

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

2022/CLE/qui/00084

IN THE MATTER OF ALL THAT piece parcel or lot of land comprising Three Thousand Four Hundred Seventy-Three (3,473) square feet situate on the Dunmore Harbour in Dunmore Town on the Island of Harbour Island one of the Islands of the Commonwealth of The Bahamas ("*Dockside Cottage Property*")

And

IN THE MATTER OF ALL THAT piece parcel or lot of land comprising Three Thousand Three Hundred and Eighty-nine (3,389) square feet situate on the said Dunmore Harbour in Dunmore Town on the said Island of Harbour Island of the said Commonwealth of The Bahamas ("*Shoreline Cottage Property*") (collectively "*the properties*")

IN THE MATTER OF the Quieting Titles Act, 1959

IN THE MATTER OF the Petition of Laura Dodge

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Richette Percentie with Darren Bain for the Petitioners
Kenria Smith with Zoe Bowleg and Perry McHardy for the Crown
Timothy Eneas KC with Ava Laroda for the Adverse Claimant Lawrence Dawson

Hearing date(s): 16 July 2024, 17 July 2024, 27 August 2024, 22 January 2025

JUDGMENT

WINDER, CJ

This quieting action relates to 2 tracts of land (collectively “the Properties”) measuring Three Thousand Four Hundred Seventy-Three (3,473) square feet and Three Thousand Three Hundred and Eighty-nine (3,389) square feet respectively situated on the Dunmore Harbour in Dunmore Town on the Island of Harbour Island, Eleuthera. The Petitioner (Dodge) prays that her title to the Properties be investigated under the **Quieting Titles Act**, (the **QTA**) and a Certificate of Title with respect to the Properties be granted to her. The Crown and Lawrence Dawson both oppose Dodge’s Petition.

[1.] The Petition was filed on 20 January 2022. Dodge swore an affidavit in support of the Petition asserting that she is entitled to a possessory title to the Properties. Dodge’s case was also supported by the evidence of Anita Wright, Joel Simmons and Simon Lowe.

[2.] A number of other affidavits were filed on behalf of Dodge but the deponents were not called as witnesses. These were Amber Vincent Johnson, Cyril Major, Reswell Nathaniel Mather, Michaela Broemel, Frank Broemel, Ingeborg Broemel, Peter Dempsey, Jayron Roberts and Kirk Alexander George Aulin. In the course of the investigation I did consider what weight to give to these, but ultimately having regard to the disposition it did not really factor as an issue.

[3.] Dodge filed an Abstract of title distilling her interest in the Properties from 2009 on the premise (as stated in her affidavit of possession) that she only needed to prove title for 12 years.

[4.] An Adverse Claim was filed by the Minister responsible for the Acquisition & Disposition of Land (the Crown). The Crown’s Adverse Claim asserts it is the beneficial owner to the Properties as they are part of a road reservation “Dunmore Street” and is Crown land. The Crown relied on the evidence of the Surveyor General, Brian Bynoe.

[5.] An Adverse Claim was also filed by Lawrence Dawson (Dawson) who claims to have a possessory title. Dawson contends that the Properties are Crown lands over which he has exercised rights of occupation and user for a period exceeding 16 years prior to the commencement of these proceedings. Dawson owns three (3) parcels of land in the Sunset Harbour Development and the marina facility which adjoins the western boundary of the Properties. Dawson acquired the first of the three parcels from Sunset in 2005 and the conveyance conferred upon him a right of way to the sea. Dawson says that he undertook repairs to the jetty and performed maintenance tasks relative to the Properties at that time without interference from any other person. Dawson gave evidence in support of his adverse claim.

