

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2017/CLE/gen/0787

BETWEEN

**LARRY CLARKE**

**AND**

**GAIL CLARKE**

**Plaintiffs**

**BLONEVA SAUNDERS**

**First Defendant**

**AND**

**LYNDEN WHYMS**

**Second Defendant**

**AND**

**WELLINGTON JOHNSON**

**Third Defendant**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Eleanor Campbell with Che Chase for the Plaintiffs**

**James R. Thompson for the Defendants**

**24 and 25 June 2019 and 28 August 2019**

**JUDGMENT**

## WINDER, J

This is a claim for trespass and for an injunction restraining the first and second defendants (the defendants) from entering, crossing or otherwise interfering with the plaintiffs' peaceful enjoyment of the subject property. The third named defendant did not participate in the trial.

1. The plaintiffs' claim, as set out in their Statement of Claim, provides as follows:

- 1) By virtue of a Conveyance made between Marguerita Fisher of the one part and the Plaintiffs of the other part dated the 4<sup>th</sup> day of August AD 2011, and recorded in the Registry of Records in the City of Nassau in Volume 11422 at pages 570 – 579. The Plaintiffs became seized, and therefore are, and were at all material times the owners in fee simple, and possessed of land being a portion of a piece parcel or lot of land comprising 1.142 acres situate in the settlement of Stanyard Creek in the Island of Andros one of the Islands of the Commonwealth of The Bahamas.
- 2) By virtue of a Conveyance made between Anthony Eric Ball of the one part and the Plaintiffs of the other part dated the 12<sup>th</sup> day of May AD 2011, and recorded in the Registry of Records in the City of Nassau in Volume 11413 at pages 007 – 012. The Plaintiffs became seized, and therefore are, and were at all material times the owners in fee simple, and possessed of land being a portion of a piece parcel or lot of land comprising 1.093 acres situate in the settlement of Stanyard Creek in the Island of Andros one of the Islands of the Commonwealth of The Bahamas (hereinafter referred to together with the property described in Paragraph 1 hereof as the "Subject Property").
- 3) ...
- 4) ...
- 5) ...
- 6) Subsequent to the Plaintiff's becoming possessed of the Subject Property, the Defendants by themselves, or by their servants and/or agents, either jointly or severally, have on divers dates wrongfully entered, crossed, or otherwise interfered with the Plaintiff's peaceful enjoyment of the Subject Property.

- 7) The Defendants threaten and intend to, unless restrained by this Honourable Court, whether jointly or severally, repeat and continue to complain of.

AND THE PLAINTIFF CLAIMS:-

- 1) A declaration that the Defendants, by themselves or their servants and or agents, whether jointly or severally, are not entitled to enter, cross or otherwise interfere with the Plaintiff's peaceful enjoyment of the Subject Property;
  - 2) An injunction to restrain the Defendants whether by themselves or by their servants and/or agents or otherwise, whether jointly or severally, howsoever from entering, crossing or otherwise interfering with the Plaintiff's peaceful enjoyment of the Subject Property;
  - 3) Damages for trespass; and
  - 4) Any further or other relief as the Court deems just.
2. At trial Larry Clarke gave evidence on behalf of the plaintiffs. His evidence was that the titles to the properties, the subject of this action, originated from a Certificate of Title issued to Marguerite Fisher on 30 November 1995 in Supreme Court Equity Action 8 of 1995. He complains that the defendants have, since his acquisition, entered, crossed or otherwise interfered with his peaceful enjoyment of the properties.
  3. Bloneva Saunders and Lynden Whyms gave evidence at trial on their own behalf. The original Defence of the first and second defendants (the defendants) allege that the respective vendors from whom the plaintiffs acquired title did not have ownership or custody of the land mentioned in the statement of claim. Additionally the defendants alleged that they were the owners of the subject property by virtue of inheritance and or long possession or both. They counterclaimed against the plaintiff alleging trespass and seeking declarations as to their entitlements to the land.
  4. Prior to the trial the defendants' amended their defence to plead that the Certificate of Title to Marguerita Fisher was void or voidable as it was obtained by fraud. Amendments which sought to allege inconsistency with the constitution were refused during an earlier interlocutory application. Allegations of fraud by the defendants alleged that:
    - a) The Order of the Court was not obeyed in order to comply with the Act in respect to service in Supreme Court Action No. 8 of 1995.
    - b) The Defendants were in possession of the subject property before and since the granting of the Certificate of Title which was not brought to the attention of the Court.

