



**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT OF THE BAHAMAS
Common Law & Equity Division
2020/CLE/gen/FP/000131**

BETWEEN

IN THE MATTER of Lot No. 25 Terrytown Drive, Freeport, Grand Bahama
Bahama Reef Yacht & Country Club Section 1, running 200 feet to the West 129.52
To the North 124.64 to the East and 105.00 to the South the property together in
particularly 1/2 an acre.

AND

IN THE MATTER of Section 3 of the Quieting Titles Act, 1959 Chapter 393 Statute
Laws of the Bahamas

AND

IN THE MATTER of the Petition of Desmond Dean and Sharmaine Dean
IN THE MATTER of the Limitation Act Chapter 83 Section 16 (3)

BEFORE: The Honourable Justice Petra M. Hanna-Adderley
APPEARANCES: Mr. K. Brian Hanna for the Petitioners
Miss Constance McDonald, QC for the Adverse Claimant
TRIAL DATES: August 19 and 20, 2021
SUBMISSIONS: October 29, 2021 for Petitioners
October 15, 2021 for Adverse Claimant

JUDGMENT

Hanna-Adderley, J
Introduction

1. This is a Quieting action commenced by the Petitioners, Desmond and Sharmaine Dean, husband and wife, by way of a Petition filed on the November 3, 2020. In their Petition, the Petitioners claimed to be the owners in absolute possession of Lot No. 25 Tarry Town Drive, Bahama Reef Yacht and Country Club Section 1 running 200.00 feet to the West 57.18 w, 69.16 feet facing the cul-de-sac on Tarry Town Drive 184.64 feet running East of the said property with 105.0 running South; that the said property is practically ½ an acre; claimed that there is no charge, encumbrance, dower or right to dower affecting the Petitioners' title to the said property; that there is no other person or persons known to claim an interest in the said property described herein; that the Petitioners had resided at the said property for the last 16 years and that no-one had interfered with their presence at the said property; that the only person who is known to have an interest in the said property is Keith Arnold who to their knowledge is deceased. The Petitioners prayed that their title to the property be investigated, determined and declared under Section 3 of the Quieting Titles Act 1959.
2. In support of the Petition the Petitioners filed the following documents:
 - (1) Notice of Petition filed November 3, 2020;
 - (2) Petition to Facts filed November 3, 2020;
 - (3) Affidavit in Support of Petition filed November 3, 2020;
 - (4) Petitioner's Plan filed November 3, 2020;
 - (5) Petitioner's Abstract of Title filed November 3, 2020;
 - (6) Supplemental Affidavit in Support of Petition filed February 4, 2021;
 - (7) Petitioners' Supplemental Affidavit filed July 2, 2021;
 - (8) Affidavit of Geuel McPhee sworn on October 29, 2020; and
 - (9) Affidavit of Dirlene Martinborough and Oron McPhee sworn on August 15, 2019.
3. An Adverse Claim was filed on February 26, 2021 by Lisa Battershill, the documentary title holder and the survivor of a joint tenancy with Mr. Keith Arnold

in respect of the said property. The Adverse Claimant relies on the following documents:

- (1) Adverse Claim filed February 26, 2021;
- (2) Affidavit of Norris Rexford Carroll filed February 26, 2021;and
- (3) Supplemental Affidavit of Norris Rexford Carroll filed July 23, 2021.

The Adverse Claimant gave viva voce evidence on August 20, 2021. All Witnesses were cross-examined.

4. The Petitioners filed written closing Submissions on October 29, 2021 and the Adverse Claimant on October 15, 2021.

Statement of Facts

Site Visit

5. A Site visit was conducted on April 26, 2022. The Lot location, dwelling-house and gazebo constructed thereon were consistent with the Petitioner's Plan filed herein on November 3, 2020. The subject property is developed property and is occupied by the Petitioners and their children. The property was fenced in, landscaped and well manicured.
6. Mr. Desmond Dean who was present at the site pointed to a house at the rear of the subject house and stated that the house was owned by Rev. Oron McPhee.

The Petitioners' Case.

7. Mr. Oron McPhee's evidence in part (Affidavit sworn on August 15, 2020) is that he is a clergyman and the brother of Sharmaine Dean and that for 16 years she has resided at the said property "**as caretaker and will take full responsibility for the maintenance and upkeep of the said home.**" In his viva voce evidence, he stated that he believed that his sister moved into the house in 2003. That during the summer of 2003, Mrs. Sharmaine Dean, at the time of her moving into her present residence, was going through a very difficult time in her life, which was not conducive for her well-being. That he mentioned to her a vacant property at Tarry Town Drive. After giving her the information, within a short time, "she took it upon herself to search for the property and move in". She

asked him to help her to move her larger, much heavier items, and she subsequently moved into the vacant property, and has been living there to the present.

8. Under cross-examination he stated that knew the owners of the subject property. That when they moved in he made himself known to them as a neighbour. That they lived there for several years. That he knew the previous owners of the house, Mr. Kahn and that when Mr. Kahn moved out the house was for sale and then Mr. Arnold moved in. He was aware when Mr. Arnold moved in after Mr. Khan moved out because he was a "good neighbour". That he did communicate with Mr. Arnold and Ms Battershill when they lived in the house. That he was not aware that Mr. Arnold and Ms. Battershill did not purchase the house until April 7, 2005. That he was surprised to know that. He denied lying about his sister having moved in the house in 2003. That he recalled receiving an email from Mr. Arnold in 2008. The email between himself and Mr. Keith Arnold dated October 20, 2008, on the occasion of his birthday, was read into the record and states as follows:

"Hey,

Thanks for the card; yes, I am 40. Wow. getting old aye.

CONGRATULATIONS ON YOUR EXPECTING CHILD. GOD BLESS. GOD BLESS. Your both.

Well it's very good to hear from you. I trust That all is well, and that you are enjoying life in England.

Just to update you again on your house. I don't know if you got my e-mail in August.

It was just informing you of what was going on with your house.

- 1) I did put on the market again, just to feel out the market, so if I got a very good offer I would let you know, but in essence the market is very bad, in fact, the economy is very bad in Freeport. The selling market and the rental market.

