

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**2023/CLE/GEN/00217**

In the matter of ALL those parcels of land comprising portions of the Sea Beach Addition situate in the vicinity of “Delaporte” in the Western District of the Island of New Providence in the said Commonwealth forming portions of Block Number Two (2) of the said Sea Beach Addition

**BETWEEN**

**VAKIS LIMITED**

Claimant

AND

**(1) HARVEY NIXON**

**(2) TROY NIXON**

**(3) AMBROSE NIXON**

**(4) WAYDE NIXON**

(Personally and as executors of the Estate of King Richard Nixon, deceased)

**(5) KIRKLAND MACKEY**

**(6) MARIE MACKEY**

Defendants

**RULING**

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<b>Before:</b>	The Hon. Madam Justice Carla Card-Stubbs
<b>Appearances:</b>	Mr. Dwight Ginton for the Claimant
	Mr. Bandele LaFleur for the Third Defendant
	Mr. K. Cadwell Armbrister for the First, Second and Fourth Defendants
	Joseph Jerome D’Arceuil for the Fifth and Sixth Defendants

**Hearing Dates:** 1 December, 2023

*Interlocutory Injunction-American Cyanamid Principles-Trespass-Considerations for the Court in determining whether to grant interlocutory injunction*

**Introduction & Background**

[1.] This is the Claimant's application for an interlocutory injunction pending suit.

[2.] With leave of the court, the Claimant amended its statement of case and filed an Amended Standard Claim on July 6, 2023. The Claimant is described as a regular company incorporated under laws of the Commonwealth of the Bahamas. The First to Fourth Defendants are brothers sued both in their personal capacity and as the executors of the estate of their deceased father, King Richard Nixon. The Fifth and Sixth Defendants are joined as parties with an interest in the matter in dispute.

[3.] The claim is one in trespass. The Claimant claims to be the beneficial owner in fee simple of "ALL those parcels of land comprising portions of the Sea Beach Addition situate in the vicinity of "Delaporte" in the Western District of the Island of New Providence in the said Commonwealth forming portions of Block Number (2) of the said Sea Beach Addition one being a triangle shaped parcel of land situate Northwestwardly of the new West Bay Street and the other said parcel being situate Southwestwardly of Lot Number Twelve (12) in the said Block Number Two (2) of the said Sea Beach Additional and which said parcels of land have such positions boundaries shapes marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance made the Seventh day of September A.D.1979 between the Caves Company Limited of the one part and the Vendor of the other part and recorded in the Registry of Records of the said Commonwealth in Volume 3237 at pages 132 to 137 and thereon coloured pink together with all the hereditaments and appurtenances thereto belonging".

[4.] The Claimant's allegation is that the First to Fourth Defendants have commenced works on the land, including excavating the land, clearing down trees and erecting signs.

[5.] The First and Second Defendants filed a Defence and Counterclaim on July 13, 2023. By way of that Defence and Counterclaim, they plead that they have no knowledge of the allegations contained in the Standard Claim and that they have "never contested or challenged that the Claimant is or is not the beneficial owner of the parcels of land described in paragraph 1(2) of the Claimant's Standard Claim form". By Counterclaim, they seek "the legal costs ... incurred in having to defend this claim."

[6.] The Third Defendant filed a Defence on July 22, 2023. By a Conveyance dated 29 November 1985, the Third Defendant purports to have received documentary title to

land being described as ALL THAT piece parcel or tract of Land situate in the Western District of the Island of New Providence aforesaid being lots Number Twelve (12) and Thirteen (13) in Block Number two (2) of the Subdivision called and known as Sea Beach Addition which said piece parcel or Lot of land has such positions shape marks and dimensions as are shown on the diagram or plan attached hereto and thereon coloured pink. The relevance of the Conveyance is a claim to ownership of that part of the land which is the subject of the dispute. The Third Defendant also claims “possessory title”.

[7.] Both the Claimant and the Third Defendant claim to have proper title to the subject land.

[8.] No acknowledgement of service has been filed by the Fourth Defendant. Evidence of service on the Fourth Defendant was filed and provided to the satisfaction of the court.

[9.] The Fifth and Sixth Defendants claim possessory title to a portion of that land.

