

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2019/CLE/qui/00797

IN THE MATTER of the Quieting Titles Act

AND

IN THE MATTER OF ALL THAT parcel of land situate on the Northern side of Bernard Road between Adderley Street and Fig Tree Court in Fox Hill comprising 38,681 square feet, 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 Petition of Rose Marie Storr nee Ferguson AKA Maria Storr nee Ferguson aka Maria Higgs, Donell Michelle Symonette and Bradley Antonio Taylor Sr.

Before Hon. Mr. Justice Ian R. Winder

Appearances: Clarita Lockhart for the Petitioners

Donald Saunders for Freddie Ricardo Miller

14 July 2020

JUDGMENT

WINDER J

This is the Petitioners' application for relief against Freddie Ricardo Miller arising from his efforts to execute upon a Writ of Possession dated 2 June 2020. The parties to this dispute are all related to each other, albeit distantly.

1. The Petitioners' application was brought by Ex Parte Summons (Amended) dated 30 June 2020 seeking the following orders:
 - (1) Immediately restraining the Respondent (Freddie Ricardo Miller) whether by himself, his servants or agents, from entering upon the said land the subject of quieting action No. 2019/CLE/qui/00797, pending the determination of the Quieting Petition filed in the Supreme Court on 12 June 2019;
 - (2) Staying the execution by Writ of Possession dated 2nd day of June 2020 or any Orders made in Common Law Action No. 1145 of 2000 or No. 1068 of 2005 which appear to affect the property the subject of the said Quieting Action pending the determination of the said Quieting Action pursuant to Order 45 rule 11;
 - (3) That the Writ of Possession issued by the Registrar on 2nd June 2020 be set aside for the incorrect facts stated therein;
 - (4) Restraining all further action by the Provost Marshall or any of his deputies on such Writs issued against the Applicants and
 - (5) That the Provost Marshall do withdraw upon the grounds that the Writ of Possession obtained on 2 June 2020 is incorrect and to declare that any orders made affecting the property the subject of the said Quieting Action is null and void and of no effect.

Background

2. There has been an extended history relative to this dispute involving two other actions before the Supreme Court.
3. On 3 Nov 2000 Alfred Miller commenced action 1145/2000 (Equity Side) (The 2000 Action) against John Ferguson, Anne Ferguson, Clifford Storr (Clifford), Rufus

Storr (Rufus), Ingrid Storr (Ingrid) and Christopher Brice (Brice). By the Statement of Claim Alfred Miller claimed:

1. The plaintiff is and was at all material times the fee simple owner and absolutely entitled to possession of all that land including all those two (2) parcels of land comprising 3 acres (by virtue of an amendment made at trial) and situate between Dorsette Street and Bernard Road, approximately 168 feet southeastwardly of Adderley Street in the Eastern District of the Island of New Providence, Commonwealth of The Bahamas, the property of the plaintiff.
2. The defendants and each of them have wrongfully taken possession of portions of the said land and have thereafter wrongfully remain in occupation and possession thereof depriving the plaintiff of the enjoyment, occupation and possession thereof.
3. The defendants and each of them have been requested in writing on various occasions to vacate the said land by the plaintiff or through his direction but they have failed and refused to do so thereby depriving the plaintiff of the use, occupation and possession of the said land in the premise the plaintiff has suffered loss and damage which loss and damage is continuing.

AND THE PLAINTIFF CLAIMS:

1. Possession
 2. Injunction until the hearing or sooner Ordered
 3. Costs
 4. Damages
 5. Further or other relief.
4. The Defence of Clifford, Rufus and Ingrid in the 2000 Action traced their title through their mother Rose Maria Storr nee Ferguson aka Maria Storr (Maria) and the long occupation of the family on the property. In particular, reliance was placed on a device in the will of George Rufus Ferguson dated 23 November 1966 which granted a life interest in the property to Maria and a remainder interest to Rufus. On 6 April 2005 *Lyons J* heard the claim and gave an ex tempore ruling as against the Defendants (except Brice) and in favor of Alfred Miller. At the end of the hearing the following order was made:
1. A declaration that the first, second, third, fourth and fifth defendants (the Storrs) that they are and each of them is in illegal occupation of the plaintiff's land.
 2. The plaintiff is adjudged to be the fee simple owner of all that three (3) acres of land more or less situate between Dorsette Street, Benard Road and Adderley Street in the Eastern District of the island of New Providence.

