

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2021/CLE/QUI/01053

Common Law and Equity Division

IN THE MATTER OF all that parcel of land containing 2.708 Acres of Lot 7 situate in the area known as Jimmy Hill and located eastern side of the Queen's Highway on the north coasts and eastward of Ramsey Settlement and approximately one (1) mile north-eastwardly of the Moss Town International Airport and bounded NORTH EASTWARDLY by the HighWater mark of the Sea measuring 132 feet, SOUTHWESTWARDLY by a Public Road measuring 140.33, SOUTHEASTWARDLY by Crown Land designated Lot No. 8 measuring 933.02, NORTHWESTWARDLY by the remaining portion of Lot no. 7 measuring 980.53 feet (hereinafter referred to as the "subject property") on the Island of Great Exuma, one of the Islands of The Commonwealth of The Bahamas

AND

IN THE MATTER OF the Quieting Titles Act (the Act).

AND

IN THE MATTER OF the Petition of the Executor of the Estate of the Late Albert Livingston Clarke, Sr; Albert Clarke Jr., Margaret Clarke Melvin, Sharon Clarke Moosa, Mavis Clarke Seymour, Kenneth Clarke and Fernon Clarke.

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Ryan Brown for the Petitioners
Janet Fountain for the Adverse Claimant, the General Conference of Seventh-Day Adventists

Hearing date(s): 4 and 5 May 2023, 30 July 2023, 7 and 19 December 2023

JUDGMENT

WINDER, CJ

This quieting action relates to a 2.708 acre of land identified as a portion of Lot No. 7 in the area known as Jimmy Hill on the Island of Great Exuma (the Property). The Petitioners pray that their title to the Property be investigated under the Quieting Titles Act, 1959 (the QTA) and a Certificate of Title with respect to the Property be granted to them. The General Conference of Seventh-Day Adventists opposes the Petition.

[1.] The Petitioners are the executors and the children of the late Albert Livingston Clarke (Clarke). They contend that they have been in exclusive, open, continuous and undisturbed possession of the subject property for 52 years immediately before the presentation of the Petition and are entitled to a possessory and proprietary interest in the Property.

[2.] The Petitioners' Abstract of Title to the Property states as follows:

23 Sept. 2021 On this date Margaret Clarke Melvin of Jimmy Hill, on the Island of Great Exuma, one of the Islands of the Commonwealth of The Bahamas, made the following statements under oath:

1. That I am one of the Petitioners herein and I am citizen of the Commonwealth of The Bahamas.
2. I make this Affidavit in support of the Petition filed herein and insofar as the matters deposed to herein are within my own knowledge, they are true. Insofar as they are in accordance with information furnished to me or derived from statements or documents which I have read, they are true and correct to the best of my knowledge, information, and belief. In this Affidavit references will be made to certain documents which are exhibited hereto in a paginated bundle. Now produced and shown to me marked "MCM1" is the aforesaid paginated bundle of copy documents to which I shall refer. Reference in this Affidavit to page numbers refer to the pages in this exhibit.
3. I am the 6th child of the late Mr. Albert Clarke Sr and Mrs. Lattice Clarke of Jimmy Hill, Great Exuma. I am 52 years of age having been born on 28 November 1968. My parents have 8 children, of which 7 are the Petitioners in this action along with the Executor of the Estate of my late father.
4. My father and mother were farmers by profession. During their lifetime they had large farms in the settlement of Mount Thompson and Jimmy Hill, Great Exuma. As children and adults, my siblings and I assisted our parents on both farms.
5. On 1 January 1960, my father leased from the Crown, Lot No. 7, located in the settlement of Jimmy Hill, Great Exuma for the purpose of building

our homestead and farming. He made an application to the Crown Lands Office to purchase the aforesaid land and that offer was accepted on 15 March 1965. I now exhibit at pages 1 to 5 of the paginated bundle a copy of the aforesaid Crown Lease and a copy of the letter from the Crown Lands Office dated 18 March 1965, reference no. 2116/11.

