

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2010/CLE/QUI/00885

IN THE MATTER OF the Quieting Titles Act 1959

AND

IN THE MATTER OF THE PETITION OF KIRKWOOD D KNOWLES

AND

IN THE MATTER OF ALL THAT piece parcel or lot of land which can be located using the Esso Service Station situate at Prince Charles Drive and Fox Hill Road as a point of reference by heading North on Fox Hill Road from the said service station and turning on to the first corner on the right side of the Road which is Blueberry Hill Road which contains Nineteen thousand Eight Hundred and Ninety-six (19,896) square feet situate on the Northern side of Blueberry Hill Road approximately Two Hundred and Twenty-Five (225) feet East of Fox Hill Road in the Eastern District of the Island of New Providence aforesaid and bounded on the NORTH by land said to be the property of Calvin Major and running thereon One Hundred and Sixty-seven and Twenty-three hundredths (167.23) feet on the EAST partly by land the property of Kirkwood Dale Knowles and Dale Pearce and running thereon jointly One hundred and sixty-three and Ninety-five hundredths (163.95) feet and on the SOUTH by Blueberry Hill Road and running thereon One hundred and Seventy-three and Sixty hundredths (173.60) feet and on the WEST partly by land the property of Arnold Emile and land the property of the Estate of Albertha Allen and running thereon jointly One hundred and Nine and Eighty-Six hundredths (109.86) feet.

Before Hon. Chief Justice Ian R. Winder

Appearances: Gregory Armbrister for the Petitioner

Adrian Hunt and Lakeisha Strachan for the Adverse Claimant,
Charmaine Eve

Miles Parker for the Adverse Claimants, Glenn Nairn and William
Bethel

7 and 8 September 2016, 19 May 2017, 12 June 2017 and 24 July 2017

Submissions on behalf of Adverse Claimant - Eve 22 August 2022
Petitioner's submissions October 2022

JUDGMENT

WINDER, CJ

This is the Petition of Kirkwood Knowles (Knowles) seeking a certificate of title for a 19,896 square feet tract of land located on Blueberry Hill Road in the vicinity of Fox Hill. Knowles' possessory claim to the land is opposed by three Adverse Claimants – Charmaine Eve (Eve), Glenn Nairn (Nairn) and William Bethel (Bethel).

Background

1. Knowles, a resident at Blueberry Hill Road, Fox Hill, claims quiet undisturbed possession of a tract of land which abuts his dwelling home. At the time of the filing of his Petition under the Quieting Titles Act, Knowles alleges that his possession was for 13 years. Knowles' neighbor, Eve, also claims possession of the entirety of the 19,896 square feet tract, her alleged possession being adverse to Knowles.
2. Nairn and Bethel's claim differ in that they both claim documentary and possessory titles to two adjacent lots of land (Parcels A and B) measuring 6,216 square feet each (totaling 12,432 square feet), situate within the 19,896 square feet tract for which Knowles claims and Eve claims adverse possession.
3. The documents filed on behalf of Knowles to commence this action were:
 - i. Abstract of Title filed 15 August 2012
 - ii. Plan filed 11 September 2012
 - iii. Affidavit of compliance filed 11 September 2012
 - iv. Amended Petition filed 15 October 2012
 - v. Notice of Petition filed 15 October 2012
 - vi. Affidavit in support of Petition filed 15 October 2012
4. The Abstract of Title filed by Knowles provides:
 1. KIRKWOOD Knowles claims to be the owner of the above described parcel of land
 2. The said KIRKWOOD Knowles has farmed the said land and has been in undisturbed possession for the past seventeen years or thereabouts
5. On 15 October 2012 Knowles filed an Amended Petition to Quiet the Title to the Fox Hill Property. Knowles' Affidavit in Support of his Amended Petition provides:

