

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2017/CLE/qui/00845**

**IN THE MATTER OF All That piece parcel or lot of land being Lot Number 1 of Coral Waterways Section 1 situate at the Northeastern junction of Andros Drive and Devonshire Drive in Coral Harbour and bounded on the North by Pelican Waterway and running thereon 94.58 feet and on the EAST by Lot Number 2 and running thereon 135.00 feet and on the SOUTH by Devonshire Drive and running thereon 110.00 feet comprising an area of 11,731.41 square feet in the Western District of the Island of New Providence in the Commonwealth of The Bahamas and shown in Pink on the Plan#3687NP filed herein.**

**AND**

**IN THE MATTER OF The Quieting Titles Act, 1959 (Chapter 393 of the Statute Laws of The Bahamas)**

**AND**

**IN THE MATTER OF The Petition of Stafford Bain**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Sidney Dorsett for the Petitioner**

**Clinton Clarke Jr. for the Adverse Claimant**

**22 January, 5 October, 9 December 2020 and 14 July 2021**

**JUDGMENT**

**WINDER, J**

This quieting action relates to property situated at Lot Number 1 of Coral Waterways Section 1 in Coral Harbour in Southwestern New Providence (the Property). The Petitioner (Bain) prays that his title to the property be investigated under the Quieting Titles Act, 1959 (the QTA) and a Certificate of Title with respect to that land be granted to him.

[1.] The Petition was filed on 19 July 2017. In support of the Petition, Bain filed affidavits of Sandy Dean Kincaid, Stephen Whyly and Milton Hanna to support his claim to a possessory title to the property. Bain's Abstract of Title, filed on 19 July 2017, sets out his claim to the property in the following manner:

- A.D. 1992  
Circa January,      1.      On or about this date the Petitioner entered into full and free open and undisturbed occupation and possession of [the Property].  
Note:  
a. The land was abandoned by the true owner, untidy, overgrown, was next door to the Petitioner's triplex where he resided also collecting garbage and a security concern (sic)  
b. The Petitioner cleared the land for many years afterwards incurring expenses as the true owner never surfaced and nobody showed an interest in cleaning.
- A.D. 2000  
Circa August,      2      On or about this date the Petitioner dry-docked his fishing vessel on the subject land which attracted the attention of Shimoda Company Limited, claiming it, but never proving title when demanded so the Petitioner never stopped occupying the land.
- A.D. 2001  
6<sup>th</sup> January      3      On or about this date the Petitioner retained J.S. Fencing and Welding Company to erect a chain link

fence around the property and whereupon one Shimoda Company Limited ("Shimoda"), as Plaintiff, filed *Common Law Side Action Number 17 of 2001* against the Petitioner, the sole Defendant therein.

Note:

- a. The action by Shimoda was resisted by the Petitioner.
- b. The Statement of Claim by Shimoda avers that on or about August 2000 the Petitioner wrongfully entered upon the subject land and displayed a "No Trespassers" sign on a tree and erected a fence.
- c. A certified copy of the Statement of Claim by Shimoda will be produced because it shows the Petitioner was in possession in excess of 12 years.

A.D. 2008  
2<sup>nd</sup> December

4

On or about this date the Action by Shimoda Company Limited was dismissed by the Registrar of the Supreme Court, whereupon they appealed.

A.D. 2016

5

On or about this date the Appeal of Shimoda Company Limited in Supreme Court Appeal #2011/APP/sts/00023 was struck out.

Note:

- a. A certified copy of the Order will be produced.

A.D. 2017  
9<sup>th</sup> February,

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On or about this date Sandy Dean-Kincaid, Widow, made oath and swore as follows:

(1.) I am 55 years of age and have for a period of 32 years last past resided in the neighbourhood of [the Property].

(2.) I am well familiar with the said property.

(3.) It has been maintained and used by Stafford Bain solely and that is to say in excess of 20 years last past continuously without interruption and it is located on the Western side of his apartment complex.

(4.) Stafford Bain erected a fence around the property, planted coconuts, palms, sweet-potatoes and whatever he felt like and also stored his boat on it without interference by anyone to the best of my knowledge.

