

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2023/CLE/00231

BETWEEN:

**~~J. MICHAEL SAUNDERS (under Power of Attorney of Satish Daryanani)~~
JEFF KESWANI (under Power of Attorney of Satish Daryanani)**

Claimant

**AND
MICHAEL HEPBURN
AND
NAFTALY ELIAS**

Defendants

Before:	The Honourable Mr. Justice Klein
Appearances:	Garvin Cassar for the Claimant Darren Bain for the Defendants
Hearing Dates:	5 April, 24 April 2024; Further affidavits received 3 July, 2 October 2024.

RULING

Consignment Agreement—Souvenirs and T-shirts held on consignment for sale on behalf of claimant by chain of luxury goods stores—Stores going into receivership—Goods returned to claimant by joint receiver-managers (JRMs)—First defendant a former receiver-manager, second defendant a former employee and agent of the claimant—Defendants operating similar stores selling jewellery and souvenirs—Search and seizure Order executed by agents of the claimant on stores and premises owned by defendants—Defendants alleging four diamonds belonging to second defendant caught up in goods seized—Evidence of ownership—Relative strength of parties’ title—Gemological Institute of America (GIA) Certificate

INTRODUCTION AND BACKGROUND

1. This is an application by Notice of Application filed 30 October 2023 (“the Application”) concerning a dispute over the ownership of four loose diamonds that were caught up in a search and seizure Order (“SS Order”) granted by this Court in July of 2023.
2. The dispute arises in the context of commercial dealings and acrimonious litigation between the claimant and a number of other defendants (see below) over a large consignment of jewellery and souvenir goods that were being retailed at various luxury-goods stores on behalf of the claimant. The merchandise was returned to the claimant after the parties’ business dealings broke down and the stores were placed in receivership, but it was alleged that some of the merchandise was retained by the defendants to the current action, which led to the grant of the SS Order.

3. In the earlier ruling, I described the commercial relationship between the original parties as being characterized by “...*cross-allegations of sharp business dealings, commercial sabotage, illegal tax practices...illicit activities*” (Ruling, 28 January 2022 in Action No. 2020/CLE/gen/000594).

Factual Background

4. As alluded to, the background to this claim is highly unusual, perhaps even bizarre. It is no stretch of the imagination to say that these proceedings required the Court to believe many “*impossible things*”, reminiscent of the remark by the Queen in Lewis Carroll’s classic “*Through the Looking Glass*”—“...*sometimes I’ve believed as many as six impossible things before breakfast*”.

5. The Action out of which the current proceedings arise (Action No. 000594 of 2020), was a claim by the Claimant, Satish Daryanani, by Writ filed 30 June 2020, for the sum of \$23 million against a number of defendants, including, *inter alia*, Mr. Leon Griffin (first defendant), Biswajit Pati (second defendant), Jitender Keswani (first of second-named defendants) and Raj Chandirimani (second of second-named defendants). A number of companies, said to be owned or operated by the first defendant, were also named as defendants: Treasures Bahamas Ltd., BJC Bahama Jewellery Company Ltd., Cotton House Bahamas Development Park Corp., Park Lane Jewellers Ltd., and Treasures International LLC. The claim was said to arise out of the breach of an agreement between the claimant and the first defendant for payment in respect of consigned jewellery and goods being retailed through a number of fine goods stores owned or operated by the first defendant through the named companies.

6. Both the first and second defendants were fatally shot in separate incidents in August and December of 2021. The stores operated by the defendants were placed in receivership, and Mr. Michael Hepburn and Mr. Richard Simms were appointed joint receiver-managers (JRMs) by Consent Order dated 24 January 2022. In this capacity, they later took possession of the goods and inventory in the stores and continued the operation of the businesses. They also oversaw, as JRMs, the return to the claimant (through his agent) of the unsold jewellery and the souvenir items held on consignment for sale on behalf of the claimant. The agent of the plaintiff, who received the goods, was Mr. Naftaly Elias, the second defendant to this claim, who also responsible for the export of the jewellery back to the US to the claimant.

