

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

Cle/gen/00074/2016

IN THE MATTER of ALL THAT parcel or Lot of Land being Lot number (4) of Bilney Allotments which said piece parcel of Lot of Land is bounded Northwardly by Shirley Street and running thereon Fifty – seven and Fifty – three hundredths (57.53) feet Eastwardly by a portion a Lot Number Three (3) and running thereon Seventy – eight and Eighty six hundredths (78.86) feet Southwardly by Lot number Thirteen (13) and running thereon Fifty- seven and Fifty – three hundredths (57.53) feet and on the West by Bilney Lane and running thereon Eighty and Fifty Hundredths (80.50) feet and situated in the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of the Bahamas.

AND

IN THE MATTER OF THE QUIETING TITLES ACT

AND

IN THE MATTER OF THE PETITION OF STACEY ALGREEN

Before: The Honourable Mr. Justice Gregory Hilton

Appearances: James M. Thompson for the Petitioner

Darren O. Bain for the Adverse Claimants

Hearing Dates: 21st and 22nd February 2019 and 4th and 5th April 2019

LAND – TITLE – Petitioner claiming ownership of Land by adverse possession for more than 12 years – Adverse claimants claiming documentary title – Whether petitioner proving exclusive possession – Whether judicial proceedings affect petitioner’s right to title through adverse possession

HILTON, J.,

1. This is a quieting action involving a Lot of Land on the corner Bilney Lane and Shirley Street in New Providence.
2. The dispute is between first cousins.
3. The Petitioner Stacey Algreen has filed a Petition on 21st January 2016 praying that her title to the property be investigated and a Certificate of Title be granted to her under the Quieting Titles Act.
4. The Petitioner claimed title by possession, first by her mother and then by her from the year 2001 up to 2015.
5. The Adverse Claimants Wendy Wilson and Christina Durham filed their adverse Claim on 18th March 2016 claiming ownership of the property by virtue of documentary title which was outlined in the Affidavit of Christina Durham also filed on 18th March 2016 and their Abstract of title filed on 18th March 2016.

6. In this case, in my view, it is first necessary to determine the legal documentary title to the land as the Law assumes the legal title owner to have occupation and possession of his/her land. Thereafter, for the Petitioner to succeed, she must establish that the legal title owner was dispossessed by her.

DOCUMENTARY TITLE HISTORY

7. On 12th march 1965 by an Indenture of conveyance the subject property was conveyed to Gladstone Burrows (the grandfather of both the Petitioner and the Adverse Claimants) which conveyance was subsequently recorded in the Registry of Records in New Providence on 8th April 1965 in Volume 854 at pages 458to 461.
8. On 25th September 1985 Gladstone Burrows died intestate leaving his eldest son, Wellington Whitfield Burrows (the father of the Adverse Claimants) as his heir – at – Law.
9. On 7th January 1986 letters of Administration were granted to Mrs Pearlina Burrows (the Widow of Gladstone Burrows and grandmother of the parties).
10. On 22nd February 1990 Mr. Wellington Whitfield Burrows died testate and his Will devised the subject property to the Adverse Claimants (his daughters); and named his brother Edwin O' Brien Burrows (known as Brian Burrows) as his executor.
11. On the 15th May 1990 Probate was granted in the Estate of Wellington Burrows.
12. Mrs. Pearlina Burrows subsequently in Action 1057 of 1990 took out an action (after having found a purported will of Gladstone Burrows in 1989 which was dated Prior to his death) and succeeded in having the Court Order, on 3rd October 1990,

declare the Letters of Administration previously granted to her in 1986 null and void.

This purported Will of Gladstone Burrows named Pearlina Burrows as the sole beneficiary of his estate.

13. On 11th March 1991 Mrs. Pearlina Burrows filed a Writ of Summons in Action No. 467 of 1991 seeking to have the purported Will of Gladstone Burrows proved and for the Court to grant her Letters of Administration with the will annexed; which if successful would have the effect of making the devise of the subject property to the Adverse Claimants by the Will of Wellington Whitfield Burrows of no effect. The Adverse claimants (as Defendants in the Action) Lodged a caveat and a counter-claim that the purported will of Gladstone Burrows was invalid.