### **Application for Interlocutory Injunction**

[10.] The Claimant by Notice of Application filed 17 March 2023 sought the following reliefs:

- (1) An Order that the Defendants be restrained whether by themselves or by their servants or agents or otherwise from trespassing on the land of the Claimant being:

“ALL those parcels of land comprising portions of the Sea Beach Addition situate in the vicinity of “Delaporte” in the Western District of the Island of New Providence in the said Commonwealth forming portions of Block Number (2) of the said Sea Beach Addition one being a triangle shaped parcel of land situate Northwestwardly of the new West Bay Street and the other said parcel being situate Southwestwardly of Lot Number Twelve (12) in the said Block Number Two (2) of the said Sea Beach Additional and which said parcels of land have such positions boundaries shapes marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance made the Seventh day of September A.D.1979 between the Caves Company Limited of the one part and the Vendor of the other part and recorded in the Registry of Records of the said Commonwealth in Volume 3237 at pages 132 to 137 and thereon coloured pink.

or any portion thereof by clearing the land or cutting any plants or trees or placing any quarry fill or building material thereon or construction or allowing to be

constructed or continuing the construction of any building or structure of chattel thereon or erecting and “No Trespassing” sign or other sign crossing the Claimant’s land whether in exercise of an alleged claim or right or otherwise until after the trial of this action or until further order

(2) Legal practitioner’s fixed cost on the issue: \$50,000.00

[11.] The Fifth and Sixth Defendants claim possessory title to a portion of that land.

[12.] The Application was supported by the Affidavit of McFalloughn Bowleg filed 17 March 2023 and the Second Affidavit of McFalloughn Bowleg filed 24 April 2023.

[13.] Subsequent to the filing of that Application, the Claimant obtained leave to amend its Standard Claim, to add the Fourth Defendant and to add the capacities in which the Defendants were being sued.

[14.] On September 20, 2023, Kirkland Mackey and Marie Mackey filed a Notice of Application seeking leave to be added as Defendants to the action on the ground that they are documentary owners of Lot Number Twelve (12) in the said Block Number Two (2). On the hearing of that application, there was no objection by the Claimant. On November 15, 2023, this Court ordered that Kirkland Mackey be added as the Fifth Defendant and Marie Mackey as the Sixth Defendant. The basis of that application lies in what the Fifth Defendant and Sixth Defendant allege as an interest in part of the property that is the subject of the dispute.

### **Allegations of the Parties**

[15.] It is useful to capture the allegations of the parties as to their interest in the property which is the subject of the Claimant’s suit:

1. The Claimant claims to be the owner, by conveyance, of “parcels of land comprising portions of the Sea Beach Addition situate in the vicinity of “Delaporte” in the Western District of the Island of New Providence in the said Commonwealth forming portions of Block Number (2) of the said Sea Beach Addition one being a triangle shaped parcel of land situate Northwestwardly of the new West Bay Street and the other said parcel being situate Southwestwardly of Lot Number Twelve (12) in the said Block Number Two (2)”.

2. The First and Second Defendants claim no knowledge as to the ownership of the land and deny any acts of trespass.

3. The Third Defendant alleges that parcels described as Lots 12 and 13 of Block Number (2) of the Sea Beach Addition were conveyed to his father, the late King

Richard Nixon. The allegation is that the Claimant does not possess title to the land complained about.

4. The Claimant has filed affidavits of service of the proceedings on the Fourth Defendant. There is no appearance from the Fourth Defendant.

3. The Fifth and Sixth Defendants allege that they are owners, by conveyance of Lot 12 of Block Number (2) of the said Sea Beach Addition and that they occupied and possessed portions of the land adjacent to Lot 12.

## **Issue**

[16.] The issue for determination whether this Court ought to exercise its discretion in favour of the Claimant by granting the interim injunction sought.

## **Parties Submissions**

### *Claimant*

[17.] The Claimant submitted that it is the beneficial owners to the subject land and that the Defendants' title is refuted despite the Deed of Conveyance dated 29 November 1985. The Claimant purports that the said conveyance is not authentic as a title search proved no prior ownership of the subject land before it was said to be conveyed by another to King Richard Nixon. They argue that this demonstrates that no rights passed to King Richard Nixon and, by extension, to the Defendants.

[18.] As a result of this position the Claimant submits that the Defendants are trespassers on their land.

[19.] The Claimant further submitted that, at present, the subject land is the focus of a governmental negotiation for acquisition and that the continuous trespass and actions of the Defendants by excavating the land, clearing of plants and trees and erecting signage affects the land and by extension could possibly affect the negotiations for acquisition.