2) There was consistent attempts of people sleeping in the house, and after consistently running people and locking up the place was not working, I put a caretaker in there.

3) I moved my sister in there. I turned on the power and water and so now we are gradually working on the house to get it back up to par. she understands the situation. I really needed to have someone in there consistently to run off the vagrants.

4) so please let me know if and when you are coming at least one month in advance, so that I could clear her out of the house. She was with my parents anyway.

I can say that it is now coming back to a livable environment. I hope you would not mind, but that was the best way to preserve what you have in Freeport. Please know that we are doing all that we can on your behalf. So like I said, let me know well in advance. k"

9. Mr. McPhee stated under cross-examination that when Mr. Arnold left he asked him if could keep an eye on the house, that he told him that he had just been robbed in a hostile manner and that they had to leave. That he told him that he would do his best. He denied ignoring Mr. Arnold when Mr. Arnold was trying to reach him. That he signed for a letter on April 30, 2019 from Norris Carroll & Co. but that he did not read it. The letter was read to him and stated as follows:

"Rev. Oron McPhee,

Freeport, Grand Bahama.

Dear Rev. Oron McPhee,

Re: Re: Lot 25 Block 2 Section 1 Tarry Town Drive, Bahama Reef Subdivision, Freeport, Grand Bahama.

You are aware, I understand, that I represented Keith Arnold and Lisa Barttershill, his wife, and I understand that you know that Keith has died. However we still represent Lisa.

It is my understanding that sometime during 2008--- around October or thereabouts--- you put your sister Sharmaine (now Mrs. Dean) in the

house, ostensibly to look after it in order to keep out vagrants who were breaking in and vandalizing it. On your informing the owners of that fact, they agreed to allow that to happen, but although she was not to pay any rent, she was to pay all expenses (power and water); and she was also to pay the annual service charge on the property on which the house is located.

She has not paid such service charge.

Your sister was also to allow the owner's Registered Agent, Mrs. Violet Wright, of Mosko Realty, to take possible buyers to view the house so that they might make intelligent offers to purchase.

She has not allowed this to happen, consistently ignoring telephone calls made to inform her when the agent would be carrying possible buyers to see the place. Mrs. Wright had at least three potential purchasers who could not be shown the place.

By refusing to comply with the terms and conditions of her occupation of the place, she has broken the agreement, and as a result has become a trespasser. I have written to her twice to advise that if she was not prepared to comply with those terms and conditions, she was to vacate the property.

I am advised that she has not complied with the terms of the Agreement, and she has not vacated the property.

This letter is to appeal to you to urge her to vacate the property forthwith. When she is moving out she should call Mr. Dario Cox to collect the keys, and view the state of the premises. Failing her doing so voluntarily, the matter will be taken to the Supreme Court.

I would be grateful for a response within seven (7) days of delivery of this letter to you, however it will be effected.

I am to thank you for your hoped-for assistance in this matter.

Yours faithfully,
Norris R. Carroll
Norris R. Carroll & Co. "

10. Rev. McPhee denied that he lied when he said that his sister had lived in the house since 2003. That over the years he had tried to contact Mr. Arnold but that there

was no communication between them. He denied ignoring Mr. Arnolds attempt to contact him. That he recalled getting a letter from Mr. Carroll but that he did not read it.

11. Ms. Dirlene Martinborough's evidence (Affidavit sworn on August 15, 2020) in part is that she is the sister of Mrs. Sharmaine McPhee and that for 16 years she has resided at the said property "**as caretaker and will take full responsibility for the maintenance and upkeep of the said home.**" In her viva voce evidence she stated she visited her there on occasions of probably birthday parties and any function that she may have had. Under Cross-examination she stated that she believed that Mrs. Sharmaine Dean moved into the house in 2003.
12. Mr. Geuel McPhee's evidence in part (Affidavit sworn October 29, 2020) is that he is the brother of Mrs. Sharmaine Dean and that for 16 years she has resided at the said property "**as caretaker and will take full responsibility for the maintenance and upkeep of the said home.**" In his viva voce evidence he stated that his sister had lived in the house for 18 years and that she lived there from 2003. Under cross-examination he stated that she moved into the house about a year after he had returned from college which was in 2002.
13. The Petitioner, Mrs. Sharmaine Dean, stated in her evidence-in-chief that the late Mr. Keith Arnold left the Petitioners in possession of the said property. That there were no other persons known to them who had any lawful right, title or interest to said property. That "in reliance on the instructions of the late Mr. Arnold and the fact that they have lived on the said property for the 17 years undisturbed they have a better title to the said property".
14. The Petitioners exhibited a copy of Mr. Arnold's death certificate issued in the London Borough of Wandsworth, UK which indicates among other things that he died on March 10, 2018 at St. George's Hospital, Blackshaw Road, Tooting and that Lisa Battershill was present at his death. They also exhibited a certified copy of a Conveyance dated April 7, 2005 between Ahmood Azaad Khan and Indira Khan and Keith Arnold and Lisa Battershill recorded in the Registry of Records in the City of

Nassau, New Providence, The Bahamas in Volume 9771 at pages 20 to 27. In the first schedule to that document the said property is described as follows: ALL THAT piece parcel or lot of land known as Lot Number Twenty-five (25), Block Number Two (2), Bahama Reef Yacht & Country Club Subdivision, Section 1 situate in the City of Freeport, in the Island of Grand Bahama (hereinafter referred to as "**the subject property**"). At paragraph 1, page 3 the Conveyance states that Mr. Arnold and Ms. Battershill purchased the subject property as "joint tenants". The Affidavit of February 4, 2021 also exhibited a letter dated September 28, 2020 addressed to Ms. Lisa Battershill from Mrs. Dean and a copy of a computer screen shot of 2 emails from Desmond Dean to the email address lisambat@aol.com asking her to read an attached correspondence. Her evidence is that the letter and the email correspondences went to Ms. Battershill but that they received no response.