3. The Plaintiff is entitled to possession of the three (3) acres of land more or less except a plot situate at the corner of Dorsette Street and Ferguson Road presently occupied by the Sixth Defendant.
5. The Storr plaintiffs, Clifford, Rufus and Ingrid sought to appeal the decision of *Lyons J*. The appeal however was not entertained by the Court of Appeal which dismissed it on 4 July 2005 holding that it failed to disclose an arguable appeal.
6. On 19 September 2005 Clifford, Rufus and Ingrid commenced action 2005/CLE/gen/1068 (The 2005 Action) against Alfred Miller alleging that the judgment of *Lyons J*, dated 6 April 2005, was obtained by fraudulently suppressing material evidence from the Court. Specifically, the claim sought:
 - (1) A Declaration that the Judgment dated the 6th day of April A.D. 2005 delivered in favour of the Plaintiff in Common Law action No. 1145 of 2000 in which the Defendant herein was Plaintiff and the Plaintiffs herein et al were Defendants was obtained fraudulently by the suppression of material evidence from the court and contrary to the facts disclosed in the Pleadings.
 - (2) A Declaration that the Plaintiffs et al were entitled collectively to the entirety of the land the subject matter of this action.
 - (3) An Injunction to restrain the Defendant whether by himself or by his agents or servants or otherwise howsoever from entering upon the subject land or from enforcing Paragraph 3 of the Order made in the action Numbered 1145 of 2000.

On 20 Sep 2005 *Jeanie Thompson J*, in the 2005 Action, issued an injunction restraining Alfred Miller from entering the land which the Storr plaintiffs (Clifford, Ingrid and Rufus) claimed to be the property of George Rufus Ferguson (deceased). In a January 2007 written decision, *Jeanie Thompson J* ruled that only the relief sought in item (3) of paragraph 6 above could proceed. The Storr plaintiffs were therefore successful in withstanding the Alfred Miller's application to strike out the claim but never prosecuted the claim any further. Ingrid would allege

that the failure was as a result of the disappearance of Rufus who is now presumed dead.

7. Freddie Miller (Miller) was substituted by consent in both the 2000 Action and the 2005 Action in place of his father Alfred Miller. Both actions were transferred to **Charles J.** for determination.
8. On 19 September 2018, in addition to Miller's substitution, **Charles J** gave leave to Miller to apply for a Writ of Possession in the 2000 Action. All defendants were, on record, represented by attorney Charles Mackay.
9. On 23 April 2019 **Charles J** dismissed the 2005 Action and ordered the plaintiffs, Clifford, Ingrid and Rufus to vacate the property claimed by them in that action. **Charles J** set aside the injunction which had been granted since 19 September 2018. Miller asserts that Maria was present in Court when **Charles J** rendered her decision. Maria is the mother of Clifford, Ingrid and Rufus.
10. On 12 June 2019, Maria, Donell Symonette (Donell) and Bradley Taylor Sr. (Bradley) petitioned the court, in this action, to investigate their title to certain property situated along Bernard Rd upon which the wholesale liquor business and the homestead is situated. In the claim Maria says that:
 - (1) She ordinarily resides in Vero Beach, Florida, United States where she migrated in 1987. She says that she visits The Bahamas occasionally.
 - (2) The other 2 Petitioners Donell and Bradley are her children.
 - (3) She is the granddaughter of George Rufus Ferguson who she says physically occupied the property with his father George B Ferguson. The property was devised to her by her grandfather. The device was for her lifetime and thereafter to her son Rufus absolutely should he reach 21 years.
 - (4) A family business, a wholesale bar, was operated from the premises since the 1990's and the family residence is also on the property.

Bradley alleges that he has lived on the property all of his life (since 1968) and has operated a car sales business from the location since 2006. His brothers and sisters, Kirk Storr, Rufus, Ingrid and Deborah Storr were all raised on the property and operate or work in the family business of the Bar/Liquor store.

