

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Action
2024/CLE/GEN/00411**

BETWEEN

KEVIN ANDREW FERGUSON

Claimant

AND

SHAW RAMON McKINNEY

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Sidney Cambridge for the Claimant as the Respondent
Mr. Byran Woodside for the Defendant as the Applicant

Hearing Date: 13 May, 2026

Civil Procedure — Summary judgment — CPR Part 15 — No real prospect of success — Claimant alleging trespass to land — Requirement of possession or immediate right to occupy — Defendant in occupation of different lots — Irregularity in entitlement of application not fatal — Form must not defeat substance.

Darville Gomez, J.

[1.] I gave my decision orally at the hearing and promised to put my reasons in writing later, I do so now.

Background

[2.] The Claimant has by his Standard Claim filed on 7 May, 2024 sought damages for alleged trespass, including aggravated damages for trespass and threats of harm, damages for loss of use and enjoyment, damages for delay and disruption of the sale of the property, damages for the costs of cleaning and clearing derelict vehicles, boats, trailers, a chicken coop, garbage and debris, legal fees of \$400 for the preparation and service of a cease and desist demand letter, interest pursuant to the Civil Procedure (Award of Interests) Act 1992, costs, and further relief.

- [3.] He has alleged that he is the registered owner of Lots "C" and "D" in the Blair Addition Subdivision in the Eastern District of New Providence, relying on two deeds of conveyance dated 21 April 2004 registered in Book 9050 at pages 365 to 369 and 370 to 374 respectively.
- [4.] The Defendant by his Defence filed on 18 June, 2024 denied trespassing on Lots "C" and "D" and asserted that any structures (shed, chicken coop, trailer) were placed on other properties, not "C" and "D." He denied operating a tow truck on the Claimant's land, denied being served with a cease-and-desist notice, and denied interfering with the Claimant's agent. He admitted that the Claimant and his agent entered upon Lots "A" and "B" (not "C" and "D") with police officers. Further, he denied knowledge of any pending sale agreement and denied causing loss, damage, or mental distress.

The Application

- [5.] By a Notice of Application (the "Application") filed on 27 January, 2026 the Defendant applied for summary judgment pursuant to Part 15 of the Supreme Court Civil Procedure Rules 2022 (the "CPR"). The Defendant contended that he occupied Lots "A" and "B" in Blair Addition Subdivision and has no relationship with Lots "C" and "D," which are the subject of the Claimant's trespass action.
- [6.] The Application was supported by an Affidavit of the Defendant filed on 27 January, 2026 and an Affidavit of Search of Luther Darville filed on 28 January, 2026 in which exhibits were filed of the survey plan of the respective lots, photographs of the properties amongst other things.
- [7.] The Claimant did not file any documents in opposition to the Application, however, as a preliminary issue he took objection to the way that the action was entitled in the Application versus the way it was in the Standard Claim. In the Application the names of the parties were reversed, and reclassified. Therefore, the Claimant Kevin Ferguson appeared without reference to his middle name "Andrew" (as was in the Standard Claim) and was referred to as the "Respondent". Additionally, the Defendant appeared as the "Applicant". Nonetheless, the action number remained the same.
- [8.] I am mindful of the overriding objective under the Supreme Court Civil Procedure Rules, 2022 (the "CPR") which requires the Court to deal with cases justly, expeditiously, and in a manner proportionate to the issues. The Claimant's position was that he did not recognize the action and therefore, did not respond and because of this irregularity would not be bound by any order made in relation to the same. Accordingly, he filed no documents in objection to the application.
- [9.] However, I observed that the action number remained the same, and the substance of the application was properly before the Court notwithstanding the irregularity in the entitlement. It is a well-established principle of civil procedure that bald technicalities or irregularities in form will

not defeat a claim where the identity of the parties and the nature of the dispute are clear. To elevate form over substance would cause injustice, unnecessary delay and costs. Therefore, I am satisfied that the form of the entitlement should not prevent the Court from addressing the merits of the Application and will proceed to determine it on its merits.

Law, Analysis and Disposition

- [10.] Part 15.1 CPR 2022 provides that the Court may give summary judgment on the whole or part of a claim or defence if: (a) the claimant has no real prospect of succeeding on the claim or issue; or (b) the defendant has no real prospect of successfully defending the claim or issue; and (c) there is no other compelling reason why the case should be disposed of at trial.
- [11.] The test under Part 15 has been explained in authorities such as **Swain v Hillman [2001] 1 All ER 91**, where Lord Woolf MR stated that the summary judgment procedure is designed to deal with cases that are not fit for trial because they have no “realistic” prospect of success. The Court must distinguish between claims that are fanciful and those that are realistic.
- [12.] Card-Stubbs J. in **G. Almando Gibson (Trading as Pro Se United) et al v Piswell Don Strachan (as Administrator of the Estate of the late Prince A. Strachan) et al** 2021 CLE/gen/849 referred to the guidance notes to Part 15, Rule 15.2 as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024 in part: 9