15. That the letter dated September 28, 2020 states as follows:

"Good Morning Ms. Battershill,
I hope this e-mail finds you in good health and strength. My name is Mrs. Sharmaine Dean. My family and I currently reside at # 25 Tarrytown Drive, Freeport, Grand Bahama, Bahamas. I thank you for taking the time to read my email of which I am writing in humbleness of spirit and of good faith.

I came upon your residence some 18 years through my brother Oron McPhee, and by extension, Mr. Keith Arnold. At that time, I really was in a bad place in my life with small children and having been recently divorced, however, I felt that God had mercy on me through Mr. Arnold at the time. My understanding is that there was a verbal agreement allowing me to stay. During this time, I was able to find a job and get back on my feet. 18 years later, I have recently married and since added to my family, a military officer and his young 4 year old daughter, whose mother has tragically died.

I am writing to you so that you know that the people who presently occupy your place are not bad people. I currently work for the Government of The Bahamas, and my husband works for an oil inspection company on the island." During the time I have resided at # 25 Tarrytown Drive, I always wondered why any of the **owners** never contacted me to inquire about the maintenance of their house & property, or if they wanted to perhaps return to the Bahamas to take up residence at # 25 Tarrytown Drive, or **if it was available for my family and I to work out some agreement for purchase.**

Ms. Battershill, the house as you knew it prior to leaving the Bahamas is truly no more. There have been two electrical fires (both accidental) during the first five years of me being there, and since the fires, four major storms/hurricanes, and many other issues would have left the house to be nothing more than a dilapidated building. I would like for you to consider the time and finances invested into this home over the years for its restoration and maintenance. We are not rich but we will be very appreciative and grateful should you consider us in the sale of your property, as we have built a family here raising my boys from infancy. We simply consider this 'home'.

Additionally, I humbly ask of you to consider myself, as a woman and a mother, to please have the power restored to the house by EMERA for my family as this is a very traumatizing experience, especially after dealing with the many losses incurred as a result of Hurricane Dorian in 2019. **We also humbly request that you give us sufficient time to negotiate and gather adequate funding in order to secure our future.**

Please consider the following:

- a. +Thousands of dollars in repairs;
- b. The roof was repaired three times after being destroyed by three hurricanes;
- c. New floors;
- d. A completely gutted house has been renovated/restored;
- e. Doors, kitchen, tiles, bathrooms, all renovated and replaced.

You right now basically have a brand new home on the interior. We have invested all of our lifesavings which we were very hesitant about doing simply because I was unable to contact Mr. Arnold, especially learning of his death through facebook when we tried to reach out to him, **to find out if we would be in good standing with him..**

Please, Ms. Battershill, I humbly ask that you could consider my family.....we are good, decent and respectable people, and I pray that whatever needs you may have, God will truly bless you bountifully for any goodness that you can show us.

I have attached some pictures for you so that you can see the state your place was in after the destruction and devastation left by Hurricane Dorian, and bear in mind, this is after completing repairs following damages caused by the hurricane prior.

Anything pertaining to your property that you would like to see I have no issues in showing you so that you can see what is going on, I have in my possession all repair receipts from time I was here 18 years ago. All I ask is for you to consider

me and my family. **We need the power restored, and we need the time to move forward. If you require us to make an offer, we would be more than willing to do so.**

We really would like to remain at # 25 Tarrytown Drive as it has been our home for all these years. Can you kindly consider the below on our behalf:

Can you consider us being the buyers for #25 Tarrytown Drive, which we are willing to do? Considering all that we have invested over the years in maintaining, renovating, and restoring, as well as the sentimental part of calling this residence 'home' for some 18 years, we graciously ask of your kind heart in all matters regarding # 25 Tarrytown Drive. **The economy in Grand Bahama today is not in a good place, and truthfully, having to relocate will be very difficult- not to mention gut-wrenching, in that # 25 Tarrytown Drive is deeply rooted in our veins. We humbly look forward to a much favourable response."**(Emphasis mine)

16. The Petitioners stated in evidence that while residing at the subject property they have always wondered why the owners never contacted them to inquire about the maintenance. That the house that Ms. Battershill knew when she left the Bahamas is no more. That there have been 2 electrical fire, both accidental during the first 5 years and 4 storms/hurricanes and many other issues would have left the house in a dilapidated building. That the Petitioners asked the Court to consider the time and money invested over the years in the restoration and maintenance of the home, that they raised their children there from infancy, that they had spent thousands of dollars in repairing the roof 3 times, put in new floors and completely gutted and renovated the house.
17. The Petitioners exhibited estimates and receipts for repairs to the house and pictures associated with the damages sustained by the house as a result of Hurricane Dorian.
18. Under cross-examination the Mrs. Dean stated that she found an abandoned house and moved into it around 2003/2004. That she was told by her brother that there was a place that was in the back of him that was not being occupied because at the time she was not able to cope with her rent. That Oron McPhee told her that the place was not up to par but that she could set up shop there until she could

figure something out. That he did not tell her immediately who the house belonged to. She assumed there was an owner and eventually her brother told her who owned the house. That when she got to the house Oron McPhee was already in it and he let her in. That she did not know of the arrangement between her brother and Keith Arnold. She had invested in the house after Hurricane Dorian and 2 fires and wanted to solidify something so she reached out to Mr. Arnold. Sometime later she found out from messages on Facebook that he had died.

19. Mrs. Dean recalled sending the letter dated September 28, 2020 to Ms. Battershill. Mrs. McDonald QC took the witnesses through the letter practically line by line which I do not intend to regurgitate verbatim. I will summarize the relevant responses. She clarified that she told Ms. Battershill that she knew of Mr. Arnold through her brother Oron, that she knew of the verbal agreement allowing her to stay in the house. That she reached out to Ms Battershill after seeing her name on the Conveyance and she understood that she owned the house. She wrote to her to see if she would agree to let her purchase the house. That after she had seen Ms. Battershill's name on the Conveyance she was acknowledging that she owned the property when she wrote the September 28, 2020 letter. That she knew that Mr. Arnold was the name on the property and they wanted to know what was happening with the property. They wanted to know if they were "in good standing" with property. Having received no response she got a lawyer. Upon her instructions Mr. Hanna wrote to Ms. Battershill and asked her if she would sell the house to her but that she never responded.