[6.] The chronology of the respective interests concerned with this investigation provides a useful starting point and demonstrates that the issues are relatively narrow:

- <1962 All Original Crown Grants in the area of the Properties identify the Properties as a Road Reservation – Dunmore Street.
- 16 May 1962 Charles Leslie Dearborn Bean and Lucille Elizabeth Bean (collectively “the Beans”) acquired Lots 23-27 and 90-94 in the Township of Dunmore Town on the plan of Harbour Island. These lots today comprise the Sunset Harbour Development (“the Sunset Harbour Development”), a residential development known as Sunset Harbour Estates which is in close proximity to the Properties.
The Plan attached to the Conveyances identifies the Properties as Crown Land.
- 28 Apr 1981 Siegfried A. Broemel acquired the property comprising the Sunset Harbour Development, by deed of conveyance, from Charles Leslie Dearborn Bean and Lucille Elizabeth Bean.
The conveyance cites the Western Bounaries (which comprises the Properties) as being bounded by “Crown Land (also known as Dunmore Street)”.
The deed of conveyance does not reflect a transmission of the interest in the Properties to Siegfried A. Broemel, nor does any other conveyance purports to transmit any interest in the Properties to Siegfried A. Broemel from the Beans.
- 18 May 2000 Sunset Harbour Resorts Limited (“Sunset”) acquired the property comprising the Sunset Harbour Development, by deed of conveyance, from Ingeborg Broemel, Frank Broemel and Michaela Broemel (“the Broemels”). The Broemels were the successors to the estate of Siegfried A. Broemel.

The Conveyance to Sunset did not include the Properties and identified the property the subject matter of the conveyance as being bounded on the “...*the WEST by Crown Land (also known as Dunmore Street) and running thereon Two Hundred and Twenty (220) feet.*”. This western boundary is where the Properties are located.
- 18 Oct 2005 Lawrence Dawson acquires his first of three (3) parcels in the Sunset Development. The Plan attached to the conveyance identifies the properties as crown land reserved for road.
- 2 Oct 2006 Peter Dempsey, the principal owner of Sunset, applies to the Crown for a Crown Lease of the Properties by completing and submitting the prescribed forms.
- 24 Sep 2007 Sunset writes to the Permanent Secretary, Office of the Prime Minister in a letter signed by Peter Dempsey where Dempsey advised that “*It is now important that we resolve this issue because the area concerned is still being polluted by human excrement and is a health hazard. We wish to take it under control through a lease so we can eliminate the problem and beautify the area.*”

- 23 Nov 2007 Audley Greeves of the Office of the Prime Minister writes to Peter Dempsey confirming that his application is receiving active consideration.
- 11 Feb 2008 Peter Dempsey, in support of his application of a lease of the Properties, replies to Audley Greeves of the Office of the Prime Minister enclosing affidavits which he says confirms the existence of the wall and the bath house for more than 50 years.
- 18 Jul 2008 Dawson acquires property in the Sunset Harbour Estate. The Plan attached to the conveyance identifies the properties as a road reservation.
- 18 May 2009 Sunset obtains a Confirmatory Conveyance from the Broemels which purports to clarify and confirm the intention of the parties to include the Properties in the original 18 May 2000 conveyance.

Peter Dempsey, procures a number of affidavits seeking to establish a claim to adverse possession of the Properties. Affidavits of Amber Vincent Johnson, Cyril Major and Reswell Nathaniel Mather each depose to the Properties having been owned by Charles Leslie Dearborn Bean and Lucille Elizabeth Bean from the early 1960's to the early 1980's and thereafter by Siegfried A. Broemel and his family from the early 1980's to 2000 when it was conveyed to Sunset. Affidavits of Michaela, Frank and Ingeborg Broemel depose to the ownership of the Sunset Harbour Development property by Siegfried A. Broemel between the 29th April, 1981 and 18th May, 2000 and noting the existence of the dock house, pathway and cesspit on the Properties at the time of Siegfried A. Broemel's purchase in 1981 and the use of the same during his ownership of the property now comprising the Sunset Harbour Development.