6. I now exhibit at pages 6 to 7 of the paginated bundle a copy of the Crown Grant dated 26 July 1965 and recorded at the Registrar General's Office in book Vol. 883 pages 533-534, whereby my father purchased from the Crown ALL THAT piece or parcel of land designated Lot No. 7 on the diagram referred to below containing the survey SIX ACRES AND ONE HUNDREDTH OF AN ACRE (6.01 acres) situate in the area known as Jimmy Hill and located eastward of Ramsey Settlement and approximately nine (9) miles westward of Georgetown Settlement on the Northern Coast of the Island of the Island of Great Exuma and bounded NORTH EASTWARDLY by the High Water Mark of the Sea SOUTHWESTWARDLY by a Public Road measuring 284.89 feet, SOUTHEASTWARDLY by Crown Land designated Lot No. 8 leased to Edwin Paul Albury under Crown Reference M.P. 2117 measuring 912.38 feet and NORTHWESTWARDLY by Crown Land designated No. 6 measuring 1009.83 feet.”
7. My father conveyed a portion of Lot No. 7 to one Godfrey Egerton Lightbourn on 25 March 1966. The dimensions and measurements of the portion of Lot. No. 7 so conveyed are these; NORTH EASTWARDLY by the High-Water mark of the Sea measuring 132 feet, SOUTHWESTWARDLY by a Public Road measuring 140.33, SOUTHEASTWARDLY by Crown Land designated Lot No. 8 measuring 933.02, NORTHWESTWARDLY by the remaining portion of Lot no. 7 measuring 980.53 feet (hereinafter referred to as the “subject property”). I now exhibit at pages 8 to 10 of the paginated bundle a copy of the Title Search Report completed by Computitle Limited.
8. Notwithstanding the aforesaid conveyance, Godfrey Egerton Lightbourn never occupied the subject property or took possession of same. Since 1966, my family has occupied the subject property and made improvements to same throughout the years.
9. Sometime in the 1970s, my father planted coconut trees on the south westward side of the subject property that abuts Lot No. 8. My family, without any disturbance by Godfrey Egerton Lightbourn or anyone else who either had or did not have the assistance of the Court, continued to use the land to farm. The process of farming involved clearing large areas of the subject land to plant harvest and sell the produce. At no time was the activity concealed from public view; members of the public would visit the farm to purchase items and to visit our family from time to time.
10. My father died in June 2004 and my mother died in November 2017.

11. In 1999 I constructed a private dirt road on subject property. The private road is maintained on a regular basis. It is approximately 1000 feet in length, spanning from the public road to the beach. A tractor was used to clear the grounds and then transport rocks and other material to construct the road. All of this was done in view of the public and could not be concealed.
12. I own a heavy equipment business, RBM Trucking. I started it in 1998. I operate the business from the subject property on a portion of which that was previously used for farming.
13. In 2000 I built the Coral Beach Villa on a portion of my father's property that was conveyed to me. It is located near the beach and is adjacent to the subject property; the private road separates to two properties. To facilitate electricity to the Coral Beach Villa, I engaged the Bahamas Electricity Corporation, now Bahamas Power and Light, to install 5 electrical poles along the left side of the private road, both of which being on the subject property. I now exhibit at pages 11 to 12 of the paginated bundle pictures of the electrical poles and Coral Branch Villa.
14. I also now exhibit at pages 13 to 14 of the paginated bundle a picture of the sign that I had installed on the subject property along the public road to indicate the location of the Coral Beach Villa upon completion and a sign indicating that it the subject property is private property.
15. My eldest brother, Albert Clarke Jr, began building a home on a portion of the subject property in 2005. That portion of the subject property was previously used for farming before Albert Clarke Jr decided to build on same. I now exhibit at page 15 of the paginated bundle a picture of the aforesaid building.
16. Together, my family and I have been in undisturbed possession of the subject property since 1966. Accordingly, I humbly pray that this Court grant to the Petitioners Certificate of Title to the subject property as we are the lawful owners of same, having been in undisturbed possession well beyond 12 years.

9th Feb. 2022

On this date Albert Clarke Jr of the Eastern District of the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas, made the following statements under oath:

1. That I am one of the Petitioners herein and I am citizen of the Commonwealth of The Bahamas.
2. I make this Affidavit in support of the Petition filed herein and insofar as the matters deposed to herein are within my own knowledge, they are true. Insofar as they are in accordance with information furnished to me or derived from statements or documents which I have read, they are true and correct to the best of my knowledge, information, and belief. In this Affidavit references will be made to certain documents which are exhibited hereto in a paginated bundle. Now produced and shown to me

marked "CL1" is the aforesaid paginated bundle of copy documents to which I shall refer. Reference in this Affidavit to page numbers refer to the pages in this exhibit.