11. Formal Notice to vacate dated 16 August 2019 as well as the Order of **Charles J** dated 23 April 2019 were served on Ingrid Storr at Midway Wholesale Bar, Bernard Rd. On 8 September 2019 Ingrid was served with the Order obtained in the 2000 Action at Midway Wholesale Bar, Bernard Rd.
12. On 2 June 2020 a Writ of Possession was issued out of the Supreme Court. The Writ of Possession addressed to the Provost Marshall, commanded him to enter into certain land occupied by John Ferguson, Anne Ferguson, Clifford Storr, Rufus Storr, Ingrid Storr and Christopher Brice. That land was described as ***“ALL THAT piece parcel or lot of land which the Plaintiffs claim to be the property of George Rufus Ferguson (deceased) the three (3) acres of land situate between Dorset Street, Bernard Road and Adderley Street in the Eastern District of the Island of New Providence some of which is presently occupied by the Defendants and which land is more described in the plan attached”***. Contrary to the assertions in the Writ of Possession there was no plan attached. There was also a discrepancy in that the backing sheet did not properly accord with the front of the document. Further, Christopher Brice was successful in the action but nonetheless supposedly the subject of the Writ of Possession.
13. On 10 June 2020 the Deputy Provost Marshall, Tommy Sands attended at the premises to execute a Writ of Possession in the presence of Ingrid.
14. The petitioners lodged a plan on 2 August 2019 which identifies the property, the subject of the Petition, as Plan 5955NP. The plan was prepared by Surveyor Alvin Young and registered on 3 July 2019. It describes an area of 38,681 sq ft. along Bernard Rd. I am satisfied that the property, the subject of the petition (0.88 acres), is a portion of the larger property of (3) acres which was under consideration by

Lyons J. in the 2000 Action and for which *Charles J* gave leave to issue a Writ of Possession.

15. The 5 April 2005 decision of *Lyons J* refers to a plan as Exhibit 2 and prepared by Surveyor Stafford Coakley. That plan, Miller says, is exhibited to his affidavit filed on 8 July 2020. Indeed it is to be found on the Courts file in the 2000 Action and identified as Exhibit 2. That Plan is 3280NP and was registered on 10 February 1999. The south western most point of that property corresponds to nearly the same North and East coordinates as the property the subject of the Petition. Also of note is the fact that the later plan 5955NP cites, in the Notes section of the plan, that it referenced the earlier plan, 3280NP, in its preparation.

Law and Analysis

16. This is a quieting petition. In *Armbrister v Lightbourn (Bahamas) [2012] UKPC 40*, the Privy Council outlined the nature of proceedings under the Quieting Titles Act. It said:

The Quieting Titles Act 1959 and other statutory provisions

7. The purpose of the 1959 Act is to provide a judicial process for the determination of disputes as to title to land in the Bahamas. The process is initiated by a petition presented by a claimant. The petition is advertised, and adverse claims may be made by rival claimants. The procedure is in the nature of a judicial inquiry and it ends in a judgment in rem which, subject to appeal, finally settles entitlement to the land, not merely as between the parties, but for all purposes. This judicial procedure meets an economic and social need in the Bahamas, where many of the outlying islands were, for much of the Commonwealth's history, sparsely populated and only sporadically cultivated. Much of the land belonged to landlords who were not permanently resident, and travel was slow. Parcels of land often had no clearly defined boundaries based on comprehensive surveys.....

8. Procedure under the 1959 Act is relatively informal. The strict rules of evidence do not apply. The procedure is comparable to that which applies on the investigation of title on an ordinary sale, out of court, under an open contract. Each rival claimant must prepare an abstract of title and adduce evidence in support of it. Section 8 of the 1959 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 (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."

9. Section 3(3) and (4) of the Conveyancing and Law of Property Act provides as follows:

"(3) Recitals, statements and description of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of truth of such facts, matters and descriptions.

(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."

17. The heading to this action has been manipulated to identify Freddie Ricardo Miller as a Defendant/Respondent. This is not appropriate as a quieting petition, unlike an ordinary action (such as the action brought by Miller), is an investigation as to the petitioner(s) interest, if any, to the property the subject of the petition. Whilst persons may come into the action as adverse claimants, it is not against any particular person or entity but rather it is as against the world.

