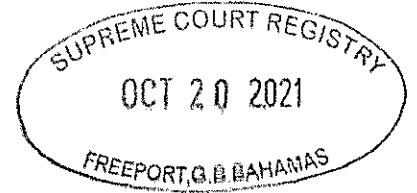


**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT OF THE BAHAMAS  
Common Law and Equity Division  
2019/CLE/qui/FP/000231**



**IN THE MATTER OFF ALL THAT piece or parcel or lot of land containing 9.61 Acres in Hunter's which forms a portion of a Tract of 100. Acres owned by Heirs of the late Alexander Lewis on the Island of Grand Bahama, one of the Islands of the Commonwealth of The Bahamas.**

**AND**

**IN THE MATTER OF the Petition of MERIEL RUSSELL**

**AND**

**IN THE MATTER OF the Intended Adverse Claimant WHEATLEY GRANT**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley  
APPEARANCES: Edmund Russell for the Petitioner  
Mr. Parkco Deal for the Intended Adverse Claimant  
HEARING DATE: September 28 and 30, 2021

**RULING**

**Hanna-Adderley, J**

This is an application by the Petitioner for leave for the Petitioner to proceed with her application for a Certificate of Title and for leave to enter Judgment in Default of Defence against the Intended Adverse Claimant.

**Introduction**

1. The Petitioner seeks an order granting leave to enter Judgment in Default of Defence by way of a Summons filed herein on March 9, 2021 pursuant to Section 7 (2) of the Quieting Titles Act, 1952 ("**the Act**") and costs. The Summons is supported by the Affidavits of the Petitioner Meriel Russell and Edmund M. Russell both filed herein on March 9, 2021. The Intended Adverse Claimant opposes the application. The Petitioner relies on the Plaintiff's Skeleton Argument filed on August 31, 2021 and the Intended Adverse Claimant relies on the Intended Adverse Claimant's Skeleton Argument filed herein on September 27, 2021.

2. On December 18, 2019 the Petitioner filed a Petition asking that the title to All That piece, parcel or tract of land containing 9.61 Acres situate in the Settlement of Hunter's on the Island of Grand Bahama be investigated, determined and declared pursuant to the Act. On March 23, 2020 the Intended Adverse Claimant was served with the Petition and on May 11, 2020 an Adverse Claim was filed on behalf of the Intended Adverse Claimant.
3. On January 20, 2021 the Assistant Registrar (Acting) Mr. R. Dawson Malone pursuant to an application by the Intended Adverse Claimant for an extension of time in which to file an adverse claim made the following Order ("**the Order**"):

**"IT IS HEREBY ORDERED** that the Adverse Claim filed by Wheatley Grant on the 11<sup>th</sup> May 2020 be and is hereby ratified as complaint with the order made on the 6<sup>th</sup> March 2020, in so far as the Supreme Court (COVID 19) Rules 2020 made on the 1<sup>st</sup> April 2020 extends period of time for compliance with Court Order (and Rules of Court) to fourteen (14) days after the cessation of the Public Emergency declared by proclamation of his Excellency the Governor General being at the time of expiration of the period to file an Adverse Claim the Public Emergency was in effect."

#### **Evidence**

4. Mrs. Russell states in her Affidavit, in part, that it has been 45 days since the Order made by Assistant Registrar Malone and the Intended Adverse Claimant has not provided proof that he was the owner of the land in this matter. That he has no claim to the land as her husband's family had lived on the land for more than 100 years. That Mr. Grant was 31 days out of time for filing an Affidavit verifying his Adverse Claim.
5. Mr. Russell states that he had personally searched the cause list records at the Registry of the Supreme Court on March 5, 2021 and found that no Affidavit verifying the Adverse Claim of Mr. Grant had been filed.

#### **Submissions**

6. Mr. Edmund Russell, Counsel for the Petitioner, submits that pursuant to Practice Direction No. 4 of 2020 the cessation period for filing documents under the Covid 19 Protocol ended as of 12:00 midnight on August 28, 2020 and that the Intended Adverse Claimant is out of time to file supporting documents for his claim. That despite having been given leave by the Court on January 20, 2021 to file his supporting documents, that is, an Abstract of Title and an Affidavit to verify his claim, he had not done so and that he was now out of

time. That the Petitioner is 91 years of age having been born on November 29, 1930. That she had occupied the land for more than 50 years uninterrupted.

7. Mr. Parkco Deal, Counsel for the Intended Adverse Claimant, submits, in part, that where a defence is served after the time has expired but before judgment the defence cannot be disregarded and the Court ought to have regard to the to the contents of the defence in such a manner that justice can be done. That the wording of the Order meant that the Intended adverse Claimant had 14 days after the cessation of the "Public Emergency", which remains in place today, to file his Adverse Claim. Mr. Deal referred the Court to **Gibbings v Strong** (1884) 26 Ch. D 66 CA.
8. That to accede to the Petitioner's application without hearing the merits of the Adverse Claimant's case would be an affront to the administration of justice. That the Adverse Claimant was born in 1939 and is now 82 years old and is in possession of the registered documents showing that he is the rightful owner of the land in question. That Court pursuant to Order 2 Rule 1 of the Rules of the Supreme Court or its inherent jurisdiction allow the matter to be heard on its merits and to reject the Petitioner's application for Default Judgment and order costs in favour of the Adverse Claimant. Further, pursuant to Order 18 Rule 19 the Petitioner's application is frivolous or vexatious or may prejudice the fair trial of this action or is otherwise an abuse of the process of the Court.

### **Issues**

9. The Court must determine whether the Intended Adverse Claimant should be permitted to file evidence supporting his claim, or whether he is out of time and as a consequence, his Adverse Claim should be struck out.

### **Analysis and Conclusions**

#### **The Law**

10. Section 7 (2) of the Quieting Act, 195 provides:

"(2) Any person having dower or a right to dower or an adverse claim or a claim not recognised in the petition shall before the expiration of the times fixed respectively in the notices referred to in subsection (1) of section 6 of this Act or subsection (1) of this section for the filing of adverse claims, file and serve on the petitioner, or his attorney, a statement of his claim in Form 3 of the Schedule, verified by an affidavit to be filed therewith. The failure of any such person to file

and serve a statement of his claim within the time fixed by the respective notices aforesaid shall operate as a bar to so such claim.”

### **Discussion**

11. This is not an appeal of the Order and so the Petitioner cannot now complain about the order made by Acting Assistant Registrar Malone. Mr. Deal has however misconstrued the Order. The Order simply regularized the late filing of the Adverse Claim by the Intended Adverse Claimant having regard to onset of the Covid 19 Pandemic and the Covid 19 Protocols in place during the period prescribed in the Notice, when the Adverse Claim ought to have been filed in 2020. The last sentence of Section 7 (2) states: **“The failure of any such person to file and serve a statement of his claim within the time fixed by the respective notices aforesaid shall operate as a bar to so such claim.”** I accept that Section 7 (2) is mandatory but I am of the view that the section was complied with by the filing of the Statement (that is, the Adverse Claim) pursuant to Form 3 of the Act. The filing of the Form 3 Statement gives the Petitioner notice that a party believes that he or she has a better claim to the land and intends to challenge the Petitioner’s claim. The Affidavit verifying the Statement relates to the “evidence” to be laid before the Court in relation to the claim of the Adverse Claimant. Once the filing of the Adverse Claim was regularized the Intended Adverse Claimant ought to have filed his evidence forthwith. This was not done because Mr. Deal misinterpreted the Order. His interpretation was incorrect but not fatal. Further, neither the Act nor the Quieting Titles Rules provide for entering Judgment in Default of Defence. The Intended Adverse Claimant having filed the Form 3 Statement pursuant to Section 7, it would be unjust and draconian not to permit the filing of the “evidence” and to strike out the Adverse Claim. I will however make an “unless order” because of the delay caused by the Intended Adverse Claimant.


### **Disposition**

12. I make the following Orders:
- (1) **UNLESS** the Intended Adverse Claimant files and serves within has 14 days his Abstract of Title, proper Plan of the land he is claiming, Notice of address pursuant to Sections 5, 6 and 7 of Quieting Titles Rules and the Affidavit evidence to support his claim, together with the Affidavit evidence of any of his witnesses, his Adverse Claim shall be struck out and the Court will proceed to hear the evidence of the Petitioner.

The Petitioner shall have 14 days thereafter to file and serve any Affidavit in reply. The matter is adjourned to November 17, 2021 at 9:30 a.m. for a Case Management Conference.

- (2) The Intended Adverse Claimant shall pay the Petitioner's costs of and occasioned by this application.

Dated this 19<sup>th</sup> day of October, A.D. 2021

  
**Petra M. Hanna-Adderley**  
**Justice**