[20.] The Claimant, relying on the case of **American Cyanamid Co. v Ethicon Limited** [1975] AC 39, submits that there is a serious issue to be tried as there remains a clear dispute to the ownership of the subject land and trespass of same, that the balance of convenience lies in their favor as the acts being performed on the land by the Defendants may negatively affect any ongoing negotiations with the government, that the preservation of the land may be affected from using the land how they see fit in the future and that damages would not be an adequate remedy in the circumstances because the land may not be able to be returned to its original state.

[21.] The Claimant argues that the status quo ought to be maintained “because the Defendant’s excavation of the land may cause irreparable damage to the property.”

[22.] The Claimant further submitted that there has been a seven (7) month period from their knowledge of the Defendants’ trespass of the subject land. By notification given around September 2022 and by letter dated 15 February 2023 they apprised the Defendant of the trespasses and requested that they cease and desist from trespassing on the land with no result. As such, they submit that they have acted expeditiously in bringing the claim and by extension this application for an interlocutory injunction before the Court.

## **The Law**

[23.] The Claimant makes its application pursuant to The Supreme Court Civil Procedure Rules, 2022, as amended (‘CPR’), Part 17, Rule 17.1. That provides in part:

17.1 Orders for interim remedies: relief which may be granted.

- (1) The Court may grant interim remedies including —
  - (a) ....
  - (b) an interim injunction;

[24.] The Court derives its power to grant an interlocutory injunction pursuant to S. 21 of the **Supreme Court Act** which provides:

21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases *in which it appears to the Court to be just and convenient to do so*.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or either of the parties are legal or equitable.

[Emphasis supplied].

[25.] A court may grant an interlocutory injunction if it appears to the court to be just and convenient to do so. This vests a wide discretion in the court. Since, as in the instant case, a party seeks an interim remedy, it is important that the court seeks to exercise its discretion in such a way that will not irreparably prejudice the substantive

rights of the parties before trial. For this reason, there are certain guidelines that a court will observe in exercising its discretion.

[26.] Time-honoured guidelines are set out in the case of **American Cyanamid Co. v Ethicon Limited** [1975] AC 396, a case relied on by the Claimant. Lord Diplock opined at pages 407 – 408 of that judgement:

*“The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.*

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing": *Wakefield v. Duke of Buccleugh* (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

*As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.*

*It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.*

*Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.* If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the plaintiff's undertaking would not be sufficient to compensate him fully for all of them. *The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies, and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application.* This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case.

[Emphasis supplied]

[27.] The guidelines per the test laid down by Lord Diplock in *American Cyanamid* can be summarized as follows.

1. There is a serious question to be tried.
2. Whether damages would provide an adequate remedy for the Claimant if the application for interim injunction were to be refused and they were to succeed in their claim at trial and, if not, whether damages would provide an adequate remedy for the Defendant if their actions were to be curtailed by the interim injunction and they were to be found at trial as having a right to carry out the actions complained of by the Claimant.
3. Where there is doubt as to the adequacy of the respective remedies in damages, where does the balance of convenience lie?



4. Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.

#### A SERIOUS QUESTION TO BE TRIED

[28.] The Claimant in this case must show that there is a serious question to be tried. The Claimant must show a threatened or continuous breach of its legal right. The claim must not be “frivolous or vexatious”.

6. A ground for the application as set out by the Claimant is that

The Claimant has a serious issue to be tried because the Defendant have trespassed on the Claimant's land by clearing the land and cutting down plants or mature trees. Also, they have placed quarry fill and erected a "No Trespassing - Nixons" sign (see **Sumner Point Properties Limited v. Cummings [2014] 3 BHS J. No. 63**). Notwithstanding the numerous requests made by and on behalf of the Claimant, the Defendants have failed and/or refused to remove the quarry fill and No Trespassing sign from the Claimant's land and has not ceased the operation of his business therefrom.

