ADVERSE CLAIMANT
LOCUS STANDI
IN
QUIETING TITLES ACTIONS

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It has been suggested that few Bahamian statutes have given rise to more jurisprudence than the Quieting Titles Act, 1959 ("***the QTA***"). Proceedings under the QTA are conducted in the nature of a judicial inquiry, often involving multiple parties. In the context of a contested petition, it is not unusual for the proceedings to be ongoing for years. As a consequence of the established duty of the court to conduct a full investigation, it is customary for Supreme Court judges to adopt a lenient approach to the filing and recognition of adverse claims. This is no doubt due in part to the absence of any specific legislative guidance on the standing required of an adverse claimant. Furthermore, there is a dearth of legal authority on the requirements which must be satisfied by an adverse claimant in order to establish sufficient *locus standi* to participate in a quieting titles action. It is posited that this deficiency has in many cases contributed to what often results in lengthy and costly court proceedings.

It is against this backdrop that the recent decision ***In The Matter of the Petition of Scott E. Findeisen and Brandon S. Findeisen (as Trustees of the Stephen A. Orlando Revocable Trust)*** 2016/CLE/qui/01564 by Justice Indra Charles may be viewed as a welcomed development in the quieting jurisprudence. In this case the petitioner's claim to ownership of the land the subject of the petition was contested by two adverse claimants, although only one of the adverse claimants claimed ownership of the property ("***Claimant A***"). The other adverse claimant ("***Claimant B***") merely contended that it was a licensee of Claimant A. The petitioner applied to strike out Claimant B's adverse claim on the ground that Claimant B failed to establish the requisite *locus standi* to maintain the claim.

In her judgement Charles J. considered the issue of *locus standi* with reference to the Canadian quieting titles case from Prince Edward Island in ***Re Ferguson (1996) Carswell PE1 79***, noting the similarities between the statutory provisions governing the

filing of adverse claims under section 16(1) of the Prince Edward Island Quieting Titles Act and section 7(2) of the QTA. Charles J. applied the *ratio decidendi* of the Chief Justice of the Trial Division of Prince Edward Island in ***Re Ferguson***, concluding that a claim purporting to be "…*an adverse claim or claim not recognized in the petition…*" as authorized by section 7(2) of the QTA must be one which asserts a claim of title. As Claimant B's claim in the proceedings was as a '*licensee*' of Claimant A, with no claim either documentary or possessory to the property, the purported claim was not within section 7(2) of the QTA and accordingly held to be unsustainable.[1]

Additionally, on the facts of the case before her, Charles J. condemned Claimant B in costs, concluding that its participation in the proceedings had been entirely unnecessary and was and continued to be "…*an abuse of the process of the Court with the effect of running up costs and delaying the fair trial of the action.*"[2] The court's determination concerning the abusive nature of the claim supports a more proactive approach being taken by the court regarding questions of standing during the case management phase. Where there are numerous adverse claimants, the relative informality in the conduct of the proceedings more often than not operates disproportionately against the petitioner who has an obligation to prosecute the proceedings during the inquiry, with each adverse claimant invariably adding to the length and costs of the proceedings. Simply put, the more adverse claimants, the more time involved and the more costly the proceedings. Furthermore, due to the investigative role of the court, contested quieting proceedings by their nature require more judicial time in comparison to ordinary *inter partes* actions. For these reasons, a shift to an approach involving enhanced scrutiny in connection with the issue of *locus standi* at

[1] In addition to licensee type claims, questions concerning *locus standi* may also arise in the context of adverse claims filed on behalf of persons claiming to be interested in the unadministered estate of an intestate or the residuary estate of a person dying testate - see *Eastbourne Mutual B.S. v. Hastings [1965] 1 W.L.R. 861 (Intestacy)* and *Commissioner of Stamp Duties (Queensland) v. Livingston [1965] A.C. 694; [1964] 3 All E.R. 692 (Privy Council)*. This line of authority does not appear to have been specifically considered by the Bahamian courts. However, if applicable, it may result in adverse claimants purporting to be interested in the unadministered estate of an intestate or the residuary estate of a person dying testate being denied *locus standi* on the ground that they have no interest (legal or equitable) in the deceased's property.

[2] Leave to appeal the decision was refused by both the Supreme Court and the Court of Appeal of The Bahamas.

an early stage of the proceedings will assist in weeding out unsustainable claims, resulting in a more cost effective and efficient judicial process.

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