20. Mrs. Dean acknowledged receiving a letter from Mr. Norris Carroll on May 22, 2017. That she rejected the letter because she had not received any communication from Mr. Arnold. That she got the letter but did not read it. She admitted to not allowing real estate agents entry to the house to show the house. She felt like she had a right to the house and she did not need them to come into her place. She denied Mr. Daeio Cox entry into the House. She did not know that they represented Mr. Arnold. Miss McDonald put the email sent in 2008 by Rev. Oran McPhee to Mr.

Arnold. She said that she knew nothing about the contents of the email and that in 2008 she was already in the house. That she was not aware that her brother was managing the house for Ms Battershill. Her evidence was that Mr. Dean did not move into the house when she did and that he had not been living in the house for 18 years. That she and her children were not there since they were in their infancy.

21. Mrs. Dean acknowledged getting a letter from Mr. Carroll on May 22, 2017 and but not the one dated March 8, 2019. She acknowledged that Mr. Carroll wrote to her on behalf of Mr. Arnold and Ms. Battershill but she wanted evidence and facts from Mr. Arnold or Ms. Battershill, the owners.

Abstract of Title

22. The Petitioners states in the Petitioners' Abstract of Title that they have possessed the subject property for 17 years. Attached to the Abstract of Title is a Search Report from G.B. Research & Associated Services dated September 17, 2020 which at page 3 sets out the documentary title of the Adverse Claimant; 2 power bills from G.B. Power Company in the name of Keith Arnold for April and July 2019 and the Affidavits of Dirlene Martinborough, Oron McPhee and Geuel McPhee.

The Adverse Claimant's Case

23. Mr. Norris R. Carroll QC, legal representative for the Adverse Claimant stated in evidence in chief (Affidavit filed February 26, 2021) that he is a Counsel and Attorney of the Supreme Court, of the said Commonwealth, having been called to the Bar of the said Commonwealth on the 9th day of January, 1974. That on the instructions of Mr. Peter Arnold and Ms. Lisa Marie Battershill, both of London, England, he acted for them in the purchase of the subject property from Ahmood Azad Kahn and Indira Kahn, his wife, by Deed dated April 7, 2005 for the sum of US\$180,000.00. That they later entered into contracts with the suppliers of power and utility services and were required to pay an Annual Service Charge. That while sale process was going on between the Khans and Mr. Arnold and Ms. Battershill

he visited the subject property on more than one occasion in 2005 and that the Petitioners were not there.

24. That during October, 2008, Rev. Oron McPhee, a friend of Keith Arnold and Lisa Battershill, who had been looking after the said home for them, advised them that he had put his sister, Sharmaine McPhee-Dean, in the house to help protect it from vagrants. Mr. Arnold and Ms. Battershill agreed with her having been put into the house, and though she was not to pay any rent, she was required to pay the expenses of the power, utilities, and the Annual Service Charge. As Mrs. McPhee-Dean was only to occupy the said home until it could be sold, she was required under the terms and conditions of her being allowed to occupy it rent free, to allow possible purchasers to view the place in order for them to make reasonable offers. Mrs. McPhee-Dean refused to allow the Real Estate Agent, Mrs. Viola Wright of Mosko Realty, to show possible purchasers the property. She also failed or refused to pay the power and utility bills, and the service charges as was her obligation under the arrangement with the owners.

25. That by e-mail dated January 24, 2017, Mr. Arnold complained to him that Mrs. McPhee-Dean was refusing to allow the Real Estate Agent to bring would-be purchasers to view the house and instructed him to advise Mrs. McPhee-Dean to either allow the viewing or vacate the place. The email was read into evidence and stated as follows:

“Hello Mr. Carroll.

I have been informed by my Realtor that they have a client that is interested in viewing my property @ 25 Tarrytown Drive, Bahama reef.

Unfortunately, the Realtor has had no response from the current occupants to arrange a viewing.

I have tried in vain to contact the occupants to no avail & my suspicion is that she may be deliberately being awkward.

Can you please advise the current occupants on my behalf that I would like them to arrange a suitable time for a viewing & to vacate the property to allow this & any future viewings.

Thanking you.

I hope to hear from you soon

Sincerely
Keith Arnold.”

26. That pursuant to Mr. Arnold’s instructions Mr. Carroll wrote Mrs. McPhee-Dean by letter dated May 22, 2017, demanding that if she was not prepared to agree to allow the viewings, she was to vacate the property within 30 days. That the said letter was delivered to Mrs. McPhee by Homeward Bound Express Delivery on May 23, 2017, for which delivery she signed. That Mr. Arnold died on March 10, 2018, in England.
27. That by letter dated October 2, 2020, Mr. Dwight Malcolm of Bahama Reef Development Company Limited advised Mr. Carroll that the arrears of Service Charges outstanding on the said property was \$4,200.70 to November 30, 2020. The letter was read into evidence.
28. That because Rev. Oron McPhee had put Mrs. McPhee-Dean in the property and knew the conditions of her occupation, and because she was his sister, and he was a Pastor to whom he thought she would listen, he wrote to Mr. McPhee by letter dated April 29, 2019, about the matter and appealed to him to urge her to vacate the place without the matter having to be taken to the Court. As with his letters directly to his said sister, there was no response to the letter.
29. That pursuant to instructions from Ms. Lisa Battershill he wrote to Mrs. Charmaine McPhee-Dean by letter dated March 8, 2019, advising her that Ms. Battershill wanted her to vacate the property. The letter was delivered to Mrs. McPhee-Dean on March 8, 2019.
30. That Ms. Battershill, as Joint Tenant of the subject property, entered into a Contract to sell it to Mr. Darieo Cox, dated December 14, 2018, but the matter has not proceeded due to the intransigence of Mrs. McPhee-Dean and her continued trespass. Ms. Battershill wants the said Mrs. McPhee-Dean and anyone else in the said property with her to be evicted therefrom, and requests the Court to make such an Order.

