

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law & Equity Division  
BETWEEN:**

2023/CLE/Gen/00209

In the Matter of ALL THAT piece, parcel or strip land situate in the Western District of the Island of New Providence being bounded on the North by land known as “Rock Point” being land the property of Vakis Limited on the East by West Bay Street on the South by a strip of land lying between West Bay Street aforesaid and the Sea at high water mark and comprising a portion of the tract of land known as “The Caves” and on the West and Northwest following the configuration of the coast by the sea at high water mark

Between:

VAKIS LIMITED

Claimant

AND

ANDREW MURRAY  
(trading as “Daq Shack” or “Tropical Daiquiri”)

Defendant

Before: The Hon. Madam Justice Carla Card-Stubbs  
Appearances: Dwight Ginton for the Claimant

---

**RULING**

---

**CARD-STUBBS J.**

**Introduction**

1. This is the Claimant’s suit in trespass.
2. For the reasons set out below, the Claimant is entitled to the reliefs as ordered.

**Background**

3. This is a simple matter. The facts are uncontested, the Defendant not appearing.
4. By way of standard claim form filed March 13, 2023, the Claimant alleged that the Defendant, trading as “Daq Shack” or “Tropical Daiquiri” erected and operated a beverage stand on the Claimant’s property, and continued to do so, despite being told to vacate the Claimant’s land. The Defendant is described as “the owner and/or operator of the business that is a beverage stand under the name and style of “Daq Shack” or “Tropical Daiquiris” from which he sells beverages (hereinafter referred to as “the beverage stand”)”.
5. The Claimant sought:
  - (1) A Declaration that the Defendant has no claim or right to the land of the Plaintiff being ALL THAT piece, parcel or strip land situate in the Western District of the Island of New Providence being bounded on the North by land known as “Rock Point” being land the property of Vakis Limited on the East by West Bay Street on the South by a strip of land lying between West Bay Street aforesaid and the Sea at high water mark and comprising a portion of the tract of land known as “The Caves”) and on the West and Northwest following the configuration of the coast by the sea at high water mark which said piece parcel or strip of land has such positions, boundaries, shape, marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the 23<sup>rd</sup> day of October A.D., 1979 between Bahamas Land and Investment Company Limited and Elm Properties Limited and recorded in the Registrar General’s Office in the City of Nassau in Volume 3457 at pages 559 to 563 (hereinafter referred to as “the Claimant’s land”) or to any part or portion thereof and is not entitled to clear down, build on or improve, enter or cross the Claimant’s land whether in exercise of an alleged claim or right or otherwise;
  - (2) An Order that the Defendant do forthwith pull down and remove the structure or shack known as or called “Daq Shaq” or “Tropical Daiquiris” on the Claimant’s land;
  - (3) An Order that the Defendant do forthwith remove all tables, benches, and other chattels placed on the Claimant’s land by him, his servants or agents;
  - (4) An Order that the Defendant do forthwith remove any other items placed on the Claimant’s land by him, his servants or agents;
  - (5) An injunction to restrain the Defendant whether by himself or by his servants or agents or otherwise howsoever from trespassing on the Claimant’s land or to any portion thereof by constructing or allowing to be constructed or continuing the construction of any building or structure or chattel thereon or by trading or selling or vending food or beverages or carrying on any kind of

business or other activity thereon and from entering or crossing the Claimant's land whether in exercise of an alleged claim or right or otherwise;

- (6) Damages;
  - (7) Interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act 1992 and section 2 of the Civil Procedure (Rate of Interest) Rules, 2008 at a rate of prime rate of the Central Bank of the Bahamas plus 2 percent per annum on any sum found due;
  - (8) Such further or other relief as this Court deems just;
  - (9) Costs.
6. Affidavit evidence shows that the Defendant was served with the documents when they were left in his presence on March 31, 2023 at Tropical Daiquiri, West Bay Street. No appearance was entered by the Defendant.
  7. At the trial of the matter, the Claimant relied on the Witness Statement of Toby Hayes filed 25<sup>th</sup> June 2024 and the Witness Statement of Dave Taylor filed 12<sup>th</sup> July 2024. Both Toby Hayes and Dave Taylor appeared and gave evidence.
  8. The Claimant also sought, and obtained leave, to rely on the Third Affidavit of McFalloughn Bowleg dated June 28, 2023.

