

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2010/CLE/qui/FP/00101**



IN THE MATTER OF ALL THAT piece parcel or part of a tract of land containing One and Ninety-five Hundreths (1.95) acres more or less situate in the vicinity of the Settlement of Bootle Cove on the Island of Grand Bahama one of the Islands in the Commonwealth of The Bahamas and being a portion of a tract of land containing Ten (10.0) acres originally granted to John Hepburn by a Crown Grant dated the 9th day of October, A.D., 1928 and recorded in the Crown Lands Office in Book B3 at page 108.

AND

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

AND

IN THE MATTER of the Petition of Wayne W. Allen

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Ricardo Pratt appearing Pro Se, Adverse Claimant
Mrs. Karen Brown for The Grand Bahama Development Company,
Adverse Claimant
Ms. Karla McIntosh for Port Group Legal, Adverse Claimant
Mr. Vann Gaitor for Mrs. Karen Brown
Mr. Christopher Gouthro for Henrique and Leslie Baptisa,
Adverse Claimant

HEARING DATES: August 25, 2015; September 15, 2015; October 19, 2015;
December 3, 2015

RULING

Introduction

1. The parties appear before the Court on the hearing of two Summonses and a Notice of Appeal from a Registrar to a Judge in Chambers filed on behalf of one of the Adverse Claimants, Mr. Ricardo Pratt in the instant action.
2. In the first application by way of an Ex-Parte Summons ("the First Summons") filed on June 8, 2015, Mr. Pratt seeks leave to apply for an Order of Committal against Karen Brown, in her capacity as Counsel and Attorney-at-Law and/or as a Partner in Higgs & Johnson (a Firm) for acts of contempt he alleges were done intentionally to defeat and obstruct the course of justice, committed perjury, scandalized the Court by knowingly and maliciously lying by making false statements during the conduct of the instant action.
3. By another application by way of an Ex-Parte Summons ("the Second Summons") (which was ordered to be served on the other parties) filed on July 8, 2015, Mr. Pratt seeks leave to apply for an Order of Committal against The Grand Bahama Development Company, Limited ("DEVCO") by its Director and/or its authorized agent Karen Brown, Counsel and Attorney-at-Law for similar acts of contempt as set out in the First Summons committed by DEVCO and/or its agent Mrs. Karen Brown. Mr. Pratt also seeks in the Second Summons an Order that the perfected Order of the Court dated July 15, 2014 issued in the instant action be stayed on the grounds that DEVCO obtained the perfected Order by perjury and deception; that the land claimed by DEVCO was not the subject of the matter; that DEVCO suppressed and failed to disclose to the Court a material fact; that the Certificate of Title given to DEVCO was obtained by fraud resulting from reliance on a forged document of title for land and DEVCO's reliance on the said Certificate of Title to demand that he pay costs in the amount of \$80,000.00 is an abuse of the process of the Court and that the said Quieting Action was not an inter parties action.
4. Mr. Pratt also filed a Notice of Appeal on June 30, 2015 against the Order of Deputy Registrar Ms. Stephana Saunders in the instant action made on June 29, 2015 whereby he states that the application for the recusal of the Deputy Registrar on the grounds of apparent bias and/or alternatively actual bias or unconscious bias was refused and that he was to pay the costs of the said application (Ex-Parte Summons filed June 15, 2015)

to Adverse Claimants, DEVCO and Port Group, Limited. The basis of his grounds of appeal arise from what he alleges was the Deputy Registrar's failure to consider and apply several authorities and was wrong in law with regard to the possibility of bias (partial or unconscious) and her refusal to recuse herself in light of his claim that the Renunciation of Dower of Miriam Agatha Rolle, signed by herself in her capacity of Acting Registrar General was a forgery and used by one of the Adverse Claimants in the instant action. Further, that the Deputy Registrar did not properly consider or failed to consider his written submissions filed June 15, 2015, his Affidavit filed on the same date and the Chronology of Events filed June 17, 2015 and that the Deputy Registrar failed to provide a written Judgment or reason for her refusal to recuse herself on the grounds of unconscious bias, apparent bias or actual bias.

5. The Adverse Claimants in the instant action, DEVCO and Port Group, Legal and Mrs. Karen Brown strongly oppose the applications by Mr. Pratt.
6. The parties during the hearing provided the Court with their submissions, written and oral which are voluminous and such submissions have been captured by the transcripts. I thank the parties for their submissions, however, I have had the benefit of the transcripts from the hearings and the written submissions by Mr. Pratt in my consideration of the applications before me and will only refer to those submissions that are relevant to the issues that I have decided are to be determined.

Background

7. In an effort to fully appreciate and understand the nature of the applications now before me, I provide below a brief background of the instant action.
8. The applications brought by Mr. Pratt are borne out of a Quieting Action whereby numerous individuals including Mr. Pratt, DEVCO and Port Group Limited made adverse claims for portions of land situated in Fortune Cay, Freeport, Grand Bahama. By an Order dated July 15, 2014 the Court following an application for the determination of a preliminary issue by several Adverse Claimants, namely, The Grand Bahama Development Company Limited (DEVCO), M and M Limited, Port Group Limited, Ben H. Bell III and Merry Bell, Scalpro Ltd, and Henrique and Leslie Baptista made the following declarations and orders:-

"IT IS HEREBY DECLARED that:

(i) Any right of action to recover the subject land which may have accrued to the Petitioner or to any person through whom the Petitioner claims would have accrued prior to 1998 and such cause of action is now statute barred by virtue of Section 16(3) of the Limitation Act, 1995.

(ii) Any right of action to recover the subject land which may have accrued to Adverse Claimants Albert Haight, Estate of William Henry Rolle and/or Ricardo Pratt, or to any person through whom such adverse claimant(s) claim would have accrued prior to 1998 and such cause of action is now statute barred by virtue of Section 16(3) of the Limitation Act, 1995.

IT IS HEREBY ORDERED that:

(i) The Petition of Wayne Allen and the respective Adverse Claims of Albert Haight, Estate of William Henry Rolle and Ricardo Pratt be and are hereby dismissed with costs to be paid to by the Petitioner, Wayne Allen and the Adverse Claims, Albert Haight, Estate of William Henry Rolle and Ricardo Pratt to the Adverse Claimants, The Grand Bahama Development Company Limited, M and M Limited, Port Group Limited, Ben H. Bell III and Merry Bell, Scalpro Ltd, Henrique and Leslie Baptista, Euriette Wright, Jon Markoulis and Prince Albert Rahming and Sophia Vanessa Rahming;

9. (ii) Certificate of Title be granted in respect of the property listed in column B of the table below to the respective party listed in column A thereof:

A	B
The Grand Bahama Development Company Limited	Roadways in the Fortune Cay Subdivision called and known as Gunport Boulevard and Cannon Drive
M and M Limited	Lot 2 Block 1 Fortune Cay Subdivision
Port Group Limited	Lot 1 Block 1 Fortune Cay Subdivision
Scalpro Limited	Lot 9 Block 2 Fortune Cay Subdivision
Ben H. Bell III and Merry Bell	Lot 10 Block 2 Fortune Cay Subdivision
Euriette Wright	Lot 11 Block 2 Fortune Cay Subdivision
Jon Markoulis	Lot 9 Block 3 Fortune Cay Subdivision
Prince Albert Rahming and Sophia Vanessa Rahming	Lot 10 Block 3 Fortune Cay Subdivision

..."

10. It is against this backdrop that Mr. Pratt grounds his applications for a stay of the said Order dated July 15, 2014; leave to commence committal proceedings against Mrs. Karen Brown and DEVCO and his Appeal from the Deputy Registrar.