(5.) During the time I have known Stafford Bain as a neighbour I believe he never located the people

responsible for the property and kept up his occupation and possession unmolested by all.

(6.) I verily know and believe that the said land has always been in the free and uninterrupted possession and enjoyment of the said Stafford Bain solely or receipt of the rents and profits of such property have always been enjoyed by him alone over the last 20 years.

(7.) The contents hereof are correct and true.

Note: This Affidavit is not recorded and the original will be produced.

A.D. 2017  
14<sup>th</sup> February,

7. On or about this date Stephen Whyllly made oath and swore as follows:

(1.) I am 55 years of age and the Proprietor of J. S. Fencing and Welding, Alexander Boulevard, Nassau Village, New Providence.

(2.) I am well familiar with [the Property].

(3.) It is the property I erected a fence during the month of January 2001 on the request of Stafford Bain.

(4.) During the time I have known the said property, well in excess of 20 years because I was previously a Defence Force Officer and often in the Coral Harbour area regularly it has always been occupied by or in the possession of Stafford Bain only. He had numerous coconut trees, palm trees, bananas, sweet potatoes and other produce cultivated there among his boat/s or marine equipment.

(5.) I verily believe that the said land has always been in the free and uninterrupted possession and enjoyment of the said Stafford Bain solely or receipt of the rents and profits of such property have always been enjoyed by him alone.

(6.) I honestly believe that the said Lot in the Plan annexed is the property of Stanley Bain (sic).

(7.) The contents hereof are correct and true.

Note: This Affidavit is not recorded and the original will be produced.

[2.] Notice of the Petition was duly advertised pursuant to the Directions Order filed on 16 November 2017.

[3.] An Adverse Claim was filed by Shimoda Company Ltd. (Shimoda) on 4 October 2019. Shimoda's Adverse Claim provided as follows:

TAKE NOTE THAT SHIMODA COMPANY LIMITED, a Company incorporated and existing under the laws of the Commonwealth of The Bahamas and carrying on business therein, claims to be the beneficial owner in fee simple in possession of a parcel of land being ALL THAT piece parcel or lot of land situate in the Western District of the Island of New Providence and being Lot Number One (1) in Phase One (1) of Section Number One (1) in the Plan of the Subdivision called and known as "Coral Waterways" which said Plan is filed in the Department of Lands and Surveys (formerly Crown Lands Office) of the said Commonwealth as No. 471 N.P. and which said piece parcel or lot of land is bounded Northwardly by a canal or waterway known as Pelican Waterway and running thereon Ninety-four and Six tenths (94.6) feet Eastwardly by Lot Number Two (2) of the said Phase One (1) and running thereon One hundred and Thirty-three (133) feet Southwardly by a reservation for a private road known as Devonshire and Westwardly by a reservation for a further private road known as Andros Drive which said piece parcel or lot of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan attached to the said Indenture and is delineated on that part which is coloured Pink of the said diagram or plan, the same being based essentially by an Indenture of Conveyance made on the 19<sup>th</sup> August A.D. 1993 between Charlene Pinder and Maudeline Pinder to Shimoda Company Limited and recorded in the registry of records in Volume 8094 at pages 337 to 346.

[4.] Shimoda relied on the Affidavit of Merrit Storr filed on 4 October 2019 in addition to documents filed in Supreme Court Action 17 of 2001 (the Supreme Court Action). These documents and the challenges in the Supreme Court Action were detailed in an affidavit of Linda Florvil dated 10 May 2011 and filed in the Supreme Court Action.