### **Issues**

9. The substantive issue before this Court is whether the Defendant is a trespasser on the land of the Claimant as alleged. This requires me to determine:
  - 1) Whether the Claimant owns the land in question and
  - 2) Whether the Defendant occupies/occupied the land and whether the Defendant did/does so without the permission of the owner.

### **Law**

10. It is useful to first set out some principles of law on trespass. Counsel relied on the cases of *In Montague Investments Limited v Westminster College Ltd. and another* [2020] 1 BHS J No 11 and *Fairness Limited v. Steven Bain et al* SCCivApp No. 30 of 2015.
11. In *Montague Investments Limited v Westminster College Ltd. and another* [2020] 1 BHS J No 11 the Plaintiff alleged certain acts of trespass by the Defendant. The Defendants admitted the acts complained of but claimed ownership of the property. In that case, trial judge Charles J found that the Plaintiff was in fact the owner of the land and defined trespass as follows:
 

“[21] Trespass to land is a medieval concept, much developed by the common law. Any unjustifiable intrusion by one person upon land that is in possession of another amounts to a trespass. It is a trespass to place anything on or in the land

which is in the possession of another: *Simpson v Weber* (1925) 41 TLR 302. It matters not how trifling the nature of the action is, a suit in trespass will lie.

[22] In *Robert Addie and Sons (Collieries), Limited v Dumbreck* [1929] A.C. 358 Asquith LJ defined a trespass at page 371 as:

“The trespass is he who goes on the land without invitation of any sort and whose presence is either unknown to the proprietor or, if known, is practically objected to.”

[23] In *Macnab and another v Richardson and another* [2008] EWCA Civ 1631, at paragraph 19, Lloyd LJ defined trespass as follows:

“... the slightest encroachment on another's land is a trespass. So even if the extent of the encroachment in this case is that the mesh, which constitutes the fence in this present case, was over the Richardsons' land but the fence posts were still on the Macnabs' land then the mesh of the fence was an encroachment and a trespass.”

[24] Similarly, in the Bahamian case of *Paradise Island Ltd. v. El Condor Enterprises Ltd.* [1992] BHS J. No. 133, Thorne J held that the encroachment of a wall on the plaintiff's property was a trespass by the defendant.”

12. In *Fairness Limited v. Steven Bain et al* SCCivApp No. 30 of 2015, President Allen of The Bahamas Court of Appeal, adopted, with approval, the principles of law as to trespass as stated in the of Fifth Edition of Halsbury's Laws of England (2015). At paragraph 28, Allen P defined trespass as follows:

“28. Trespass is defined in Volume 97 (Tort) of the Fifth Edition of Halsbury's Laws of England (2015) as the unlawful presence on land in the possession of another. Indeed, according to that text, a person trespasses on land “if he wrongfully sets foot on it, or rides or drives over it, or takes possession of it, or expels the person in possession...”

29. At paragraphs 573 and 574 the authors of Halsbury's Laws say:

“573. If the defendant intends to enter the land on which he trespassed it is no defence that he mistakenly thought that it was his own land; mistake is no defence in trespass. 574. Any form of possession, so long as it is exclusive and exercised with the intention to support a claim of trespass is sufficient to support a claim of trespass against a wrongdoer. It is not necessary, in order to maintain trespass, that the claimant's possession should be lawful, and actual possession is good against all except those who can show a better right to possession in themselves. However, a mere trespasser who goes into occupation cannot by the very act of trespass, and without acquiescence give himself possession against the person he has

ejected...”

### Legal Analysis

- 1) Whether the Claimant owns the land in question.
13. The evidence before me is that the Claimant gained title to the land in question by an Indenture of Conveyance dated 29<sup>th</sup> March 1991. The land conveyed is described in the conveyance as:
 