Notice of Appeal

11. Mr. Pratt by his Notice of Appeal seeks an Order that the Order of the Deputy Registrar issued on June 29, 2015 be set aside and further order or relief the Court deems just and appropriate. He sets out his grounds of appeal which are:-

- a. The Learned Deputy Registrar was wrong in law or failed to consider or apply the law established in *Stephen Stubbs v Deputy Chief Magistrate Carolita Bethel* SCCrApp No. 44 of 2011 as it relates to whether a fair-minded and informed observer, with knowledge of the facts would conclude that there was a real possibility that she was biased in light of the fact that he claimed and provided Affidavit evidence that the purported Renunciation of Dower of Miriam Agatha Rolle which was signed by the Learned Deputy Registrar (in her former capacity as Acting Assistant Registrar General) was a forged document, by virtue of having been created in violation of Section 70 of the Penal Code;
- b. The Learned Deputy Registrar was wrong in law or failed to consider or apply the law as established in *Lawal v Northern Spirit Ltd. [2002] UKHL 35* as it relates to public perception of the probability of unconscious bias, in light of the material fact that Miriam Rolle has sworn an Affidavit that she had no knowledge of the forged Renunciation of Dower which was lodged for recording by DEVCO and uttered in the Quieting Action by DEVCO; and having been relied on by DEVCO to demand money in violation of Section 376 of the Penal Code and/or obtain a Taxation Certification from the Learned Deputy Registrar, who signed the forged document for and on behalf of DEVCO or Carrick Limited;
- c. The Learned Deputy Registrar did not properly consider and or failed to consider at all the possibility of conscious bias or partiality, having signed the forged document for the pecuniary benefit of DEVCO and or Carrick, Limited who used the forged document to steal 1.95 acres of land situate at Bootle Cove, Grand Bahama;

- d. The Learned Deputy Registrar did not properly consider and or failed to consider at all the reasoned legal and factual arguments put forward by the Adverse Claimant in his Written Submissions filed on June 15, 2015 and or his Affidavit filed June 15, 2015 and or the Chronology of Events filed June 17, 2015;
- e. The Learned Deputy Registrar failed to provide a written Judgment or reason for her refusal to recuse herself on the grounds of unconscious bias, apparent bias or actual bias.

Preliminary Objection

12. When the parties appeared before the Court on August 25, 2015, Ms. Karla McIntosh, Counsel on behalf of Port Group Limited made a preliminary objection to the hearing of the Notice of Appeal. She submitted that during the hearing before the Deputy Registrar, Mr. Pratt refused to proceed with his application for recusal and as a result the application was dismissed; that there was no hearing nor were submissions advanced by Mr. Pratt; that the grounds to which Mr. Pratt appeals are misguided considering he refused to proceed with the application and that to allow him to proceed would be an abuse of the process of the Court. Mrs. Karen Brown also submitted that Mr. Pratt refused to put forth his application before the Court; that to consider an appeal based on the grounds of appeal would be an abuse of the process of the Court; that he sets out that the Deputy Registrar was wrong in law and in failing to consider the law in several cases but nothing was put before the Deputy Registrar; and that to appeal the decision in circumstances where the Deputy Registrar had no other alternative but to dismiss the Summons would be an abuse of the Court process. Mr. Pratt in response submitted that when asked by the Deputy Registrar if he was willing to proceed with his application responded that he was not willing to do so on the grounds that she had refused to seal a Writ of Subpoena to subpoena herself and Mrs. Karen Brown; that he laid over written submissions and sworn Affidavits to the Court and that he made an application before the Court but refused to make submissions.

The Decision by the Deputy Registrar

13. On a review of the file in this action it appears that a hearing date was set for an application by Counsel for two of the Adverse Claimants for an extension of time within to file their respective Bill of Costs. Mr. Pratt also filed an Ex- Parte Summons on June 15, 2015 seeking an Order that the Deputy Registrar recuse herself from the hearing of

the taxation of the substantive action on the grounds of apparent bias and/or alternatively actual bias or unconscious bias. The parties subsequently appeared before Deputy Registrar Stephana Saunders on June 29, 2015.

14. I have had an opportunity to review the copy of the transcript of the said hearing and what is gleaned from the transcript is that Mr. Pratt had filed two Praecipis for Writ of Subpoena for the Deputy Registrar and Mrs. Karen Brown and had not received the sealed Writ of Subpoenas and that the said Writ of Subpoenas were needed in order to compel the Deputy Registrar and Mrs. Karen Brown to give evidence during the said hearing (i.e. the Adverse Claimants' application for an extension of time to file their respective Bill of Costs). Mr. Pratt was advised by the Deputy Registrar that his subpoenas dealt with the hearing of the taxation matter and makes no referral to the recusal matter and it was the recusal matter that was to be heard before her. There continued to be an exchange between the Deputy Registrar and Mr. Pratt resulting in the Deputy Registrar dismissing his application for recusal as he refused to proceed to have it heard. I now set out the said exchange below.

"The Court: You have an application for the recusal.

Mr. Pratt: My Lady, I have a Writ of Subpoena.

I want my Writ of Subpoena, my Lady; I'm entitled to it.

The Court: And you are not going to proceed on the basis that the Writ is not sealed, the Writ of Subpoena?

Mr. Pratt: My Lady –

The Court: Are you going to proceed or not,

Mr. Pratt?

Mr. Pratt: My Lady, my application is by Ex Parte, by way of Summons. My Lady has not read my papers. I have laid over further submissions regarding the pattern of Ms. Brown and Port Group Limited, if the Court will permit, as being conterminous. And my Lady, I would respectfully submit that they cannot be heard by the Court in any matter in front of this Court until

that contempt is purged.

And yes, my Lady, it would appear that –

The Court: Mr. Pratt, that is not before me.

The matter before me is the recusal application.

Mr. Pratt: Well, my Lady, it is an integral part of my application.

The Court: No, it isn't. You have a second Ex Parte Summons on that; that is not before the Court at this time. What is before the Court is your Ex Parte Summons that was filed June 15th.

Mr. Pratt: And so, my Lady, if I may, may I ask the Court as to where is my, why my Writ of Subpoena has not been sealed.

The Court: I have already dealt with that; the Assistant Registrar is on vacation and it has not been executed.

Now, are you going to proceed with your Ex Parte matter this morning?

Mr. Pratt: My Lady, respectfully, I understand That in relation to the Writ for Stephana Saunders. I have a Writ of Subpoena for Ms. Karen Brown; that has nothing –

The Court: Mr. Pratt, I asked you if you are going to proceed with your recusal application.

Mr. Pratt: Yes, I will proceed.

The Court: You may proceed then.

Mr. Pratt: My Lady, I have a question regarding my Writ of Subpoena for Ms. Karen Brown. Why Is it that my Lady is failing and refusing to seal my Writ of Subpoena for Ms. Brown?

The Court: Because your Writ of Subpoena, Mr. Pratt, is out of order. The matter has been

completed by Justice Evans from July of 2014.

Mr. Pratt: My Lady, I wish to bring your attention to --

The Court: That is my decision. Do you have anything further for your matter with the recusal?

Mr. Pratt: My Lady, I wish to have leave to appeal your decision.

The Court: I don't have to give you leave to appeal.

Mr. Pratt: Thank you very much.

Let me just make note of that.

In fact, my Lady, I am not prepared to proceed with any matter in front of you. I have accused you of some very egregious things. And I believe that my right to a fair hearing is being trampled on. I have a right to be heard with any application.

The Court: I am giving you your right to be heard. Mr. Pratt, I asked you if you would like to proceed with your recusal matter?

Mr. Pratt: Yes, I would like to.

The Court: You may proceed then. And I have made my decision regarding the Subpoena, that has been done. So therefore you may proceed with your recusal application.

Mr. Pratt: My Lady, I cannot proceed because I have to call Ms. Brown and I have to call yourself as a witness.

The Court: You don't have to call anyone. I said that you must proceed with your recusal application.

Mr. Pratt: Well, my Lady, I am unable to proceed because I have a right to call witnesses and you

happen to be one of those witnesses.

