



## **JUDGMENT**

### **Elgin Wright & Others (Appellants) v Building Heritage Limited (Respondent)**

**From the Court of Appeal of the Commonwealth of the  
Bahamas**

**before**

**Lord Neuberger  
Lord Walker  
Lord Mance  
Lord Kerr  
Lord Clarke**

**JUDGMENT DELIVERED BY  
LORD WALKER  
ON**

**14 March 2013**

**Heard on 13 February 2013**

*Appellant*  
David di Mambro  
Wendy Mathers

(Instructed by Charles  
Russell LLP)

*Respondent*

(Not represented)

## **LORD WALKER:**

1. On 13 February 2013 the Board gave the appellants permission to appeal against the rejection by the Court of Appeal of the Bahamas of their application for leave to appeal and to adduce fresh evidence in proceedings under the Quieting Titles Act 1959. The fresh evidence is centred on an indenture dated 24 June 1909 (“the 1909 Deed”), the significance of which is explained below. The Board also indicated that it would humbly advise Her Majesty to allow the appeal and direct that the matter should be remitted to a judge of the Supreme Court to be heard together with the claim remitted by the Court of Appeal on 27 January 2010 (as set out in para 28 of the judgment of the Court of Appeal delivered by Longley JA). These are the reasons for the Board’s decision.

2. The respondent, Building Heritage Ltd was served with notice of the application and supplied with copies of the fresh evidence but has not taken any part in the proceedings before the Board.

3. The Quieting Titles Act was recently considered by the Judicial Committee in *Armbrister v Lightbourn* [2012] UKPC 40, to which reference may be made for a summary of its provisions. Procedure under the Act is intended to be relatively informal, with a flexible approach to the admission of evidence. The procedure is designed to ensure that claims made under the Act are advertised so that all adverse claimants can make their claims and have them adjudicated together so as to achieve finality.

4. In this case the proceedings have been very protracted. They were commenced as long ago as 1964, and there have been several changes in the parties as a result of deaths and other transmissions of title (or claims to title). The various competing claims are complex and difficult. One of the reasons for this is the large number of descendants of Henry Wright Senior (“HWS”), the original owner of the disputed land, and doubts about their correct names and dates of birth, death and marriage. An even more potent cause of doubt and difficulty is that of all the many deeds relied on in the proceedings, so far as appears from the record before the Board, only two contain a plan as part of the description of the land conveyed: the original Crown grant made in 1870 to HWS, and a conveyance dated 1 June 1954 of about two acres to the Education Department. In every other case the land conveyed is described only by its area (or approximate area) and the names of the owners (or in some cases former owners) of the adjacent land (or in some cases by a reference to the sea,

or to a public road). With some of the deeds now more than a century old, identification of the plots of land is often very difficult.

5. It is unnecessary, and would be inappropriate, to go far into these complexities. The general picture is that HWS took two areas of land, totalling roughly 220 acres, under the 1870 Crown grant. HWS had three sons (Percival, Levi and Albert) and one daughter (Cevas). The appellants are descendants of Albert. HWS is known to have disposed of some relatively small areas of his land in 1904 and 1908 to Gabriel McPhee (apparently his son-in-law) and in 1915 to Percival's widow and children. It is reasonable to conjecture that he might have made similar dispositions in favour of his other sons, Levi and Albert, and Levi is mentioned as an adjoining owner in some deeds. But until the appearance of the 1909 deed there has been no direct documentary evidence of any such disposition to Albert. The bulk of the land granted to HWS by the Crown grant passed on his death intestate in 1920 to his grandson Benjamin, from whom the respondent Building Heritage Ltd derives title.

6. It has to be said that in the proceedings eventually heard by Thompson J (in which judgment was given on 30 March 2007) the appellants and their predecessors were criticised for having failed to file abstracts of title, despite being represented by counsel. That is a matter to which the Board has to give due weight. On the other hand a recent affidavit made by Mrs Deborah Outten deposes that in 2000 the conduct of the proceedings on behalf of this group of claimants was undertaken by the appellant, Prince Albert Wright ("PAW"), then aged about 70. Mrs Outten (who is his cousin and holds a power of attorney for him) has deposed that within a year of undertaking this responsibility PAW began to suffer from Alzheimer's disease, and by the time of the hearings before Thompson J his state of health was very bad.

7. Mrs Outten has also deposed that the appellants were badly let down by their lawyers. They did not inform her of the decision of Thompson J, and she heard of it at the end of May 2007 as a result of a communication from another party who was appealing against the decision. She made an informal application for these appellants to become parties to the appeal. This application was refused by the Court of Appeal on 21 February 2008. The Board was told that no reasons were given and no order dismissing the application was entered.

8. Mrs Outten firmly believed that her branch of the family did have a properly documented title to some land and during 2009 she made repeated searches, without success, at the Land Registry. She deposed:

“I did not give up. I knew that there had to be some documentation. I called again on the family for assistance in searching for any documents that they may have. I spoke to the wife of [PAW] again, and asked if there was any other place where he kept documents.

She said that she had given me everything but mentioned that there was a trunk under a bed in the guest room in which he kept family mementos. I asked if I could see it. It contained old clothes, receipts, letters and documents relating to [PAW's] house and his mother's house. Some of the documents were wrapped up in old shirts. We went through it and it was then that I came across the affidavit of Edith Glovina Greene and the indenture [the 1909 deed] for the transfer of the land.

On finding these documents I wrote to the Court of Appeal on 20 March 2010 applying to the Court to allow us to admit in evidence the 1909 indenture. The Court refused. We were not given any opportunity to explain.”

9. The 1909 deed is a conveyance dated 24 June 1909 between Henry Wright (described as a farmer) and Albert Wright (described as a farmer). Its standard parts are on a form printed by a law stationer and the particulars are written in ink in a good legible hand. The consideration paid was £3.4s.0d and the land was described as “all that piece, parcel or lot of lands containing four (4) tasks situate in the Orange Hill settlement of Mangrove Cay Andros bounded as follows: on the East by land the property of Levi Wright, on the West by land the property of the said Henry Wright, on the North by the public road and on the South, by land the property of Henry Wright.” The exhibit to Edith Glovina Greene's affidavit has been photocopied with a fold, so that the execution of the 1909 deed is obscured. But as it bears an official Land Registry number there is no reason to suppose that it was not duly executed.

10. The 1909 deed is on its face very clear evidence of an inter vivos disposition of four tasks (that is, 40 acres) of land from HWS to his son, Albert. There is, however, real difficulty in identifying which part (if any) of the disputed land consists of these 40 acres (it is no doubt at least theoretically possible that it refers to other land owned by HWS, not subject to the proceedings under the Act). One affidavit obtained by Mrs Outten (that of Leroy Bannister) indicates that the area of the Blue Hole (a scenic feature referred to in many of the deeds) and Orange Hill are the same settlement. Another affidavit (that of Elizabeth Flowers) indicates that Orange Hill is “some distance from the Blue Hole”. Yet another affidavit (that of Maggie

Thompson, forming part of an abstract of title) refers to “two specific areas of the Henry Wright tract, namely, Orange Hill and the Blue Hole.”

11. The Board takes the view that these are matters which ought to be investigated by the Supreme Court. The 1909 deed is potentially of critical importance to the appellants’ claim, and it ought to be considered in the remitted proceedings in order to avoid the risk of injustice.

12. The appellants were represented by Mr David Di Mambro and Miss Wendy Mathers, instructed by Charles Russell LLP, all acting pro bono. The Board is grateful to them for their public-spirited assistance.