[29.] The Affidavit of McFalloughn Bowleg filed 17 March 2023 sets out the documentary title which the Claimant relies on to assert their ownership for the land said to be subject of the trespass. At paragraphs 10 to 13 and 15 to 18, the affiant swears to the following:

10. I am informed and verily believe that on or around the 29th July 2022 the Defendants, their servants and/or agents cleared the land of plants and mature trees then placed quarry fill on it. Also, they erected a "No Trespassing - Nixons" sign without the Claimant's permission.
11. On the 14th September 2014 Mr. Toby Hayes, an agent of the Claimant, visited the land and saw that it had been cleared of plants and mature trees and there was quarry fill with a "No Trespassing - Nixons" sign on the land. He took photographs that show the cleared land with the quarry fill and No Trespassing sign with an electronic device that appeared to be working properly at the time. There is now produced and shown to me and exhibited hereto marked "**MB7**" the said photographs.
12. By an electronic message sent by telephone on the 9th September 2022 from the Third Defendant to Mr. Hayes, the Third Defendant attached a copy of the Certificate of Title and asserted that he and his relatives owned Lots Numbers Twelve (12) and Thirteen (13) in Block Number Two (2) Sea Beach Addition. There is now produced and shown to me and exhibited hereto marked "**MB8**" the said message.
13. The Claimant's attorneys carried out a title search for Lot Number Twelve (12) and Lot Number Thirteen (13) in Block Number Two (2) Sea Beach Addition that were purportedly conveyed from Agans Moss who purportedly conveyed

land to King Richard Nixon with the assistance of Computitle Ltd. A search was carried out and a title search report was issued on the 22 September 2022 which revealed that the abovementioned Indenture of Conveyance dated the 29th November 1985 from Agans Moss purported to convey to King Richard Nixon Lots Numbers Twelve (12) and Thirteen (13) in Block Numbers Two (2) Sea Beach Addition. However, the search did not show from whom Agans Moss received title to the said Lots and there were no predecessors in title nor any other means by which Agans Moss could have received title to the said Lots. Accordingly, it appears the said Indenture of Conveyance dated the 29th November 1985 from Agans Moss to King Richard Nixon is not authentic and seemed not to have passed any right, interest or title to King Richard Nixon. There is now produced and shown to me and exhibited hereto marked "MB9" a true copy of the said title search report.

14. ....

15. By a cease-and-desist letter dated the 15<sup>th</sup> February 2023 from Dwight Ginton, Esq., of the Claimant's attorneys, to the First and Second Defendants, it was indicated that the land they had cleared and upon which they had erected the "No trespassing" sign belonged to the Claimant. Also, a demand was made for the Defendants to cease and desist from trespassing on the land and to remove the quarry fill, building material and "No Trespassing" sign they had placed on it. There is now produced and shown to me and exhibited hereto marked "**MB11**" a true copy of the said letter.

16. The Defendants have not responded to the cease-and-desist letter and the quarry fill, building material and "No Trespassing" sign have remained on the Claimant's land.

17. Notwithstanding numerous requests by and on behalf of the Claimant, the Defendants have failed and/or refused to cease and desist from trespassing on the land.

18. I verily believe that the Defendants will continue to trespass on the land unless restrained by this Honourable Court.

[30.] The Affidavit of McFalloughn Bowleg filed September 29, 2023 purports to exhibit "aerial photographs that were taken on behalf of the Department of Lands and Surveys that show the Claimant's land."

[31.] The Affidavits of the Claimant aim to support a claim in trespass.

[32.] The Affidavit of Kirkland Mackey and Marie Mackey filed on September 20, 2023 in support of their application to be joined in the action shows at paragraphs 21 to 37 as follows:

21. We immediately planted grass on Lot Number 12 and a portion of the adjoining property on the Western boundary of Lot 12 that I had previously filled in.

22. On or about the year 2007 We constructed a wall around Lot Number 12 and about 7 Feet beyond the Western boundary of Lot Number 12.