The Affidavit of Miriam Rolle, which is also –

The Court: Again I say to you, Mr. Pratt, I have said to you three weeks ago, you are not here to relitigate the matter. The matter has been decided upon by Justice Evans in July of 2014.

Mr. Pratt: My Lady, I am not prepared to litigate any application in front of you.

The Court: Your application for recusal has been dismissed, with costs.

Mr. Pratt: My Lady, I have not made any application in front of you.

The Court: You filed an Ex Parte Application filed June 15th; it was supposed to be heard this morning. You have refused to have it heard, and it has been dismissed with costs.”

[Transcript dated June 29, 2015 page 7, lines 5-32; page 8, lines 1-32; page 9, lines 1-32; page 10, lines 1-3]

Discussions/Analysis

15. An appeal from the decision of a Registrar is dealt with by way of an actual rehearing of the application which led to the order under appeal (**The Supreme Court Practice 1999, The White Book at paragraph 58/1/3**). The Judge will give the weight it deserves to the decision of the Registrar however the Judge is not bound by it.
16. Mr. Pratt in his Notice of Appeal has set out five grounds of appeal by which he states the Deputy Registrar’s Order dismissing his application for her recusal should be set aside. Grounds (i) to (iv) contemplate that the Deputy Registrar was wrong in law and/or failed to consider what he submits was relevant case law on the issue of bias as it related to his allegations of her involvement in the signing of what he alleges is a fraudulent document used in the substantive action by another Adverse Claimant. Further, that the Deputy Registrar did not properly consider and/or failed to consider at all **“the reasoned legal and factual arguments put forward by the Adverse Claimant”** in his Written Submissions, Affidavit and Chronology of Events (**emphasis mine**).

17. The transcript itself provides a compelling picture as to what transpired during the hearing. I am constrained to conclude that ultimately, Mr. Pratt refused to proceed with his application for recusal of the Deputy Registrar although the Deputy Registrar gave him numerous opportunities to do so. Ms. McIntosh and Mrs. Brown have submitted that Mr. Pratt refused to proceed and having carefully considered the said transcript I accept their submissions that to proceed with Mr. Pratt's Notice of Appeal would be an abuse of the Court's process. Additionally, his grounds offered suggest that the Deputy Registrar failed to consider what was placed before her, however, it is evident from the transcript that Mr. Pratt refused to put any submissions or evidence before her to even consider during the hearing.
18. Ground (v) contemplates that the Deputy Registrar failed to provide a written Judgment or reason for her refusal to recuse herself on the grounds of unconscious bias, apparent bias or actual bias. I am of the view that this ground is meritless as there is no requirement for a written Judgment to be prepared. Moreover, the Deputy Registrar did indicate her reason for dismissing Mr. Pratt's application (found on page 10, lines 2-3 of Transcript dated June 29, 2015). Furthermore, as a result of Mr. Pratt refusing to proceed with his application, there was no reason or written Judgment to be provided by the Deputy Registrar indicating her refusal to recuse herself on any of the alleged grounds of bias.
19. Therefore, I accept the submissions made by Ms. McIntosh and Mrs. Brown on their preliminary objection to the hearing of Mr. Pratt's Notice of Appeal and subsequently dismiss the same as to proceed would amount to an abuse of the Court's process.

July 8, 2015 Ex-Parte Summons-Application for a Stay

20. By an Ex-Parte Summons filed July 8, 2015 Mr. Pratt seeks an Order pursuant to Order 52 and/or Order 45, Rule 11 of the RSC seeking leave to commence committal proceedings against DEVCO and/or its agent Mrs. Karen Brown on allegations of fraud, perjury and making false statements in the substantive action whereby a Certificate of Title was granted in its favour and that all further proceedings in the action with respect to the Order made on July 15, 2014 be stayed on the basis that the said Certificate of Title was obtained via fraud. I will deal with Mr. Pratt's application for leave to commence committal proceedings against DEVCO and Mrs. Karen Brown personally, lastly in my Ruling.

21. Mr. Pratt seeks a stay of all further proceedings in this action on the following grounds:-

- a. That DEVCO obtained the perfected Order (July 15, 2014) by perjury and deception of the Court;
- b. That DEVCO obtained the said Order for land that was not the subject matter of the action by its agent's willful and malicious deception of the Court by stating that all of the roadways called and known as Gunport Boulevard and Cannon Drive ("the Roadways") situate in Fortune Cay Subdivision were a portion of the 1.95 acres of land subject matter of the action;
- c. That DEVCO concealed, suppressed and failed to disclose to the Court in its Abstract of Title filed in the action the material fact that it had sold all of its right title and interest in the Roadways to Port Group, Limited by a Deed of Assignment dated May 8, 1999 and recorded in the Registry of Records in Volume 7878 at pages 120 to 126;
- d. That it is an affront to natural justice and a gross violation of Sections 375 and 376 of the Penal Code, that DEVCO in reliance on the said Order it obtained by perjury and the forged document of title for land, being the said Certificate of Title that DEVCO obtained by fraud in violation of Section 17(1)(d) and Section 27 of the Quieting Titles Act for the Roadways which it has no right title or interest in, to be permitted to abuse the process of the Court to demand him to pay costs in the amount of \$80,000.00;
- e. That the Quieting action (the substantive action) was not an inter partes action and there is no provision in the Quieting Titles Act nor the Rules of the Supreme Court, 1978 and no basis in common law for him as an Adverse Claimant to pay the costs of another Adverse Claimant, DEVCO in obtaining the said Order by perjury and deception and for land which was not adjudicated on by the Court and which was not the subject matter of the Petition nor action.

Issues

22. The Court must determine (1) whether it is functus following the pronouncement and perfecting of its Judgment on July 15, 2014 and if not; (2) whether justice requires that a Stay be granted.

The Law

23. Mr. Pratt makes his application to stay all further proceedings in this action pursuant to Order 45, Rule 11 of the RSC.

24. Order 45, Rule 11 of the RSC provides:-

“Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.”

25. According to **Halsbury’s Laws of England, 4th Edition**, under the rubric **Stay of Proceedings Generally** at paragraph 437:

“A stay of proceedings usually arises under an order of the court which puts a stop on the further conduct of the proceedings in that court at the stage which they have then reached, so that parties are precluded thereafter from taking any further step in the proceedings.”

26. Additionally, the effect of a stay of proceedings is not permanent meaning that the action still subsists and the stay may be removed if proper grounds are shown to do so. **See Halsbury’s Laws of England, 4th Edition, Volume 37, Stay of Proceedings, Effect of stay proceedings, para 438**

27. According to **Halsbury’s Laws of England, 4th Edition**, under the rubric **Stay of execution generally** at paragraph 451;

“..., the court’s inherent jurisdiction to stay the execution of a judgment or order is limited in its extent, and can only be exercised on grounds that are relevant to a stay of the enforcement proceedings themselves, and not to matters which may operate as a defence in law or relief in equity, for such matters must be specifically raised by way of defence in the action itself.”

Submissions

28. Mr. Pratt submitted largely in part that the documents relied on by Port Group Limited are all forgeries, i.e. the Adverse Claim and the Abstract of Title in the substantive action and as a result they have no locus standi in these proceedings. Further, he submitted that the said Order (July 15, 2014) was made without jurisdiction and is a nullity and should be stayed under the Court’s inherent jurisdiction to prevent further abuse of the Court’s process. Additionally, Mr. Pratt made a preliminary objection as to whether Port

Group Legal is a non-existent legal entity and as such all documents containing the purported signature of Port Group Legal are also forgeries and as such that also amounts to an abuse of the Court's process. Further, that the signature of Port Group Legal on the said documents is that of a non-existent legal entity (Port Group Legal) and not that of Ms. McIntosh as Counsel and Attorney which he submitted should have had her personal signature as Counsel and Attorney.