3. I am the eldest child of the late Mr. Albert Clarke Sr and Mrs. Lettice Clarke of Jimmy Hill, Great Exuma. I am 68 years of age having been born on 10 March 1953. My parents have 8 children, of which 7 are the Petitioners in this action along with the Executor of the Estate of my late father.
4. My father and mother were farmers by profession. During their lifetime, they had large farms in the settlement of Mount Thompson and Jimmy Hill, Great Exuma. As children and adults, my siblings and I assisted our parents on both farms.
5. On 1 January 1960, my father leased from the Crown, Lot No. 7, located in the settlement of Jimmy Hill, Great Exuma for the purpose of building our homestead and farming. He made an application to the Crown Lands Office to purchase the aforesaid land and that offer was accepted on 15 March 1965. A copy of the Crown Lease is exhibited to the Affidavit of Margaret Clarke Melvin filed herein on 23 September 2021.
6. A copy of the Crown Grant dated 26 July 1965 and recorded at the Registrar General's Office in book Vol. 883 pages 533-534, whereby my father purchased from the Crown ALL THAT piece or parcel of land designated Lot No. 7 on the diagram referred to below containing the survey SIX ACRES AND ONE HUNDREDTH OF AN ACRE (6.01 acres) situate in the area known as Jimmy Hill and located eastward of Ramsey Settlement and approximately nine (9) miles westward of Georgetown Settlement on the Northern Coast of the Island of the Island of Great Exuma and bounded NORTH EASTWARDLY by the High Water Mark of the Sea SOUTHWESTWARDLY by a Public Road measuring 284.89 feet, SOUTHEASTWARDLY by Crown Land designated Lot No. 8 leased to Edwin Paul Albury under Crown Reference M.P. 2117 measuring 912.38 feet and NORTHWESTWARDLY by Crown Land designated No. 6 measuring 1009.83 feet" is exhibited to the Affidavit of Margaret Clarke Melvin.
7. My father conveyed a portion of Lot No. 7 to one Godfrey Egerton Lightbourn on 25 March 1966. The dimensions and measurements of the portion of Lot. No. 7 so conveyed are these; NORTH EASTWARDLY by the High-Water mark of the Sea measuring 132 feet, SOUTHWESTWARDLY by a Public Road measuring 140.33, SOUTHEASTWARDLY by Crown Land designated Lot No. 8 measuring 933.02, NORTHWESTWARDLY by the remaining portion of Lot No. 7 measuring 980.53 feet (hereinafter referred to as the "subject property").
8. Notwithstanding the aforesaid conveyance, Godfrey Egerton Lightbourn never occupied the subject property or took possession of

same. Since 1966, my family has occupied the subject property and made improvements to same throughout the years.

9. Sometime in the 1970s, my father planted coconut trees on the south westward side of the subject property that abuts Lot No. 8. My family, without any disturbance by Godfrey Egerton Lightbourn or anyone else who either had or did not have the assistance of the Court, continued to use the land to farm. The process of farming involved clearing large areas of the subject land to plant harvest and sell the produce. At no time was the activity concealed from public view; members of the public would visit the farm to purchase items and to visit our family from time to time.
10. My father died in June 2004 and my mother died in November 2017.
11. After farming the subject property for decades, I decided to build a home on a portion of the subject property, measuring approximately 150' x 80', which is to the left of the Coral Beach Villa, referred to in my sister's Affidavit. I now exhibit at page 1 of the paginated bundle a picture of the aforesaid building.
12. I began preparing the property to build the house in 2007 and completed building in 2017. I now exhibit at page 2 of the paginated bundle a copy of the occupancy certificate for the aforesaid building.
13. In 1999 my sister, Margaret Clarke Melvin, constructed a private dirt road on subject property, which provides access to my home. The private road is maintained on a regular basis. It is approximately 1000 feet in length, running from the public road to the beach. A tractor was used to clear the grounds and then transport rocks and other material to construct the road. All of this was done in view of the public and could not be concealed.
14. In 2000, Margaret Clarke Melvin built the Coral Beach Villa on a portion of my father's property that was conveyed to her. It is located near the beach and is adjacent to the subject property; the private road separates to two properties. To facilitate electricity to the Coral Beach Villa, she engaged the Bahamas Electricity Corporation, now Bahamas Power and Light, to install 5 utility poles along the left side of the private road, both of which being on the subject property. The utility poles are also used to supple (sic) electricity to my home.
15. Together, my family and I have been in undisturbed possession of the subject property since 1966. Accordingly, I humbly pray that this Court grant to the Petitioners a Certificate of Title to the subject property as we are the lawful owners of same, having been in undisturbed possession well beyond 12 years.