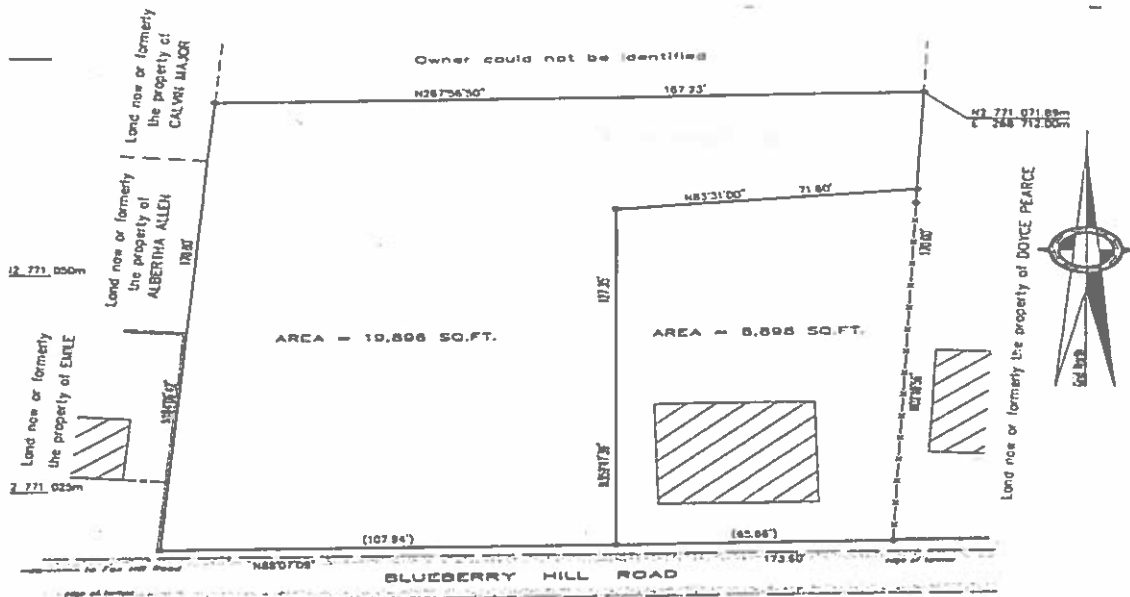
I Kirkwood D Knowles of Blueberry Hill Road, Fox Hill in the Eastern District of the island of New Providence one of the islands of the Commonwealth of The Bahamas, Air condition Technician, make oath and say as follows:

1. That I am the Petitioner herein.
2. ...

3. That no person or persons whomsoever is or are in occupation and possession of the said piece parcel or lot of land the subject matter of my Petition.
4. That no person or persons whomsoever have occupied and possessed the land the subject matter of my said Petition filed herein during the past 13 years.
5. That to the best of my knowledge, information and belief the Affidavits filed herein relating to my quiet full free exclusive, undisturbed, uninterrupted, occupation possession and enjoyment of the said piece parcel or lot of land for the past 13 years fully and fairly disclose all facts material to my adverse occupation and possession of the said piece parcel or lot of land the subject matter of my Petition filed herein.
6. That by virtue of my quiet full free exclusive, undisturbed, uninterrupted, occupation, possession and enjoyment of the said piece parcel or lot of land the subject matter of my Petition filed and I verily believe that in accordance with the provisions of the Limitation Act, 1995 I have acquired a possessory title thereto and that whatever title the documentary title holder may have had relating to the said piece parcel or lot of land has been extinguished and replaced with my possessory title.

...

6. There were two survey plans put into evidence in this matter. The plan of Knowles, and the plan drawn at the instance of Nairn. Nairn's plan was used to support his and Bethel's claims. Knowles survey plan, is reproduced below, in part:

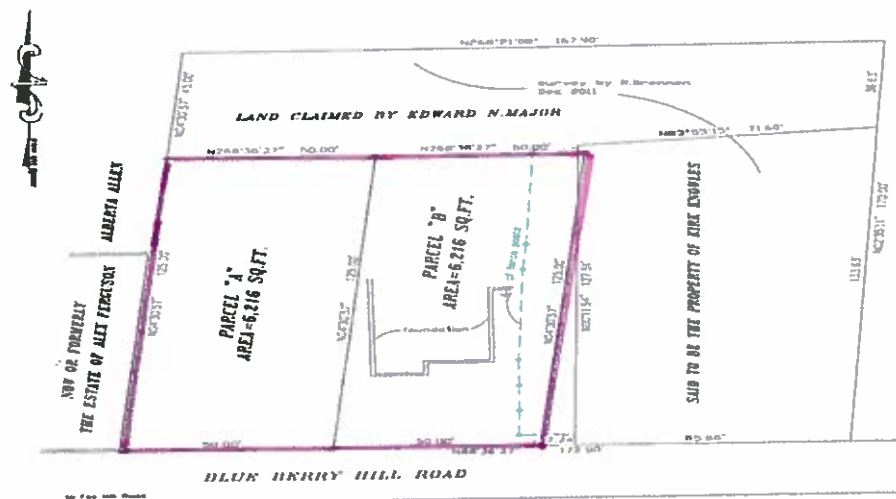


7. On 14 December, 2012 Nairn filed an adverse claim in which he claims to have both documentary and possessory title of Parcel B within the 19,896 square feet tract of land to which Knowles is seeking a certificate of title. In his affidavit in support of his adverse claim, filed on 6 May 2013, Nairn claims to have been in quiet undisturbed possession of Parcel B in excess of 20 years.