7. A bit needs to be said of Mr. Elias’ involvement in these proceedings. It appears that he arrived in The Bahamas in October of 2021, at the behest of the claimant, to manage the claimant’s “business operations” here. He was authorized in writing in June of 2022 to take control of all of the merchandise belonging to the claimant or held by him on consignment for sale with the view of trying to sell them, although the evidence suggests that he held this authority from January of 2022. The June 2022 instructions to sell were subsequently countermanded by the claimant, who demanded the return of the merchandise.

8. Mr. Elias apparently returned merchandise valued at some \$5,403,305.00 in July of 2022, but there was some back and forth between Mr. Elias and the claimant over whether the entirety of the consigned merchandise was returned to the US. The claimant asserted, through his legal agent that the defendants retained some of the souvenirs and merchandise. To the contrary, Mr. Elias claimed that the claimant's valuation of the inventory was inflated and exceeded the valuations in the JRMs' reports.

9. To further complicate matters, it appears that Mr. Elias, along with the first-named defendant, may also have been retailing luxury goods on their own behalf from other stores. In this regard, it appears that Mr. Elias also owns a US jewellery retail company, Roniet Creations Ltd., which was one of the suppliers of jewellery to the claimant for resale here.

10. At some point following the return of the goods in 2022, it appears that there was a falling out between Mr. Daryanani and Mr. Elias. Mr. Elias claims that the claimant owes him some \$950,000.00, which was apparently acknowledged by the claimant, resulting from unpaid consigned jewellery supplied by the second defendant's company plus what was owing from his unpaid employment contract. This application is not concerned with that dispute.

The current proceedings

11. The current proceedings were commenced by Standard Claim Form ("SCF") filed 29 March 2023 (amended 6 June 2023), which pleaded at para. 2 as follows:

"The Claimant is the owner of merchandise, namely jewelry and souvenirs/t-shirts valued at or around \$5,403, 503.00 and \$2,326,928.00 respectively, placed in the custody of the Defendants on or around January 2022 with the understanding that the Defendants would, acting as the agents and trustees, seek to liquidate the merchandise if possible and to forward the proceeds of sale to the Claimant, minus any expenses incurred by the Defendants in relation to the safe custody of the goods, storage security, etc. There is exhibited hereto copies of the invoices confirming the Claimant's ownership rights in the merchandise and marked 'JMS-2'. There is now produced and shown to me a copy of an inventory of jewelry items returned to Naftaly Elias and marked 'JMS-3'".

12. By Notice of Application filed 1 May 2023, the claimant (through his attorney J. Michael Saunders) applied for a search and seizure Order against the defendants, to recover merchandise belonging to the claimant that allegedly remained in the possession of the defendants. The application was supported by the affidavits of J. Michael Saunders and Vishal Dewalia filed that same day. A supplemental affidavit of J. Michael Saunders was filed 22 May 2023. The Court granted the SS Order at a without-notice hearing on 20 June 2023 (Order filed 5 July 2023), which was executed on 6 July 2023 on several locations owned or operated by the defendants, including Solitaire Jewellery Ltd. ("Solitaire") (see further below). The SS Order was amended on 10 August 2023 to include several additional locations where items were allegedly being stored by the defendants, and subsequently executed on those locations.

13. In an affidavit filed 21 July 2023, Mr. Hepburn asserted that he was part owner of Solitaire, and it appears that he and Mr. Elias were involved in retailing jewellery on their own behalf from those premises. The ownership of Solitaire is somewhat obscure, but it appears from affidavit evidence that the shares in the company were beneficially purchased by a company called “AMAKK Investments Ltd.” in July 2021, and that Mr. Hepburn and Mr. Daryanani styled themselves as the “*beneficial owners and operators*” of Solitaire. Further, it appears that there was a memorandum of agreement executed between Solitaire and Michael Hepburn and Co. with Sovereign (Mr. Daryanani’s company) for the retail of jewellery through Sovereign.

