

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

2022/CLE/qui/01777

IN THE MATTER OF the Quieting Titles Act, 1959

IN THE MATTER OF ALL THAT piece parcel or lot of land herein labeled as Lot 16 and 17 situate Flamingo Avenue and being bounded on the North of Flamingo Avenue and running thereon One Hundred (100.00) Feet bounded on the West by neighbouring lot and running thereon One Hundred (100.00) Feet bounded on the South by neighbouring lot and running thereon One Hundred (100.00) Feet and bounded on the East by neighbouring lot and running thereon One Hundred (100.00) Feet.

IN THE MATTER OF the Petition of Terry Alday

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Candice Ferguson with Tai McCartney for the Petitioner

Hearing date(s): 30 January 2025 and 20 February 2025

JUDGMENT

WINDER, CJ

This quieting action relates to 2 lots (collectively “the Properties”) measuring 10,000 square feet and identified as Lots 16 and 17 Greater Chippingham Subdivision situated on the Island of New Providence.

[1.] The Petitioner (Alday) prays that his 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 him

[2.] The Petition was filed on 21 December 2022. Alday swore an affidavit in support of the Petition asserting that he is entitled to a possessory title to the Properties. Alday’s case was also supported by the evidence of Violet Storr and Nancy Storr.

[3.] Alday filed an Abstract of Title (as amended) distilling his interest in the Properties from 2008/2009 on the basis of his taking possession of the property.

[4.] 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.

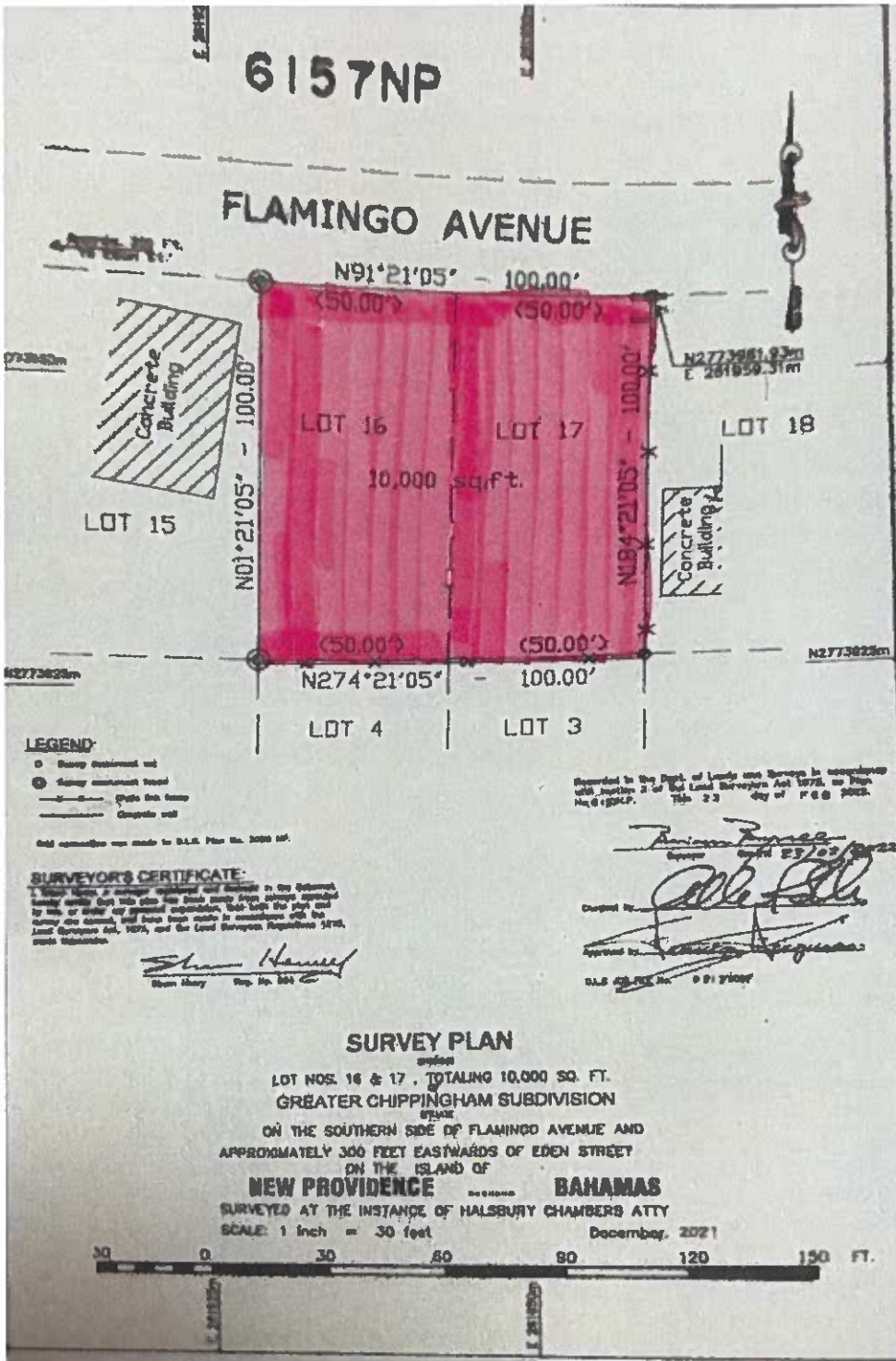
An investigation must therefore be conducted into the competing claims. This *investigation* is being conducted by the Court pursuant to the **QTA**. By section 8 of the **QTA**, it is provided that:

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.

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



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

[7.] There are no adverse claimants.

[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 n of ***Armbrister et al. v. Lightbourn et al.*** [2012] UKPC 40.

[11.] Notwithstanding that there is no adverse claimant, Alday must still demonstrate a title to the Properties. The Court has no power to create title but can only grant the title, if any, which the party is entitled to. According to *Lord Briggs* in ***Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd*** [2018] UKPC 27, at paragraph 40-41:

[40.] Nonetheless the court hearing a petition under the Quieting Titles Act enjoys one major advantage over the court hearing a vendor and purchaser summons. Its power to direct notification and advertisement to potential adverse claimants is coupled by provision in section 7(2) of the Act that any person's failure to file and serve a statement of an adverse claim within the time specified by the court shall operate as a bar to such a claim. This means that the court may exercise case management powers to ensure that, by the time of trial, all persons with a claim can have their claims investigated by the court, or alternatively be barred from pursuing a claim. The result is that the court need not be deterred from issuing a certificate of title to the claimant who, among those before the court, appears to have the best title, by any apprehension of a real risk that there may be one or more others, unknown to the court, whose rights in relation to the land would thereby be unjustly infringed. The result is that the court may with confidence grant a certificate of title to a claimant who, in a vendor and purchaser summons, might have failed to prove good marketable title sufficient to justify an order for specific performance, precisely on the basis that there were unacceptable risks of adverse claims.

[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 ... 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 authorizes 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.

[12.] It is accepted that to be successful, Alday must show possession of the Properties for the 12 year period up to 21 December 2022.

[13.] I am not satisfied that the quality of any such possession, that Alday claims, is sufficient for the purpose of the grant of a Certificate of Title.

[14.] Alday was a tenant of an apartment building in the vicinity of the Properties and says that his first connection to the Properties was using it as a short-cut to get to the bus stop. At some point he began to use a cutlass to clear a path across it to get to the bus stop. The evidence was that, as time allowed his connection to the Properties grew to clearing it down regularly.

[15.] Alday's witnesses say that he did not begin to take possession until after a year or so of his first contact with the Properties. Their evidence was that he was there about 12-14 years ago, which from the date they gave evidence would be around 2011-2013, just shy of the period needed. On balance, I was not satisfied that Alday's possession was continuous for a 12 year period.

[16.] My assessment of Alday's witnesses, who live next to the Properties, were his friends were simply there to help him get the Properties. In fact, he said that he erected the fence as a result of break-ins to Nancy and Violet Storr's property, not necessarily to secure it for himself. Violet Storr did not see him as the owner as she told Urban renewal that she did not know who owned the Properties when they came to inquire about the ownership of the Properties. In fact, Nancy Storr said that she also cleared the Properties after she learned that marijuana was being grown on it.

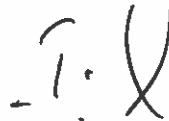
[17.] Not only was I satisfied that the duration of Alday's alleged possession was insufficient, I was also not satisfied as to the quality of Alday's possession. Alday says that he cleared the Properties and planted mango and papaya trees on the Properties. This planting of trees however only took place from 2019 and 2020, shortly before the filing of the Petition. When the court visited the Properties only a few mango trees were on the Properties. According to Alday they were only recently planted as they were only 12 to 18 inches high. According to Alday, the plants were regularly stolen.

[18.] Alday eventually fenced-in two of the four sides of the Properties, but the front remained open and accessible to all. Further, this fencing was only erected in 2021, a year before the filing of the Petition. As the front of the Properties remained open and accessible to all, including persons dumping indiscriminately, I was not satisfied that Alday exercised exclusive control of the Properties such that everyone would be aware that he, and only he, was the owner.

[19.] In all the circumstances therefore, I find that Alday does not meet the necessary evidential requirement for a continuous uninterrupted possession of 12 years to dislodge the title of documentary title holder.

[20.] The Petition of Alday is therefore dismissed.

Dated this 24th day of February 2025

A handwritten signature in black ink, appearing to read 'I. Winder', with a stylized flourish at the end.

Sir Ian R. Winder
Chief Justice