23. There were several coconut trees on the Western boundary of Lot Number 12 that was frequently visited by strangers picking coconuts to use for sale of coconut waters.
24. In addition to picking the coconuts the strangers would always cut the coconuts on the property and left the coconut barks or shells accumulating on the property.
25. Our tenants in the rental units who were always expatriates complaint about the strangers frequenting the adjoining property for coconuts stating that they were concern and felt
26. As a result of the concerns expressed by my tenants we constructed a fence on the Western portion of the adjoining property extending 20 Feet north and completely enclosing the adjoining portion of the property that I had previously filled in.
27. On about June of 2022 when I return home from work and discovered that someone had pushed down the front portion of my fence facing Sea Beach Blvd, that was a part of the fence enclosing the portion of the property on the Western boundary of Lot Number 12.
28. I asked my wife if she had seen the person or persons that pushed down the front portion and she stated that she did not seen or heard the person.
29. I then inquired from Pauline Davis-Thompson the President of the Sea Beach Association whether the Association had mistakenly pushed down the front portion of the fence during their community cleanup operations.
30. She stated that they had not pushed the fence down.
31. On or about August 2022 my wife called me while I was at work stating that a tractor was on the portion of the lot I fenced in, pushing down the remaining fence and clearing down properties on the on the Western side of Lot Number 12.
32. I came home to discover that there was a tractor clearing down properties on the Western boundary of Lot 12 and I immediately inquire on whose instruction they were destroying my fence and clearing down the property?
33. I was informed by the tractor that he was instructed by Nixon to clear the property and he insisted that I call a number and speak with Mr. Nixon.
34. I called the number given to me by the tractor operator and spoke with a male identifying himself as Mr. Nixon who told me that he had a conveyance for the property.
35. I informed him that he does not own the property to no avail.
36. Over the next week persons on the instruction of Nixon continue to clear the property and destroyed and cut down the mature coconut trees on the property.
37. Prior to August 2022 the Nixons were never in possession or were involved with any properties along the Sea Beach Blvd area.

[33.] The essence of the matters set out in that affidavit given by the Fifth and Sixth Defendants is to allege a claim to ownership of a portion of the land in question and to provide evidence of evidence of acts by the Third Defendant as it concerns that portion of the land. That portion of the land is part and parcel of the land which is the subject of this dispute.

[34.] The Third Defendant, Ambrose Nixon, filed an affidavit on September 21, 2023 and a supplemental affidavit on November 27, 2023. By affidavit of on September 21, 2023, the Third Defendant gives the following evidence at paragraphs 10 to 12, 16 - 17 and 22 to 31:

10. That from around the age of 10 I know my father King Richard Nixon to have been in open, notorious, and continuous possession of a parcel of land for 19 years, until his death in the year 2005.
11. That from around the age of 10, I Ambrose Arin Nixon helped my father, King Richard Nixon to possess and farm the parcel of land without any interruption or interference from any other person or entity. And has cultivated, cleared, and planted sturdy trees on the land, and maintained it for 19 years until his death.
12. That after my father's death in 2005, I continued his open, notorious, and continued possession of the parcel of land by placing numerous signage, and fencing on the parcel of land over the past 18 years.
13. ...
14. ...
15. ...
16. That throughout the years my father has been contacted in reference to the purchase of the parcel of land. That after my father's death I was under the assumption that he had sold lot 12 in Block 2 of Sea Beach Addition. That only after completing a full title investigation of my father's estate for probate purposed I learned of the Conveyance between Orange Creek Development Limited and Kirkland and Marie Mackey.
17. That based of my father conversation with me he always intended for me to possess and build on the parcel of land, which is the reason he never built a dwelling home on the property.
18. That the executor of King Richard Nixon Estates officially applied for probate the in 2017 and was granted the probate on July 25 2022.
19. That after receiving the probate form [sic] the Supreme Court Probate Division I contracted an architect and an architectural engineer to create a building plan for the property.
20. That on July 29 2022 I visited the parcel with intent to establish my architectural vision and place new Signage's.
21. ...
22. That throughout the year I was never approached, contact, or disturb by any person or entity in regards to lot 13 in Block 2 of Sea Beach Addition unit August 20 2022.
23. That on August 20 2022 I had a few coconut tree cut down on the parcel of land and was approached for the first time by Maria Mackey who reside in a duplex located on lot 12 in Block 2 of Sea Beach Addition.
24. That on August 30 2022 I had another coconut tree cut down on the parcel of land and spoke with Mr. Kirkland Mackay who encouraged the removal of the coconut tree that was hang over the boundary and the roof of the duplex located on lot 12 in Block 2 of Sea Beach Addition.
25. That on September 22022 I had several loads of fill delivered to the parcel of land.
26. That on September 4 2022 I had the most the fill spread and flatten on the parcel of land.
27. That on September 6 2022 I was contacted by Toby M. Hayes, on behalf of Vakis Ltd.