29. Mr. Pratt also submitted in part that he would like for the Court to stay all further proceedings including the taxation and his application for recusal of the Deputy Registrar (Appeal) and that all further proceedings on behalf of DEVCO and Port Group Legal amount to a nullity. Additionally, he submitted that there was a miscarriage of justice in the action as he was not heard by the Court in respect to the land described in the said Order, the "costs order" and that the said process was corrupted by DEVCO drawing and preparing the said Order for perfecting for land which was not the subject of the action. He also submitted that the stay of all proceedings should be granted because they all involve matters that are already the subject matter of other actions in the Supreme Court which he contended would go to trial quickly and would be the proper form to ventilate some of the issues as an inter partes action and not within a quieting action.
30. Ms. McIntosh in response submitted in part that while Mr. Pratt filed his application seeking a stay of all further proceedings there are other parties to the matter who had not been served with these proceedings and it would be unfair to hear the application for the stay as they would not have had an opportunity to be heard. Additionally, she submitted that the Adverse Claimant in the action is Port Group Limited, a company incorporated pursuant to the law of the Commonwealth of The Bahamas and Port Group Legal is a department that has a house of lawyers that represent Port Group Limited in its legal matters. Further, that she is Counsel and Attorney of record; that she has been called to the Bahamas Bar and as such is duly qualified to represent Port Group Limited in the matter and that each time the matter was called she appeared as Counsel for Port Group Limited, one of the Adverse Claimants whose address for service is in care of Port Group Legal Department, second floor, Grand Bahama Port Authority Building.
31. Mrs. Brown in response submitted in part that Mr. Pratt is asking the Court to stay an Order of concurrent jurisdiction and their position is that such an application must be made before the Judge who made that Order. Additionally, it is her submission that the

Court is functus as the Order was made and has been perfected and that Mr. Pratt is in essence impugning the process that he initiated in the Court. She submitted that the provision of the RSC (Order 45, Rule 11) relied on by Mr. Pratt is for a stay on the grounds of matters that have occurred since the date of the Judgment or Order. Additionally, that the aspect of the Order Mr. Pratt seeks a stay is the Court's order of costs and that the Court ordered Mr. Pratt, as well as the Petitioner and various other Adverse Claimants to pay the costs of the action to DEVCO, Port Group Limited, M and M Limited and other Adverse Claimants. She submitted that the grounds on which Mr. Pratt relies allegedly transpired during the course of the quieting proceedings (the substantive action) and as such there is nothing new that has happened since the making and perfecting of the said Order (for costs). It is also her submission that in the substantive action DEVCO claimed to be the owner of Gunport Boulevard and Cannon Drive; produced evidence of the same and the Court accepted their evidence and granted them a Certificate of Title and the matter is completed. However, in the same matter the Court heard Mr. Pratt's evidence, rejected it and did not find Mr. Pratt to be the owner of any portion of the disputed land. Therefore, she submitted that any recourse available to any of the parties in the substantive action who felt aggrieved by that Order would have been to appeal, no appeal has been filed, no application for leave to appeal out of time has been filed and there is no indication that any will be filed.

32. Additionally, Mrs. Brown submitted that the crux of Mr. Pratt's arguments is that DEVCO held itself as being the owner of portions of the said roadway knowing it was not and is relying on a Deed of Assignment exhibited to his Affidavit filed July 8, 2015 however the said Assignment says it is an Assignment of Right in a Declaration and not an assignment of property and the roadway itself. Therefore, these are issues that may have been determined on appeal and Mr. Pratt has asked a Court of concurrent jurisdiction to exercise an appellate jurisdiction to overrule the Order of then Justice Estelle Gray Evans. Further, that Mr. Pratt's submissions that DEVCO's Certificate of Title is in some way in excess of what was petitioned by the Petitioner and should reflect a portion of the roadways is a non-issue as he has no interest in the road, the property claimed by him in the proceedings did not extend to the road and that essentially his application for a stay is really a stay of the Order for costs. Moreover, in response to Mr. Pratt's submission that the Order of the Court is a nullity and therefore does not require a pronouncement

made by the Court Mrs. Brown submitted that the Order was drawn up in accordance with a decision made by the Court, that Order has been perfected and that the said Order remains good and valid unless and until it is set aside. Lastly, she submitted that Mr. Pratt's reliance on the case of Benjamin MacFoy is of no assistance to his case as the question in that case was whether or not a Statement of Claim that was filed during the long vacation was void or voidable and the Court held that it was good and effective until it had been set aside.

Analysis/Discussion

Preliminary Objection

33. Mr. Pratt raised a preliminary objection to the appearance of Ms. McIntosh in these proceedings as he submitted that the most recent documents filed in the action were signed "Port Group Limited, care of Port Group Legal Department, Second Floor". Further that these documents, the predicate document, their Adverse Claim is signed "Port Group Legal Department, Attorneys for Port Group Limited" on the backing sheet, on the body of the document and the "purported" Certificate of Title is typed and signed in the same manner and does not bear Ms. McIntosh's personal signature as Counsel and Attorney. Ms. McIntosh has submitted that she has appeared as Counsel and Attorney on behalf of Port Group Limited and that she works out of Port Group Legal Department.
34. Mr. Pratt referred the Court to Order 5, Rule 6(2) of the RSC in support of his submissions. Order 5, Rule 6(2) of the RSC states: "Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any such proceedings otherwise than by an attorney."
35. It appears that Mr. Pratt has only now taken this objection as during the substantive action Ms. McIntosh has acted as Counsel and Attorney on record for Port Group Limited. Further, his reliance on Order 5, Rule 6(2) of the RSC does not assist him as I accept that Ms. McIntosh is Counsel and Attorney after being duly called to the Bahamas Bar and a such her appearance from the commencement of the filing of Port Group Limited's Adverse Claim and her continued representation during the substantive action complies with Order 5, Rule 6(2) of the RSC. Therefore, I find his preliminary objection meritless and I move on to the next issue to be determined on this application.

Whether the Court is Functus?

36. Mrs. Brown has submitted that the Court at this juncture is functus in that the Order given by the Court has been perfected. However, while no authority was given by Mrs. Brown in support of her submission, as I understand it the doctrine of functus officio applies when a justice has discharged all of his/her judicial functions in a case. **See Halsbury's Laws of England, 4th Edition, Volume 29, Magistrates; The doctrine of functus officio, para 390.**
37. The Court of Appeal in **Rosina Smith v Fidelity Bank (Bahamas) Limited SCCivApp No. 122 of 2020** at paragraphs 34 to 41 also considered whether the Trial judge in that case was correct when she ruled that she was functus officio and did not have the jurisdiction to set aside the perfected order in that matter. At paragraph 34 the Justices stated that it is a well settled principle at common law that a judge has jurisdiction to reverse his decision at any time before it is perfected, but not afterwards. Additionally at paragraph 37 they refer to Sir John Donaldson, MR in **Regina v. Cripps, ex parte Muldoon et al [1984] QB 686** where he stated "*It is well settled that any judge is fully entitled to reconsider and vary any decision at any time before the order embodying or based upon that decision has been perfected (In re Suffield and Watts, ex parte Brown 12 (1888) 20 QBD 693, 697, per Fry LJ) although in some circumstances he may be under an obligation to give the parties a further opportunity to be heard. At that stage, no slip rule power is needed. However, once the order has been perfected, the trial judge is functus officio and, in his capacity as the judge, has no further power to reconsider or vary his decision whether under the authority of the slip rule or otherwise.*" Furthermore, they affirmed then Chief Justice Sir Michael Barnett's decision that he was functus in **Palms of Love Beach Building B Management Company et al v. Love Beach Properties Ltd et al 2010/CLE/gen/001673** following the Second Defendant's filing of two Summonses seeking various orders, such as a stay of all further proceedings, an order setting aside all previous proceedings and the dismissal of the Originating Summons; and an order vacating, dismissing and discharging the Writ of Possession and all other orders affecting the condominiums after the Order granted in the matter was perfected on February 14, 2013. Therefore, after considering the well settled principle the Justices concluded in their Ruling that once the Order obtained in the Supreme Court had been perfected, there was no way for it to be set aside or discharged as the trial Judge was functus. They further stated that no judge of the Supreme Court had the

jurisdiction to grant the relief the intended appellant sought in her Re-Amended Summons.