14. As it turned out, the searches yielded many items of jewellery and thousands of boxes of souvenir goods. The ownership of some of the merchandise was disputed, and those goods to which Mr. Elias was able to establish ownership based on clear documentary evidence were returned to him by the claimant’s attorney and independent attorney appointed by the Court to supervise the seizure order, following an inventory of the items conducted by the parties. Perhaps not surprisingly, a significant amount of the recovered items did belong to the claimant. Several items, whose ownership could not be conclusively determined during the inventories, were marked as disputed and secured in a storage facility under the authority of the independent attorney. Mr. Elias now alleges that there are four diamonds among the disputed goods that belong to him, hence the claim for their return.

15. The JRMs resigned in February of 2024, and by Order dated 24 February 2024, the Court sanctioned their resignation. Mr. Edward Rolle, who was formerly employed by the JRMs, was appointed receiver-manager. The receivership was terminated by Order dated 27 October 2023. Under a settlement agreement with the estate of the first defendant (details of which were not disclosed), the businesses were turned over to Jitendar Keswani, as attorney for Satish Daryanani, who continued to operate the businesses (or some of them). Mr. Saunders made application for release from the Order giving him power of attorney in respect of Mr. Daryanani by application dated 4 March 2024, citing that he “*no longer has the support of his principal*” and was unable to obtain any instructions from him. The Court acceded to this request. Mr. Keswani subsequently applied for an order appointing him to act in a representative capacity by power of attorney on behalf of Mr. Daryanani on 3rd April 2024, which was granted.

16. Among the incredulous features of these proceedings, is the fact that the claimant’s current representative, by power of attorney, is himself a former defendant to the claimant’s multimillion dollar claim. Secondly, one of the former JRMs is a defendant to the claim involving goods over which he was at one point a receiver-manager, and in respect of transactions carried out during the period of his appointment. Thirdly, the second defendant, who asserts ownership to the items, was formerly an employee and agent of the claimant, and may have been responsible for managing the franchises on his behalf post October 2021. Further, during the course of the earlier proceedings, the second-named defendants (including Mr. Keswani), who initially resisted the claim that monies were owing under the retail agreement, did an about-face and asserted in a later affidavit that in fact the first-named defendants were indebted to the claimant for over US\$33

million. I have already mentioned that, sadly, two of the principal defendants to the original action met their demise in suspicious circumstances.

17. Against this backdrop, it will be readily understood why the Court has great difficulty in accepting at face value anything said by or on behalf of the parties on either side of the fence.

The Application

18. The Application seeks an order that four diamonds, which were identified by their Gemological Institute of America (“GIA”) Report Numbers, be released to the defendants on the ground that the second defendant is able to confirm ownership by way of original GIA certificate. The details of the diamonds were as follows: (1) GIA No. 2328152119 (1.3 ct., round); (2) GIA No. 2155205425 (2.02 ct., pear shaped); (3) GIA No. 6335922823 (2.01 ct., cushion shaped); and (4) GIA No. US 400135069D (1.51 ct., square modified). For convenience, I will identify the diamonds respectively as Diamonds 1, 2, 3 and 4. The Application was supported in the main by an affidavit of Naftaly Elias filed 30 October 2023, and the subsequent affidavit of Michael Hepburn filed 7 May 2024.

19. In response, the Claimant relied on a number of affidavits, as follows: (i) five affidavits of Vishal Dewalia, filed 2 October 2024, 16 January 2024, 8 March 2023, 1 May 2023 and 3 August 2023; (ii) the affidavit of Jitender Keswani filed 4 April 2024; and (iii) the affidavit of Yash Jhamnani filed 8 August 2023. It is not necessary to refer to all of these affidavits.

20. I also heard oral arguments from counsel for the parties on 5, 24 April 2024, and gave the parties leave to file any additional affidavits, which the Court would consider on the papers in addition to the oral arguments.