[5.] On 13 December 2019 Bain filed a Supplemental Statement of Facts which provided:

- 1 The Abstract of Title and Affidavits of the Petitioner demonstrate his possession. ...
- 2 [Shimoda] is a limited company, incorporated under the laws of The Bahamas with Registered Office at the Chambers of its Attorneys, at Village Road, New Providence.
- 3 The Petitioner had maintained the land beginning in April 1987. He inquired regarding its owner without success and in January 1992 he deliberately set about himself establishing full occupation and possession having

- expended funds discontinuing its use as a neighbourhood garbage dump and he had paying tenants.
- 4 The Petitioner also dredged the canal at the rear of the lot, poured a bulkhead, erected a dock, and stored his vessel as shown by photographs annexed in a bundle marked "A".
- 5 *Common Law and Equity Division Action Numbered 17 of 2001* wherein Shimoda Company Limited ("Shimoda") was Plaintiff and the Petitioner was Defendant was dismissed by the Registrar on 2<sup>nd</sup> December A.D. 2008 and the Order is annexed marked "B." Shimoda's Appeal #2001/APP/sts/00023 was dismissed on 6<sup>th</sup> July A.D. 2016.
- 6 Shimoda took title on 19<sup>th</sup> August, A.D., 1993 from Charlene Pinder and Maudeline Pinder. That is to say, the Petitioner had cleaned the land approximately six years before Shimoda bought.
- 7 Neither Charlene Pinder nor Maudeline Pinder occupied the subject land at any time. Charlene Pinder and Maudeline Pinder acquired title from Jones Construction Company Limited on 30<sup>th</sup> day of December, A.D., 1982. Jones Construction Company Limited acquired title on 17<sup>th</sup> day of March, A.D., 1987 from Elsie Violet Wells.
- 8 In the Conveyance to Jones Construction Company Limited, the address of the Vendor, Elsie Violet Wells, is stated as Freeport, Grand Bahama. It confirms the Petitioner's belief that the subject property had an absentee owner. Elsie Violet Wells and Henry Thomas Wells, her deceased joint tenant never occupied the land. If both were permanently resident in Grand Bahama, it will be contended that it may have a bearing on why the subject land was not maintained.
- 9 Hurricane Matthew affected New Providence in late 2016. Destruction of trees occurred that year.

#### Bain's case

[6.] At trial, Bain gave evidence and called Sandy Dean Kincaid and Stephen Whyllly as witnesses in support of his case.

[7.] Bain's verifying affidavit provided as follows:

I am a Retired Civil Servant and depose as herein mentioned to verify my Petition.

- 1 I am in exclusive possession of Lot Number 1 of Coral Waterways Section 1 in Coral Harbour Subdivision ("the subject land") which adjoins Lot Number 2, on which I reside.
- 2 My title is possessory and exceeds 20 years last past without interruption.
- 3 To the best of my knowledge information and belief this Affidavit, all other papers produced herewith and pleadings prepared on my behalf and intended to be relied on by me fully and fairly disclose all facts material to my title and all

contracts and dealings affecting my title or any part thereof or giving rights against me.

- 4 My claim is not disputed or questioned by any person to the best of my knowledge. But, a claim was asserted against me once by Shimoda Company Limited in *Common Law and Equity Division Action Numbered 17 of 2001*. It was dismissed on 2<sup>nd</sup> December A.D. 2008 and the ensuing Appeal #2011/APP/sts/00023 was struck out on 6<sup>th</sup> July, 2016.

[8.] On the witness stand, Bain confirmed the evidence in his petition and statement of facts. He stated that he is a retired Defence Force Officer and landlord. He prepared a survey plan of the Property in 2003. From 1987 he began to take care of the Property cleaning up the debris that people had deposited on the Property. The Property was adjacent to his apartment building which is situated at Lot #2. He has been in occupation of the property from 1987 to the time he gave evidence at trial.

[9.] Bain stated that he planted fruit trees and garden vegetables such as potatoes, bananas, coconuts for many years. He said that he planted palm trees and sea grape trees in front of the property. He built a fence to enclose the property. He stored a big boat on the property and built a complete docking facility, having dredged for a marina.

[10.] Under cross examination he accepted that he was not given permission by anyone to enter the property to conduct the survey plan in 2003. He stated that no one ever touched him or came into the yard during his occupation. He was taken to Court by Shimoda but the case was thrown out twice. It was only after clearing down the property a legal action was commenced. He cleared down the property over a number of years, taking down huge pine trees and burning them. He accepted that he defended the action brought by Shimoda. Bain denied that attorney Joan Ferguson was troubling him and telling him to "behave and not to mess around with that property". He admitted that he recalled, some 7-10 years before the action was brought in 2001, speaking to Mrs Ferguson on one occasion when he was looking for the person who owned the Property, so he could purchase.