38. As I understand the position before the Court on behalf of Mr. Pratt, he contends that he should not be ordered to pay the costs as ordered by the Court in the said Order as DEVCO and Port Group Limited fraudulently obtained their respective Certificates of Title and the said Order. During the hearing Mr. Pratt advised the Court that he will not pay the costs as ordered by the Court. I set out below the said exchange:-

“Mr. Pratt:...I had no knowledge that they were claiming to own all of the roadway in Fortune Cay. I had no notice that they were claiming to own call of Lot No. 1, but yet I was served an order of the Court saying, Mr. Pratt, you are to pay Port Group Limited and DEVCO money. And, my Lady, I am not going to pay it. I am not going to pay it.

The Court: You are not going to pay it.

Mr. Pratt: No, my Lady, because no court in this world has a right to order me to pay for someone or something that I did not claim to own that was not before the Court...”

[Transcript dated September 15, 2015 at page 20, lines 20 to 31]

39. The Court of Appeal case **Rosina Smith v Fidelity Bank (Bahamas) Limited (supra)** is helpful and instructive. Considering the facts of the cases referred to by the Court of Appeal in that case, the Applicants applications before the Court were to vary or set aside the Order/Ruling/Judgment given by the Court in addition to other items for relief. In the instant case, Mr. Pratt has asked the Court to essentially put a stop to the proceedings in this action. However, considering Mr. Pratt’s submissions and the exchange between Mr. Pratt and the Court, his application is ultimately an attempt to stop the taxation of the costs he has been ordered to pay as a result of being one of the unsuccessful parties in the action. This action was the result of a petition made by the Petitioner seeking to claim land under the Quieting Titles Act. The matter was adjudicated before Justice Estelle Gray Evans and her Order was made on July 15, 2014 and was subsequently perfected. As it relates to DEVCO and Port Group Limited, both parties filed their respective Bills of Cost (albeit after the expiration of the three month period as prescribed

by the RSC) but they have yet to proceed with the actual taxation proceedings of the same as an extension is required. In the circumstances, Mr. Pratt has made some heavy and serious allegations of fraud and forgery on the part of DEVCO and Port Group Limited (and by extension several other Adverse Claimants) in an attempt to not only set aside the said Order as it relates to costs but to the actual grant of the Certificate of Title. Essentially, Mr. Pratt is asking the Court to exercise some appellate powers to set aside a Judgment and Order made by a Judge of concurrent jurisdiction which it cannot do. Therefore, I find that the Court is functus in making any determination as to setting aside the perfected Order.

40. However, if I am incorrect in my finding above and that the Court is not functus I must consider whether justice requires a stay of all proceedings in this action.

Stay of Proceedings

41. Mr. Pratt's application for a stay of proceedings is made pursuant to Order 45, Rule 11 of the RSC. Order 45 of the RSC makes provisions for the enforcement of Judgments and Orders. However, Order 45, Rule 11 of the RSC provides for a party to apply to the Court for a stay of the execution of the Order or Judgment made against him/her on the ground of matters that occurred since the Order or Judgment was made.
42. The learned authors in **Odgers On Civil Court Actions** at page 367 under the heading "Staying Execution" stated that while the court will not without good reason delay a successful plaintiff in obtaining its fruits of his or her judgment, it has the power to stay execution if justice requires that the defendant should have this protection.
43. In the instant case, it is DEVCO and Port Group Limited (and the other successful Adverse Claimants) who were awarded Judgment and costs of the action.
44. As I understand Mr. Pratt's submissions, DEVCO and Port Group Limited obtained their respective Certificates of Title and the Order made by then Justice Estelle Gray Evans fraudulently by what he asserts were forged documents and committing perjury.
45. Mrs. Brown has submitted that Mr. Pratt has not provided to the Court any matters that have occurred since the said Order was made and the Certificate of Titles obtained that would warrant the granting of a stay. She also submitted that the "grounds" under which he alleges warrants the grant of a stay were the same "grounds" or allegations and assertions made during the substantive action and thus are not new matters that occurred since the Order was made. Further, that any party that was aggrieved by the

Judgment and Order made in the substantive action had the recourse of an appeal and in the circumstances Mr. Pratt has not done so. Therefore, a stay of these proceedings should not be granted.

46. Having considered the submissions of the parties, I accept the submissions of Mrs. Karen Brown and also accede to the preliminary objection raised by Ms. McIntosh. On a consideration as to whether it would be just to grant a stay of the proceedings in this action, firstly it would not be just to grant a stay of the proceedings as only three (3) Adverse Claimants (DEVCO, Port Group Limited and the Baptistas) were given notice of the said application by Mr. Pratt and were the only Adverse Claimants who were heard on the application. Therefore, it would be an injustice to grant a stay in the absence of the other Adverse Claimants being heard. Secondly, Mr. Pratt has not provided to this Court any new circumstances (for example, a pending appeal before the COA or an order taxing the costs herein) that have occurred since the Judgment and subsequent Order was made. Further, Mr. Pratt has stated on the record his refusal to pay any costs Order made against him in the substantive action.
47. Therefore, in the absence of ANY evidence provided to the Court by Mr. Pratt of new circumstances which occurred since the Judgment and Order were made, Mr. Pratt's failure to serve the other Adverse Claimants so that they could be heard on the application and Mr. Pratt's unequivocal refusal on the record to comply with the costs order made in the substantive action I hereby refuse a stay of these proceedings.

Application for Leave to Commence Committal Proceedings

48. Mr. Pratt has filed two Ex-Parte Summons on June 8, 2015 ("First Application") and July 8, 2015 ("Second Application") seeking leave to commence committal proceedings against Mrs. Karen Brown in her capacity as Counsel & Attorney-at-Law and/or Partner at Higgs & Johnson and DEVCO by its Director and/or by its authorized agent Mrs. Karen Brown, Counsel & Attorney-at-Law.
49. In his first application he seeks leave to commence the committal proceedings on the following grounds:-
- a. That Karen Brown with the intent to defeat and obstruct the course of justice in the action committed perjury by knowingly and maliciously making a false statement in paragraph 4.7 of the Supplemental Skeleton Arguments and Authorities on behalf of DEVCO and M & M Limited Adverse Claimants filed on

February 28, 2013 that "...In any event, since the Conveyance in favour of Carrick, Limited is the first to be recorded, Carrick Limited's title ranks in priority..." Mrs. Karen Brown knowing the same to be untrue by virtue of the Indenture of Conveyance dated June 3, 1991 and made between Ellen Rolle and Carrick, Limited which was lodged for recording in the Registry of Records in Volume 5662 at pages 386 to 392 on August 13, 1991 and the Indenture of Conveyance dated May 24, 1985 made between Ellen Rolle and Albert Haight which was lodged for recording in the Registry of Records in Volume 4303 at pages 259 to 265 on August 29, 1985 both being public record and with actual and/or constructive notice deliberately perverted the course of justice in the action and thereby committed a contempt of court;

