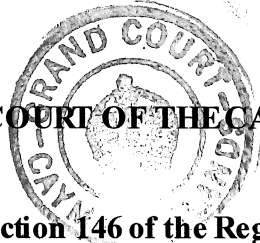
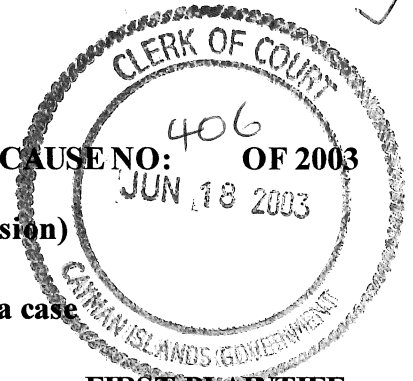


IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: 406 OF 2003

JUN 18 2003



In the matter of section 146 of the Registered Land Law (1995 Revision)
And in the matter of Order 56 of the Grand Court Rules, 1995
And in the matter of the refusal of the Registrar of Lands to state a case

BETWEEN: Alfred Lindberg McLean **FIRST PLAINTIFF**
AND: McLean Vivine Elizabeth McLean **SECOND PLAINTIFF**
AND: Margaret Elizabeth McLean **THIRD PLAINTIFF**
AND: The Registrar of Lands **FIRST DEFENDANT**
AND: Lucille Juanita Christian-Barnes **SECOND DEFENDANT**
as Administratrix of the Estate of
Eric Augustus Christian (deceased)

NOTICE OF ORIGINATING MOTION

TAKEN NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on 28th July 2003 at 9:30 or as soon thereafter as counsel can be heard, by counsel on behalf of Alfred Lindberg McLean, Vivine Elizabeth McLean and Margaret Elizabeth McLean for an order that:

1. In the exercise of his powers and/or the performance of his duties conferred or imposed on him under sections 17, 137, 146 and 155 and under all other relevant and applicable provisions of the Registered Land Law (1995 Revision), the Registrar of Lands erred in refusing to state a case for the opinion of this Honourable Court as required on behalf of the First Plaintiff, the Second Plaintiff and the Third Plaintiff by letter dated 30th May 2003 from Mr. Waide DaCosta of Broadhurst DaCosta, the reasons for such refusal given by reply letter dated 4th June 2003 wherein The Acting Registrar of Lands referred to section 147(1) of the Registered Land Law requiring notice of intention to appeal under that section within 30 days of the relevant decision and then stated that the prescribed form for filing such notice of intention to appeal had not been filed within the time allowed under section 147(1).
2. The Registrar of Lands shall within fourteen days state a case for determination of this Court and/or refer a question of law to this Court by way of case stated, namely:
 - a. Whether, with respect to the principles of adverse possession and the relevant and applicable provisions of the Limitation Law (1996 Revision), the First Plaintiff and the Second Plaintiff as the proprietors of registered parcel 14BJ-11 and the Third

Plaintiff as the proprietor of registered parcel 14BJ-9 did not intend to dispossess the Second Defendant as the proprietor of registered parcel 14BJ-8 by fencing in the relevant portions of the parcel 14BJ-8 contiguous with the parcels 14BJ-9 and 14BJ-11 respectively.

- b. Whether, with respect to the principles of prescription and the Prescription Law (1997 Revision), the First Plaintiff and the Second Plaintiff as the proprietors of the 4BJ-9 did not claim any right to an easement so as to allow continued parking on a portion of the parcel 14BJ-8 to the northeast side of the dwelling house on the parcel 14BJ-9.
 - c. Whether, before deciding the matters set forth in paragraphs (a) and (b) above adversely to the First Plaintiff, the Second Plaintiff and the Third Plaintiff, the Registrar of Lands should not first have afforded them a full and fair opportunity properly to address him with respect to the said principles and related matters.
3. The Registrar of Lands shall register:
- a. The First Plaintiff and the Second Plaintiff as the proprietors with absolute title of all that portion of the present parcel 14BJ-8 that lies within the fenced-in portions of land adjoining parcel 14BJ-9 and that the Registry Map be rectified accordingly.
 - b. The Third Plaintiff as the proprietor with absolute title of all that portion of the present parcel 14BJ-8 that lies within the fenced-in portions of land adjoining parcel 14BJ-11 and that the Registry Map be rectified accordingly.
4. The Registrar of Lands shall also rectify the Registry Map to show in the correct position the vehicular right of way across parcel 14BJ-8 to parcel 14BJ-9.
5. The First Plaintiff, the Second Plaintiff and the Third Plaintiff shall be awarded their costs of and incidental to these proceedings and to the proceedings before the Registrar of Lands be paid by the First Defendant and/or by the Second Defendant, such costs to be agreed or taxed.