31. In his Supplemental Affidavit filed July 23, 2021 Mr. Carroll stated that the Petitioners have not made full disclosure to the Court, that paragraphs 3 and 5 of the Petition are not true because on September 28, 2020 they wrote to Ms. Battershill and recognized her as the owner of the subject property and begged her to sell it to them. That on September 21, 2020 Ms. Battershill sent him an email from Mr. K. Brian Hanna which stated as follows:

"Dear Ms. Battershill,
Re: LISA BATTERSHILL
LOT #25 TARRYTOWN DRIVE
WINDSOR PARK, FREEPORT, GRAND BAHAMA

Please be advised that Our Chambers write to you with regards to the above captioned property.
Please advise Our Chambers on whether you are prepared to sell the said property.
Kindly revert to us the sale is eminent "

32. That he received a letter from Mr. K. Brian Hanna which stated as follows:

"24th September, 2020
Mr. Norris Cambell
Counsel & Attorney-at-law
Stac House
West Settlers Way
P. O. Box F-44646
Freeport, Grand Bahama
Bahamas
Dear Mr. Campbell,

Re: Mrs. Sharmaine Dean-#25 Tarry Town Drive,
Lucaya: Propose Lot

Kindly be advised that Our Chambers represents Mrs. Dean
With regards to the above property.
We have been that the said property is owned
Presently by Ms. Lisa Battershill. We are advised that Our
Chambers represents her. With that in mind, we write to you requesting
whether Ms. Battershill will be interested in selling

The said property. First and foremost to our client, Mrs. Sharmaine Dean resided there for sixteen (16) Years Uninterrupted.
Our Chambers
We humbly seek your assistance with the same. We await your urgent reply.
Sincerely,
K. Brian Hanna"

33. That paragraphs 3, 4 and 5 of the Petition and the statement in the "Petition of Facts" that the Petitioners have not been able to find Ms. Battershill are untrue.
34. Under Cross-Examination Mr. Carroll stated that he visited the subject property in 2005 and in 2008. That he did not see him on the property in 2008 but that he got the impression that he was still there because at that time he was complaining that the property was in a bad condition. That Mrs. Dean was not living there in 2005. Mr. Arnold was advised by Mr. McPhee in 2008 that he had put Mrs. Dean into the property. That he made inquiries into the services charges because Ms. Battershill wanted to know that they were paid. That on instructions from Mr. Arnold he wrote to Mrs. Dean. That he did not take out a Court action but told Mr. McPhee that he wanted Mrs. Dean to leave so as to avoid taking the matter to Court. That Ms. Battershill sent him the letter from Mrs. Dean pleading to buy the property from Ms. Battershill. That he wrote to Mrs. Dean on the instructions of Mr. Arnold and then Ms. Battershill.
35. Under Re-Examination Mr. Carroll stated that Mr. Arnold and Ms. Battershill took up residence in the house in 2005 almost 2 months after buying it. That Mr. Arnold's parents lived in the house between March and May of 2006. That Mr. Arnold and Ms. Battershill lived in the house in 2007. That when they bought the house from the Khans they took vacant possession of it.
36. The Adverse Claimant stated in her Adverse Claim in part that the Adverse Claim sets out the documentary title of the Adverse Claimant, namely, that the Adverse Claimant and the late Mr. Keith Arnold purchased the subject property on April 7, 2005 from Ahmood Azaad Khan and Indira Khan by an Indenture of Conveyance

recorded in the Registry of Records in Volume 9771 at pages 20 to 27 as hereinbefore-mentioned.

37. In her viva voce evidence she stated that she and Mr. Keith Arnold purchased the property in 2005 from Ahmood Azard Kahn and Indira Kahn. That the property was empty when they purchased it. That they went back to England in 2006 because they got robbed in January 2006. She could not speak to the arrangements about the house because Mr. Arnold had dealt with all of that. He died in 2018. That she got an email from Sharmaine Dean which she sent to Mr. Carroll. Mrs. Dean went into possession in late 2008. That she filed an Adverse Claim in this action and that she is the owner of this property.
38. Under Cross-Examination she stated that she was in the United Kingdom in 2008 and that she was told that Mrs. Dean was in the property at that time. That it says so in the email from Oron McPhee. The first time that she dealt with the property was in 2019. When they left in 2008 they wanted nothing to do with the property because they had been robbed once when they lived there and another time when they did not. After Keith died she told Mr. Carroll that she wanted Mrs. Dean out of the property in late 2018 and definitely in 2019. As far as she knew Mrs. Dean was still living in the property.

Issues

25. The Court must determine:
- (1) Whether the Petitioners possession of the subject property was adverse to the documentary title holder;
 - (2) Whether the Petitioners possessed the requisite factual possession and animus possidendi;
 - (3) Whether the Petitioners acknowledged the ownership of the subject property by the documentary title holder and the consequences of any.

Submissions

26. Mr. K. Brian Hanna, Counsel for the Petitioners submits that the Petitioners have occupied the property for the last 18 years undisturbed by anyone and that no

consent was given to them by the adverse claimant Lisa Battershill. That since 2008 the Petitioners have enjoyed exclusive rights to the property which is evidenced by the fact that no one was allowed onto the property without their consent. The fact that they prevented real estate agents from showing the property illustrated that their intention was to control ownership of the property. That the Adverse Claimant left the property unattended for over 18 years and at no time attempted to enforce her rights over the property, extinguishing any claim to the property as owner. She left Grand Bahama over 18 years ago and no one has heard from her or seen her since. Pursuant to Section 16 (3) of the Limitation Act she is now precluded from bringing an action for the recovery of land.

27. Mr. Hanna submitted that the adverse claimant did not enforce her rights within the prescribed time and the fact that she sent letters to the Petitioners some 16 years ago did not stop time from running. The Petitioners being allowed onto the property by Reverend Oron McPhee does not equate with permission or consent being granted by the Adverse Claimant. It also does not constitute a license to occupy the property as there was never any communication between the Petitioner and the Adverse Claimant. That the effect of the Limitation Act is that the Adverse Claimant's rights to the property is extinguished because the Petitioners have been in occupation of the land for 18 years without interruption.