18. The fact that this is a quieting matter does not preclude the grant of injunctive relief.

Section 28 of the ***Quieting Titles Act*** provides:

28. Subject to the provisions of this Act and of any of the rules made hereunder and except where otherwise provided, the practice and procedure under the Supreme Court Act and the rules made thereunder shall apply to proceedings under this Act.

Section 21 of the *Supreme Court Act* empowers the Court to grant injunctive relief irrespective of the nature of the proceedings. Order 29 rule 1 of the RSC provides that:

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

19. In determining whether it should grant or continue an interlocutory injunction, the Court will exercise its discretion having regard to the criteria set out in the celebrated case of *American Cyanamid Co. Ltd v Ethicon Ltd [1976] AC 396*, which is the following:

- (1) Whether there is a serious issue to be tried;
- (2) Whether damages are an adequate remedy; and,
- (3) Where the balance of convenience lies.

According to the learned authors of *Gee on Commercial Injunctions* at paragraph 2.015:

What the case [of American Cyanamid] clearly establishes is that there is "normally" no need on applications for an interim injunction to embark upon a mini trial on witness statements or affidavits to assess the quality of the claimant's case or the defendant's defences, or to assess the rival merits on a disputed, complicated question of law. This would be wasteful of the parties resources and those of the court. It would also be inconsistent with the objective of the court not to pronounce an opinion on the substantive merits of the case until trial. This objective encourages judges not to decide important applications on assessment of the apparent merits based on evidence, which is incomplete, and without the benefit of cross-examination, full disclosure of documents and detailed argument. These features made it fair and sensible to avoid assessment of the merits in American Cyanamid.....However, the principles are "guidelines", and not a "straitjacket", where the function of the court is to hold the position as justly as possible pending final determination of the triable issue at trial"

20. Miller says that the land sought to be quieted by the petitioners represents an area of land that has already been adjudicated upon by *Lyons J* in his ruling of 6 April 2016. The applicants, he says, are aware of the ruling and are simply attempting to frustrate him and defeat the course of justice. The claim before *Lyons J* was a

trespass action and unlike a quieting Petition only binds the persons before the Court at that time. It is accepted that Maria was not a party to the proceedings before *Lyons J*. In fact whether by representations made to him or simple error *Lyons J*, as reflected in his written ruling, mistakenly believed that Maria had died.

21. It is also clear on the evidence that Rufus and Ingrid both had independent claims relative to other property claimed by Miller. They are separate and apart from the homestead and the wholesale Bar, which are the subject of the Petition. According to the affidavit evidence of Deborah Storr, Ingrid worked for Maria as an employee at the family bar but also invested with Rufus, who mysteriously went missing about 7 years ago to build a house and erect some apartments. It is said that those properties containing the apartments and other buildings have been seized by Miller. Deborah says that on 31 July 2019 Ingrid obeyed the Court Order and moved out of her house and the apartments which were abandoned as a result of the judgment of *Lyons J* and leave granted by *Charles J*.

22. Miller says that I should find that Maria is estopped from challenging the decision of *Lyons J* on the basis of issue estoppel. He says that the matter was res judicata. *Jeanie Thompson J*. description of the matter before *Lyons J*, in her January 2007 ruling in the 2005 Action, is entirely appropriate, where she stated:

This action was commenced as a result of what can be called "*a Tragedy of Errors*". Apparently because of "*differences*" between the trial judge and counsel for the Storrs (the plaintiffs in this action and defendants in Action No. 1145 of 2000), Action No. 1145 of 2000 was heard in the absence of the Storrs and their counsel. Further, the period given for the judgment to be questioned expired without the challenge having been made, and other problems arose at the Court of Appeal level which resulted in the appeal being dismissed.

Respectfully, *Lyons J* himself in his May 2008 ruling revisiting the matter and dismissing Miller's claim against Brice, accepted that it was arguable as to whether or not even Ingrid, Rufus and Clifford were bound by the doctrine of res judicata. What then of Maria who was not sued and did not participate?