- b. That Karen Brown, with the intent to defeat and obstruct the course of justice in this action is scandalizing the Court by knowingly and maliciously lying on the Court by making a false statement in paragraph 4.6 of the Supplemental Skeleton Arguments on behalf of DEVCO and M & M Limited, Adverse Claimants filed in the action on February 28, 2013 that "It is further submitted that in CL No. 22 of 1996, the Court determined that the property purportedly conveyed by the Haight Conveyance was the 6.232 acre tract which at that time was owned by DEVCO. Karen Brown, knowing the same to be untrue on the grounds that (i) the Order of the Court filed in 1996/CLE/gen/00022 on September 13, 1996 that identified the 6.232 acres in pink and the attached plan identifies the 10.0 acres John Hepburn Tract to the North; (ii) DEVCO with respect to the Haight Conveyance stated to the Court in the Plaintiff's Submissions dated September 10, 1996 in the said action at paragraph 27 "It is submitted that the reference to the Crown Grant of John Hepburn certainly identifies the property intended to be conveyed to the Defendant. Therefore, in this particular case the erroneous reference to being "bounded on the South by the sea" has no effect"; at paragraph 30 "In short, the Defendant has no colour of title to the 6.232 acres, either possessory or documentary...to the extent that the Defendant has title to any property it is only to the property described in the conveyance to the Defendant and delineated on the plan attached to the Crown Grant to John Hepburn which clearly consists of 10 acres immediately to the North of the 6.232 acres. They are 2 different pieces

of property with 2 distinct roots of title"; and at paragraph 39 "In the circumstances, there is no reason for the Plaintiff's claims for relief to be delayed any further...The Plaintiff claims to own one (1) piece of land, i.e. 6.232 acres, and the Defendant's title documents show him to be claiming title to a completely different piece of land." Therefore, Karen Brown has scandalized the Court and has deliberately perverted the course of justice in the action and is bringing the administration of justice into disrepute and has thereby committed a contempt of court in the fact of the Court;

- c. That Karen Brown with the intent to defeat and obstruct the course of justice in this action, lied to the Court and has committed perjury by knowingly and maliciously making a false statement in paragraph 4.8 of the Supplemental Skeleton Arguments and Authorities on behalf of DEVCO and M & M Limited, Adverse Claimants filed on February 28, 2013 "Moreover, since Mr. Haight, a non-Bahamian, did not obtain a permit from the Investments Board, any conveyance in his favour would be void." Karen Brown knowing the same to be untrue and with actual and/or constructive notice of Section 17 of the Immovable Property (Acquisition by Foreign Persons) Act (now repealed) which saves existing rights acquired by foreign persons prior to the enactment of the Act has perverted the course of justice in this action and has committed a contempt of court.

50. In his second application he seeks leave to commence the committal proceedings on the following grounds:-

- a. That DEVCO and its authorized agent Karen Brown willfully interfered with the course of justice and administration of justice in this action by lying to the Court and committing perjury in violation of Section 426 of the Penal Code by making a false statement in the Adverse Claim of DEVCO filed on November 3, 2010 that "...The Grand Bahama Development Company Limited,...claims to hold the fee simple interest in Gunport Boulevard and Cannon Drive, being Roadways in the Fortune Cay Subdivision..." and by making a false statement in the Abstract of Title of DEVCO filed on November 3, 2010 that "General Note: Gunport Boulevard and Cannon Drive Roadways, retained by The Grand Bahama Development Company Limited". DEVCO and its authorized agents Karen Brown had actual noted that the false statement(s) was untrue by virtue of the material fact that DEVCO sold all of

its right title and interest in Gunport Boulevard and Cannon Drive being roads in the Fortune Cay Subdivision to Port Group, Limited; by a Deed of Assignment dated May 8, 1999 made between DEVCO and Port Group Limited and recorded in the Registry of Records in Volume 7878 at pages 120 to 126 which is public record and DEVCO and its authorized agent Karen Brown are in contempt of court and which contempt has not been purged to date;

- b. DEVCO and its authorized agent Karen Brown have willfully interfered with the course of justice and administration of justice by deceiving the Court and have committed perjury in violation of Section 426 of the Penal Code by making a false statement in the Adverse Claim of DEVCO that "...Gunport Boulevard and Cannon Drive, being Roadways in the Fortune Cay Subdivision...being a portion of the 1.95 acre tract of land situate at Bootle Cove in the City of Freeport..." DEVCO and its authorized agent Karen Brown, knowing the same to be untrue and with actual notice of the material fact that the 1.95 acres of land is delineated as being 90.0 feet wide x 943.14 feet long on the Plan filed in the Quieting action by the Petitioner, and with the intent to defeat the course of justice in this action knowingly and maliciously lied to the Court that Gunport Boulevard and Cannon Drive (which are each approximately 60.0 feet wide x 1,250.0 feet long) is a portion of the 1.95 acres of land subject of the action and DEVCO and its authorized agent Karen Brown are in contempt of Court and which contempt has not been purged to date;
- c. DEVCO and its authorized agent Karen Brown have interfered with the administration of justice and perverted the course of justice in this action by knowingly, intentionally and maliciously lying to and deceiving a Justice of the Supreme Court, by drawing up and obtaining a perfected Order of the Court for land that was not described in the Petition nor the subject matter of the action and DEVCO and its agent Karen Brown in violation of Section 375 of the Penal Code have forged a document of title for land which DEVCO has no right, title or interest in by drawing up the Certificate of Title filed in this action on September 29, 2014 which states "...THESE ARE TO CERTIFY under the authority of the Quieting Title Act, 1959...that THE GRAND BAHAMA DEVELOPMENT COMPANY LIMITED...is the legal and beneficial owner in fee simple in possession of ALL

THOSE roadways in the Fortune Cay Subdivision...called and known as Gunport Boulevard and Cannon Drive comprising a portion of a tract of land containing Ten (10.0) acres originally granted to John Hepburn by a Crown Grant..." DEVCO and its authorized agent Karen Brown knew that the false statement was untrue by virtue of having actual notice that the entire Roadways called and known as Gunport Boulevard and Cannon Drive was not the subject matter of the action having filed a "PLAN" in the action on February 29, 2012 and delineated and described the 60.0 feet x 90.0 feet portion(s) of the Roadway which is a portion of the 1.95 acres subject of the action; and DEVCO and its authorized agent Karen Brown, have committed a contempt of Court in the fact of the Court and which contempt has not been purged to date;

- d. That DEVCO and its authorized agent Karen Brown interfered with the course of justice in the Quieting Action by obtaining the perfected Order of the Court by perjury and obtaining a Certificate of Title for the Roadways which DEVCO sold to Port Group Limited and DEVCO and its authorized agent Karen Brown have thereby deliberately perverted the course of justice in this action by lying to the Court that Gunport Boulevard and Cannon Drive comprises a portion of the Ten (10.0) acre tract granted to John Hepburn by a Crown Grant and they are in contempt of Court and which contempt has not been purged to date;
 - e. That DEVCO and its authorized agent Karen Brown have interfered with the administration of justice by filing a Summons in the Quieting Action on March 12, 2013 for a determination of a preliminary issue with respect to Section 16(3) of the Limitation Act with no locus standi and no legitimate interest in the relief sought and obtained from the Court and with no right, title or interest in the Roadways or in any portion of the 1.95 acres of land subject matter of the Quieting Action and DEVCO and its authorized agent Karen Brown have deliberately defeated, perverted and obstructed the course of justice in this action by filing and being heard on the Summons and they have committed a contempt of Court in the face of the Court which contempt has not been purged to date.
51. In support of his applications Mr. Pratt filed two Statements on June 8, 2015 and July 8, 2015 and an Affidavit on July 8, 2015. Mr. Pratt also filed Written Submissions in support of his applications on June 29, 2015 and July 13, 2015.