In a ruling dated 19th June 1992 Hall, J. ruled that the purported Will of Gladstone Burrows was invalid and entered judgement in favour of the Defendants (the now Adverse Claimants in the Quieting Action).

It is worth noting that in the Action before Hall, J. the present Petitioner gave evidence in the trial on behalf of Pearlina Burrows (that she along with her brother had witnessed and signed the purported Will of Gladstone Burrows "which was on the reverse side of a Raffle ticket") and that Hall, J. had found her an incredible witness.

14. Mrs Pearlina Burrows appealed the decision of Hall, J. to the Court of Appeal in Civil Appeal No. 3 of 1993 and on 9th June 2005 the appeal was dismissed.
15. Subsequent to the dismissed of the appeal Brian Burrows (the Executor of the Will of Wellington Whitfield Burrows) never executed a Deed of Assent in favour of the Adverse Claimants up to the date of his death in 2015.
16. In view of the above outlined history it is clear to me that the Adverse Claimants have a superior documentary (entitlement)

title to the subject property and that the Petitioner has no documentary title nor can she claim one.

17. In order for the Petitioner to succeed she must establish that the Adverse Claimants and Brian Burrows (in whose name the Probate was granted as Executor of the Will of Wellington Whitfield Burrows) were dispossessed by her.

EVIDENCE OF PETITIONER'S (Adverse) POSSESSION

18. The Petitioner seeks to rely on the combined possession by herself and her mother from 2001 up to the filing of the Petition in January 2016 (15 years) of open, undisturbed, continuous and exclusive possession of the subject property.
19. The evidence of the Petitioner's possession comes from her affidavit filed on 21st January 2016 and the sworn evidence of her aunt Florence Fornof; her cousin Ian Russell; her neighbours Angela Archer and Hartley Archer, which confirmed most of the evidence contained in the Petitioner's Affidavit set out below:

AFFIDAVIT OF STACEY ALGREEN

I, **STACEY ALGREEN**, of House #125 of the Subdivision called and known as Bilney Allotments situate in the Eastern District of New Providence, one of the Islands of the Commonwealth of The Bahamas make oath and say as follows:-

1. That I am the Petitioner in this matter and depone to the facts herein from my own knowledge.
2. That I am 49 years of age and my date of birth is the 4th day of October, A.D., 1966.

3. That back in the year 1974 or 1975. I returned home from the United States of America to the Island of New Providence aforesaid along with my mother Gwendolyn Loretta Bradley (nee Burrows) (hereinafter referred to as "Gwendolyn"), my uncle Arthur Fornof, my aunt Florence Cynthia Fornof and their daughter Josephine Cynthia Fornof.
4. That my mother and I went to reside at the home situate on Lot Number 4 of the Subdivision called and known as Bilney Allotments (hereinafter referred to as the "property") on our return in the year 1974 or 1975, such Lot being situate at the corner of Shirley Street and Bilney Lane.
5. That at the time of our return home to The Bahamas, I was about seven (7) or eight (8) years of age when my mother and I moved onto the property.
6. That I lived with my mother Gwendolyn and my grandparents, namely, Gladstone Burrows and Pearline Burrows, at the property continuously from 1974 or 1975 up to the time I got married to Theodore Algreen in the year 1987. After getting married, my husband and I lived at the property until we re-located with our two daughters in the year 1992.
7. That my grandparents had ten (10) children, namely:
 - (i) Wellington Whitfield Burrows
 - (ii) Preston Burrows;
 - (iii) Florence Fornof;
 - (iv) Patricia Burrows;
 - (v) Sydney Burrows;
 - (vi) Rosalee Burrows;
 - (vii) Gwendolyn Burrows;
 - (viii) Edwin O'Brien Burrows (also known as "Brian")

- (ix) Gary Burrows; and
- (x) Philip Burrows.