28. Mr. Hanna submitted that the evidence of Mr. Norris Carroll cannot be relied upon as he only speaks to what possibly happened. That the Petitioners never gave any consideration to the letters from Mr. Carroll which were sent on the instructions from Mr. Keith Arnold. That the Petitioners' occupation was notorious and open. They made it clear to all persons that they were in total control of the property being the rightful owners. There was never any indication that the Adverse Claimant existed and she enforced her rights until the agents she sent were rejected. That the Petitioners were not allowed onto the property by the owners. Oron McPhee gave the Petitioners' permission to enter the property and they remained there without permission. Mr. Carroll's evidence corroborates the fact

that permission was not granted by the owners and that many attempts were made to have the Petitioners removed from the property.

29. Mr. Hanna submitted that the Petitioners have a better title to the property. That they paid all taxes and bills to upkeep the property over 15 years. That Hurricane Dorian destroyed the house completely and the Petitioners spent a considerable amount of money renovating it. That the Adverse Claimant has not adduced any evidence to contest the continuous period of habitation by the Petitioners. That the Adverse Claimant is in no position to enforce her rights today.

30. Mr. Hanna referred the Court to the following authorities:

Riley v Brathwaite and Another (Court of Appeal of Barbados)

Lynes v Smith [1899] 1 QB 486

Edward v Brathwaite High Court of Barbados

Goonti Ramnarave v Harrypersad Lutchman (2001) WIR 59 page 511

31. Miss Constance McDonald QC submitted that the Petitioners' claim by their Petition to have been in possession of the property for 17 years (that is since in or about 2003). If this was true, they would have been in possession of the property before the now title holders/owners. That the Petitioners have abstracted a Conveyance dated April 7, 2005 from Ahmood Azard Khan and Indira Khan to Keith Arnold and Lisa Battershill, as joint tenants, recorded in Volume 9771 at pages 20 to 27. That knowledge of ownership of one joint tenant is knowledge of ownership of all joint tenants collectively since there is no divisible share in a joint tenancy. That Mr. Keith Arnold and the Adverse Claimant took possession of the property 2005 when they acquired the property. That the Petitioners' documentary evidence and fact evidence are contradictory.

32. Miss McDonald submitted that Section 16 (3) of the Limitation Act does not apply to when an Adverse Claimant enters an appearance. The Petitioners must satisfy the necessary elements of adverse possession for 12 years preceding the filing of their Petition in order to make a successful case. That on the facts of this case the

Petitioners did not have 12 years of exclusive, undisturbed and without permission, possession prior to the filing of the Petition.

33. That Petitioners are trying to mislead the court into believing that they had undisturbed possession of the subject property for 16, 17 and in some documents 18 years when it is clear from the evidence that this is not true. It must be noted that the Adverse Claimant and Mr. Keith Arnold did not enter into possession of the subject property until 2005 when they purchased it.
34. Miss McDonald submitted that the Sharmaine Dean by her own letter of September 28, 2020 acknowledged to the Adverse Claimant that she had permission to occupy the subject property. That Mr. Norris Carroll QC deponed in his Affidavit of February 26, 2021 that Rev. Oron Jones, a friend of Keith Arnold, who had been looking after the subject property for him and Ms. Battershill, advised them that he had put his sister Sharmaine McPhee Dean in the home to protect it from vagrants. That Oron McPhee was the agent and representative of the true title holders. That Mr. Hanna cited **Edwards v Brathwaite** and sought to distinguish it by stating that in the instant case the Petitioners got permission from Oron McPhee and not from the title holders. That Oron McPhee was an agent of the title holders and that as such permission of the title holders for Mrs. Dean to occupy the subject property was established. That in line with **Edwards v Brathwaite** the Petitioners' Petition must fail as the requirement for possession to be adverse to that of the title holder is a crucial and important element of adverse possession.
35. Miss McDonald QC took the Court through Mr. Carroll's evidence and submitted that it is clear from the September 28, 2020 letter that the Petitioner Sharmaine McPhee Dean acknowledged that Ms. Battershill was the owner. She referred the Court to **Browne v Perry** (1991) 40 WIR 165 as illustrative in this instance as it was held that a claim for adverse possession may be defeated by a written acknowledgment, made by the person in possession to any person claiming to be the proprietor, to the effect that the proprietor's claim is admitted. That the statement in the Petitioners' Abstract of Title that they have lived on the subject

property for 17 years undisturbed is not true. Further, that the statements in paragraphs 3, 4, and 5 of the Petition are not true.

36. Miss McDonald submitted that to succeed the Petitioners must show that they have factual possession of the property and the necessary animus possidendi. That to prove factual possession, possession must be open (nee clam), peaceful (nee vi) and adverse (nee precario). That the Petitioners possession of this property is not adverse neither do they possess the necessary animus possidendi because of the reasons that Mrs. Dean entered into possession of the property, the contents of the September 28, 2020 letter and the contents of the letter from Mr. Hanna to Ms. Battershill seeking to purchase the property.

37. Miss McDonald, QC further submitted that Petitioners tried to deceive the Court despite all of the factual and documentary evidence to the contrary that they are entitled to the fee simple ownership of the property. That the Petitioners entered the property with the permission of the title holder and remained in possession based on that permission. That further and in the alternative, the Petitioners' possession of the property falls short of the 12 year period necessary to advance a successful claim of adverse possession.

Analysis and Conclusions

The Law

38. Sections 3, 4, 5, 15, 17 and 18 of the Quieting Titles Act, 1959 provides as follows:

"3. 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."

"4. Every application made under the provisions of section 3 of this Act shall be by petition in Form 1 of the Schedule and unless the court dispenses therewith either in whole or in part shall be supported by —

(a) the title deeds and other evidences of title in the possession or power of the petitioner;

(b) certified copies of all recorded documents the originals of which are not in the possession or power of the petitioner;

I an abstract of title signed by an attorney;

(d) a concise statement signed by the petitioner or his attorney of such facts as are necessary to make out the title and which do not appear in the documents produced;

I proof of any fact which is required to be proved in order to make out the title, and which is not established by the produced documents;

(f) an affidavit made in accordance with the provisions of section 5 of this Act;

(g) at least two affidavits as to possession in the case of a petitioner relying on possession under the Limitation Act;

(h) a plan of the land prepared from a survey thereof.”