[11.] Bain admitted that the marina was only constructed around 2015/2016. He also stated that he suffered property damage as a result of Hurricane Matthew.

[12.] Sandy Dean Kincaid's affidavit in support of the Petition provided as follows:

- 1 I am 55 years of age, and have for a period of 32 years last past, resided in the neighbourhood of [the Property].
- 2 I am well familiar with the said property.
- 3 It has been maintained and used by Stafford Bain solely and that is to say in excess of 20 years last past continuously without interruption and it is located on the Western side of his apartment complex.
- 4 Stafford Bain erected a fence around the property, planted coconuts, palms, sweet-potatoes and whatever he felt like and also stored his boat on it without interference by anyone to the best of my knowledge.
- 5 During the time I have known Stafford Bain as a neighbour I believe he never located the people responsible for the property and kept up his occupation and possession unmolested by all.
- 6 I verily know and believe that the said land has always been in the free and uninterrupted possession and enjoyment, of the said Stafford Bain solely or receipt of the rents and profits of such property have always been enjoyed by him alone over the last 20 years.

[13.] At trial Dean Kincaid stated, under cross examination, that over the last 20 years only Bain kept and used the Property, planting coconut trees and he fenced it in. She stated that she has never seen anyone else there. She lived next door to the Property at Waterway Condos. Bain was the one who maintained that property. Anyone driving along the street going to the Defence Force base would have seen the Property being occupied and being taken cared of.

[14.] Stephen Whyllly's affidavit in support of the Petition provided as follows:

- 1 I am 55 years of age and the Proprietor of J.S. Fencing and Welding, Alexander Boulevard, Nassau Village, New Providence.
- 2 I am well familiar with [the Property]
- 3 It is the property which I erected a fence around during the month of January 2001 on the request of Stafford Bain.
- 4 During the time I have known the said property, well in excess of 20 years because I was previously a Defence Force Officer and often in the Coral Harbour area regularly it has always been occupied by or in the possession of Stafford Bain only. He had numerous coconut trees, palm trees, bananas, sweet potatoes and other produce cultivated there among his boat/s or marine equipment.
- 5 I verily believe that the said land has always been in the free and uninterrupted possession and enjoyment, of the said Stafford Bain solely or receipt of the rents and profits of such property have always been enjoyed by him alone.
- 6 I honestly believe that the [the Property] is the property of Stafford Bain.



[15.] Milton Hanna swore an affidavit in support of Bain's claim but did not give evidence at the trial.

#### Shimoda's case

[16.] At trial Shimoda did not call any witnesses and relied on the documentary material. Shimoda's case is that it is the documentary title owner and that it has interrupted the adverse possession of Bain. On 5 January 2001 Shimoda sued Bain in the Supreme Court Action for wrongfully entering the property, erecting a fence and parking a large fishing boat on the property. The history of the action was as follows:

1. The Writ of Summons was served on Bain on 9 January 2001.
2. Bain did not enter an appearance and Judgement in Default of Appearance was filed on 21 March 2001.
3. The Judgment in Default was set aside, by consent, on 11 March 2002.
4. On 5 June 2002 Bain entered a Defence where he asserted, inter alia:
  2. As to paragraph 2 of the Statement of Claim that a "No Trespassers" sign was erected, this is not admitted. The Defendant asserts that he is the rightful owner and occupier of the land having been in continuous and uninterrupted possession for at least 12 years....
5. As to paragraph 3 of the Statement of Claim, it is not admitted, but the Defendant says that if he put a fence (which he does not admit) he was entitled to do so by virtue of the possession aforesaid.
5. On 21 August 2004 a Notice of Trial was filed in the action by Shimoda.
6. On 7 August 2008 Bain applied to have the action dismissed for want of prosecution.
7. On 2 December 2008 the action was dismissed for want of prosecution. Shimoda did not attend the hearing asserting that a Summons was served at the wrong address and did not have a return date.
8. Shimoda appealed the decision of the Registrar and on 6 July 2016 the Supreme Court dismissed the appeal for want of prosecution as no one appeared for Shimoda when the appeal was ultimately set down for hearing.