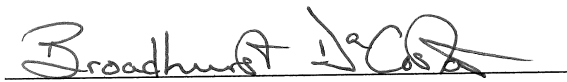
AND FURTHER TAKE NOTICE that the grounds of this application are:

- (1) The Registrar of Lands erred in law in all the respects indicated above.
- (2) The First Plaintiff, the Second Plaintiff and the Third Plaintiff were not afforded a full and fair opportunity to address the erroneous basis on which the Registrar of Lands proceeded to make his decision dated 31st March 2003.
- (3) The Registrar of Lands failed to give proper and appropriate consideration to the affidavit and other evidence presented to him and gave too much reliance on submissions by the Second Defendant's licensed land surveyor without supporting evidence being submitted.

- (4) In the light of all relevant affidavit and other evidence submitted to him and in light of the relevant and applicable principles of adverse possession and prescription law, the Registrar of Lands erred:
 - (a) In finding that an *animus possidendi* by an encroaching roof from the said parcel 14BJ-9 dwelling house but not by encroaching fences erected by the owners of the said parcels 14BJ-9 and 14BJ-11 well in excess of 12 years prior to the date on which the Second Defendant commenced current proceedings in accordance with the Registered Land Law, because “the degree of annexation is totally different from that claimed by the fence line position” and because the First Plaintiff, the Second Plaintiff and the Third Plaintiff “were always of the belief that they were on their own land”.
 - (b) In failing to find that the Second Defendant was barred by section 19 of the Limitation Law from recovering the land she claimed to have been wrongly fenced-in by the First Plaintiff, the Second Plaintiff and the Third Plaintiff, because she had failed to bring the requisite action within the time limits allowed under the said Limitation Law.
- (5) Degree of annexation may be relevant when determining whether a leaseholder’s addition to leased property is or is not a fixture (thus becoming a part of the land owned by the freeholder), but is not a relevant consideration within established principles of adverse possession.
- (6) The Registrar of Lands misapplied proper notions of “occupation” and/or “possession” for the purposes of the Limitation Law and misstates what is required for *animus possidendi* by an adverse possessor.
- (7) In particular, the Registrar of Lands failed to consider or appreciate that:
 - (a) The intention to possess to the exclusion of all others is not necessarily incompatible with mistake or ignorance as to the true ownership of land in question.
 - (b) The conduct of the adverse possessor must have been such as to demonstrate an apparent intention to exclude the paper owner from any immediate user of his property, which clearly the First Plaintiff, the Second Plaintiff and the Third Plaintiff did.
 - (c) Erection of fencing is useful evidence of occupation to the exclusion of others and enclosure is the strongest possible evidence of adverse possession.
 - (d) Only rarely will extensive fencing fail to demonstrate the adverse possession required for a successful claim of possessory title.

- (e) Sufficient that the adverse possessor demonstrate merely an intention for the time being to possess the land to the exclusion of all other persons, including the owner with the paper title, and that such intent has to be inferred from the acts themselves.
 - (f) The First Plaintiff, the Second Plaintiff and the Third Plaintiff demonstrated such intent by the fencing they did, even if they mistakenly believed that they were fencing in their own property (which belief is irrelevant).
- (8) The Registrar of Lands failed to register:
- a. The First Plaintiff and the Second Plaintiff as the proprietors with absolute title of all that portion of the present parcel 14BJ-8 that lies within the fenced-in portions of land adjoining parcel 14BJ-9 and to rectify the Registry Map accordingly.
 - b. The Third Plaintiff as the proprietor with absolute title of all that portion of the present parcel 14BJ-8 that lies within the fenced-in portions of land adjoining parcel 14BJ-11 and to rectify the Registry Map accordingly.
- (9) The Registrar of Lands failed to rectify the Registry Map to show in the correct position the vehicular right of way across parcel 14BJ-8 to parcel 14BJ-9.

Dated the 18 day of June 2003.



Broadhurst DaCosta
Attorneys-at-Law

TO: The Clerk of the Court

AND TO: The Registrar of Lands

AND TO: The Attorney General of the Cayman Islands

AND TO: John Furniss Esq., Attorney-at-Law for the Second Defendant

This Notice of Originating Motion was issued by Messrs. Broadhurst DaCosta, Attorneys-at-Law for the First Plaintiff, the Second Plaintiff and the Third Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands.