

COMMONWEALTH OF THE BAHAMAS
IN THE SUREME COURT
Common Law and Equity Division

2005/CLE/qui/00735

IN THE MATTER of the Quieting Titles Act 1959

AND

IN THE MATTER OF ALL that piece parcel of land containing Twenty-six and Six hundredth and Seventeen thousandth (26.617) acres being a portion of a larger tract originally known as MARTIN JOLLIE TRACT situate in the settlement of Salt Pond in the Island of Long Island one of the Islands of the Commonwealth of the Bahamas

AND

IN THE MATTER OF ALL That piece or parcel of land containing Ten thousand and Four hundredth and Thirty (10,430) square feet being a portion of a larger tract originally known as MARTIN JOLLIE TRACT situate in the settlement of Salt Pond in the Island of Long Island one of the Islands of the Commonwealth of the Bahamas

AND

IN THE MATTER OF the Petition of Brian Miller in his capacity as Personal Representative in the Estate of the Late William Miller of the Settlement of McKanns in the said Island of Long Island, deceased

Before Hon. Mr Justice Ian R. Winder

Appearances: Craig Butler with Raquel Jones-Hall for the Petitioner
Erica Ferreira for the Adverse Claimants

14 March 2018, 16 March 2019 and 26 September 2019

JUDGMENT

WINDER, J

This is a Quieting Petition made pursuant to section 3 of the Quieting Titles Act 1959, Ch. 393 ("the Act"). It concerns two tracts of land (the Property) comprising a total of 37.047 acres of vacant land situate on the Island of Long Island in the settlement of Salt Pond and being a portion of a larger tract of land originally known as the Martin Jollie tract.

1. The Petitioner, Brian Miller (Miller), filed this Petition, supported by his affidavit and the affidavits of James Fox, Willis Harding, Kingsley Edgecombe, and Louise Fox. He claimed to be the owner of the Property and requested that his title be investigated, determined and declared by the Court. Miller's claim is in his capacity as Personal Representative in the Estate of the late William Miller.
2. There are three Adverse Claimants to the Property namely: (1) Rhoda Knowles-Ferguson, (2) Celeste Weir and (3) Florence Butler. The Adverse Claimants are related and their claims, although adverse to Miller, are not adverse to each other.
3. Miller gave evidence and called James Fox, Roland John and Kingsley Edgecombe as witnesses in his case. Each of the Adverse Claimants gave evidence and called Lynden Bridgewater, Alice Gray-Miller and Mary Edgecombe as witnesses in their case.
4. 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.

5. 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.

6. Miller, as does the Adverse Claimants, claim to be the owner of the Property by documentary as well as possessory title.

The Documentary Claims

7. Miller, by his re-amended abstract of title, seeks to trace his title from the 1832 Crown Grant to Martin Jollie to the estate of his late father. There is however no true documentary nexus to Miller and the documentary title to the Property. Counsel for Miller conceded this in his closing presentation and confirmed that the strength of his claim was possessory.
8. The documentary claim of the Adverse Claimants seek to trace their title from the Crown Grant to Martin Jollie in 1832 to the estate of their ancestor Nathan Knowles. They rely on a conveyance dated 14 November 1933 from Theophilus Millar to Nathan Knowles and recorded in the Registry of Records in Volume 600 at pages 213 to 215. The evidence of the surveyor Roland John, which has not been seriously contested and which I accept, is that the property described in the conveyance to Nathan Knowles is not the property claimed in the Petition and the subject of this investigation.

The Claims of Possession

9. None of the contending parties, in my view, have a valid claim of documentary title to the property. The question then turns to whether they 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 (nec 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 did not accept the account of the witnesses. 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 the 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 paragraphs 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 circumstance therefore I am not satisfied that there was sufficient evidence of possession in either party or that such possession as existed has not been long abandoned. I am therefore unable to grant any title to either party in this matter.

16. I make no order as to costs.

Dated the 19th day of December 2019



Ian R. Winder

Justice