#### Law, Analysis and Disposition

[17.] Section 3 of the QTA provides that:

3. Any person who claims to have any estate or interest in land may apply to the court to have his title to such land investigated and the nature and extent thereof

determined and declared in a certificate of title to be granted by the court in accordance with the provisions of this Act.

An investigation must therefore be conducted into the competing claims. This *investigation* is being conducted by the Court pursuant to the QTA. By section 8 of the QTA it is provided that:

8. (1) The court in investigating the title may receive and act upon any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.

(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.

(3) The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court.

[18.] The appropriate starting point in considering competing claims remains the Privy Council decision in *Ocean Estates Ltd. v. Pinder* [1969] 2 AC 19. In that decision Lord Diplock opined at page 25 paragraph A, as follows:

"Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser."

[19.] The law therefore is that in order to succeed in his claim, a party must demonstrate a documentary title or that, he or his predecessor went onto the land as trespasser and by virtue of such possession beyond the limitation period, had extinguished the documentary title of his opponent or its predecessors in title. In considering the meaning of *possession*, Slade J. in *Powell v. McFarlane* (1977) 38 P & CR p452 at 470 held that:

(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question of what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and use must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v. S. Don Manis Appu* the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the *Red House Farms* case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.J.J. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College* (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for

practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, the *animus possidendi* involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

[20.] The principles enunciated in *Powell v. Mcfarlane* have been approved in the Privy Council decision of *Armbrister et al. v. Lightbourn et al.* [2012] UKPC 40.

[21.] On the issue of factual possession, the learned authors of *Commonwealth Caribbean Property Law* states at page 246 as follows:

**Possession by adverse possessor**

The factual possession required must have characteristics similar to those required for a claim to an easement by prescription, viz, the possession must be open (*nec clam*), peaceful (*nec vi*) and adverse (*nec precario*). Furthermore, factual possession must be accompanied by an *animus possidendi*, that is, an intention to enjoy possession to the exclusion of the paper owner.

The requirement of openness means that the possession of the claimant must be 'notorious and unconcealed', for otherwise the paper owner would not be made aware of the need to challenge the adverse possessor before expiry of the limitation period. On the other hand, it is not necessary that the paper owner should have been aware that he had a good title, nor that the adverse possessor should have had knowledge of the true ownership of the property. It is sufficient that he performed acts which were 'inconsistent with [the paper owner's] enjoyment of the soil for the purposes which he intended to use it'.

[22.] It is not seriously disputed on the evidence that Bain, by his activity, had taken possession of the property. Shimoda's own claim in the Supreme Court Action, detaining the use and occupation of the property by Bain supports this. Additionally Bain's evidence and defence of the Supreme Court Action, positively asserting his ownership adverse to the documentary title owner, demonstrated the necessary *animus possidendi* with respect to the property. I have no hesitation in finding that Bain's activity amounts to factual possession and that he possessed the requisite *animus possidendi*. The only real issue in this dispute is whether this possession has been continuous and not interrupted by the Supreme Court Action as alleged by Shimoda.

[23.] On the authorities, notwithstanding Shimoda has sued Bain, that suit does not interrupt Bain's possession as the Supreme Court Action did not end in Shimoda's favor. According to the learned authors of Halsbury's laws of England at para 1078:

In a claim for recovery of land, previous legal proceedings which are unsuccessful do not prevent time running in favour of the person in adverse possession: *Markfield Investments Ltd v Evans* [2001] 2 All ER 238, [2001] 1 WLR 1321, CA.