“5. The affidavit in support of the petition shall confirm all the facts set out in the petition and shall be made by the petitioner or may, with leave of the court, be made by some person other than the petitioner or as to part by one person and as to part by another and shall in addition set out whether any person is in possession of the land and under what claim, right or title, and shall state that to the best of the deponent’s knowledge, information and belief, the affidavit and the other papers produced therewith fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the title or any part thereof or give any rights as against him.”

“15. Every certificate of title under this Act shall be presumed to be subject to the following exceptions and qualifications —

(a) the reservations, if any, contained in the original grant from the Crown;

(b) any encumbrance which has been recorded in respect of the land and which is valid and subsisting at the date of the certificate of title;

I any public highway or right of way, watercourse, right to light and other easements;

(d) the right of the wife, if any, of the petitioner to dower.”

“17. (1) After the court has completed the hearing of an application made under section 3 of this Act it may —

(a) dismiss the application;

(b) dismiss the application and grant a certificate of title in the form prescribed by section 18 of this Act to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act;

I grant a certificate of title in the form prescribed by section 18 of this Act to the petitioner;

(d) grant separate certificates of title in the form prescribed by section 18 of this Act to the petitioner and to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act in respect of the whole or separate parts of the land described in the petition.

(2) The court may give one certificate of title comprising all the land described in the petition, or may give separate certificates of title as to separate parts of the land.”

“18. (1) The certificate of title shall be substantially in the form of Form 4 of the Schedule, and may, where necessary, have a schedule thereto and a plan annexed thereto, and shall be under the seal of the court, and shall be signed by a judge thereof, and the certificate, the schedule and plan, if any, shall be recorded without any further proof thereof.

(2) A separate index of certificates of title shall be kept by the Registrar General in a book in which the certificates of title shall be numbered in order and in which shall be entered the names of the petitioners and of any adverse claimants, and short particulars of the land which is the subject-matter of the petition and of adverse claims, and any other particulars which may be deemed to be desirable.”

39. Section 16 (3) of the Limitation Act 1995 provides as follow:

“(3) No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued

to such person or, if it first accrued to some other person through whom such person claims, to that person:"

40. In **Anthony Armbrister and Others v Marlon Lightbourn and Others** 2012 UKPC 40 Lord Walker delivered the Judgment of The Judicial Committee of the Privy Counsel on appeal from the Court of Appeal of The Bahamas and set out the process of quieting titles and the role of the Court beginning at paragraph 7:-

"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. But while the 1959 Act meets an economic and social need, there has also been a warning from a lecturer, familiar with the 1959 Act both as a legislator and as a practicing member of the bar, that bench and bar must be vigilant to prevent the statutory procedure being abused by "land thieves" (the Hon Paul L. Adderley in an address to the National Land Symposium on 17 March 2001). It is no accident that the Judicial Committee has over the years heard many appeals raising questions of title to land in the Bahamas, including *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] AC 1072, *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, *Higgs v Nassauvian Ltd* [1975] AC 464, and *Higgs v Leshel Maryas Investment Co Ltd* [2009] UK PC 47.

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.”

Possessory Title

41. The Petitioners’ claim is by possessory title. They have to prove that this possession was adverse to that of the documentary title owner, in this case the Adverse Claimant. Megarry and Wade in the text **Law of Real Property**, 4th Edition at page 1013 define the term Adverse Possession as:

“possession inconsistent with the title of the true owner and not for example possession by a trustee on his behalf.”

As submitted by Miss McDonald QC, that not only must the Petitioners possession be adverse it must be peaceful.

42. In **Building Heritage Ltd. v Minister of Housing and Social Development**

1999 No. 256/250 Lyons J stated:

"In *Evans v Carey [1977-78] 1 LRB 176*, the Court of Appeal approved the statement of law by Scarr J in *Re Bowe* (unreported EQ.137/19610. Scarr J. said

"It is contained in s 1 of the Real Property Limitation Act...and ss3 and 34 of the Real Property Limitation Act No. 1...the combined effect of which is that in order to extinguish the title of the true owner and establish a possessory or squatter's title, the claimant must substantiate the following three facts:

1. that the owner has either abandoned his possession or has been dispossessed,
2. that adverse possession has been taken by another and,
3. that the adverse possession was continued without any interruption for a least 20 years.

By "Adverse Possession" is meant that the trespasser must occupy and deal with the land in such a way that it is quite inconsistent with the right of the true owner to enjoy the land as he wishes i.e. preclude him from enjoying it (see *Leigh v Jack (1879) 5 Ex D 24*); and he must prove such occupation in respect of every inch of land he claims, *Glynn v Howell (1909) Ch 666*. The burden of proof is not a light one and the law does not lightly reward trespassers...Where the acts of the trespassers are equivocal i.e. not necessary acts of ownership...the claimant must prove an intention to exclude the true owners (*Littledale v Liverpool College [1990] 1 Ch 9*). There must also be dispossession of the true owner and mere use by another is not enough (see *William Bros v Raftery [1957] 3 All England Report 593, [1958] 1 QB 159*)"

43. In the instant case, the burden is on, applying the above test, the Petitioners to prove that the documentary title holder has discontinued or abandoned possession of the property and that the Petitioner has entered into possession of the property and has dispossessed the documentary title holder and that the Petitioners possession has continued without interruption according to them for 18 years.
44. In **Powell v McFarlane** 1977 38 P & CR p 452 the Court considered the concept of possession and the conditions necessary to establish an intention to possess land adversely to the paper owner where a squatter had occupied the land and defended a claim for possession. Slade J stated:

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

(1) 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 through the paper owner.

(2) 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”).

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive 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 of 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 generalize 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 Manis Appu* 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.

(4) The *animus possidendi*, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College*¹² (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 realise that, at least until he acquires a statutory title

by long possession and thus 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 judgment, 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."