- c) The advertisement in the newspaper was deliberately phrased by not mentioning the name of the Grantee so as not to alert the defendants to the quieting action
- d) The plaintiff having roots in Stanyard Creek and or his predecessors in title knew that Margaret Fisher was in possession of land not owned by Jeremiah Whemyss as represented to the Court.
- e) The Defendant was not heard by the Court on their land possession as required by the constitution.
- f) The plaintiffs and their predecessors knew that the quieting action was not served on the defendants who were in possession.
- g) The plaintiff had notice by reason of published documents that the land which was the subject of the Certificate was owned by Jeremiah Whemyss.

5. Section 3(4) of the Conveyancing and Law of Property Act provides:

(4) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by the Crown or a certificate of title granted by the court in accordance with the provisions of the Quieting Titles Act, whichever period shall be the shorter.

Section 19 of the Quieting Titles Act (the Act) provides

19. Subject to the provisions of section 27 of this Act and notwithstanding the provisions of any other Act or law, on and from the date of the certificate of title the same shall be —

(a) conclusive as to the accuracy of the contents thereof (including any schedule thereto and any plan annexed thereto) and binding on the Crown and all persons whomsoever; and

(b) conclusive evidence that every application, notice, publication, proceeding, consent and act which ought to have been made, given, taken or done before the granting of the certificate of title, have been properly, duly and sufficiently, made, given, taken and done.

Section 27 of the Act provides:

27. If in the course of any proceedings under this Act any person acting either as principal or agent fraudulently, knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact or matter of information, any certificate of title obtained by means of such fraud or falsehood shall be null

and void except as against a bona fide purchaser for valuable consideration without notice.

The plaintiffs argue, and I agree, that the cumulative effect of the above legislation is that the plaintiffs are afforded protection by the Certificate of Title unless it can be shown that they or their predecessors in title are not bona fide purchasers for value without notice.

6. Having seen and heard the evidence of the witness called by both the plaintiffs and the defendants, I am satisfied that, in the event any fraud was perpetrated upon the defendants by Marguerita Fisher, it had not been shown that the plaintiffs were party thereto. I am satisfied that they were bona fide purchasers for value without notice and entitled to the protection afforded in Section 27 of the Act. No evidence was led to suggest that either plaintiff was aware of the defendants. I am not satisfied, on the evidence which I have heard, that there was any occupation at the time of plaintiffs' purchase to put either plaintiff on any notice of any possible interest of the defendants.
7. The party to whom the allegations of fraud, particularized in the amended defence, could and ought to be levied is Marguerita Fisher, the petitioner in Equity Action 8 of 1995. The plaintiffs were not parties to that action nor has it been alleged that they had any involvement with it. More importantly Marguerita Fisher is not a party to this action. It does seem to me to be inappropriate for the defendants to challenge the plaintiffs in this action. The proper place for such a challenge to the Certificate of Title is Equity Action 8 of 1995.
8. Finally, it was open to the defendants, upon learning of what they say is alleged fraud, to pursue the fraud claim against Marguerita Fisher and any other person they say perpetrated the fraud against them.
9. In all the circumstances I am satisfied as to the plaintiffs are entitled to the relief claimed in the Statement of Claim and I so order. I therefore dismiss the

counterclaims of the defendants. The plaintiffs shall have their costs to be taxed if not agreed.

Postscript

10. The Judgment of the Court will not take effect until Tuesday, 28 April 2020.

Dated the 8<sup>th</sup> day of April AD 2020

Ian R. Winder  
Justice