8. I know that my grandparents, Gladstone Burrows and Pearlina Burrows, were living on the property, where they lived until their death. My grandfather died on the month of September, A.D., 1985 while my grandmother died in the month of September, A.D., 1994. Up to this time, my mother and I continued to live on the property without any disturbance from any other family members.
9. When Gwendolyn and I went to reside at the property on our return home from abroad aforementioned, my grandparents and the following family members were living on the property:
 - (i) Brian Burrows (my uncle);
 - (ii) Gary Burrows (my uncle);
 - (iii) Philip Burrows (my uncle);
 - (iv) Derek Burrows (my cousin); and
 - (v) Stephen Burrows (my cousin).

All of my family members had moved away from the property by the time both of my grandparents had died, except for my Uncle Brian, leaving Gwendolyn and Uncle Brian in possession of the property from the year 1992. Uncle Brian lived on the property up to the time of his death in 2013.

10. That I returned to live on the property in the year 2003 in order to spend time with my mother Gwendolyn and Uncle Brian. I eventually rented an apartment nearby from the year 2006 until I finally moved back on the property in the year 2009, where I have lived ever since.
11. That at the time of my return to The Bahamas in the year 1974 or 1975, my Uncle Wellington Whitfield Burrows (hereinafter referred to as "Uncle Wellington") was not living on the property. He was living elsewhere on the Island of New Providence with his wife and family.

12. That I know that Uncle Wellington was never in possession of the property nor did he show any interest in maintaining the property.
13. That I know that Uncle Wellington's daughters, Wendy Louise Wilson (nee Burrows) and Christina Maria Durham (nee Burrows) have never lived at the property nor did they show any interest prior to my mother's death in the month of October, A.D., 2015.
14. That I know that my mother Gwendolyn was self-employed and ran her home based business from the property in order to make an income. She would sell certain items from the home including such items as sodas, cigarettes and homemade items. She sold some of her items to tourists, who would stop by to purchase them. She also sold her items to persons of the general public, who became familiar with her small business over the years. She was always self-employed and operated her business from the property up to the time she became ill in the years 2014 and 2015. I was able to find one of mother's expired Business Licenses for the 2001 and I now mark and exhibit as "**SA 1**" a copy of a Business License in the name of my mother for her business at the property located at Shirley Street and Bilney Lane of the Island of New Providence aforesaid.
15. That I know that Gwendolyn also obtained a permit to to harvest sea oats on the Islands of Grand Bahama and Abaco from the Department of Fisheries of the Ministry of Agriculture, Fisheries and Local Government in the month of March, A.D., 2003 to support her business enterprise situate at the property. I now mark and exhibit as "**SA 2**" a copy of my mother's said permit.

16. That I had gotten married to Theodore Algreen in the year 1987 and we both moved away from the property in the year 1992 and lived nearby on the Island of New Providence aforesaid.
 17. In the year 2003, I moved back to live on the property with Gwendolyn where I stayed until 2006, when I left the property and went to live in an apartment in the vicinity of Bar Twenty Corner on Mackey Street on the Island of New Providence aforesaid, where I live until the year 2009.
 18. I returned to live on the property in the year 2009, where I have continuously lived ever since.
 19. However, my mother continued to live and occupy the property since her return home from abroad in the year 1974 or 1975, but she had moved at some point to Freeport on the Island of Grand Bahama where she lived for a few years until return to the property in the year 2001. Upon returning to live on the property, Gwendolyn continuously lived and occupied the property up to the time of her death on the 25th day of October, A.D., 2015. At the material time, I was also living on the property, having returned in the year 2009.
 20. That since Gwendolyn's death, I have continued to live on the property Again, my mother continuously lived on the property from the year 2001 up to the time of her death in the month of October, A.D., 2015.
 21. That the contents of this Affidavit are true and correct to the best of my knowledge, information and belief.
20. The Petitioner as stated earlier is relying on the period of successive squatting on the subject property between herself and her mother for 15 years.