8. Nairn's Abstract of title filed 14 December 2012 provides:

1. On the 29th day of September A.D. 1965 Alexander Ferguson conveyed the subject property to the Carl Alexander Nairn Sr. which conveyance is recorded in book 990 at pages 150 to 152 after which time the said adverse Carl Alexander Nairn took exclusive possession of the subject land.
2. On the 10th day of August A.D. 1993 Carl Alexander Nairn Sr. died. The Adverse claimant took exclusive possession of the subject land from the said date of death of his grandfather Carl Alexander Nairn Sr.
3. On the 15th day of February A.D. 2008 Letters of administration in the Estate of Carl Alexander Nairn Sr. were granted by the Supreme Court of the Bahamas to Carl Alexander Nairn Jr. By assenting conveyance dated the 25th day of March A.D. 2008 the subject property became vested in Carl Alexander Nairn Jr. in fee simple. This conveyance is recorded in Volume 1058 at pages 428 to 431.
4. On the 26th day of March A.D. 2008 Carl Alexander Nairn Jr. conveyed the subject property to the Adverse Claimant Glenn Nairn. This conveyance is recorded in Volume 10589 at pages 432 to 435. The said property has been in the exclusive possession and control of the said Adverse Claimant to the present day. No one has ever disturbed the Adverse Claimant in his continuous and open possession of the said lot other than the recent trespass by the petitioner.
5. The Adverse claimant claims the fee simple title to the subject property by virtue of documentary title and also possession adverse to all other persons.

9. Nairn's survey plan (upon which Bethel also relies) is reproduced in part below:



10. On 6 May 2013, Bethel filed an adverse claim in which he claims, like Nairn, a 6,216 square feet portion of the tract (Parcel A) for which Knowles petitions. As per the plan in evidence, the portion of the land he claims is adjacent to that claimed by Nairn. His affidavit in support was filed on the same day as his adverse claim. Bethel's evidence in his affidavit in support is that he has both documentary and possessory title to the land for more than 20 years.

11. Bethel's Abstract of Title filed 6 May 2013, provides:

1. On the 29th day of September A.D. 1965 Alexander Ferguson conveyed the subject property to the adverse claimant William Benson Bethel which conveyance is recorded in book 990 at pages 147 to 149 after which time the said adverse claimant took exclusive possession of the subject land.
2. The said property has been in the exclusive possession and control of the said Adverse Claimant to the present day. No one has ever disturbed the Adverse Claimant in his continuous and open possession of the said lot.
3. The Adverse claimant claims the fee simple title to the said property by virtue of documentary title and also possession adverse to all other persons.

12. On 14 February 2013, Eve filed an adverse claim, claiming possession of the entire tract for which Knowles petitions. In her affidavit in support of her adverse claim, Eve claims possession of the 19,896 square feet tract of land since 1989.

13. Eve's Abstract of Title, filed 21 February 2013 provides:

- | | |
|-------------------------------|---|
| 10 th January 1971 | On this date Charmaine Eve was born on the Island of New Providence. |
| 1971 | Charmaine Eve began permanently residing on land the property of the Estate of Albertha Allen, situate on the Northern Side of Blueberry Hill Road and Approximately 178 feet East of Fox Hill Road in the Eastern District of (sic) Island of New Providence one of the Islands of the Commonwealth of The Bahamas containing an area of 15,944 square feet which said piece or parcel of land is bounded Northwardly by land now or formerly the property of Calvin Major and running thereon One hundred and Seventy-eight and Twenty-eight hundredths (178.28) feet Eastwardly by land the subject of this Quieting Petition and running thereon Eighty-eight and Six Hundredths (88.06) feet Southwardly by land now or formerly the property of Bernard Vincent Ferguson and running thereon One hundred and Eighty and Eighty-two hundredths (180.82) feet and Westwardly by Fox Hill Road and |

running thereon Eight-nine and seventy six hundredths (89.76) feet.

1st June 1989-present

Charmaine Eve went into exclusive possession of the land the subject of this Quieting Petition.

14. At the trial of this matter, Knowles gave evidence in support of his Petition and called Lawrence Morrison and Edward Major. Nairn gave evidence in support of his adverse claim as well as that of Bethel. Eve gave evidence in support of her claim along with Rodney Eve, Andretti Demeritte, Larry Pinder and Wayde White. The witnesses were subject to cross examination on their evidence.

The Evidence

Kirkwood Knowles

15. Knowles testified that he has lived on the property adjoining the land which he is seeking to quiet since 1983. He says that he cleared down the subject property in 1996. After the mandatory posting of the Petition on the land, he says that he was confronted by Eve while cutting down a tree on the property. She demanded that he leave the property, but he did not.

16. When asked if Demeritte (a witness for Eve, whose evidence is traversed below) parked cars on the property, he answered by saying there were quite a few people who did so as the property was open.

17. Knowles says he inherited the property that his home is built on from his father on or around 1982. He would garden on the tract being claimed, which adjoins his residence over the years, having planted banana trees around 1998. On or about 2009 he fenced a portion of the property where his house sits. In or about October or November 2010, he says Nairn erected a foundation on the property.

18. Knowles says he cleared into the tract between 50 to 70 feet from the original boundary, to his house. He cleared the tract by hand and on occasion Demeritte would employ a tractor to push down the property. It was on such an occasion that his fence and some of his crops were also pushed down by a tractor. Demeritte who was using the property to store cars from his body shop, would push the residue of the debris from the body work he performed into a pile. Knowles admits that he has never made an attempt

to stop Demeritte from employing the practice of pushing down the property, to avoid confrontation.