The decision in *Markfield Investments Limited v Evans* was applied in the Trinidadian High Court case of *Henry v Brazel Claim No. CV 2014-04517*, Rajkumar J (as he then was) stated:

#### Effect of Non-Pursuit of Previous Action

20. See Adverse Possession: Stephen Jourdan at pages 270-271 para 15-16; also referring to *Brampton –v- Burchall* (1842) Beav 67; *Dixon –v-Gayfere* (1853) 17 Beav 421 at 427 and *Markfield Investments Limited –v- Evans* [2001] 1 WLR 1321:

“that the commencement of an action to recover the disputed land will stop time running. However, if such an action is commenced, but not pursued to judgment, and is eventually discontinued, struck out, stayed or simply abandoned, it has no effect on the running of the limitation period. In *Markfield Investments Limited –v Evans*, Simon Brown LJ said:

With regard to any particular action the relevant time, and the only relevant time, for consideration of adverse possession is that which has expired before such action is brought. That is the language of section 15 and, as Dillon LJ explained, that is the effect of the legislation. The fallacy in Mr Treneer's argument is in supposing that because one ignores in the first action any adverse possession which follows the writ, so too that same adverse possession falls to be ignored in the second action. That is just not so and there is nothing in the statute or authorities to suggest that it is. For the purposes of any particular action, the issue of a writ in earlier proceedings is no more relevant than a demand for possession. In *Mount Carmel Investments Ltd v Peter Thurlow Ltd* such a demand was held not to start time running afresh; no more would the service (still less the mere issue) of some earlier writ. Were it otherwise, as the defendant points out, all the true owner would have to do to avoid adverse possession claims is issue (and perhaps serve) a writ every 12 years without more”.

[24.] In the Privy Council decision in *Kenneth Higgs v Leshelmaryas [2009] UKPC 47*, on an appeal from the Court of Appeal of The Bahamas, Lord Scott stated at paragraph 47 as follows:

[47.] Mr Higgs has appealed to the Privy Council against the Court of Appeal's implied dismissal of his appeal on the possessory title issue. His main points are that no reasons for that dismissal have been given by the Court of Appeal and that no sufficient findings of fact were made by Thompson J. The Board are of opinion that both these complaints have substance. However, the first and second defendants' case for asserting a possessory title to the exclusion of Leshel and its documentary title to a 1/4 share is, in the Board's opinion, bound to fail. The reason for this is the 1987 action brought by Nassauvian and the final order made in that action. The 1967 litigation that culminated in the grant of the 1970 Certificate to Nassauvian prevents the first and second defendants from relying as against Leshel, Nassauvian's successor-in-title to the 1/4 share, on acts of exclusive adverse possession predating 1970. The 1987 proceedings and the final order made in 1988 prevents, in the Board's opinion, reliance by the first and second defendants on acts of adverse possession predating 1987. For a good possessory title a period of at least twenty years uninterrupted adverse possession is required. The commencement by a documentary title holder of judicial proceedings against a person in adverse possession, the success of which proceedings requires the recognition of the documentary title, constitutes, **if the proceedings are successful**, an interruption of the period of adverse possession. If the adverse possessor remains in possession the requisite 20 year period must start afresh. By 1987 the 20 year period from 1970 had not expired. Between 1987 and the commencement of the partition action in 2002 a fresh 20 year period had not expired. The 1987 action, like the partition action, required for its success a judicial recognition of the plaintiff's documentary title to a 1/4 undivided share in Tract A. It follows that the first and second defendants' claim to have overridden Leshel's documentary title by a 20 year period of adverse possession must fail. That is so whatever view be taken of the quality of the possessory acts relied on or of the question whether the incident on 16 September 1987 constituted a re-entry and therefore an interruption of the adverse possession on which the first and second defendants relied.

[Emphasis added]

[25.] In the circumstances therefore I find that, in law, there was no interruption of Bain's possession. I am satisfied that he was in factual possession with the requisite animus possidendi for a period beyond the statutory period provided under the Limitation Act. A

Certificate of Title should therefore be issued to Bain subject to the exceptions and qualifications set out in the QTA.

Dated this 1<sup>st</sup> day of March 2022

A handwritten signature in blue ink, appearing to be 'I-W', written in a cursive style.

Ian Winder

Justice