28. That on September 8 2022 the remainder fill was spread and flatten on the parcel of land
29. That on September 15 2022 I submitted the building plan to Ministry of Works, Department of Physical Plan, and Environmental Health which was approval [sic] in 2022.
30. That I contacted the a [sic] Registered Land Surveyor with the Bahamas Association of Land Surveyor, to investigate the opposing property reference in the conveyance dated 19th June A.D. 1986 between Gibrus Holding Limited of one part and Vakis Limited of the other part and recorded in the registry of record of the said Commonwealth in Volume 4616 at page 346 to 349
31. That Land Surveyor Certification No. is 073, conducted a physical inspection of the parcel of land and the surroundings properties and after careful examination and analysis it is his professional opinion that the opposing property subject to the dispute and the parcel of land identified in my father King Richard Nixon conveyance are not the same properties.

[35.] The case of the Third Defendant is supported by affidavits of Perry Edwards, Jean Vanterpool, Natasha Farah and Bishop Kermit Agaro. The evidence of the affiants in those several affidavits can be summarized as follows: (1) the Third Defendant's father possessed the land, (2) the Third Defendant carried out acts of occupation and possession in the property and (3) the affiants are of the view that the property belonged to the Third Defendant's father.

[36.] The evidence of the Third Defendant corroborates the evidence of the Claimant and that of the Fifth and Sixth Defendants as to the acts carried out on a particular parcel of land.

[37.] The submissions of counsel for the Third Defendant address the question of the ownership of land. The submission is that the Defendants have "possessory title" and that the Claimants has "no title to the property at all, neither possessory nor documentary."

[38.] The suit brought is in relation to an allegation of trespass. Trespass concerns the wrongful interference with property rights. The Claimant is alleging an ongoing wrongful interference with its rights to the subject property. The defences put forward lie in the question of title and ownership of the property. These are serious questions to be tried.

[39.] There is the evidence by affidavit of Perry Edwards, and reflected in the submission of the Third Defendant, that the parcel of land referred to in the conveyance relied on by the Claimant is not the same parcel occupied by the Third Defendant. I find that that is a matter to be ventilated at trial. This contention also supports this court's finding that there is a serious issue to be tried.

## THE ADEQUACY OF DAMAGES AS REMEDY

[40.] The second limb of the *American Cyanamid test*, as per the guidelines is the consideration of the adequacy of damages as a remedy. If this Court were to exercise its discretion against the Claimant, and refuse to grant the injunction, this court must consider whether the Claimant can be compensated in damages. If this Court were to exercise its discretion in favour of the Claimant, and grant the injunction, this court must consider whether the Defendant could be compensated in damages, if the Defendant were to prevail at trial. In other words, this Court must consider the position of the parties, in the event they were to prevail at trial, and the relative impact of the grant of the injunction or the refusal of the interim remedy as well as the whether the parties are in a financial position to pay such damages as an alternative remedy.

[41.] In this case, if the Claimant were to be successful at trial, would damages would be an adequate remedy for the Claimant if the interim remedy sought is refused and if the acts complained of were to continue? If the answer to that, is “no”, I must also consider the following question. If the Defendants were to be successful at trial, could the Defendants be adequately compensated in damages if they were to be enjoined from continuing the acts on the subject property?

[42.] A ground for the application as set out by the Claimant is that

In this case damages may not be an adequate remedy for Claimant if the Defendants are allowed to continue his trespass that has included clearing the land because the mature trees may be difficult to replace and topography of the land may be impossible to restore after being excavated or levelled (see **Nave v. Hunter**, [1998] B.C.J. No. 314).

[43.] In the Affidavit of McFalloughn Bowleg filed 17 March 2023, the affiant swears to the following at paragraph 14:

14. The Government of the said Commonwealth of the Bahamas has been in correspondence by emails with the Claimant regarding its acquisition of a tract of land that belongs to the Claimant for the construction of a new road, which is within close proximity to the Claimant's land. The Claimant is of the view that Defendant's activities may adversely affect its discussions with the Government regarding its acquisition of the said land and any future plans the Government may have for the area. There is now produced and shown to me and exhibited hereto marked "**MB10**" a true copy of the said emails.

[44.] By contrast, the activities embarked on by the Third Defendant, as shown in his affidavit and referred to before, relate to cutting down trees, the spreading of fill and a general intention to build a residence.

[45.] The evidence from each party is that the topography of the land is being vastly altered.