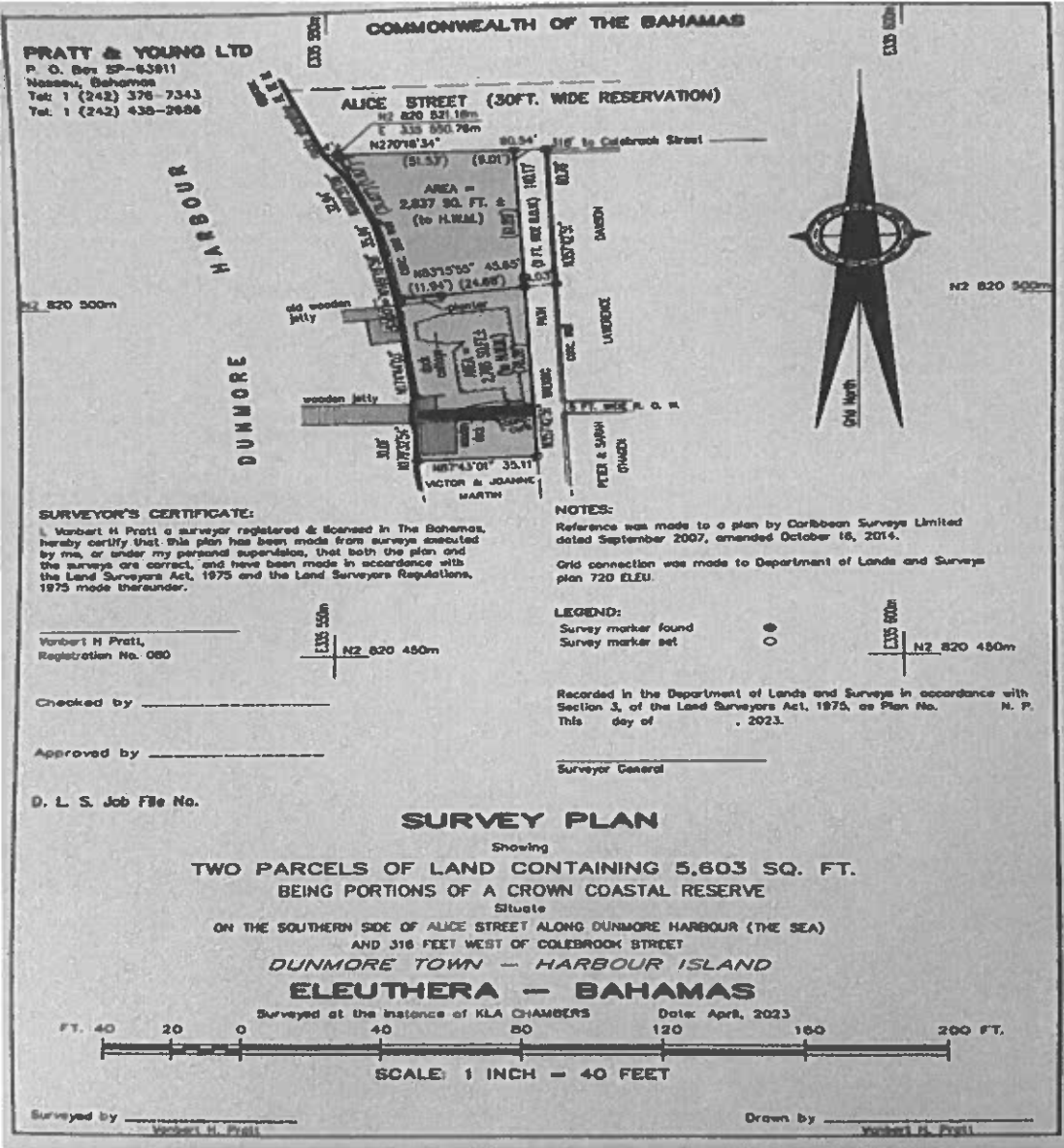
Incidents of possession to the Properties include having constructed (a) the wall along the Northern boundary of the Properties, (b) the dock house, (c) the pathway leading thereto and (d) the cesspit which serves the dock house.