Notes: 15.2

Grounds For Summary Judgment

The rules in this Part provide a procedure by which the court may carry out part of its duty of active case management, the summary disposal of issues that do not need full investigation and trial. The issues disposed of may arise in claims, counterclaims, third-party proceedings or similar proceedings. The rules in this Part permit summary disposal in three types of cases which under the previous Rules of the Supreme Court rules were dealt with by separate provisions; summary judgment, summary disposal of a case on a point of law (RSC 0.14), and striking out pleadings (RSC 0.18 r.19) Part 15 also permits the court to summarily dispose of cases and issues in three additional types of cases: (1) allowing summary judgment against a claimant where, on all the facts, the claim has no reasonable prospect of success; (2) allowing summary disposal of preliminary issues where the court is satisfied that those issues do not need full investigation and trial; and (3) allowing the court to fix summary judgment hearings of its own initiative. There is a substantial overlap between Part 15 and Part 26.3. As with Pt 15, the court's powers under Part 26.3 may be exercised on the application of a party or on the court's own initiative. Part 26.3 cover the strike out of claims or defences which are unreasonably vague, incoherent, vexatious, scurrilous, or obviously ill-founded and other cases that do not amount to a legally recognisable claim or defence. Part 15.2 provides that: (1) not only a claimant may apply for summary judgment against a defendant, but a defendant may apply for a summary judgment against the claimant for the claim or any issue in the claim against him to be dismissed on the basis of the evidence as opposed to striking out on

technical grounds under the court's case management powers under Part 26. (2) where the application is made by the claimant the test to be applied is whether the defendant has 'no real prospect of successfully defending the claim or issue'; (3) where the application is made by the defendant the test is whether the claimant has 'no real prospect of succeeding on the claim or issue'. In an appropriate case, an application- for summary judgment may be combined with an application to strike out under Part 26. Conversely, the court may treat a defendant's application to strike out as if it were an application for summary judgment: Taylor v Midland Bank Trust Co Ltd 21 July 1999, BLD 230799916, [1999] All ER (D) 831. Similarly, where the defence merely contains bare denials, the court may equally make an order for summary judgment under Part 15 on the basis that the defence stands no real prospect of success: Ed Jacob v Millennium Development Corporation Ltd (IT: CV 2007-1668) (3 April 2008). 10 [29.] [30.] Some of the summarized cases referred to in the Practice Guide are:

Swain v Hillman [2001] 1 All ER 91, CA-The court should interpret 'real' as the opposite of fanciful and should not conduct a mini-trial in order to establish whether a summary disposal was appropriate:

Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550, [2001] BLR 297-The test under Part 15 is whether there is a real prospect of success in the sense that the prospect of success is realistic rather than fanciful; when undertaking this exercise, the court should consider the evidence which can reasonably be expected to be available at the trial - or the lack of it; it is not appropriate for the court to undertake an examination of the evidence (without a trial) and adopt the standard applicable to a trial (namely, the balance of probabilities).

Three Rivers District Council v Bank of England (No 16, [2001] 2 All ER 513 3) [2001] UKHL (Lord Hope at paras 95 and 158)-The rule '... is designed to deal with cases which are not fit for trial at all'; the test of 'no real prospect of succeeding' requires the judge to undertake an exercise of judgment; he must decide whether to exercise the power to decide the case without a trial and give summary judgment; it is a discretionary power; he must then carry out the necessary exercise of assessing the prospects of success of the relevant party; the judge is making an assessment not conducting a trial or a fact-finding exercise; it is the assessment of the case as a whole which must be looked at; accordingly, 'the criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is the absence of reality.'

[13.] The Claimant in his affidavit had this to say with respect to Lots "C" and "D":

1. That at all material times since the year of 2010 I have been in undisturbed occupation of the two properties being Lots "A" and "B" situated in the vicinity of Blair Addition Subdivision, commonly referred to as "Bowe's Cove". A graphic display of the various plots of land are shown to me and produced in the Plan marked and exhibited as "Exhibit SRM – 1".
2. That north easternly of the aforesaid properties of Lots "A" and "B" there is vacant land that exist which is purportedly now or formerly owned by one Mr. Kinnear Cross. I have also been in occupation of a small portion of this land.
3. That the Claimant/Respondent purports to have served upon me a letter dated 21st February, 2024 from the law Firm of Messrs Munroe and Associates expressing that they were acting on behalf of a Mr. Kevin Ferguson the Claimant /Respondent herein who alleges to be the owner of Lots "C"

and "D" and that I was in trespass of the same. I am now shown a true copy of the letter from Munroe and Associates marked and exhibited as "Exhibit SRM – 2".