Submissions

52. Mr. Pratt has submitted in summary in his application against Mrs. Karen Brown that Mrs. Brown on November 3, 2010 as an agent of DEVCO fabricated evidence by making false statements in documents including lying in the Adverse Claim that the entire Roadways was a portion of the 1.95 acres of land subject of the action; lying in the Abstract of Title that the Roadways were retained by DEVCO and lying to the Court that the 1991 Carrick Conveyance was recorded first in time prior to the 1985 Haight Conveyance. Further that these false statements were made to affect the course of and/or outcome of the action and resulted in DEVCO obtaining the Order of the Court by perjury and issued a Certificate of Title for land which was not the subject of the action and land that DEVCO had sold and had no claim, right, title or interest in. Mr. Pratt also submitted that Mrs. Brown on March 12, 2013 as an agent of DEVCO willfully interfered with the administration of justice by filing a Summons for the determination of a preliminary issue under Section 16(3) of the Limitation Act with no locus standi and no right, title or interest in any portion of the Roadways nor any portion of the land subject to the Quieting Action; that DEVCO and Mrs. Brown lied to the Court that DEVCO was in possession of the land since 1998 with full knowledge it sold the Roadways to Port Group Limited in 1999. It is his submission that Mrs. Karen Brown and DEVCO filed the Summons (to determine the preliminary issue) with the sole and ulterior purpose of affecting the course or outcome of the said action. Mr. Pratt also asserts in part that the false statements and other documents used in the said action were knowingly made with the intent to deceive a Judge by committing perjury and that such serious act is also a criminal offence under Section 426 of the Penal Code. Further that Mrs. Karen Brown knew the Court's determination in Action No. 22 of 1996 but willfully interfered with the administration of justice and scandalized the Court; that the consequences of the actions of Mrs. Karen Brown and DEVCO were to obstruct and interfere with the administration of justice by defeating the documentary title of the late Albert Haight and the Applicant and for the pecuniary benefit of Karen Brown and DEVCO. Mr. Pratt submitted that the drawing up of the Order and Certificate of Title for what was claimed by DEVCO and all of the false statements made by Karen Brown (as detailed in his Statements filed June 8 and July 8, 2015) constitutes the actus reus of the contempt; that by filing the Summons for the preliminary issue to be determined under Section 16(3) of the Limitation Act when DEVCO

had no documentary or possessory title constitutes further actus reus (**See Attorney-General v Times Newspapers Ltd; Balogh v Crown Court [1974] 3 All ER 283 per Lord Denning at page 292 para. c-f; Steen v HM Attorney-General & Anor [2001] EWCA Civ 403 per Lord Phillips MR at para 62 to 65 and 67 to 68; Attorney General v Punch Ltd [2002] UKHL 50 per Lord Nicholls of Birkenhead at para 2).**

53. Mr. Pratt has submitted in summary on his application against DEVCO that DEVCO interfered with the administration and/or perverted the course of justice in this action and deceived a Justice of the Court by knowingly make a false statement in its Adverse Claim without any belief in its truth that the entire roadway is a portion of the 1.95 acres and as such has been in contempt since 2010. Additionally, that DEVCO has not purged their contempt and cannot be heard on any application and that DEVCO's contempt is clearly evidenced by the fact that DEVCO and its agents deceived and lied to a Justice of the Court to grant Certificates of Title for land that was not the subject of the Quieting Action.
54. Mr. Gaitor, Counsel on behalf of Mrs. Karen Brown submitted largely Mr. Pratt's application for leave to commence committal proceedings is misguided and stillborn. He submitted that Mr. Pratt does not have the standing to make an application for the contempt alleged (i.e. subverting the course of justice) and the correct person would be the Attorney General. Mr. Gaitor referred the Court to the Supreme Court Practice, Volume 1 ("The White Book") Order 52/1/4 and Order 52/1/7 that gives examples of civil and criminal contempt. Additionally, he submitted that Mr. Pratt does not have any standing to declare that any Order of the Court is null and void nor does he have any standing that Karen Brown should be committed for subverting the course of justice. Mr. Gaitor made the distinction between criminal and civil contempt and submitted that criminal contempt is an act which threatens the administration of justice that is required as punishment from the public point of view whereas civil contempt involves disobedience of a court order **by undertakings be persons** involved in litigation (See page 121 of Arlidge, Eady and Smith on Contempt). He further submitted that Mr. Pratt seeks some sort of punishment by way of imprisonment for the kind of contempt he claims and alleging subversion of the justice of the court which is in relation to criminal contempt and as such is a matter for the Attorney General or on the Court's own motion (See page

165, para 3-165 in *Arlidge, Eady and Smith on Contempt; Lonrho Plc and Others* [1992] AC 154; *AG v Times Newspaper Limited* [1974] AC 273). Additionally, he submitted that Mr. Pratt did not show his interest in any of the disputed land or the land which Karen Brown obtained a title for. Moreover, that he did not have authority to bring this kind of application for leave to have Karen Brown committed for contempt as she did not give evidence, she did not swear an affidavit, no evidence was given by her that was false in any way, no oath was taken by her. He submitted that the Court did not find any perjury was committed by her and she was entitled to put her case before the Court as best she could while the other parties had the opportunity to state their case as well.

55. Mrs. Karen Brown, Counsel on behalf of DEVCO indicated that she adopted the submissions of Mr. Gaitor as to the law on contempt but made further submissions. She submitted that DEVCO was entitled to put a case before the Court and part of that was the conveyance in favour of Carrick Limited was the first validly recorded conveyance; that the Adverse Claimant was entitled to advance its claim and that at no time did DEVCO either by its adverse claim or any other documents advance to the Court that all of the roadways were in fact a portion of the 1.95 acre tract. Further, Mrs. Brown submitted that the proper course to be taken by Mr. Pratt relative to his "issues" with the terms of the Order and Certificate of Title was to lodge an appeal. It was also her submission that the Deed of Assignment (as exhibited to Mr. Pratt's 6th Affidavit) is an assignment of the right in the declaration and not of the roadway as argued by Mr. Pratt; that the submissions made on behalf of DEVCO referencing a determination made by the Court in an earlier action was Counsel merely putting forward the Adverse Claimant's understanding of the effect of the Order and not an intention to deceive the Court. Lastly she submitted that Mr. Pratt failed to show any willful interference and any calculation on the part of DEVCO to deceive the Court in any way; that Mr. Pratt's argument is not sustainable and there is no evidence upon which the Court should exercise its discretion to grant leave to Mr. Pratt to commence committal proceedings against DEVCO.

56. Mr. Pratt in reply to Counsels submissions that he does not have any interest or locus standi to bring such an application submitted in part that his abstract of title filed in the substantive action clearly details what right, title and interest he has and he has provided evidence by way of Affidavit of the same. Further that the Quieting Titles Act, Section 3 provides that any person who has rights or any claim or interest but it does not say he

has to have legal title, he can put in an adverse claim and that based on his agreement for sale duly recorded from Mr. Albert Haight to himself he filed his adverse claim. He also submitted that he also has an agreement for sale from the Estate of William Henry Rolle.

57. Mr. Pratt contended that he made an application to join the Attorney General on the ground that perjury was committed, that he made similar applications for the committal of the same persons before the Order was made but they were not heard; that the Court has the jurisdiction to inform the Attorney General that the perjury has been committed and not him. Further, in response to Mr. Gaitor's objection that Mr. Pratt's application is for criminal contempt and not civil contempt, Mr. Pratt asserted that his application was properly made by way of Ex Parte Summons, supported by a Statement setting out the names and its description and supported by an Affidavit verifying the facts to be relied on. Mr. Pratt also referred the Court to Section 426 of the Penal Code that defines fabricating evidence which he stated applies in these proceedings. Mr. Pratt also submitted in response to their submissions that he had the recourse to appeal the Order and Certificate of Title he had a choice whether to appeal the matter or commence an action to have the said Order set aside as having been obtained by perjury but took the avenue to commence another action.

The Law

58. Order 52 of the RSC empowers the Court to punish parties for contempt of court which is exercised by way of an order for committal. This power is discretionary. However, before such an order is made, a party must seek and obtain the leave of the Court to do so.

59. Order 52, Rule 2 of the RSC states:-

"(1) No application to the Supreme Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to the Supreme Court, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on."