Glenn Nairn

19. Nairn told the court under cross examination that his property (Parcel B) was interfered with by both Knowles and Demeritte. He filed an action in trespass against Demeritte in particular. He also verbally requested in or around 2008 that Demeritte remove the vehicles that he had placed on the property, which Demeritte did. After Demeritte removed the vehicles he did not pursue the litigation to trial.

20. Nairn says he only found out about Eve's claim after Knowles petitioned. He says Parcel B was bought by his grandfather (Carl Alexander Nairn) in 1965. After his grandfather died testate, his Will was probated and in or about 2000, he took possession of the parcel. He did not put up a no trespassing sign on the property. He did increase his visits to the property after Demeritte removed the cars from it. He had attempted to sell the lot and it was the proposed purchasers who erected a foundation on the property around 2010.

Charmaine Eve

21. Eve testified that she kept the property cleared down since around 1989/1990. She says she spotted Knowles on the property two or three times and told him to leave which he eventually did. She even went to the police on one occasion to have him removed. However, the police advised that it was a civil matter for the Courts.

22. Eve says that she was of the belief that the property was generation property belonging to her family, which is why she had the land surveyed in 2012. She did not garden or farm the land. She rejected the suggestion that her possession of the land was interrupted at any time by other claimants. She was not aware that her grandfather supposedly sold the property to Nairn's grandfather, however knowing that it had been sold would not have changed her position on her possession of the land. It was not her intention to take the land from Knowles or Nairn, as it was her family's property. She denied that she was trespassing on the land. She saw Knowles put up a makeshift fence using pallets and she along with Demeritte took the fence down.

Lawrence Morrison

23. Morrison's evidence was that he lived 2-3 miles from Blueberry Hill Road. He knew Knowles for 20-30 years and they would exchange seeds and plants over the years since 1995. Knowles, he says, grew field crops including bananas, sugar cane, pumpkin, cassava and other fruit trees on the property.

Edward Major

24. Major, whose property appears on both plans presented in this action, says he lived in Blueberry Hill since 1975 despite his affidavit in evidence saying that he lives on the Eastern Road. Knowles is his third or fourth cousin. However, he knows Eve and told the Court that if he was approached by her first to give evidence in support for her adverse claim, he would have done so on her behalf, instead of on Knowles behalf.

Rodney Eve

25. Rodney Eve's evidence was that he lived at the property since 1983 and supports his sister's adverse claim. He did not know if his grandfather sold the property or of the conveyance to Nairn.

Andretti Demeritte

26. Demeritte is an auto body mechanic and operates from across the street from the tract and has parked cars on it. He says he does not know who owns the property. He confirmed that he was served with court papers demanding the removal of vehicles he had parked on the property. The Court papers, he says, indicated that Nairn was the owner. He also believes it was Nairn who put the foundation on the land. When he was served with the papers from Nairn he brought it to Eve's attention. Demeritte says that he has seen sugarcane and bananas on the property.

Larry Pinder

27. Pinder says he never saw a foundation on the land.

Wayde White

28. White says he is close friends with Eve and he had never met Knowles. He lived in the vicinity of Blueberry Hill Road most of his life. He left in 1998, returned in 1999, moved out again in 2007. He returns to the area almost every day since he last moved out. He also stores vehicles on the property along with Demeritte while performing bodywork.

Visit to the locus in quo

29. The visit to the locus took place on 12 June 2017. Following the visit to the locus, Knowles, Eve, Nairn and White returned to court on 24 July 2017 to give evidence as to what they observed on the property at the time. Knowles took the stand first and indicated on the survey plan the area that he described as having trees such as banana, noni, ginger and sugarcane that he planted. There was also a rock wall along the eastern boundary of the property as pointed out by Knowles during the visit.

30. Nairn's evidence was that he saw his foundation in which he had banana trees planted and the encroaching fence placed on his boundary by Knowles. He told the court that there were 'no harvestable crops per se, just mainly bushes' on the property.

31. Eve described what she saw on the locus visit, saying that the parties entered the tract along the eastern boundary of Knowles property. There were cars that were parked along the front and some to the western side of the property, about four or five, which belonged to Demeritte. She says that she gave him permission to park them there. The property was also entered from Fox Hill Road through the property of Albertha Allen (on which she lives). She spoke to the position of the rock wall shown on the plan which is situate along the boundary of Albertha Allen, Emile and Calvin Major. There was also pathway that she and her brother used which lies along the boundary with Emile, which was also viewed during the visit. She described the property as being overgrown with bushes with one or two dilly trees and a mango tree. Eve testified that Alexander Ferguson was her great grandfather, he had died before she was born. Her mother would have inherited the property from him and she in turn from her mother.