[46.] The evidence of the Claimant is that it has entered discussions with the Government concerning the acquisition of the land. It seems to me that if the Defendant is allowed to continue the actions undertaken, which could include the construction of a building, then it would affect the value of the land. I accept the Claimant's argument that such continued activities may make it difficult, if not impossible, for the land to be restored. One may suppose that a loss in value of land could be remedied in damages but I do not find that to be so easy an equation in this case. If the Third Defendant were to continue his actions, it may also adversely affect the continued discussions between the Claimant and the Government for the acquisition of the property. Such a result is not easily quantifiable, or remediable. On the other hand, if the Defendants are prevented by injunction from cutting down trees, spreading fill and constructing a residence, these are activities that could be resumed if the Defendants were to be found, at a trial, to have established a right to continue these actions.

[47.] There is no evidence by the Third Defendant of any prejudice that he would suffer by a delay in the carrying out of these activities. In particular, there appears to be no urgency in the construction of the building for which approval was said to be sought and obtained. In fact, there is no submission by the Third Defendant in this regard. The sole thrust of the Third Defendant's submission concerned the claim for "documentary and possessory title" which the Third Defendant submits as a complete defence to the allegation of trespass.

[48.] It is my finding that damages would not be an adequate remedy for the Claimant if the acts complained of are allowed to continue unabated pending trial. It is also my finding that the Defendants, where responsible for these acts, could be adequately compensated in damages. The Claimant, a corporate entity, asserts title to several parcels of land, including the property subject of the dispute. The Claimant, in submissions, has indicated its position to provide the usual undertaking in damages. There has been no objection or response to this. In this case, the Claimant will be required to provide an undertaking in damages.

#### THE BALANCE OF CONVENIENCE

[49.] Given my determination above that damages would not be an adequate remedy for the Claimant, it becomes superfluous to consider this issue. Nevertheless, based on the factors considered in relation to the matter of adequacy of damages, and for the reasons given in that regard, is also my determination that the balance of convenience lies in favour of the Claimant. There is a greater risk of irreparable harm if the injunction is not granted than if it is.

## STATUS QUO

[50.] This is an unnecessary consideration given the foregoing findings and determination.

## **The Decision**

[51.] For the foregoing reasons, this court will grant the injunction as sought.

## **Costs**

[52.] Exercising my discretion pursuant to Part 17, Rule 17.5, this court orders that the costs of this application will be costs in the cause.

## **ORDER**

[53.] The order and direction of this Court is THAT:

1. The First, Second, Third and Fourth Defendants be restrained whether by themselves or by servants or agents or otherwise from trespassing on the land subject of this action brought by the Claimant being:

*"ALL those two parcels of land comprising portions of the Sea Beach Addition situate in the vicinity of "Delaporte" in the Western District of the Island of New Providence in the said Commonwealth forming portions of Block Number Two (2) of the said Sea Reach Addition one being a Bay Street and the other said parcel being situate Southwestwardly of Lot triangle shaped parcel of land situate Northwestwardly of the new West Number Twelve (12) in the said Block Number Two (0) of the said Sea Beach Additional and which said parcels of land have such positions boundaries shapes marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance made the Seventh day of September A.D. 1979 between the Caves Company Limited of the one part and the Vendor of the other part and recorded in the Registry of Records of the said Commonwealth in Volume 3237 at pages 132 to 137 and thereon coloured Pink."*



or to any portion thereof by clearing the land or cutting any plants or trees or placing any quarry fill or building material thereon or construction or allowing to be constructed or continuing the construction of any building or structure or chattel thereon or erecting any "No Trespassing" sign or other sign or crossing the Claimant's land whether in exercise of an alleged claim or right or otherwise until after the trial and determination of this action or until further order.

2. The Claimant undertakes to, and shall, comply with any Order this Court may make in the event that this Court shall hereafter find that the Defendants, or any of them, shall have sustained any loss by reason of this Order and that such Defendants, or any of them, ought to be compensated for that loss by the Claimant.

3. Any party shall be at liberty to apply to the court to discharge or vary the terms of this Order or to seek directions upon giving not less than 7 days' notice to the other parties herein.

4. Costs of this Application are to be costs in the cause.

Dated the 14<sup>th</sup> day of April, 2025

A handwritten signature in black ink, appearing to read 'Carla Card-Stubbs', with a stylized flourish at the end.

Carla Card-Stubbs

Justice