evidence and called her son Michael Angelo Munnings, family friend Trevor Derek Bethel and surveyor Emile Joseph Ledee as witnesses in her case.

[7.] It ought to be stated at the outset that these are inquisitorial proceedings. Section 3 of the Act provides that:

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.

[8.] Section 8 of the Act provides:

(1)The court in investigating the title may receive and act upon any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.

(2)It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection 94 of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.

(3)The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court.

The Claims of Possession

[9.] As indicated, the 1974 Certificate of Title has extinguished any valid claim of documentary title to the property. The question then turns to whether she can assert a claim of possession adverse to the true documentary title holder such that they may oust that documentary title holder.

[10.] The usual starting point in any title dispute is the case of **Ocean Estates and Pinder [1969] 2 AC 19** and the oft cited passage of Lord Diplock at page 25 paragraph A where he stated:

Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the title proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.

[11.] According to the learned authors of **Commonwealth Caribbean Property Law** at p. 260:

In order to succeed in a claim for adverse possession the claimant must show positively that the true owner has gone out of possession of the land, that he has left it vacant with the intention of abandoning it. The mere fact that the paper owner is shown to have made no use of the land during the period does not necessarily amount to discontinuance of possession...

The factual possession required must have characteristics similar to those required for a claim to an easement by prescription, viz, the possession must be open (nee clam), peaceful (nee vi) and adverse (nee precario). Furthermore, factual possession must be accompanied by an animus possedendi, that is, an intention to enjoy possession to the exclusion of the paper owner.

[12.] According to Samson Owusu in the text **Commonwealth Caribbean Land Law**, p. 280, in discussing adverse possession:

These should be acts, which are inconsistent with the enjoyment of the soil by the person entitled to the land. The land should have been used in a way, which altered or interfered in a permanent or semi-permanent way with the land. A classic case is where the disputed land is fenced and substantial structures are constructed on it by the squatter, leaving in its trail substantial traces of use.

[13.] I have no hesitation in saying that having examined the witnesses and observed their demeanor as they gave their evidence, I was not impressed by the quality of the evidence of the witnesses on possession. I could not accept the account of the witnesses as to farming on any portion of this tract of land. Further, there is absolutely no evidence of any activity which could be pointed to by anyone as being undertaken on the property, now or at any time in the recent past. I was not satisfied with the quality of the evidence such that I was satisfied that the documentary title owner's title has been extinguished. In any event if there was any such adverse possession, such possession must have now long been abandoned.

[14.] In **Bannerman Town, Millars and John Millars Eleuthera Association (Appellant) v Eleuthera Properties Ltd (Respondent) (Bahamas)** the Judicial Committee of the Privy Council found that the court, in conducting an investigation under the Act, is not bound to grant a title in circumstances where the court is satisfied none exists. At paragraph 41 of the decision, the Board stated:

[41] But none of this means that the court has the duty, or even the power, to create title by use of the machinery conferred by the Act, where in truth no title at all is proved. Section 17 of the Act gives the court a discretion whether to dismiss the application entirely, to dismiss it and grant a certificate of title to an adverse claimant, to grant a certificate of title to the petitioner, or to grant separate certificates of title to different parts of the land to the petitioner and to one or more adverse claimants. In *Nova Scotia (Attorney General) v Brill* [2010] NSCA 69, para 37, Fichaud J said this, speaking of the Quieting Titles Act 1989 in the Nova Scotia Court of Appeal:

“The QTA does not enable a court to create title. Rather it authorises a court to grant a certificate that reflects the title, including possessory title, to which the party is entitled by the legal principles that exist outside the QTA.”

The Board considers that the same principles apply to the Bahamian Act.

[15.] In the circumstances therefore I am not satisfied that there was sufficient evidence of possession or that such possession as may have existed has not been long abandoned. I am therefore unable to grant any title in this matter.

Dated the 14th day of May, 2024

A handwritten signature in black ink, appearing to be 'I. R. Winder', written in a cursive style.

Sir Ian R. Winder
Chief Justice