23. There are clearly serious issues to be tried in this case. Respectfully, all of the authorities agree that complicated questions of law and fact are not for the determination of the judge on the hearing of an application for interlocutory injunctive relief. The court need only find that there is a serious issue to be tried. In the circumstances of this case I find that it would be inappropriate to embark upon a *mini trial on affidavits to assess the quality of the petitioner's case or Miller's defences*. Additionally I ought not *to decide important applications on assessment of the apparent merits based on evidence, which is incomplete, and without the benefit of cross-examination, full disclosure of documents and detailed argument*.

24. On the question of balance of convenience, the case of *Fellowes & Son v Fisher* [1976] 1 QB 122, 137 provides useful instruction. In that case it was stated that:

"It is where there is doubt to the adequacy of the respective remedies in damages... that the question of balance of convenience arises.... The extent to which the disadvantage to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies."

National Commercial Bank Jamaica Ltd. v Olint Corp Ltd. (2009) 5 LRC 370

further provided that:

"The court should take whichever course seems likely to cause the least irreparable prejudice to one party or the other."

25. It would seem that the balance of convenience lies in favour of the Petitioners. Their business and homestead are at the site and have been there and operated by them for decades. Alfred Miller knew since as far back as the 1990's that the claim to the homestead and the liquor store went through Maria, notwithstanding she may not have physically been present on the property. At all times her children were merely her agents and acting upon her authority. Rufus Storr stated, in an affidavit (sworn July 1996) which was exhibited in Ingrid's April 23 2002 affidavit in the 2000 Action, that:

- (1) He was born on 4 December 1963 (aged 33 at the time of executing that document) on the disputed property;
- (2) That his mother (Maria) inherited the property from her grand father the late George Rufus Ferguson who died testate on 15 December 1969. (he exhibited affidavits of possession which purportedly relate to the occupation of the land.
- (3) Because of his family's long open continuous and undisturbed possession of the subject land the title of any other person, if any, would be extinguished.

Notwithstanding Donell and Bradley's joining in the Petition their affidavit evidence also supports Maria as the primary interest holder of whatever interest the family has at the homestead and the wholesale liquor premises. Miller has been able to secure the benefit from the other property which was the subject of the proceedings before *Lyons J.*

26. Notwithstanding all of the Children have been consistent in their reference to Maria, in all of the actions brought over the years, Maria was never joined or sought to be joined as a party. I am not prepared, on this application, to find that Maria is bound by a decision to which she was not a party and which Miller was the only person from whom the judge actually heard.

27. In the circumstances therefore I will find that the balance is tilted in the petitioners' favour.

28. The Petitioners ask that the Writ of Possession be set aside. The Writ of Possession appears to have been granted in the 2000 Action. In as much as Maria nor any of the petitioners are parties to that action, they really have no locus to challenge it in this action. The petitioners could have sought to move the court in the 2000 Action as persons affected the execution of the Writ of Possession. In any event, in my view, having regard to my decision to grant injunctive relief, any extensive discussions on the Writ of possession becomes unnecessary. I will nonetheless comment that the several errors and irregularities contained on the face of the document renders its efficacy questionable.

Disposition

29. Whilst Maria was not a party to these proceedings there is little doubt that she became aware of them, notwithstanding her residence in the United States, prior to her alleged attendance in Court in 2019. Whilst Miller ought to have included her if he intended it to affect her, she too could to have intervened as Miller threatened her property. There is the concern that there was no effort to move this Petition beyond its filing. In fact, the Abstract of Title was not filed until 8 June 2020.
30. I will grant the interlocutory injunction but will do so on terms that ensures that the action is prosecuted speedily and that some security is in place to underpin the undertakings in damages. Miller will be restrained from interfering with the property comprising the homestead and the liquor business.
31. The Petitioners are ordered to provide security, in an appropriate form, in the amount of \$15,000 to support the undertaking to be given in damages. The security to be in place within 60 days. The Petitioners will be permitted to remove the fencing across the front of the property once the security is in place.
32. I will give the usual quieting directions and set a date within 3 months for a case management fixture to set the petition down for hearing.
33. I will hear the parties on costs, by written submissions, to be delivered within the next 21 days.

Dated the 29th day of July 2020



Ian R. Winder

Justice