[3.] The Property is described in a filed Plan and is shown below:

R
 REALTY SURVEYING CO. LTD.
 NEWSPICE AVENUE & LINDEN STREET
 P.O. BOX 9-9403 SPECIAL SERVICES
 NASSAU, BAHAMAS (PHONE) 477-3446
 PLAN BY R.C.J.

627EX

RECORDED IN THE OFFICE OF LAND AND SURVEYS IN ACCORDANCE WITH
 SECTION 106 OF THE LAND SURVEYS ACT 1973 & PLAN NO. 627EX/2021
 ON 6 MAR 2022

Rainey Powell
 SURVEYOR GENERAL
 06/03/2022
James Anderson
 CHIEF OF SURVEYS
Albert Clarke
 OWNER

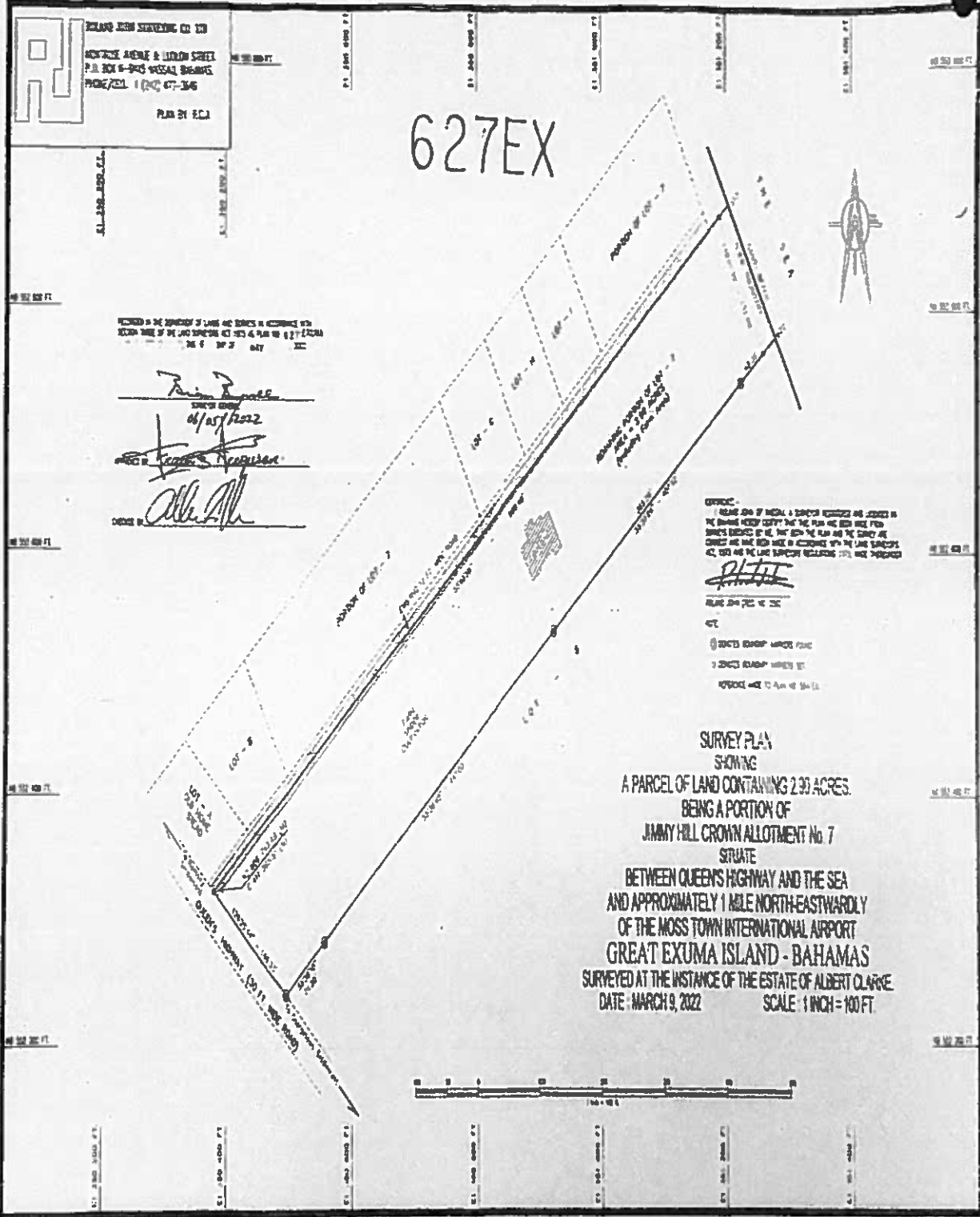


NOTICE:
 I HAVE BEEN OF THE OPINION THAT THE PLAN AND THE SURVEY
 THEREON WERE MADE IN ACCORDANCE WITH THE LAND SURVEYS
 ACT 1973 AND THE LAND SURVEYS REGULATIONS 1973 AND I HEREBY
 CERTIFY THAT THE PLAN AND THE SURVEY ARE
 TRUE AND CORRECT.

R.C.J.
 SURVEYOR

- ① BOUNDARY MARKERS
- ② BOUNDARY MARKERS
- ③ BOUNDARY MARKERS

SURVEY PLAN
 SHOWING
 A PARCEL OF LAND CONTAINING 2.93 ACRES
 BEING A PORTION OF
 JIMMY HILL CROWN ALLOTMENT No. 7
 SITUATE
 BETWEEN QUEEN'S HIGHWAY AND THE SEA
 AND APPROXIMATELY 1 MILE NORTH-EASTWARDLY
 OF THE MOSS TOWN INTERNATIONAL AIRPORT
 GREAT EXUMA ISLAND - BAHAMAS
 SURVEYED AT THE INSTANCE OF THE ESTATE OF ALBERT CLARKE
 DATE: MARCH 9, 2022 SCALE: 1 INCH = 100 FT.



[4.] Notice of the Petition was duly advertised pursuant to the Directions Order made by the Court.

[5.] The sole Adverse Claim was filed by the General Conference of the Seventh Day Adventists Church asserting that it is the beneficial owner to the fee simple to the Property.

[6.] The Abstract of Title of the Adverse Claimant to the Property states as follows:

1966	Conveyance of Lot 7 Jimmy Hill, Exuma dated 16 November 1966 Albert Clarke to Godfrey Egerton Lightbourne (no recording reference) Renunciation of Dowerd dated 16 November 1966 Letitia Clarke to Godfrey Egerton Lightbourne (no recording reference) Conveyance dated 25 March 1969 Godfrey Egerton Lightbourne to Thomas Lucien and Anne Spencer Gaudreau (no recording reference) Renunciation of Dower dated 25 March 1969 Vivien Ann Lightbourn to Thomas Lucien and Anne Spencer Gaudreau (no recording reference)
1980s	Anne Spencer Gaudreau gave property to the Adverse Claimant for use and benefit of the Seventh-day Adventist Church in The Bahamas
1980s to present	The Adverse Claimant has claimed by virtue of possession ownership of the subject property

Law, Analysis and Disposition

[7.] Section 3 of the QTA provides that:

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.

An investigation must therefore be conducted into the competing claims. This *investigation* is being conducted by the Court pursuant to the QTA. By section 8 of the QTA it is provided that:

8. (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 (4) 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.

[8.] The appropriate starting point in considering competing claims remains the Privy Council decision in *Ocean Estates Ltd. v. Pinder* [1969] 2 AC 19. In that decision, Lord Diplock opined at page 25 as follows:

Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles 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.