“ALL THAT piece, parcel or strip land situate in the Western District of the Island of New Providence being bounded on the North by land known as “Rock Point” being land the property of Vakis Limited on the East by West Bay Street on the South by a strip of land lying between West Bay Street aforesaid and the Sea at high water mark and comprising a portion of the tract of land known as “The Caves” and on the West and Northwest following the configuration of the coast by the sea at high water mark which said piece parcel or strip of land has such positions, boundaries, shape, marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the 23<sup>rd</sup> day of October A.D., 1979 between Bahamas Land and Investment Company Limited and Elm Properties Limited and recorded in the Registrar General’s Office in the City of Nassau in Volume 3457 at pages 559 to 563”
  14. The evidence of Dave Taylor, land surveyor is that he conducted a survey and prepared a survey plan, taking into account the plan attached to the Indenture of Conveyance. His plan shows the outline of the parcel of land contained in the conveyance as well as the location of a structure said to be the location of Tropical Daiquiri.
  15. I am satisfied that the Claimant is the owner of the land described in the Conveyance and that the structure complained of, that is “Tropical Daiquiri” is located within the boundaries of the Claimant’s property.
- 2) Whether the Defendant occupies or occupied the land and whether the Defendant does so without the permission of the owner
16. The evidence of Toby Hayes, employed by a company that manages certain properties owned by the Claimant, is that during one of his site visits “in or around March 2019”, he noticed “a makeshift wooden building known at the time as “Daq Shack” where daiquiris were being prepared and sold. There was a generator connected to the beverage stand that produced electricity for that business. Also, there were wooden tables and benches nearby for customers to use.” Mr. Hayes’ evidence is that he “made enquiries to ascertain who the owner was and was told that the proprietor was the Defendant.”

17. Mr. Hayes evidence is that, following this discovery, the attorneys for the Claimant's attorneys wrote to the Defendant informing him that he was encroaching on the Claimant's land. The letter also invited the Defendant to acknowledge the Claimant's ownership of the land by signing the letter. The Claimant received no such acknowledgment from the Defendant.
18. On another site visit "one month later" Mr. Hayes observed that the Defendant continued to operate the beverage stand on the Claimant's land. The Claimant's attorneys issued a second letter to the Defendant and then a third letter. There was no response from the Defendant to the letters from the attorneys for the Claimant.
19. Mr. Hayes' evidence is that he last visited the property on May 20, 2024 and that the structure was still present. He describes the shack as a "permanent structure made of timber and wood." It operated with an electronic device.
20. On this issue, I am satisfied that the Claimant gave no consent to the Defendant to operate the Daiquiri stand known as "Tropical Daiquiri" on its land. The Defendant operated same without permission and is a trespasser.

### **The Injunction and Declaration as reliefs**

21. The effect of trespass is that there has been a wrongful occupation or user of the land. In an appropriate case, the Court may order an injunction and/or a declaration in order to prevent further acts of trespass. The grant of injunctions and declarations is discretionary. They are discretionary remedies granted at the discretion of the court, taking into account the circumstances and nature of the trespass.
22. In this case, I have held that I am satisfied that the Claimant is the owner of the land on which the acts of trespass have taken place. The evidence is that there is a structure erected by the Defendant which is situate on the Claimant's land. That structure was erected and installed without the permission of the Claimant. This is a continuing trespass. Damages are not an adequate remedy. In this case, I am satisfied that the acts of trespass as alleged have been made out and that this is an appropriate case for the court to restrain the Defendant from continuing and further acts of trespass. I am satisfied that this is an appropriate case for an injunction.
23. The Claimant has also sought a Declaration. This raises the question as to whether a Declaration is necessary or appropriate in this case.
24. The Claimant's case is that there is an offending structure from which the Defendant operated. Appropriate remedies are an injunction to restrain the trespass, the mandatory orders sought (to remove the structure) and damages. This begs the question as to the purpose of the declaration.
25. Declarations are primarily useful in cases where a Defendant has asserted a right over the property and the rights of ownership may be usefully declared. Declarations are also useful where an injunction has proven insufficient to stop a trespass. Neither of those cases exist here. These are some examples of cases where the declaration is best utilized.
26. In the present case, a declaration may also be useful where there has been no appearance by the Defendant and where it may be appropriate to declare the right proven by the

Claimant. However it is my view, especially given the absence of the Defendant, that any declaration made ought not to traverse matters which were not in issue before the court or which were not adjudicated upon.

