COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp. No. 189 of 2022

B E T W E E N

RICARDO F. PRATT
(In his capacity as Administrator of the Estate of Ruel Pratt)

Appellant

AND

HENRIQUE BAPTISTA

1st Respondent

AND

LESLEY BAPTISTA

2nd Respondent

BEFORE:	**The Honourable Madam Justice Crane-Scott, JA** **The Honourable Mr. Justice Evans, JA** **The Honourable Mr. Justice Smith, JA**
APPEARANCES:	**Mr. Ricardo F Pratt appeared Pro Se** **Mr. Christopher Gouthro, Counsel for Respondents**
DATES:	**7 December 2023; 8 March 2024**

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Civil Appeal - Quieting of Titles Act (Ch 393) - Order 27 Rule 3 Rules of the Supreme Court 1978 – Order or Judgment on Admissions – Whether there were Admissions

The appellant filed an action in the Supreme Court seeking to set aside a grant of Certificate of Title which vested certain land in the Respondents pursuant to the Quieting of Titles Act (Ch 393). He then applied pursuant to Order 27 Rule 3 of the Rules of the Supreme Court 1978, for judgment on certain admissions and other interlocutory orders. The judge heard the application and dismissed it. The appellant now appeals the dismissal of his application on the main ground that the "Learned Judge misdirected herself and was plainly wrong and or erred in law with regard to Order 27 Rule 3 of the Rules of Supreme Court 1978". The court heard the parties, gave an oral judgment and promised to give written reasons.

Held: appeal dismissed; the Appellant is ordered to pay the Respondents' costs of the appeal to be taxed if not agreed.

Ellis v Allen [1914] 1 Ch 904

REASONS FOR DECISION

Judgment delivered by The Honourable Mr. Justice Smith, JA

1. On the 7th December 2023, we heard the appeal in this matter and Crane- Scott JA delivered a short oral decision. By that decision, we dismissed the appeal and ordered the appellant to pay the Respondents' costs of the appeal. We had also promised to give short written reasons for our decision, and we do so now.

2. The Appellant brought this action against the Respondents. In this action the Appellant's main claim was to set aside the grant of a Certificate of Title which vested certain land in Grand Bahamas in the Respondents pursuant to the Quieting of Titles Act (Ch 393).

3. The Appellant then brought an application for, inter alia, judgment on certain admissions which, he alleged, were made by the Respondents. That application by way of a summons, was made pursuant to Order 27 Rule 3 of the Rules of the Supreme Court 1978.

4. Justice Petra M. Hanna-Adderley (the Trial Judge), heard this application and dismissed it in a written decision dated 29th December 2022.

5. The Appellant now appeals the decision of the trial judge.

6. We are of the view that the trial judge's decision was correct, or at the very least, was not plainly wrong and we too dismiss this appeal.

Order 27 Rule 3

7. The relevant part of Order 27 Rule 3 provides that:

> **"Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he is entitled to…"**

8. The trial judge noted that under this rule, and ever since the decision in **Ellis v Allen** [1914] 1 Ch 904, any such admission must be in the clearest terms.

9. In the present matter, the Appellant alleged that the Respondents made admissions in (A) their Pleaded Defence and (B) their Statement of Facts which would entitle him to judgment.

(A) Alleged Admissions in the Defence

10. The Appellant alleges that there are admissions in paragraph 5 and 6 of the Defence which entitle him to judgment.

11. (a) Paragraph 5 of the Defence merely states that **"Paragraph 5 of the Statement of Claim is admitted."**

Paragraph 5 of the Statement of Claim is a mere recital of the Defendants' (Respondents) claim to the land which was granted to them under the Quieting of Titles Act. For completeness, I set out paragraph 5 of the Appellant's Statement of Claim:-

> **"5. On 27th October, 2010, the 1st Defendant and the 2nd Defendant ("the Defendants") filed an Adverse Claim in Supreme Court Equity Action No. 2010/CLE/qui/FP/00101 claiming that they were the fee simple owners of Lot 11, Block 3 Fortune Cay Subdivision ("Lot No. 11") by virtue of an Indenture of Conveyance dated 14th June, 2007 made between Port Group. Limited and Henrique JS and Lesley Baptista ('the Baptista Conveyance') and that Lot No.11 was a portion of the 1.95 acres of land situate at Bootle Cove."**

12. By admitting their claim to the land in question, under paragraph 5 of the Defence, the Respondents/ Defendants were actually asserting their title to the land in question, this could not be an admission of any fact or matter which would entitle the Appellant to judgment.

13. (b) Paragraph 6 of the Defence states:-

> **"6. Paragraph 6 (of the Statement of Claim) is admitted <u>save for</u> the fact that the Defendants relied on the plan that was submitted by other parties to action 2010/CLE/qui/FP00101 (The Quieting Action) to identify a very small portion of Lot 11 which appeared from the plan to overlap with the 1.95 acres described in the Petition of the Quieting Action." [Emphasis Added]**

14. Paragraph 6 of the Statement of Claim which was referred to in paragraph 6 of the Defence stated above provides that:-

> **"6. The Defendants (Respondents) did not claim to own the entire 1.95 acres of land subject of the petition and did not file a plan in Supreme Court Equity Action No. 2010/CLE/qui/FP00101 ("the Quieting Action"), to identify what portion (if any) of Lot No. 11, is a portion, in accordance with Rule 5 of the Quieting of Titles Rules, 1959."**

15. Paragraph 6 of the Statement of Claim set out above makes two basic assertions, namely (i) that the Defendants (Respondents) did not claim the entire portion of land that was granted to them under the Quieting of Titles Act, and (ii) that the Defendants (Respondents) did not file a plan in the Quieting of Titles land claim as was required by law.

16. With respect to assertion (i) above, namely that the Defendants (Respondents) did not claim the entirety of the land in question, I will deal more fully with that issue in paragraphs 21, and 22 below.

17. With respect to assertion (ii) above, which is the main assertion in paragraph 6 of the Statement of Claim:-

> Rule 5 of the Quieting of Titles Rules, provides for, inter alia, the filing and serving of a plan of the land which is being claimed under the Quieting of Titles Act. The Appellant alleged that the Respondents failed to file a plan in respect of the 1.95 acre parcel which they acquired under the Quieting of Titles Act.

18. In paragraph 6 of the Defence stated above, the Respondents assert that they relied on a plan submitted by other parties in the Quieting of Titles application. Whether this satisfies Rule 5 of the Quieting of Titles Rules is a question of mixed fact and law that will have to be decided in the trial of this action. It is not a clear admission which would entitle the Appellant to judgment.

19. In any event, as the trial judge correctly stated, even if it is found that the plan relied on by the Respondents did not comply with Rule 5 of the Quieting of Titles Rules, Section 26 of the Quieting of Titles Act may be a complete answer to the absence of such a plan in the Respondents application. Section 26 provides that:

> **"No petition, order, <u>certificate</u>, recording or other proceedings under this Act shall be invalid by reason of any <u>informality or technical irregularity</u> therein, or of <u>any mistake</u> not <u>affecting the substantial justice of the proceedings.</u>"** [Emphasis Added]

20. Therefore, by virtue of s 26 of the Quieting of Titles Act the Respondents may have a complete defence for not filing a plan as alleged. In that event, there is no clear admission which would entitle the Appellant to judgment.

B. Alleged admissions in the Defendants Statement of Facts

21. At paragraph 3 of the Defendents (Respondents) Statements of Facts, they state:

> **"The first and second defendant alleged in action 101 of 2010 (as adverse claimants)that a very small portion of the land upon which is situate their matrimonial home (approximately 50 square feet) is on the land alleged by the Petitioner in action 101 of 2010 to be his."** [Emphasis Added]

22. There are two points to note in this statement. First, the Respondents did mention the Appellant's alleged claim to 50 square feet (out of 1.95 acres claimed) in their Quieting of Titles Application. In spite of this, they were given a Certificate of Title of the entire 1.95 acres of land. This is permissible under the Quieting of Titles Act which can give formal recognition to adverse claims (as the Respondents/ Defendants claim to the 50 square feet of land). There is therefore, no admission that the Appellant is entitled to any small portion of the Respondents' 1.95 acres of land. A fortiori, there is no right to any judgment on an admission. Second, the statement sets out that the Appellant is "alleged" to be owner of this small area of 50 square feet of land. As yet, there is no decision or determination that the Appellant is entitled to the small area of 50 square feet of land. Until such a determination is made by a competent authority there has been no admission of the Appellant's alleged right to the 50 square feet of land nor is the Appellant entitled to judgment or any admission.

Conclusion

23. Therefore, for the reasons stated above, the Appellant is not entitled to judgment upon any admission in the Defence nor in the Statement of Facts of the Respondents.

24. The Appeal is therefore dismissed and the Appellant is ordered to pay the Respondents' costs of the appeal to be taxed by the Registrar in default of agreement.

The Honourable Mr. Justice Smith, JA

The Honourable Madam Justice Crane-Scott, JA

The Honourable Mr. Justice Evans, JA