21. Counsel for the Petitioner submitted this was legally possible / permissible and referred to "THE LAW OF REAL PROERTY" 5th edition by Megarry and Wayde at page 1036 dealing with the issue of successive squatters paragraphs (a) and (b) states the following:

Successive Squatters

- (a) *Dispositions by squatter.* As already explained a squatter has a title based on his own possession, and this title is good against everyone except the true owner. Accordingly, if a squatter who has not barred the true owner sells the land he can give the purchaser a right to the land which is a good as his own. The same applies to devises, gifts or other dispositions by the squatter, and to devolution on his intestacy: in each case the person taking the squatter's interest can add the squatter's period of possession of his own. Thus if X, who has occupied A's land for eight years, sell the land to Y, A will be barred after Y has held the land for further four years.
- (b) *Squatter dispossessed by squatter.* If a squatter is himself dispossessed, the second squatter can add the former period of occupation to his own as against the true owner. This is because time runs against the true owner from the time when adverse possession began, and so long as adverse possession continues unbroken it makes no difference who continues it. But as against the first squatter, the second squatter must himself occupy for the full period before his title becomes unassailable. This has already been explained, but a simple example may be useful here. If land owned by A has been occupied by X for eight years and Y dispossesses X, A will be barred when 12 years have elapsed from X first taking possession. But although at the end of that time A is barred, X will not be barred until 12 years from Y's first taking possession; for Y cannot claim to be absolutely entitled until he can show that everybody with any claim to the land has been barred by the lapse of the full period.

22. Counsel for the Petitioner also relied upon the decision of English Court of Appeal in *Mount Carmel Investments v. Peter Thurlow Ltd.* [1988] 3 ALL ER 129 at 130 where it was held:

“(2) If a squatter dispossessed another squatter and the first squatter abandoned his claim to possession, the second squatter could obtain title to the land by 12 years adverse possession by both squatters. Accordingly, since R had abandoned his claim in 1974 when he fled abroad and had never asserted any claim to the property, the defendants were entitled to rely on the combined period of 14 years’ possession by R and themselves, prior to the issue of the second Writ to give them a title which defeated the Plaintiff’s claim as assignee of R.....

23. And, therefore, the Petitioner submits that she is able to rely on the combined period of fifteen (15) years adverse possession by Gwendolyn Burrows and herself.
24. The Adverse Claimants have contested that the Petitioner’s mother had dispossessed them as a result of her occupation and possession of the subject property from 2001 up to the date of her death in 2015 and thereafter by the occupation and possession by the Petitioner from 2009.
25. The Adverse Claimants submit that the Petitioner is unable to rely upon the occupation of the subject property by her mother and further that the Petitioner’s mother’s occupation of the subject property did not amount to exclusive possession nor did her mother have the necessary intention to possess so as to oust / extinguish the title of the Adverse Claimants. They submit that various other members of their family were given permission to occupy the property along with the Petitioner and her mother after 2001 including Uncle Brian Burrows who lived there up to 2013.

26. With respect to the Petitioner's claim, seeking to utilise the exclusive possession by her mother to add to her possession, the Adverse Claimants have submitted that this is not permissible as the mother of the Petitioner never sold or in any way transferred her "squatters possessory rights" to the property to the Petitioner.
27. Without making a final determination on this issue the court (in addition to accepting that was indicated as the state of the Law on "Successive Squatters" by Megarry and Wade ante) also notes that The Statute of Frauds prohibits transfers of interests in Land/property otherwise than by in writing.
28. It is undisputed that there was no written transfer of the Petitioner's mother's squatters rights to the Petition regarding the disputed property and no evidence of any administration of the estate of the Petitioner's mother transferring any right/interest she may have had to the property to the Petitioner.

QUALITY OF POSSESSION NECESSARY TO EXTINGUISH DOCUMENTARY TITLE OF PAPER OWNER

29. The Law is clear that for a person to acquire title by adverse possession two requirements must be met: a) factual possession and, b) an intention to possess.
30. In considering the meaning of possession Slade, J in Powell v. Mcfarlane (1977) 38 P& CR 452 at 470 and 471 stated as follows:

"It will be convenient to begin by restating a few basic principles relating to the concept of possession under English law:

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 though the paper owner.

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”)**.

Factual possession signifies an appropriate degree of physical control. It must be a single and exclusive 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 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 user 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 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 *CadijaUmma v. S. Don ManisAppu* 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.