- 18 Jun 2009 Acting Director of the Department of Land and Survey grants to Peter Dempsey a renewable annual license subject to an annual fee of \$2,500 upon terms.
- 18 Jul 2010 Dawson acquires property in the Sunset Harbour Estate being described as a Reverse Osmosis Plant.

The Plan attached to the conveyance identifies the Properties as a road reservation.
- 25 Jun 2018 Dodge purportedly purchased the Properties, by deed of conveyance, from Sunset. Dodge is aware that the nature of the purchase is the possessory interest and says that she assumed the risks.

Dodge applied for and obtained Bahamas Investment Authority (BIA) approvals for the purchase of the Properties from Sunset prior to her purchase. While the plan submitted to the BIA had a description of the parcels as being a part of a Crown Reserve, the areas where the Properties were shaded had blotted out the words Road Reservation (Crown Land). Dodge has paid Real Property Taxes on the properties since her purchase.

[7.] The Properties are described in a Plan filed by Dodge and is shown below:



[8.] Notice of the Petition was duly advertised pursuant to the Directions Order filed in the Court.

Law, Analysis and Disposition

[9.] 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.

[10.] 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.

[11.] 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.

[12.] 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.

Whether the Properties formed part of the road reservation

[13.] The first issue for determination is whether the Properties had formed a road reservation. This issue is critical as it would determine the period of limitation which must be proven by the Dodge. If in fact the title to the Properties were that of the Crown, Dodge must prove title for 60 years from the date of the filing of the Petition. In **F.A.R Ltd. v The Attorney General** SCCivApp. No. 105 of 2024, the Court of Appeal confirmed that relevant period to accrue against the Crown is 60 years. According to *Turner JA*:

17. However, the decision as to whether the land was properly accorded the status of foreshore land, having regard to the definition of such land in the Limitation Act, 1995, is immaterial to the determination of this ground of appeal. Properly considered, the Learned Trial Judge's decision does not reach the conclusion that the appropriate limitation period is 60 years based on the land being foreshore land. In paragraph 20 of the Learned Trial Judge's decision (*supra*) the court had cited an extract from Petition of Mortgage Holdings:

“[23.] Mortgage asserts that it entered into possession in 1983, prior to 31 August 1995 (the coming into force of the Limitation Act 1995) the relevant period for consideration would be the period which pertained under the limitation act in place at that time. The Real Property Limitation (Crown) Act 1873 had been in effect up to 31 August 1995. The Real Property Limitation (Crown) Act 1873 provided at section 2:

2. The Queen shall not at any time hereafter sue, impeach, question or implead any person or persons for or in any wise concerning any lands, tenements, rents or hereditaments whatsoever, or for or in any wise concerning the revenues, issues or profits thereof, or make any title, claim, challenge or demand of; in or to the same, or any of them, by reason of any right or title which hath not first accrued and grown, or which shall not hereafter first accrue and grow, within the space of sixty years next before the filing, issuing or commencing of every such action or other suit or proceeding, as shall, at any time or times hereafter be filed, issued or commenced for recovering the same or in respect thereof,

The limitation period which was in place prior to 1995 was therefore 60 years in accordance with the Real Property Limitation (Crown) Act 1873.

[24.] The cause of action of the Crown, to challenge Mortgage's occupation of the property would have accrued in 1983 (when the occupation is alleged to have initially taken place) and would therefore expire in 2043 (being 60 years from 1983)...”

The Learned Trial Judge then stated:

“[21.] I am not satisfied that FAR or its predecessors in title has demonstrated possession of the land for the 60 year period required.”

18. Nowhere in the decision does the Learned Trial Judge find that because the land was foreshore land, that therefore the 60 year period was applicable pursuant to section 16(2) of the Limitation Act 1995. Instead this finding was predicated on the other findings of the court, and the pleaded case of the Petitioner, that their predecessors in title had entered onto the property since well before 1995 (the year of the passage of the Limitation Act 1995), therefore the relevant limitation period would have been the 60 year limitation period established by the Real Property Limitation (Crown) Act 1873, the law in force at the time of the asserted entry onto the land, which would have accrued the Crown’s right to challenge that occupation.

19. For these reasons, I find that the Learned Trial Judge’s determination that the relevant limitation period is 60 years is legally correct.

[14.] It is not seriously disputed that the Properties formed the road reservation - Dunmore Road and that the title thereof is in the Crown:

- a) All of the early plans of Harbour Island identify the Properties as a Road Reservation – Dunmore Street.
- b) The survey plan describes the Properties as Two Parcels of Land containing 5,603 sq ft. being portions of a *Crown Coastal Reserve*.
- c) All Original Crown Grants in the area of the Properties all identify the Properties as a Road Reservation – Dunmore Street.
- d) The conveyances to the Beans, Siegfried Broemel, to Sunset and to Dawson all identify the the Properties, their western boundary, as *Crown Land (also known as Dunmore Street) or Road Reservation (Crown Land)*.
- e) The unchallenged evidence of Bynoe was that the Properties are a part of the road reservation - Dunmore Road and Crown Land.

[15.] I therefore accepted this evidence and find that the Properties are Crown lands. Dodge, and anyone seeking to claim the Properties by adverse possession must show a continuous uninterrupted possession of 60 years. In the context of this matter, Dodge must show possession for 60 years prior to the filing of this Petition, namely 20 February 1962.

Whether Dodge can show a continuous uninterrupted possession of 60 years

[16.] Putting aside questions as to the quality of any claim to possession, I am satisfied on the evidence that Dodge does not meet the necessary requirement for a continuous uninterrupted possession of 60 years:

- (a) The Beans acquired the title to the several lots which became the Sunset Harbour Development on 16 May 1962. Assuming that they immediately begins to possess the neighboring roadway he still falls shy of the 60 years by 3 months. It could not be (and

has not been) suggested that he took ownership of the neighbouring road reservation before he took ownership of the several lots he purchased.

- (b) If Bean does in fact enter into possession of the Properties there is no conveyance of that interest to the Siegfried Broemel. This creates a break in the chain of possessory interests. That possessory interest, if existed, remain in the Beans or was abandoned by them. Siegfried Broemel (nor his heirs) could, by confirmatory conveyance or otherwise, have conveyed what he did not have. Siegfried Broemel could only have accrued his own possession as of 1981.
- (c) The Broemels could not convey any possessory interest in the Properties to Sunset beyond any possession they claimed during their ownership of the Sunset Development.
- (d) Dodge claimed to have acquired the possessory interest of Sunset but:
 - (i.) Sunset's principal Peter Dempsey was in 2006 recognizing the Crown's title to the Properties by seeking to obtain a Crown Lease in respect of the Properties.
 - (ii.) Sunset writes to the Office of the Prime Minister on the 24th September, 2007 complaining about the unhealthy upkeep of the Properties, in an acknowledgement of the Crown's title.
 - (iii.) Sunset's original conveyance (8 May 2000) acquiring the Sunset Harbour Development identified the property as being bounded on the "*...the WEST by Crown Land (also known as Dunmore Street) and running thereon Two Hundred and Twenty (220) feet.*". This western boundary is where the Properties are located.
 - (iv.) Sunset conveys to Dawson identifying the Properties as Crown Land.

Proprietary Estoppel

[17.] Dodge's closing submission raised for the first time the issue of proprietary estoppel. She says that:

- (i) the granting of a permit to her by the Investment Board pursuant to the provisions of the International Persons Landholding Act, 1993;
 - (ii) her registration as the owner of the Properties under the provisions of the Real Property Tax Act; and
 - (iii) the subsequent purchase of the Properties and payment of real property taxes
- establishes an equity which renders it inequitable for the Crown to now assert title to the Properties in these proceedings.

[18.] I accepted the submission of Mr Eneas KC, Counsel for Dawson, that this was an untenable argument on the basis that no equity can arise in favour of [Dodge] in the circumstances of this case on the basis of Dodge's knowledge, the conduct of Sunset (through whom she claims) and her own conduct. The claim is tainted by the impropriety of being part of a scheme to wrongfully

acquire Crown land over which there is a public road known as Dunmore Street. Further, the Crown cannot be prevented by estoppel from relying upon its legal rights in circumstances where it did not have knowledge that its actions were contrary to its rights in the property.

[19.] *Lord Denning*, in the case of **Williams v. Staite and Another** [1979] Ch. 291 provides a useful discussion on the impact of conduct and impropriety in assessing whether proprietary estoppel ought to arise. At page 299(D) and (E) *Lord Denning* states:

“So the novel point is argued. It is said that the court has to determine when the matter is brought before it whether there is any equity to restrain the legal owner from exercising his legal right and, therefore, where there has been conduct of the kind I have been describing, impropriety in relation to the property by the party setting up the equity, the court has to consider whether he comes with clean hands so as to be entitled to equitable relief. If that be right in law and on the facts, it is a complete answer, and the party seeking to set up the equity is left with no right at all and the legal owner is at liberty to exercise his legal right.

If it were necessary to decide that novel point, I am inclined to think that it is right in principle and, when a party raises an equity of this character and it is alleged against him that his own behavior has been wrong, the court has to decide on the facts whether a sufficient answer to his equity has been made out.”

[20.] Dawson submissions aptly chronicles the extent of the misconduct and impropriety and I could not improve upon his assessment:

[Dodge] was aware that the land which adjoined the Sunset Harbour Development was Crown land comprising an existing public roadway known as Dunmore Street and her participation by the Petitioner in the scheme of her predecessor to appropriate public lands. This contention includes the conduct of [Sunset] with regard to the concealment of the Crown’s interest and the public rights when applying for the approval of the Investment Board in respect of the acquisition of the property pursuant to the Confirmatory Conveyance and the subsequent misrepresentations or omissions to the Office of the Administrator/Town Planning Committee when applying for a Building Permit in addition to the Petitioner’s participation and furtherance of the scheme through her utilization of a plan which failed to denote the Crown road reservation when seeking Investment Board approval and the continuing illegality resulting from the obstruction of the public road known as Dunmore Street.

...

[Dawson] contends that the [Dodges’] claim originates with her predecessor’s ([Sunset]/Mr. Dempsey) scheme to obtain title to Crown land over which there is an existing public road. The scheme involved the purported acquisition of the alleged possessory interests of [Sunset]’s predecessors in title over the property situate to the west of the Sunset Harbour Development which included the public road. In attempting to acquire the interest of the Broemel’s [Sunset] relied upon a manipulated survey plan when applying for the Investment Board approval for the acquisition. Prior to embarking on the scheme [Sunset] made application to the Crown for a grant or lease of the said property thereby acknowledging the title of the Crown and evidencing its knowledge of

the Crown's interest in the property. [Dodge], as the alleged successor to [Sunset], now purports to rely *inter alia* upon (i) the erroneous plans prepared by [Sunset] and utilized by [Dodge] to obtain a permit from the Investment Board and (ii) the Building Permit obtained by [Sunset] to establish an equity for the purpose of raising an estoppel against the Crown.

...

[Dawson] submits that [Dodge]'s participation in the scheme with full knowledge of [Sunset]'s misrepresentations and the use of the erroneous survey plan when seeking Investment Board approval disentitles [Dodge] to equitable relief.

...

In implementing its plan, [Sunset] relied upon a survey plan when making application to the Investment Board for the requisite permit to acquire the property from the Broemels which removed all indication that the land was Crown land reserved for a public road.

...