27. On examination of the declaration sought, it seems to me that the terms are excessively wide and unlimited. The proposed terms are unnecessary for the resolution of this dispute and goes beyond the resolution of this dispute. The declaration as sought would cover not only the singular right as adjudicated on before me but also a declaration that the Defendant “has no claim or right.... to any part or portion [of the entirety of the parcel of land] and is not entitled to clear down, build on or improve, enter or cross the Claimant’s land *whether in exercise of an alleged claim or right or otherwise.*”
28. The case before me concerns the right of the Defendant, trading as “Daq Shack” or “Tropical Daiquiri”, to erect and operate a beverage stand on the Claimant’s property. There is no evidence before me as to any other proprietary right or ownership interest or easement in relation to any other part of the land. There is no evidence before me that the Defendant is asserting a proprietary right which assertion requires a resolution. There is also no evidence before me as to whether there is any type of right or interest that may vest in the Defendant. There is no evidence before me that the Defendant has any level of proprietary interest and there is no evidence before me that he has none. To go further and make a declaration as to any “alleged claim or right” over the entire parcel is unnecessarily wide and is uncalled for in these circumstances. The evidence before me is that the Claimant holds title by conveyance of the property. What was proven, in the absence of an appearance or case by the Defendant, is that the legal title vests in the Claimant and that there was no permission for the particular acts of occupation taken by the Defendant viz, the erection and operation of a beverage stand. The case of the Claimant does not lie any higher than that.
29. What I have before me is an uncontested claim in trespass. I am satisfied that the Claimant owns the property and that the Defendant does not have its consent to occupy the property i.e. the Defendant, trading as “Daq Shack” or “Tropical Daiquiri”, is not entitled to erect and operate a beverage stand on the Claimant’s property. However, this judgment is not a determination of ownership rights and interest in property. To that extent, this court will refrain from making the Declaration in the terms sought.
30. I am minded to grant a declaration limited to the facts of this case. Therefore the declaration is granted in terms as below. The injunction will similarly be limited to the facts of this case.

### **Conclusion**

31. The effect of trespass is that there has been a wrongful occupation or user of the land.
32. In this case, I am satisfied that the acts of trespass as alleged have been made out.
33. The Claimant is entitled to the relief and declaration as ordered below.

### **Damages**

34. Damages to be assessed.

### **Costs**

35. The Defendant shall pay the Claimant's costs of this action, such costs to be assessed by this Court.

**ORDER**

36. The order and directions of this Court are as follow:

(1) It is hereby DECLARED THAT:

The Defendant has no right to erect or maintain the structure or shack known as or called "Daq Shaq" or "Tropical Daiquiri" on the Claimant's land being ALL THAT piece, parcel or strip land situate in the Western District of the Island of New Providence being bounded on the North by land known as "Rock Point" being land the property of Vakis Limited on the East by West Bay Street on the South by a strip of land lying between West Bay Street aforesaid and the Sea at high water mark and comprising a portion of the tract of land known as "The Caves" and on the West and Northwest following the configuration of the coast by the sea at high water mark which said piece parcel or strip of land has such positions, boundaries, shape, marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the 23<sup>rd</sup> day of October A.D., 1979 between Bahamas Land and Investment Company Limited and Elm Properties Limited and recorded in the Registrar General's Office in the City of Nassau in Volume 3457 at pages 559 to 563 (hereinafter referred to as "the Claimant's land").

(2) It is hereby ORDERED THAT:

(i) The Defendant do pull down and remove the structure or shack known as or called "Daq Shaq" or "Tropical Daiquiris" on the Claimant's land within 3 weeks from the date hereof;



(ii) the Defendant do remove all tables, benches, and other chattels placed on the Claimant's land by him, his servants or agents within 3 weeks from the date hereof;

(iii) the Defendant do remove any other items placed on the Claimant's land by him, his servants or agents within within 3 weeks from the date hereof;

(iv) an injunction is hereby granted to restrain the Defendant, and the Defendant is hereby restrained, whether by himself or by his servants or agents or otherwise howsoever from trespassing on the Claimant's land or to any portion thereof by constructing or allowing to be constructed or continuing the construction of any building or structure or chattel thereon or by trading or selling or vending food or beverages or carrying on any kind of business or other activity thereon;

(v) Damages are awarded to the Claimant, such damages to be assessed.

(vi) The Claimant is entitled to interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act 1992 and section 2 of the Civil Procedure (Rate of Interest) Rules, 2008 at a rate of 6.25 per centum per annum on any damages so assessed.

(vii) Costs of the action are awarded to the Claimant, such costs to be assessed.

**Dated this 2nd day of August 2024**

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a large, sweeping flourish underneath.

**Carla D. Card-Stubbs J**