32. White's testimony did not differ materially from Eve as to what he observed on the property during the locus visit.

Submissions of Knowles

33. In closing submissions, counsel for Knowles reiterated the principles on land possession in this jurisdiction as set out in the eminent Privy Council case of ***Ocean Estates v Pinder [1969] 2 AC 19***, per the dicta of Lord Diplock:

“At common law as applied in The Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an “absolute” title. Where questions 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.”

34. The Limitation Act 1995 (the LA) applies in the circumstances, as Nairn and Bethel's documentary title have been debarred by Knowles' possession which has ran for more than 12 years, submits Knowles. Sections 16(3) and 25(1) LA provides:

“(3) No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person: Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.”

25. (1) At the expiration of the period prescribed by this Act for any person to bring an action to recover land, the estate or interest of that person in the land shall vest in the person who is then in adverse possession of the land within the meaning of section 24.

35. Knowles says that his possession was sufficiently exclusive and continuous in that he would have obtained a possessory title to the land. Knowles says that this is fortified by the evidence of the witnesses in support of his petition. The Privy Council case of ***Anthony Armbrister and Cyril Armbrister v Marion Lightbourn and Robin Symonette [2012] UKPC 40*** is relied on for sufficiency of possession, as follows:

“82. The clearest statement of the law is in the speech of Lord Browne-Wilkinson in *J A Pye (Oxford) Ltd v Graham [2002] UKHL 30, [2003] 1 AC 419*, with which

the rest of the House agreed. Lord Browne-Wilkinson (at para 41) approved the principles stated by Slade J in *Powell v McFarlane* (1977) 38 P & CR 452, 470-471: "The question 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...

Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor had 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."

36. Knowles says that he has proven his possession through amongst other things, his farming of the land, upon which he planted banana trees and other plants. While it is accepted that there was a confrontation with Eve in or around 2010 when she asked Knowles to cease from cutting down trees, it is submitted that no one else except Knowles farmed the tract of land.

37. It is also accepted that Demeritte parked cars on the tract at its extreme southwestern edge and that others were permitted to do so as well. Further that on about four occasions Demeritte employed heavy equipment to push back the debris that he deposited there from his bodywork shop. Knowles did complain to the police about Demeritte's activities in or around 2010 at the same time that he complained of Nairn pushing down the fence erected on the western boundary of the tract around the time the foundation on Parcel B was laid. The southeastern boundary fence had been erected by Knowles in or around 2009.

38. With regard to the documentary and possessory title claims of Nairn and Bethel, counsel for Knowles submits that it is inconsistent with authority that they should be allowed to claim both types of possession. In reliance on the authority of *Arnold Celestine (Appellant) v Carlton Baptiste HCVAP 2008/011*, a case out of the Court of Appeal of Grenada, it is submitted that a person claiming ownership as of right may not also claim ownership based on adverse possession of the same land.

39. Counsel, who acts for both Nairn and Bethel reminded the court in submissions that both Nairn and Bethel claim to have both documentary titles and possessory titles to the parcels of land in this action.

Submissions of Bethel and Nairn

40. Of the 19,896 square feet tract of land that Knowles claims, Nairn and Bethel claim Parcels B and A respectively, as seen on the survey plan. The parcels share the same documentary root of title. Bethel having purchased his parcel from Alexander Ferguson on 29 September 1965. The conveyance to Bethel is recorded in the Registry of Records in Book 990 at pages 147 to 149. While the conveyance from Alexander Ferguson to Carl Nairn also on 29 September 1965 is recorded in the Registry of Records in Book 990 at pages 150 to 152. Carl Nairn is Nairn's grandfather who died on 10 August 1993. After Carl's estate was probated Nairn received the property through an Assenting Conveyance on 25 March 2008, recorded in the Registry of Records in Book 10589 at pages 428 to 431. Counsel submits that the documentary title of neither Nairn nor Bethel was challenged in this action.

41. While Bethel unlike Nairn never claimed to have placed any building on his parcel, he would regularly check on the property by driving by it every year or two to check on it. He maintains that he remained in exclusive possession of the property. His evidence was that he and Lynden Nairn (Nairn's brother) cleared down both parcels on 26 June 2003. There was no interference or complaint by anyone when they did so.

42. It is submitted as per Nairn's evidence that he took possession of the property around 2000 and made regular checks on the property. He begun action CLE/gen/00034 of 2009 against Demeritte for trespass for using the land as a place to store vehicles for his bodywork business. Demeritte removed the vehicles after being served with the trespass action. Nairn made attempts to sell the property in 2010 and it was the proposed purchaser who erected a foundation on his parcel. However, the sale was never completed and the foundation left bare and abandoned since. In 2011 Knowles moved his fence eastward on to Nairn's parcel, this is when Nairn became aware of Knowles trespass.

43. Speaking to Eve's claim, counsel for Nairn and Bethel submits that her evidence on her adverse possession is equivocal and inconsistent. At one point she says that the property is generation property. Then she says that her family was to turn the property

over to her when she attained the age of 18. She has never regarded herself as a trespasser or sought to dispossess any person. While she says she gave Demeritte permission to store cars on the property in 1999, when made aware of the intended trespass action taken out by Nairn in 2008, she mounted no response. Further she did not plant anything on the property or make use of it in any way submits, counsel.

44. The access road that Eve had alleged was on the property was not apparent from a physical inspection of the property. It's existence or use could not be determined. The property was also not fenced nor walled in.

45. In view of the lack of serious challenge to the documentary titles of Bethel and Nairn, Knowles' and Eve's only option is to prove that the two men have not taken possession of the parcels they allege to own. This could only indicate that Knowles and Eve are confusing occupation with possession. The Privy Council case of ***Newcastle City Council v Royal Newcastle Hospital [1959] 1All ER 734*** speaks to the fact that a title holder to land need not be in occupation to maintain possession. One must be ousted by adverse physical or actual occupation for the period defined in statute.

46. Counsel for Bethel and Nairn also relies on the renowned case of ***Ocean Estates v Pinder*** and the dicta of Lord Diplock, who opined, on how titles to land in this jurisdiction are to be construed, namely that it is an investigatory process. Nairn and Bethel, they say, have also met the threshold for claims under Section 3(4) of the Conveyancing and Law of Property Act which requires that a purchaser of land need not require title going back beyond 30 years to have a good title to land. It is now for Knowles and Eve to show that they have dispossessed Nairn's and Bethel's documentary title to the land, through their own open, continuous possession.

47. In further support of their position as to the rights of documentary title holders, Nairn and Bethel say as per ***Powell v McFarlane [1977] 38 P&CR 452***:

"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 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."

They submits that the farming that Knowles is alleged to have carried out on the property is insufficient to prove possession. Even so, they say, the farming that Knowles and Eve claimed to have carried out on the property did not take place on either Parcel A or B.

Submissions of Eve

48. Counsel for Eve speaks to her evidence and the claim that she went into adverse possession of the entire tract of land on 1 June 1989. The cases of *Ocean Estates v Pinder* and *Powell v McFarlane* are also relied on by Eve. In addition to the aforementioned authorities, counsel for Eve relies on the case of *Re Roman Catholic Apostolic of The Bahamas [1984] BHS J No.34* with regard to adverse possession, as follows:

“As regards the burden and nature of proof and the desired quality of possession, the adverse claimant by himself and his predecessors had to meet the criteria indicated in *Sherren v Pearson* 14 Can SCR 581 where Ritchie CJ said at p.585:

To enable the trespasser to recover he must show an actual possession, an occupation exclusive, continuous, open or visible, and notorious for the twenty years. It must not be equivocal, occasional or for a temporary or special purpose.”

49. Eve's possessory title submits her counsel, stems from the following acts:
- i. She began regularly clearing the land, in or around 1998 to prevent it from becoming overgrown with bush and weeds. Occasionally, she would enlist the assistance of her brothers, James & Pedro, as well as the help of neighbours, Andretti Demeritte and Wayde White;
 - ii. She picked fruits on the property and there were dilly, mango, guipnep (sic) and sour lime trees;
 - iii. From 1998 she was of the understanding that the land would belong to her;
 - iv. In the year 1999, she gave Andretti and Wayde permission to park cars on the land for the purpose of their auto bodywork business and they used the land for this purpose ever since. In return they continued to help Miss Eve regularly maintain and look after the property.
 - v. In 2000, she cleared a path on the western side of the land which was used as a shortcut to access her home. Additionally, her brother also used this path as an access point to bring materials onto her grandfather's property for construction of his own home;
 - vi. She would regularly remove garbage and refuse that would accumulate along the path;
 - vii. In 2005, some of her neighbours, who rented the home of her former neighbor, Arnold Emile, began dumping garbage on the land. Despite her removal of the dumped garbage, and her repeated warnings to the

neighbours not to dump any further garbage on the land, they continued to do so. As a result, Miss Eve called the Ministry of Health, who she believed issued a warning to the neighbours to stop any further dumping of garbage. She also asked Mr. Emile to speak to his tenants about their dumping of garbage;

- viii. In 2011 she notice (sic) the Petitioner, for the first time carrying out activity on the land and as a result she approached the Petitioner about the same and told him that he was trespassing. The Petitioner pretended not to hear her and said nothing and shortly thereafter he left the property;
- ix. After she was served with notice of these proceedings on the 15th February, 2013 she noticed that the Petitioner put up a makeshift fence and was repeatedly coming on to the land. On one occasion, she saw the Petitioner on the land trying to put up a makeshift fence using pieces of board and pallet. As a result she went on to the land with Andretti who helped her take down the makeshift fence. Miss Eve also personally told the Petitioner to stop and get off the land. Later, on or about 20th February 2013, she saw the Petitioner on the land attempting to cut down a tree. Accompanied by her brother James, she warned the Petitioner to stop what he was doing, and leave the land. On both occasions, the Petitioner said nothing and left the land without incident;
- x. Miss Eve's quiet enjoyment of the property was not interrupted until in 2010 or 2011 when she realized a foundation was erected on the property. At the time, Miss Eve would have been in possession of the property for at least Twenty (20) years.

50. In the circumstances counsel for Eve submits that Eve has both the necessary animus possidendi and factual possession of the property. Her treatment of the property was adverse to Knowles and to the documentary title holders, Nairn and Bethel. Further, Eve's witnesses confirmed her possessory title.

Law, Analysis and Conclusion

51. The quieting of title process, as mandated by the Quieting Titles Act, is an inquisitorial process as per section 3:

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.

52. While counsel are invited to provide submissions on the facts and points of law on which they intend to rely my main consideration is whether any of the parties have proven

by their evidence that they have both the animus and factual possession of the property being claimed. In other words, what needs to be decided as per *Ocean Estates v Pinder*, is who has the better title if any to the land in question.

53. This is a matter of adverse possession, such possession to be proven by the parties to the action. The authors of *Elements of Land Law, 5th edition* para 9.1.50 speaks to the nature of adverse possession, stating:

“Indeed the animus required of the adverse possessor relates not to ownership of the land at all but rather to the assertion of a ‘complete and exclusive physical control’ over the land – an assertion which is wholly consistent with an erroneous assumption as to entitlement. A plea of adverse possession can therefore succeed even though both parties mistakenly but genuinely believed that the claimant was the true owner of the land and that his entry on that land was therefore ‘as of right’. Possession may likewise be asserted adversely to a paper owner who is unaware that title to the land was conveyed to him long ago and that, in reality, he has now been dispossessed.”

54. The law of adverse possession mandates that the possessory claimant must establish continuous undisturbed factum possessionis (factual possession) as well as continuous intention to possess (animus possidendi) the land claimed.

55. The Board in the Privy Council case of *Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd. 2018 UKPC 27*, speaks to the courts authority with respect to titles to land under the QTA:

41. But none of this means that the court has the duty, or even the power, to create title by use of the machinery conferred by the Act, where in truth no title at all is proved. Section 17 of the Act gives the court a discretion whether to dismiss the application entirely, to dismiss it and grant a certificate of title to an adverse claimant, to grant a certificate of title to the petitioner, or to grant separate certificates of title to different parts of the land to the petitioner and to one or more adverse claimants. In *Nova Scotia (Attorney General) v Brill* [2010] NSCA 69, para 37, Fichaud J said this, speaking of the Quieting Titles Act 1989 in the Nova Scotia Court of Appeal:

“The QTA does not enable a court to create title. Rather it authorises a court to grant a certificate that reflects the title, including possessory title, to which the party is entitled by the legal principles that exist outside the QTA.”

Additionally, the Board considers that the same principles apply to the Bahamian Act.

56. Having listened to and observed the witnesses in this case as they gave their evidence for and on behalf of the various parties I was unable to find in favour of Knowles. I find that the evidence does not demonstrate the undisturbed uninterrupted possession required to be demonstrated by him. I was not satisfied that the nature of his occupation was sufficient to demonstrate any possession of the entirety of the property. I was not satisfied that such planting of seasonal plants as he did amounted to factual possession to oust the documentary title owners Nairn and Bethel.

57. Knowles was warned to come off of the property on at least two (2) occasions by Eve. Demeritte was allowed to utilize the property to park cars for his bodywork business and his activity only ceased as a result of the threatened trespass action of Nairn. Knowles allowed Demeritte to run a tractor on the property and push the debris to the rear of the property. Nairn caused a foundation to be erected on a portion of the land in defiance of Knowles alleged possession. Further, having visited the locus in quo, I accepted the witnesses evidence that there was no evidence to support Knowles claim to possession of the land. The farming described by Knowles was insufficient to assist his claim as it did not take place upon a sufficient portion of the tract to be considered a possessory element. The few plants that were observed were either on Knowles original property or close to the boundary lines of the land he occupied before claiming possession of the tract. While Knowles may have had the intention to possess the tract being claim, his factual possession of the land did not coincide. In the circumstances Knowles claims of possession did not present the requisite combination of both animus possidendi and factual possession to extinguish the documentary titles of Nairn and Bethel.

58. Insofar as the adverse claim of Eve is concerned, I was not satisfied that Eve possessed the necessary animus possidendi and factual possession to be issued a certificate of title to any portion of the land. Even though she could have gone into possession under the mistaken belief that she had inherited the land through her mother, I did not find this to be the case. The so called acts of possession of Eve did not include any attempts to enclose the property or to engage in any meaningful attempts at farming the land or to add to the land in any way to be sufficient to meet the demands of a person claiming adverse possession. Nairn had a foundation erected which could not have been built unbeknownst to Eve.

59. Even the activities of Demeritte who along with White parked cars and employed tractors to clear down the property detract from Eve's claim that she was in exclusive possession of the land. Demeritte appeared to use the land as he saw fit. It was Nairn who started a trespass action against Demeritte for parking cars on the property. Demeritte's evidence, given on behalf of Eve was that he was given permission by Eve to park on the property. However, despite having been granted permission by Eve, he acquiesced to Nairn's demand to remove the vehicles he had placed on the land. The evidence does not reflect a response by Eve consistent with Nairn trespassing on what she believed to be her family property. If Eve truly possessed the land it is doubtful that she would have allowed these notorious and open acts of Bethel and particularly those of Nairn to go unchallenged, as she did. After all, [t]he adverse possessor must 'unfurl his flag on the land, and keep it flying so that the owner may see, if he will, that an enemy has invaded his dominions and planted his standard of conquest' (Per Shangraw CJ, *in Laird Properties New England Land Syndicate v Mad River Corp*, 305 A2d 562 (1973)). Eve did not do this.

60. Eve was not in open, undisturbed possession of the land in the face of the activities of Knowles and of Nairn and/or Bethel. More particularly, in light of the evidence for Nairn and Bethel which shows that they have cleared down Parcels A and B over the years and had not been confronted or advised at any time before the commencement of this action by Eve that she was in possession, her claim must fail.

61. Nairn supported the evidence of Bethel that they are the paper title owners and the possessory owners of Parcels A and B. The foundation on Parcel B to which he lays claim remains on the property as a fact of his asserting his right to possession.

62. There is no prohibition under the QTA from Nairn and Bethel asserting their documentary title to Parcels A and B as being adverse and/ or inconsistent to the claims of Knowles and Eve (*South Shore Investments Company Limited v Austin Thomas Laing et al*, and *South Shore Investments Company Limited v Marcella Schetter*, Civil Appeal No.2 of 1966 and Civil Appeal No. 6 of 1966/1965-70 1 LRB 73).

63. The documentary titles of both Nairn and Bethel were considered during the investigatory process. The presentation of the title documents are facts that are directly relevant to the issue at hand, that is, whether they are the owners to the land as stated in

Phipson on Evidence, 12th edition, Chapter 8 – Ancient Documents As Evidence of Ancient Possession:

Ancient documents (i.e. over 20 years old...) produced from proper custody and by which any right of property purports to have been exercised are admissible, even in favour of the grantor or his successors, in proof of ancient possession.

Principle. Such documents are sometimes thought to be admissible by exception to the hearsay rule; but this is incorrect. They are received not as proving the *truth* of the facts stated, but merely as presumptive evidence of possession. Thus, a demise by copy of ancient Court Roll is an assertion of a right of ownership, and enjoyment under it is evidence of ownership.

The grounds of admission for this purpose are twofold – *necessity*, ancient possession being incapable of direct proof by witnesses; and the fact that such documents are themselves *acts of ownership*, real transactions between man and man, only intelligible upon the footing of title, or at least of a bona fide belief in title, since in the ordinary course of things men do not execute such documents without acting upon them.

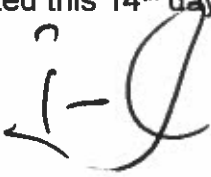
Qualifications. ...(2) Deeds of this nature must, to ensure genuineness, be, like other ancient documents, produced from proper custody; and should, to be of any weight, be corroborated by proof, within living memory, of payments made, or enjoyment had, in pursuance of them. The absence of evidence of modern enjoyment, however, goes merely to weight and not to admissibility; indeed in one case the paper title of the owner, though only slightly corroborated, was held to prevail over open, adverse or long-continued user by the public [Johnston v O'Neill [1911] AC 552].

64. Having reviewed the documentary evidence and performed the required investigation per the QTA. The root of title for both Parcels claimed by Nairn and Bethel stem from Alexander Ferguson. In all the circumstances, I am satisfied that the documentary titles of Nairn and Bethel have not been extinguished by Knowles' nor Eve' alleged possession of the land. Nairn's and Bethel's documentary titles are valid and remain unaffected in the circumstances. Both claimants have proven that their documentary titles are good and marketable to Parcels A and B, albeit without any serious challenge in any event from Knowles or Eve as to their validity.

65. For the reasons I have stated, I order that Certificates of Title be issued with respect to Parcels A and B in Bethel and Nairn respectively. I am not satisfied that Knowles or Eve have defeated the documentary title to Bethel and Nairn in the Parcels.

66. In the circumstances the Petition of Knowles is dismissed and the adverse claim of Eve is dismissed. Knowles and Eve are to bare 50% each of the reasonable costs of Nairn and Bethel.

Dated this 14th day of November, 2022

A handwritten signature in black ink, appearing to read 'I. Winder', written over a horizontal line.

Ian R. Winder
Chief Justice