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 realize that, at least until he acquires a statutory title by long possession and this 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 judgement, 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.

The question of animus possidendi is, in my judgement, one of crucial importance in the present case. An owner

or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgement, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgement, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."
 (Emphasis Added)

31. The Principles enunciated by Slade J. in *Powell v. McFarlane* have been cited with approval in the Bahamian Privy Council decision of *Armbrister et al. v. Lightbourne et al.* [2012] UKPC 40; And also cited with approval in the House of Lords decision of *J.A. Pye (Oxford) Ltd. and another v. Graham and another* [2002] 3 ALL ER 865.
32. Lord Hope of Craighead in considering the animus possidendi in the *J.A. Pye* case stated at paragraph: 71 as follows:
 - “71. The question as to the nature of the intention that has to be demonstrated to establish possession was controversial, particularly among jurists in Germany (see, for example, Henry Bond ‘Possession in the Roman Law’ (1890) 6 LQR 259). But it is reasonably clear that the animus which is required is the intent to exercise exclusive control over the thing for oneself (see Bond (1890) 6 LQR 259 at 270). The important

point for present purposes is that it is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor. The word 'adverse' in the context of s 15 (1) of the 1980 Act does not carry this implication. The only intention which has to be demonstrated is an intention to occupy and use the land as one's own. This is a concept which Rankine *The Law of Land – Ownership in Scotland* (4th edn, 1909) p 4, captured in his use of the Latin phrase 'cum animo rem sibi habendi' (see his reference in footnote 1 *Savigny Das Recht des Besitzes*, translated by Perry (1848) (paras 1-11). It is similar to what was introduced into the law of Scotland by the Prescription Act 1617, Ch 12 relating to the acquisition of an interest in land by positive prescription. The possession that is required for that purpose is possession openly, peaceably and without any judicial interruption on a competing title for the requisite period (see s1 (1) (a) of the Prescription and Limitation (Scotland) Act 1973). So I would hold that, if the evidence shows that the person was using the land in the way one would expect him to use it if he were the true owner, that is enough. (Emphasis Added)

33. On considering the evidence led in this case with respect to the law relative to possession I have already found that the Adverse Claimants have a good documentary title to the subject property which has not been impugned by the Petitioner.
34. The Petitioner, in my view, has not established that either her mother or herself had exclusive possession of the subject property for the requisite period under the Limitation Act. The evidence from the Petitioner herself is that when her mother moved into the house in 2001 that her uncle Brian Burrows was living there and continued to live there up to the year 2013.
35. I have indicated ante that Brian Burrows was the executor named in the Will of Wellington Burrows (the father of the Adverse Claimants)

and the Probate was granted in his name; which meant that the legal title to the property was in his name until such time as he would execute a Deed of Assent in favour of the Adverse Claimants who were the beneficiaries under the Will.

36. This means that exclusive possession by the Petitioner could only begin in the year 2013, after Brian Burrows was no longer on the property, nowhere near the 12 year period necessary under the Limitation Act to oust the legal title of the Adverse Claimants.
37. Additionally the fact that the legal entitlement to the property was the subject of a judicial dispute which was not resolved until 2005 when the Court of Appeal dismissed the appeal of Pearline Burrows (which sought to challenge the Legal entitlement of the Adverse Claimants) meant that any claim to possession by the Petitioner through her mother could not actualize prior to 2005 and thus could not meet the 12 years period prescribed by section 16 (3) of the Limitation Act.
38. The Petition was filed in January 2016. The Petitioner has failed to establish that she (or her mother) was in exclusive possession of the property for the 12 years period immediately preceding the presentation of the Petition.
39. The Petitioner's claim for a certificate of Title is dismissed.
40. I accept that the devise in the Will of Wellington Whitfield Burrows devising the property to the Adverse Claimants give them a good title to the property and I grant a Certificate of Title to the Adverse Claimants subject to the exceptions and qualifications set out in section 15 of the Quieting Titles Act Chapter 393.
41. The Petitioner is to pay the costs of these proceedings to be taxed if not agreed.

Dated this 21st day of August A.D. 2019

The Hon. Mr. Justice Gregory Hilton