[9.] The law therefore is that in order to succeed in his claim, a party must demonstrate a documentary title or that, he or his predecessor went onto the land as trespasser and by virtue of such possession, beyond the limitation period, had extinguished the documentary title of his opponent or its predecessors in title. In considering the meaning of *possession*, Slade J. in *Powell v. McFarlane* (1977) 38 P & CR p452 at 470 held that:

(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question of 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. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and use must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to

generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v. S. Don Manis Appu* the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the Red House Farms case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.JJ. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has 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.

(4) The *animus possidendi*, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College* (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, the *animus possidendi* involves the 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.

[10.] The principles enunciated in *Powell v. Mcfarlane* have been approved in the Privy Council decision of *Armbrister et al. v. Lightbourn et al.* [2012] UKPC 40.

[11.] On the issue of factual possession, the learned authors of *Commonwealth Caribbean Property Law* states at page 246 as follows:

Possession by adverse possessor

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 (*nec clam*), peaceful (*nec vi*) and adverse (*nec precario*). Furthermore, factual possession must be accompanied by an *animus possidendi*, that is, an intention to enjoy possession to the exclusion of the paper owner.

The requirement of openness means that the possession of the claimant must be 'notorious and unconcealed', for otherwise the paper owner would not be made aware of the need to challenge the adverse possessor before expiry of the limitation period. On the other hand, it is not necessary that the paper owner should have been aware that he had a good title, nor that the adverse possessor should have had knowledge of the true ownership of the property. It is sufficient that he performed acts which were 'inconsistent with [the paper owner's] enjoyment of the soil for the purposes which he intended to use it'.

[12.] At trial, the Petitioners called Margarete Clarke Melvin (Margarete), Fernon Errol Clarke, Everette Hart and Pastor Paul Scavella as witnesses in their case. The Adverse Claimant called Pedro Rolle and Anne Spencer Gaudreau as witnesses in their case.

[13.] Margarett Clarke Melvin gave evidence that she is the daughter of Clarke and that her parents were farmers by profession. Clarke and her mother had large farms in the settlement of Mount Thompson and Jimmy Hill. She and her siblings assisted their parents on both farms. Despite the sale, Godfrey Egerton Lightbourn never occupied the Property or took possession of it. Her family has occupied the subject property and made improvements to it throughout the years without any disturbance by Godfrey Egerton Lightbourn or anyone else.

[14.] According to Margarett, the process of farming involved clearing large areas of the subject land to plant, harvest and sell the produce. At no time was the activity concealed from public view; members of the public would visit the farm to purchase items and to visit her family from time to time. Clarke died in June 2004 and her mother died in November 2017. In 1999 she constructed a private dirt road on a portion of the subject property. The private road is maintained on a regular basis. It is approximately 1000 feet in length, spanning from the public road to the beach. A tractor was used to clear the grounds and then transport rocks and other material to construct the road. All of this, she says, was done in view of the public and could not be concealed. She owns a heavy equipment business, RBM Trucking which she started in 1998. She says that she operates the business from the subject property on a portion of which that was previously used for farming.

[15.] Margarett says that in 2000 she built the Coral Beach Villa on a portion of Clarke's other property on Lot#7. To facilitate electricity to the Coral Beach Villa, she engaged the Bahamas Electricity Corporation, now Bahamas Power and Light (BPL), to install 5 electrical poles along the left side of the private road, which is on the Property. Signs directing customers to Coral Beach Villas was erected on the Property along the public road. Her eldest brother, Albert Clarke Jr, began building a home on a portion of the Property in 2005. This was the portion of the Property that was previously used for farming. Her family have been in undisturbed possession of the subject property since 1966.

[16.] Fernon Errol Clarke, Everette Hart and Pastor Paul Scavella all gave evidence supporting the claim that Clarke farmed the Property and corroborated the evidence of Margarett. Fernon Clarke is the son of Clarke. Clarke denied suggestions that there was an admission that the Adverse Claimant was the owners of the Property. Hart is a 79-year-old resident of Exuma and Pastor Scavella is a Seventh Day Adventist Pastor and the former President of the South Bahamas Conference of Seventh-Day Adventists.

[17.] Pedro Rolle was called as a witness by the Adverse Claimant. He testified that he has no recollection of the subject property being farmland, having been used as a farmland or being adequate for farm land.