The defendant’s claim

21. The main planks of the defendants’ claim to ownership is that (i) they are in possession of the original or authentic GIA reports (“certificates”), which are normally only held by a person who has (or had) possession of the diamonds; (ii) that the diamonds were not included in the claimant’s inventory of the list of jewellery, which was exhibited as “JMS 2” to the SCF; and (iii) that the date of the invoices did not match the date when the claimant said the stones were purchased.

22. The defendants assert that Mr. Elias’ ownership of the diamonds is solidified by possession of the original GIA certificates, and sales purchase invoices # 9956, 8517, 6218, 7589 which were said to correspond to the carat weight, shape and cutting style listed in the GIA certificates. However, the sales purchase invoices were never produced.

23. As to the former claim, the defendants procured a letter from a Ms. Gail Brett Levine, an independent appraiser with the GIA, who apparently confirmed that the original GIA certificates were presented for her examination and matched the diamonds in question (“the Levine report”). In her report, which was exhibited to the affidavit of Michael Hepburn, Levine explained her assessment of the GIA Reports as follows:

“Attached are the reprinted copies of the GIA Laboratory Reports of the four diamonds above that were secured on GIA.edu and match the original GIA Laboratory Reports given to me. All GIA reports contain security features such as a hologram, security screen and microprint lines that prevent them from being forged or duplicated. GIA’s Report Check service verifies whether the information on the report matches what’s contained in the GIA database. A report from GIA.edu only reproduces what data was inputted into the system at the time the original diamonds were presented to the GIA Laboratory.

Anyone who applies can receive a copy of a GIA Laboratory Report. However, they will not have the original Report(s). As set out below, if the original GIA Laboratory Report is lost, in order to get another “original report”, the diamonds must be resubmitted to a GIA Laboratory.”

24. The defendants also refuted the allegations of ownership of the diamonds made in the first affidavit of Vishal Dewalia. In that affidavit, it was asserted as follows:

“5. Mr. Elias obtained the certificates following the inventory of January 2022 when the stones as well as other jewelry and merchandise, namely souvenirs and T-shirts were handed over to him as agent and trustee of Mr. Satish Daryanani...

7. These stones were purchased by Mr. Daryanani from Sovereign Jewelry Inc. company on December 3rd, 2019, now produced and shown to me marked exhibit VD-1 are copies of the invoices from the vendor to Mr. Daryanani’s company (Treasures Bahamas Limited...

8. There are also produced and shown to me copies of the customs entries reflecting the payment to Bahamas Customs duties of the stones that are marked exhibit “VD-2”.

25. In his affidavit, Mr. Hepburn made several points in reply: (i) that the diamonds were not in the inventory of jewellery that was returned to Mr. Elias for reshipment to the claimant, proving that they were never in the possession of Mr. Elias; (ii) that the invoices relating to purchases are dated 7 November 2019 and not December 2019; and (iii) that the invoices do not include any personal identification markings to clearly identify the diamonds, such as the GIA markings.

The claimant’s case

26. As indicated, the claimant filed a number of affidavits in support of his claim, the most recent sworn 2 October 2024. The main points taken by the claimant are as follows: (i) that the GIA documents are not evidence of ownership and are merely certificates of authenticity and grading of diamonds, which can be obtained by any one; (ii) that the way of proving ownership of the diamonds was by way of producing receipt or invoices, which the defendants failed to do; and

(iii) that Mr. Elias abused his position of trust to obtain the information and documents in relation to the diamonds, which were used to advance a spurious ownership claim.

27. As to the GIA certificates, the Claimant contends that the brochures are not an “invoice or receipt”. It was submitted that GIA is a research institution that neither sells nor trades in diamonds and therefore cannot give an invoice to establish ownership of any kind of diamond. The claimant further submitted that anyone can go online and get copies of the GIA Reports, and that authorized retail dealers in the jewellery trade, if they produce the GIA Report Numbers, can get an “*authentic GIA report if they requisition for the same*”. The claimant also takes issue with the “report” of Ms. Levine, which is said to lack certification or verification.