That application was made to the Investment Board sometime prior to the 5th June, 2012 (see the date of the amendment to the permit exhibited to the Confirmatory Conveyance) following the execution of the Confirmatory Conveyance and after having acknowledged the Crown's ownership and having received the offer for the annual renewable license as aforesaid.

...

[Dawson] contends that the removal of the reference to the designation of the land being "*(Crown Land) Reserved for Road*" was intended to conceal from the Investment Board the true ownership of the property the subject matter of the application, and had this information been included on the plan, the Investment Board would have been alerted to the Crown's interest and the existence of the fact that the said property was known as Dunmore Street.

...

In view of the aforesaid, it is respectfully contended that [Sunset]'s failure to include a designation of the Crown's interest on the plan was a deliberate attempt to conceal this material fact from the Investment Board.

...

There is no evidence to suggest that the said offer for the annual renewable license was accepted by [Sunset], however, in January, 2015, [Sunset] made application under the Building Regulations Act and the Town Planning Act, 1961 for a Building Permit with respect to the property. Notwithstanding [Sunset]'s acknowledgment of the Crown's interest by reason of the Crown Grant/Lease Application and the subsequent offer for an annual renewable license, it is critical to note that the application papers attached to the Building Permit clearly evince that there was a failure on the part of [Sunset] to fully disclose its alleged interest in the property the subject matter of the application as required by section (2) of the application form. That section requires the application to state "*...particulars of applicant's interest in the Land...*". In that section Mr. Dempsey noted "*Dwelling Home*" and confirmed that he had obtained the consent of the owner/lessor for the proposed development. These representations were clearly misleading and/or false as [Sunset] had not accepted the annual renewable license nor had it obtained the consent of the Crown to undertake the construction works. ...

[21.] It is abundantly clear from the above that no equities can arise in the context of Dodge's reliance on the Government's Investment Board Approval or the payment of Real Property Tax. I

am satisfied that Dodge and her predecessor in title, Sunset, engaged in a systematic scheme in an effort to try to simply take the Properties which they knew was the Crown's property for a road reservation. In that process Dodge was not candid with the government as to what was being acquired when these applications were being made as at no point did she indicate that she was purporting to purchase Crown Land from Sunset. Such conduct ought to disentitle any claim for proprietary estoppel and the same is rejected.

[22.] In any event such a claim is not viable in the context of a quieting petition. The Court of Appeal in **F.A.R. Ltd.** (supra) considered a claim for unjust enrichment. The claim asserted that having purchased the land following the receipt of approval from the Investment Board and having consistently paid real property taxes, the Crown should be equitably estopped from asserting a claim to the land. The Court rejected the claim on the basis that:

- (i.) There is no legal requirement on the part of the Investment Board nor the Department of Inland Revenue to determine who owns land in The Bahamas.
- (ii.) In accordance with the Judgment of Privy Council in ***Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd [2018] UKPC 27*** (“*the Bannerman Town case*”) the Court has no power to create title but can only grant the title if any, which the party is entitled to.

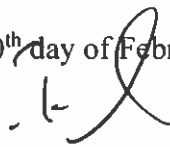
Disposition

[23.] In all the circumstances therefore, I find that:

- (a) Dodge does not meet the necessary evidential requirement for a continuous uninterrupted possession of 60 years to defeat the title of the Crown to the Properties.
- (b) The Crown is not estopped by proprietary estoppel from now asserting title to the Properties in these proceedings as a result of:
 - (i.) the granting of a permit to her by the Investment Board pursuant to the provisions of the International Persons Landholding Act, 1993;
 - (ii.) her registration as the owner of the Properties under the provisions of the Real Property Tax Act; and
 - (iii.) the subsequent purchase of the Properties and payment of real property taxes.

[24.] The Petition of Dodge is dismissed. I will hear the parties as to the appropriate order for costs.

Dated this 20th day of February 2025



Sir Ian R Winder
Chief Justice