

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW & EQUITY SIDE  
2005/CLE/gen/01408**

**BETWEEN**

**RALEIGH I. BUTLER, SR.**

**Plaintiff**

**AND**

**RAYMOND W. MACDONALD**

**First Defendant**

**AND**

**MERRILL W. MACDONALD**

**Second Defendant**

**AND**

**ISLAND ACQUISITIONS LTD.**

**Third Defendant**

**AND**

**JORGE DIAZ-CUETO**

**Fourth Defendant**

**Appearances:** C. Butler, Esq. for the Plaintiff  
C. Bethell, Esq. for the Third and Fourth Defendants

**Hearing Dates:** October 31 and November 2, 2006

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**R U L I N G**

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## **Thompson J.**

This action was commenced by a Writ of Summons filed herein on January 24, 2006 which Writ was subsequently amended. By an Order of January 17, 2006 made on an ex parte application, the Defendants were restrained by themselves, or by their servants or agents or otherwise by injunction until judgment in this action or further order from selling, advertising for sale, subdividing, trespassing, interfering, excavating and or dealing with the tracts or parcels or lots of land situate on the Island of Rum Cay one of the Islands of the Commonwealth of The Bahamas until this Honourable Court has had an opportunity to investigate the claim of the Plaintiff in respect of his Petition pursuant to the Quieting Titles Act, 1959, or until further order from the court.

2. By the same order the Defendants were given leave to apply to discharge this injunction or giving the Plaintiff at least two (2) clear days notice.

3. By two Summonses one filed March 31, and the other July 28, 2006 the Third Defendant sought to have the action dismissed as it discloses no reasonable cause of action.

4. For various reasons this court was unable to hear the application until late 2006, and I regret that the Ruling has been late in being made. I apologise to Counsel and to the parties for any inconvenience caused.

5. The Defendants contend that the third Defendant has a good and marketable title based on documentary and possessory title, and, whilst it accepts that the land the subject matter of the action with reference to the Third Defendant (the Frazer

Tract) was originally conveyed to a predecessor in title of the Plaintiff as a tenant in common, any interest of the Plaintiff and his family was extinguished by adverse possession under the Limitation Act 1874 (the Act which would apply in this case) by the Defendant and its predecessors in title.

6. The Third Defendant's title begins with a Warranty Deed dated June 1, 1964 from Beatrice Knowles Whidden, Laura Knowles Roberts and William D. Knowles, all said to be devisees under the Will of the late Percival R. S. Dorsett. Unfortunately neither a Will or Grant of Probate of the Will of the said late Percival R. S. Dorsett has been produced. Further, in the Schedule to the warranty Deed, the claim to the property in Rum Cay by the Grantors in the Warranty Deed is based on possession of the property by the said Percival R. S. Dorsett from 1897. Following the grant of the Warranty Deed the Defendants allege that the late Effie Knowles exercised acts of dominion and entered into actual possession of the property. One of these acts of dominion was set out as a lease from the late Mrs. Knowles to Rum Cay Development Company Limited of May 4, 1967.

7. This document is very interesting as it clearly shows that the parties were not convinced of the "good" title now being touted by the Defendants. Indeed the lease clearly states that:

***"Paragraph (iii)***

***"whereas, it is necessary and desirable that appropriate proceedings be instituted to quiet title to said real property, in order that it may be made readily marketable, and in this connection it is necessary that field surveys and inspections be made.***

***“Paragraph (v)***

***“Grantee will proceed with diligence to survey, plot, initiate and prosecute an action to quiet title to all of the property indicated on the attached plot, or so much thereof as may prove to be expedient, in the light of conflicting claims”***

8. The Defendant’s claim that the Third Defendant was a purchaser for value without notice of any claim by the plaintiff. However, any prudent purchaser on being faced with a possessory title would and a disclosure of “conflicting claims” seek to discover the documentary title holder or holders.

9. The Plaintiff has produced evidence by way of documents and Affidavits to support his claim that he has inherited at least a portion of the land the subject matter of the action and that he is representing the interests of other owners. The documents on their face show a clear line of title from the conveyance to the first Milo Bulter and John Culmer to the Plaintiff and other members of the Butler family. Further, there are Affidavits which show prima facie occupation of the land by the Butler family from the time of the Conveyance to the present.

10. In the circumstances there is clear evidence on the pleadings that there are issues to be tried between the parties. Consequently I do not concede to the Defendant’s application to have the action dismissed as an abuse of process of the court. Likewise I see no objection to the proposed amendments to the Writ, given the matters as set out above.

11. On the question of the lifting of the injunction it is argued that the Third Defendant is a bona fide purchaser for value without notice and details of the title are set out in the First Affidavit of Maxwell Turner. It is alleged that the Plaintiff and his predecessors in title were dispossessed or abandoned possession and that there was possession, dominion and ownership by Effie Knowles and the other predecessors in title of the Defendants. These matters have already been spoken to in the earlier part of this ruling.

12. It is further alleged that the Third Defendant has expended monies in preparing the land for a subdivision and that tractors are already on the property, the work having been suspended because of the injunction which has created unemployment on Rum Cay. However, the Defendants have not produced any evidence of having obtained subdivision approval to do the works on which they are allegedly embarked and there is evidence produced by the Plaintiff that such approval has not been granted.

13. The Defendants through the Affidavit of the said Maxwell Turner has attempted to bring into the equation negotiations which the Plaintiff allege were "without prejudice" and which should not have been brought to the attention of the court, to show that damages would be an adequate remedy. In the absence of this evidence, which I will not entertain, there is nothing to show that damages would be an adequate remedy. The Plaintiff and the other members of the Butler family may not want to create a subdivision, consequently the user of the land by the Defendants would not be to their advantage but to their disadvantage.

14. There is no evidence by the Defendants that there was any material non disclosure by the Plaintiff in seeking and obtaining the injunction exparte, and the Plaintiff argues that all the requirements needed for the granting and continuation of the injunction have been complied with. *See AMERICAN CYANAMID CO. v ETHICON 91975) 1All ER 504.*

*“where other factors appear to be equally balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the Defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at trial is to postpone the date at which he is able to embark on a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it is in the event of his succeeding at trial.”*

15. I note that several lots have been sold, and, if the Third Defendant should not succeed in this action these sales and subsequent sales, should the injunction be lifted, could result in much negative publicity for The Bahamas.

16. In all the circumstances, and, in particular the matters that are laid out in *AMERICAN CYANIDE v ETHICON (above)* I am not prepared to dissolve the injunction at this stage.

17. However, because of the matters at stake and the delay already having taken place I would order that a Defence be filed within 21 days and that the Plaintiff proceed to have the action progress in a timeous manner.

18. The costs of the application are awarded to the Plaintiff to be taxed if not agreed.

Dated the 26<sup>th</sup> day of March A.D. 2007.

  
Jeanne Thompson J.