28. The claimant contends that “*the only true means of showing ownership to the diamonds is the old fashioned way used for any form of asset ownership—purchasing receipts and by further extension importation receipts.*” In this regard, he provided copies of the following invoices in one of the affidavits of Vishal Dewalia as follows:

Diamond 1:	Invoice from Shefi Diamond Inc. to Sovereign Jewelers Inc. (“Sovereign”), (the Claimant’s US company) on the 29 November 2019 in respect of a diamond style-SD-8-19007: 1.30 ct. round, said to be accompanied by the original GIA certificate, \$7,877.00.
Diamonds 2, 3:	Invoice from Scintillating Imports Inc. of New York to Parklane Jewellers, Bahamas, dated 5 th November 2019, which included the following items: (i) item. 066CE200A, description 2.20 ct. RBC (round brilliant cut) HS12 920086703, \$8,738.70; and (ii) item 067CE2001, 2.01 ct. RBC 1 VS2 400123353, \$8,542.50.
Diamond 4:	Invoice from Roniet Creations Inc. to Sovereign, dated 31 October 2019, which included the following: Princess Diamond, IBVS2 EGL, 1.51. (ct)., \$5,617.00.

29. In addition, the claimant submitted Customs invoices for imports into The Bahamas associated with the majority of the diamonds. There is an invoice from Sovereign to Treasures Bahamas Ltd., dated 3 December 2019, apparently presented to Bahamas Customs on 4 December 2019, listing a diamond that has the same tag as Diamond No. 1, although the price is said to be \$822.22. A payment receipt stamped 4 December 2019 by Customs is attached, but the amount paid is illegible. Then, there is another invoice dated 7 November 2019 from Sovereign to Parklane Jewellers dated 7 November 2019 and stamped with the Bahamas Customs stamp at Lynden Pindling Airport (“LPIA”) on 8 November 2019, with diamonds matching the tags at 3 and 4, although the prices listed in the invoice are respectively \$878.37 and \$770.70.

30. The claimant’s case in essence is that, other than the certificates in his possession, the second defendant has produced no evidence of his purchase of the stones or other documentation to show how the diamonds came into his ownership or possession. As to the certificates, it is asserted in the affidavit of Visal Dewlia dated 8th March 2024 that “...*Mr. Elias has abused his*

managerial role and confidence as an employee of Satish Daryanani during the years in question when he held private documents and oversaw the Treasures Bahamas Ltd. and Park Lane Jewellery Company before his arrival in the Bahamas in October 2021.”

ANALYSIS AND DISCUSSION

Legal Principles

31. Where there are competing claims to ownership of a chattel (which would include jewelry or precious stones), the Court will determine the dispute by reference to the relative strength of the parties’ claims. The party with the better claim to title will prevail: see **Costello v Chief Constable of Derbyshire Constabulary** [2001] EWCA Civ. 381 (UK Court of Appeal), at para. 14. That case is considered among the leading authorities on possessory title in relation to chattels, and the Court of Appeal confirmed, among others, two important principles governing such claims: (i) possession of a chattel confers a possessory title which is valid against all except those with a superior claim; and (ii) in disputes over ownership, the court has to determine who has the better title.

32. The standard of proof is the regular civil standard of the balance of probabilities, and the claimant or defendant must show that it is more likely than not that they are the owner based on documentary and factual evidence.

Analysis of evidence

33. I must say that I cannot agree with the defendants that the mere possession of the original certificates (which were presented to the Court for inspection) means that they own the diamonds—a proposition which they put so high as to say that possession of the certificates eliminates any “*question of ownership*”.

34. There is merit in the procedural objections taken by the Claimant to the “Levine report”, on the grounds that it does not meet the criteria nor formalities for the giving of expert evidence under the *CPR 2022*. Nonetheless, I exercised my discretion to consider the report *de bene esse*. In fact, despite its formal defects, the report did not undermine the claimant’s case. For one, it did not purport to say that the defendants own the diamonds, but only that the certificates presented were authentic and the details of the diamonds matched what was in the GIA database.