[18.] Anne Gaudreau testified that she and her husband fell in love with the waters of Exuma and acquired the Property in 1969 with the intention of constructing her home. When she returned to Exuma on the final of three visits, she found a shack on the Property and was disturbed by prevalence of drugs on the island. She says that she and her husband abandoned their dream of building a home. They never returned to the island and subsequently gave the Property to the Church.

[19.] In assessing the evidence and observing the demeanor of the witnesses as they gave their evidence, I have no hesitation in indicating that I preferred the evidence of the Petitioners witnesses where they differed from that of the Adverse Claimant's witnesses. The facts which I accept are the following.

[20.] Clarke was an Elder in the Seventh Day Adventist Church in Great Exuma. Clarke originally leased Lot#7, a seven acre tract from the Crown on 1 January 1960. Clarke subsequently acquired a Crown Grant to Lot#7 on 26 July 1965. The Property is situated within Lot#7.

[21.] Shortly after the acquisition of Lot #7 Clarke divided the property into two segments with a road reservation dividing the segments. The Property comprises the southern portion of Lot#7. Clarke sold the Property to Godfrey Egerton Lightbourn on 25 March 1966. Godfrey Egerton Lightbourn sold the property to Mr. Thomas Lucien Gaudreau and Mrs. Anne Spencer Gaudreau (the Gaudreus) of 6840 Eastern Avenue, N.W., Washington, D.C., 20012, United States of America on 25 March 1969. The Gaudreus were also Seventh Day Adventists who visited Exuma in the late 1960's when they acquired the Property. The Gaudreus had intended to build a home on the property.

[22.] In or about 1971 the Gaudreus lost interest in visiting Great Exuma due to concerns about drugs on the Island. They never returned to the Island and decided to give the Property to the Seventh Day Adventist Church. Around the time the Gaudreus lost interest in the Island Clarke and his family entered onto the Property and commenced occupation on it. The occupation included the following:

- (1) Commercial farming which took place by Clarke from the 1960s until his death in 2004 with minimal farming thereafter by his children.
- (2) Constructing and Maintaining a portion of a gravel road measuring approximately 1000 feet;
- (3) Causing the installation of utility poles taking electricity to the Property by BPL in 2000 at the instance of one Margarete Clarke Melvin.
- (4) Operation of a trucking business from the Property.
- (5) The construction of a substantial home onto the Property by Albert Clarke Jr from about 2004/2005.

- (6) The erection of signage advertising the Petitioners' businesses as well as no trespassing signs.

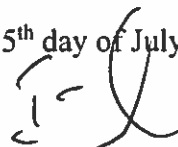
[23.] It appears that at some point the Gaudreaus executed a Conveyance to the Property to the Adverse Claimant however, there is no recorded transfer. Available evidence suggests that the transfer purportedly took place in or about 27 December 1983. It is not disputed that the prevailing law¹ at the time prohibited the conveyance of land to a non-Bahamian entity such as the Adverse Claimant. In any event, the Adverse Claimant accepts in its submissions that they are not the paper owner and that this remains in the Gaudreaus. The Adverse Claimant has also admitted that it has not entered into possession of the Property or ever occupied it.

[24.] The Adverse Claimant also sought to rely on the payment of real property tax to support its claim to a possession of the property. Unfortunate as it may be, the payment of taxes in these circumstances does not defeat the claim of a Petitioner to the Property. The Department of Inland Revenue in The Bahamas does not determine who owns land in The Bahamas but merely the valuation of real property taxes on the land. (See **Petition of Mortgage Holdings Ltd 2018/CLE/qui/00582** (unreported))

[25.] It could hardly be disputed that anyone other than Clarke and his family possessed and occupied the Property. Other than Rolle, the preponderance of the direct evidence supports that the Clarkes have been in open and undisturbed occupation of the property for well over 40 years. I am satisfied, on balance, that the Petitioners were in factual possession with the requisite animus possidendi for a period beyond the statutory period provided under the Limitation Act. A Certificate of Title should therefore be issued to them with respect to the Property subject to the exceptions and qualifications set out in the QTA.

[26.] In all the circumstances therefore, I accept the claim of the Petitioners to the Property and the Adverse Claim is dismissed.

Dated this 15th day of July 2024



Sir Ian R Winder
Chief Justice

¹ Immovable Properties Act 1981