Finding of Facts

45. I do not accept that the Petitioners have been residing in the subject property since 2003. The evidence of Sharmaine Dean, Oron McPhee, Dirlene Martinborough and Geuel McPhee concerning when Sharmaine Dean and her family took up residence in the subject property is contradicted by the fact that the Adverse Claimant and the late Mr. Arnold did not purchase the subject property until 2005.
46. I accept that Rev Oron McPhee acted as agent for Mr. Arnold and Ms. Battershill by this agreement to oversee and act as caretaker for the subject property once they had returned to England, by assisting them in marketing it for sale and securing a buyer and when he could not continue as caretaker, installing his sister Sharmaine Dean to do the same. The correspondence between Rev. McPhee and Mr. Arnold on October 20, 2008 supports this finding. So, I accept that Sharmaine Dean and her family took up residence in or about October 2008 with the permission of the documentary title holders and their agent. There is no evidence before the Court that it has ever been disputed that the terms and conditions of her residence therein was that she would maintain the home and pay the power and utility bills and pay the service charges.
47. I accept that by Mrs. Dean's letter to Ms. Battershill dated September 28, 2020 that she acknowledged that Ms. Battershill was the documentary title holder, that is, the owner of the subject property. That the letter was firstly a plea to be

permitted to remain in residence or to be permitted to purchase the subject Property.

48. I accept that the email correspondence from Mr. Hanna to Ms Battershill on September 21, 2020 and Mr. Hanna's letter to Mr. Carrol on September 24, 2020 are also acknowledgments by Counsel for the Petitioners of Ms. Battershill's ownership of the subject property.

Factual possession & Animus possidendi

49. There is no dispute that the Petitioners occupy that home situate on the Subject Property. The lot upon which it sits is fenced in and the yard well kempt. No-one else has been able to gain entry to the subject property. Their consent is required to do so. In applying the test in **Building Heritage Ltd. (Supra)**, the owners cannot be said to have abandoned possession of the subject property. They left it in the care of Rev. Oron McPhee as caretaker and to be sold or, it seems from his evidence, to be rented. They did not object to Mrs. Dean being let into possession in 2008 upon certain conditions. In 2017 Mr. Arnold reached out to Rev. McPhee and having received no response he retained Mr. Norris Carroll QC to secure access to the Subject Property by Mrs. Dean, to show it to potential purchasers or alternatively, for her to vacate the same. The Petitioners entered possession with the permission of the owners and therefore their possession could not be adverse. They occupied the subject property for just over 12 years but that occupation was not adverse or uninterrupted. Further, the Petitioners acknowledged the ownership of the subject property, as did their attorney on their behalf, and cannot be said to possess an intention to exclude the true owners. They do not meet the test in **Building Heritage Ltd.**

50. In applying the test in **Powell v McFarlane (Supra)**, the Petitioners have established that were in possession of the subject property at least from October 2008 to November 3, 2020 when the action was filed, just over 12 years. However, this "possession" of the subject property cannot be said to have been undisturbed. Mrs. Dean received 2 letters from Mr. Carroll on behalf of the Petitioners, one on

May 22, 2017 and one on March 8, 2019 demanding that the Petitioners vacate the subject property. Having the animus possidendi is also necessary to constitute possession. Mrs. Dean and her family were put into possession of the subject property through her brother, who was acting on behalf of the owners with the paper title. She and her family were there with the permission of the owners with paper title. Their initial occupation of the subject property was not therefore "adverse" to the owners of the paper title. By excluding real estate agents and Mr. Darieo Cox from entry to the subject property and by ignoring letters from Counsel for the owner of the paper title it can be argued that the Petitioners had the animus possidendi but by making an offer to purchase the subject property from the owner with the paper title negatives any suggestion that the Petitioners possessed the animus possidendi. In doing so the Petitioners acknowledged that Ms. Battershill is the owner of the subject property and they do not have the animus possidendi. Mrs. Dean admitted under Cross-examination that Mr. Arnold was the owner of the subject property.

Acknowledgement

51. In Browne v Perry: PC 14 Oct 1991

(Antigua and Barbuda) The parties disputed a claim for land by adverse possession.

Held: Any acknowledgement of a paper title must be in writing. Lord Templeman explained the rule against reliance upon oral acknowledgements in adverse possession cases: 'If an oral acknowledgment were allowed to constitute an interruption litigation would be encouraged and litigants would dispute what was said, by whom and to whom. Once an acknowledgment has been reduced to writing, there is certainty about the words used and the court need only decide whether the words which have been written amount to an acknowledgment. There is no room for fraud, mistake or failure of memory. The written word speaks for itself.'

52. On September 21, 2020 Mr. Hanna wrote to Ms. Battershill on behalf of the Petitioners and on their instructions asking whether she would be willing to sell

the subject property to the Petitioner; on September 24, 2020 Mr. Hanna wrote to Mr. Carroll about the Petitioners purchasing the subject property from Ms. Battershill; and on September 28, 2020 Mrs. Dean wrote directly to Ms. Battershill again seeking to purchase the subject property from her. These acts acknowledge the rights of the owner with the paper title and extinguish any animus possidendi on the part of the Petitioners.

Conclusion

53. In establishing a possessory title to the land under the Limitation Act the Petitioners had to demonstrate that they had been in exclusive continuous open or visible and undisturbed possession of the land for 12 years against the documentary title holder. In my considered opinion the Petitioners have not fulfilled the legal requirements to dispossess the documentary title holder. In the circumstances I will dismiss the claim by the Petitioners.

Disposition

54. I make the following Orders:

- (1) That the Petitioners are to deliver up vacant possession of the subject property in 60 days.
- (2) Costs usually follow the event and I see no reason to depart from this general principle. Costs are awarded in favour of the Adverse Claimant, to be taxed if not agreed.

55. Pursuant to the Court's powers pursuant to Order 41 Rule 3 (2) of the Rules of the Supreme Court, and further to the Court having delivered this Judgment on April 29, 2022 but releasing the written Judgment today, the same will be dated May 18, 2022 and shall take effect therefrom in every respect so as to not prejudice the parties' right to appeal this decision and obligation to comply with the Court's Orders.

Dated this 18th day of May, A.D. 2022


Petra M. Hanna-Adderley
Justice