35. Second, the Levine report said that in order for there to be concurrent sets of original certificates, the actual diamonds would have to be presented for assessment. I accept this as a correct statement of the GIA policy in this regard, and reject the claimant’s suggestion that *any* jewellery retailer can obtain authentic or original certificates simply by making a requisition based on knowledge of the GIA numbers on the stones.

36. I agree, however, with the claimant that just being in possession of the original certificates is not *ipso facto* proof of ownership. Certificates of authenticity or “grading” reports are not conclusive of ownership, although they may support a claim in combination with other evidence. The claimant has established that there was a business and personal relationship with Mr. Elias (which the second defendant has confirmed), which could have provided him with opportunities to legitimately come into possession of the certificates as agent for the claimant.

37. I also agree with the claimant that a person asserting ownership of the diamonds should be in a position to provide some other evidence, such as invoices or receipts evidencing their chain of ownership. The claimant has in fact provided receipts, relatively contemporaneous to the period when it is alleged the stones were purchased, which match the cut and weight of the diamonds in question. There are also Customs invoices containing items which roughly correspond to the cut and weight of at least 3 of the diamonds, and which are also dated around the time the claimant contends that the diamonds were imported.

38. There is a significant disparity in the prices listed in the sales invoices and those presented for Customs. However, based on the earlier litigation and the allegations levelled there, it is safe to assume that the diamonds were probably undervalued for Customs purposes. For example, the 1.51 ct. diamond, valued at \$5,617.00 in the sales invoice, was listed for \$770.72 in the invoice presented to Customs—a fraction of the real value of the diamond. As alluded to, similar allegations of attempts to defraud Customs surfaced during the earlier proceedings between the parties. But this observation does not go to the ownership of the items, although it may be a red flag for the Customs authorities, who may wish to pay greater vigilance with respect to these kinds of imports.

39. I do not think that anything turns on the issue of any misstatement in the date of purchase and the invoices. As seen, the invoices bear different dates, but they are all between October to December 2019, which is consistent with the time period when the claimant says the items were purchased.

40. Finally, it is a point of some significance that an inventory of the jewellery held by Solitaire Jewelers conducted on 3 September 2021, included diamonds containing the same tag numbers and characteristics of the diamonds in dispute. It seems to be common ground that Mr. Elias came to the Bahamas in October of 2021, so it does not explain why it is that the diamonds were in the inventory of Solitaire prior to his arrival. Further, in an affidavit filed 28 July 2023, Mr. Elias claimed that all of the jewellery seized from Solitaire pursuant to the search order belonged to him, which was said to be proved by the fact that the invoice dates of his inventory (all supplied by his company Roniet Creation Inc.) ranged between “09-15-2022 to 11/11/2023”. It turned out that most of these items were in fact returned to Mr. Elias. However, it only serves to solidify the point, by his own evidence, that any inventory which existed prior to October 2021 could hardly have been part of his inventory.

41. There was also the assertion, from one of the JRMs (Mr. Simms), that the second defendant removed jewellery items valued at \$685,271.55 during January 2022 from the Parklane Marina Village and Parke Lux, which were part of the inventory of the claimant, and which the JRMs were indicating had to be factored into the goods returned. It will be recalled that the Customs invoice for two of the diamonds was from Sovereign to Parklane, so it is possible that goods from Parklane ended up in Solitaire.

42. Having considered counsel's submissions and the totality of the documentary and factual evidence, I find that it is more likely than not that the disputed diamonds are the property of the claimant, rather than the second defendant. I would therefore refuse the relief sought by the defendants in their Application.

CONCLUSION & DISPOSITION

43. For the foregoing reasons, the Application is dismissed with costs and I order that the diamonds be returned to the claimant or his agent, Mr. Keswani. The independent attorney is to oversee the transfer of the diamonds.

44. The cost of the Application is the claimant's, which I will summarily assess on hearing from the parties.

Klein J.,

A handwritten signature in black ink, appearing to be 'JK' with a stylized flourish.

5 August 2025.