Discussion/Analysis

60. According to Halsbury's Laws of England, 4th Edition, Volume 9 "Contempt of Court, Contract, Copyholds, Copyright, Coroners, Corporations" at paragraph 2 under the rubric "Kinds of contempt" it states:-
- "Contempt of court may be classified either as (I) criminal contempt, consisting of words or acts obstructing, or tending to obstruct or interfere with, the administration of justice or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other process of the court, and involving a private injury."
61. Mr. Pratt's applications seeking leave to commence committal proceedings against Karen Brown and DEVCO through its agent Karen Brown are for what he alleges were acts of perjury, their intention to defeat and obstruct the course of justice and the making of false statements during the course of the Quieting Action which resulted in those parties being granted an Order and Certificates of Title in their favour. Additionally, he alleges that the Order and Certificates of Title in their favour is for land that was never claimed by the Petitioner in his Petition.
62. Having considered the submissions of Counsel and Mr. Pratt and the relevant authorities provided I am not of the view that Mr. Pratt has satisfied the Court that the alleged acts of Mrs. Karen Brown and DEVCO during the conduct of the Quieting Action amounted to perjury and defeated and obstructed the course of justice. The Court in discharging its duties by adjudicating the issues before it would have considered the evidence adduced and determined whether or not the Claimants were entitled to their respective interest in the land. As submitted by Mr. Gaitor and Mrs. Brown and I accept, during the course of litigation parties put forward their respective cases and the Court determines based on what is placed before it, whose case it accepts and whose case it rejects.
63. Additionally, it is evident that the nature of contempt which Mr. Pratt seeks is criminal contempt as he relies on several provisions of the Penal Code relating to perjury and the fabrication of evidence. In the circumstances, I accept the submissions of Mr. Gaitor on this issue.
64. Moreover, Mr. Pratt's unfounded allegations against Mrs. Brown and DEVCO without more I find is an attempt to have the matter reheard and impugn the decision of Justice Evans. If the Court was to agree with the allegations levied by Mr. Pratt against any of the other

Adverse Claimants, the Court would essentially be rehearing the matter which has already been adjudicated and even more so completed by way of a perfected Order. While Mr. Pratt has submitted that his options following the rendering of the Decision of the Court were to appeal or commence a separate action and that he chose to commence another action alleging fraud, the Court at this juncture will not permit it to be used to rehear matters that have been dealt with or in some way attempt to exercise some appellate jurisdiction, particularly where the Plaintiff has already commenced, according to him, a new action. That would be an abuse of the process of the Court.

65. Therefore, I refuse the granting of leave to commence committal proceedings against Mrs. Karen Brown and DEVCO through its agent Karen Brown as I am not satisfied on the evidence before me that they committed the alleged contemptuous acts and should be held in contempt.

December 3, 2015 Hearing

66. On December 3, 2015 Mr. Pratt, Mr. Christopher Gouthro, and Ms. Tamar(a) Moss, Counsel on behalf of Henrique and Leslie Baptista, one of the Adverse Claimants in the action appeared before the Court pursuant to Mr. Pratt's application for a stay. Mr. Pratt indicated that the Baptistas were the only Adverse Claimants to be served and did not intend to serve the other Adverse Claimants with his application as no other action has been taken by any of the other Adverse Claimants (Euriette Wright, Ben and Merry Bell, Scalpro Limited and Jon Markoulis). The submissions by Mr. Pratt during this hearing mirrors his previous submissions laid over to the Court during the prior hearing dates and the Court only summarizes below those submissions that differ from the ones made in previous hearings and summarized in the paragraphs above. Mr. Pratt contended that Counsel for the Baptistas was not present when the said "costs" Order was made and the declaration contained in the same that he as Adverse Claimant will pay their costs was made "ex parte". Further, he contended that the Baptistas are estopped by their own admissions made in their Defence filed in an action (2015/CLE/gen/FP/00201) he commenced as Plaintiff alleging that the Baptistas obtained their respective lot by way of fraud. He further submitted that this admission contained in the Defence and the filing of the Writ of Summons (2015/CLE/gen/FP/00201) are matters that occurred after the said Order (July 15, 2014) was made by the Court in accordance with Order 45, Rule 11 of the RSC. Moreover, he contended that in light of these new matters being discovered

i.e. that the said costs Order was obtained by several criminal offences including deceit of a public officer or judicial officer, he should be entitled to stay of all further proceedings with respect to the said costs Order to prevent further abuse of the Court process. Additionally, he submitted that any taxation of the said costs Order should be stayed until the action against the Baptistas is determined which he stated is an action to set aside the said Costs order. Mr. Pratt also submitted the basis upon which he alleges to have the locus standi to bring such an application and the same submission can be found in paragraph 53 above.

67. Mr. Gouthro, in response behalf on the Baptistas, submitted that Order 45, Rule 11 of the RSC provides for a stay if execution proceedings are brought and there is only an Order for costs. Further, that Order 45 of the RSC specifically states that there must be a money order for Judgment and that the costs Order has not been taxed and there is no money order for Judgment. Therefore, it is his submission that the application is premature.

68. Mr. Pratt in response advised the Court that his application was also made pursuant to Order 31A, Rule 18(1) and (2)(d), (s) and Rule 7 of the RSC which empowers the Court to make any order to achieve the just resolution of the proceedings and gives the Court jurisdiction to make the order he seeks.

Discussion/Analysis

69. I have already set out the general principles and applicable law on the issue of a stay at paragraphs 24 to 27 above. Mr. Pratt has submitted that his application for a stay is only against the Baptistas however, his submissions for this application are virtually the same submissions made during his previous application for a stay against DEVCO and Port Group Limited which include that the costs order was made without jurisdiction and is a nullity; that by virtue of an Agreement of Sale between himself and Albert H. Haight (another Adverse Claimant) dated September 25, 2007 he has standing (locus standi) to commence this application and that he is a party against whom the Order was made. Mr. Gouthro appeared during the hearing as his clients had been served pursuant to the Court's instruction, however, while Mr. Pratt maintains that he does not wish to proceed with his application for a stay against the other Adverse Claimants, any determination made by the Court in this action would affect all parties involved. Therefore, it would be an injustice to consider granting a stay in their absence without the other Adverse

Claimants being heard. Additionally, Mr. Pratt has strongly advised the Court during a previous hearing that he will not pay any costs Order made against him in the substantive action. Moreover, I accept the submissions of Mr. Gouthro that to date the costs awarded by the said Order has yet to be taxed and therefore no order for the payment of money has been made by the Court.

70. Therefore, I hereby dismiss Mr. Pratt's application for a stay as against Henrique and Leslie Baptista.

Disposition

71. Having read the Summonses and Notice of Appeal, having read the transcripts carefully and considered the Written Submissions filed herein, having read the Affidavit evidence on behalf of Mr. Pratt, having read the Statements on behalf of Mr. Pratt, having heard and considered the oral submissions from Counsel, having considered the relevant authorities and applicable law and statutes I hereby dismiss Mr. Pratt's Ex-Parte Summons filed on June 8, 2015 seeking leave to commence committal proceedings against Karen Brown; Ex-Parte Summons filed July 8, 2015 seeking leave to commence committal proceedings against DEVCO and a stay of the Order dated July 15, 2014 and Notice of Appeal filed June 30, 2015 for all of the reasons stated above. Finally, I apologize profusely for the delay in rendering this Ruling.
72. Costs usually follow the event and in the circumstances I am not minded to depart from the usual costs order. Therefore, the Adverse Claimants, DEVCO, Port Group Limited and Henrique and Leslie Baptista are awarded their costs to be paid by Mr. Pratt to be taxed if not agreed.
73. Mr. Pratt requested a Certification hearing in respect to the Court's Ruling on his Appeal from the Order of Deputy Registrar Saunders and leave to appeal the Rulings in the Interlocutory Applications herein. Ms. Brown seeks leave to be heard in respect of these applications. The Court will revert to the parties with respect to a date for the hearing of the said applications.

Dated this 31st day of March A. D. 2023


Petra M. Hanna-Adderley
Justice