4. On or about the 25th day of June, AD., 2024 I gave instructions to have a survey conducted by a qualified/licensed surveyor of the properties which I have been in occupation of for some fifth teen 15 years. The said survey plan clearly shows that the properties for which I am in occupation are Lots "A" and "B" and not Lots "C" and "D" has claimed by Mr. Kevin Ferguson the Claimant/Respondent herein. I am now shown a true copy of the survey plan produced by Mr. Winston Sweeting, Registered Surveyor marked and exhibited as "Exhibit SRM – 3".
5. That sometime thereabouts in March of 2024 I hired the company Computitle Limited to produce a Special Title Search Report in respects to Lots "A" and "B". I received a report from the Computitle company dated 4th of April 2024 in which I was informed that they were unable to locate the aforementioned parcels but were able to search the names of Samuel Maxwell Bowe, Samuel Bowe and Peter Maxwell Bowe. The Honourable court is directed to items #3 and #5 in the aforesaid report produced by Computitle which indicate that Samuel Maxwell Bowe and Peter Maxwell granted lot" C" to Annette Jessie Davis and Julie Ann Mortimer. They also granted lot "D" to Annie L B Bowe. I am now shown a true copy of the Report produced by Computitle Limited marked and exhibited as "Exhibit SRM – 4".
6. That I am verily informed by my attorneys that a search was conducted of the land claimed to be owned by the Claimant/Respondent which he alleges was supposedly trespassed upon by me. The said search by my attorneys revealed that Mr. Kevin Ferguson although a previous owner was not now the current fee simple owner of Lots "C" and "D" in Blair Addition Subdivision commonly referred to as Bowe's Close, and no evidence was found which might support that he is the owner of Lots "A" and "B" in Blair Addition Subdivision or the owner of the vacant land situated north easternly of those lots.
7. I am further verily informed that Lot "C" was purchased by KX Company Limited from Annette Jessie Davis and Julie Ann Mortimer on the 7th February, A.D., 2004 and that the said company KX Company Limited later sold Lot "C" to Kevin Ferguson on the 21st of April, A.D 2004.
8. The search further uncovered that the properties the Claimant/Respondent alleges to have entered into a sales agreement with Mr. Jamaill Sharief for the sale of Lots "C" and "D" of Blair Addition Subdivision and commonly referred to as Bowe's Close are no longer owned by the purported seller Mr. Kevin Ferguson. I am now shown a copy of the conveyance of Lot "C" to one Genell Hanna exhibited as Exhibit "SRM – 5".
9. The Lots " C" and "D" now have a duplex apartment structure on them which to the best of my knowledge are occupied by one Genell Hanna, family members and tenants. I am now shown copies of photos which I took on my iPhone camera now produced and marked as Exhibit "SRM – 6".
10. Additionally, I did not at any time trespassed upon properties being Lots "C" and "D" of Blair Addition Subdivision because as previously mentioned I have always been in occupation of the properties being Lots" A" and "B" and not "C" and "D" of Blair Addition Subdivision commonly referred to as "Bowe's Cove".

r.] Mr. Darville the Search Clerk who conducted a search of the properties referred to in the Standard Claim had this to say about the results of his search:

11. My search revealed that the Claimant/Respondent herein Kevin Andrew Ferguson, acquired ownership of the properties being Lots "C" and "D" in the vicinity of Blair Addition Subdivision also known as "Bowe's Cove" from KX Company Limited in two Conveyances dated 21st day of April, A.D.,2004 and recorded in Book 9050 at pages 365 to 369 for Lot "C" and 370 to 374 for Lot "D". I am now shown and produced true copies of the two Conveyances between KX Company Limited and Kevin Andrew Ferguson marked and exhibited as Exhibit "LD-1".
12. That I found no conveyance or any other executed document relating to the property being vacant land identified as at the rear of Lots "C" and "D" and the properties situated in Danottage Estate Subdivision, which is identified as land now or formerly the property of Kinneer M. Cross. This supports that the Claimant/Respondent , the said Kevin Andrew Ferguson is not likely to be the owner of the aforesaid vacant property.
13. That I found no conveyance or any other executed document in the name of Claimant/Respondent herein Kevin Andrew Ferguson and relating to the property being vacant land identified as Lots "A" and "B" located in the vicinity of Blair Addition Subdivision, also known as "Bowe's Cove".
14. I am verily informed that the said Claimant/Respondent, Kevin Andrew Ferguson as vendor supposedly entered into a Sales Agreement as the Registered Owner of Lots "C" and "D" in the vicinity of Blair Addition Subdivision with a Jamal Shariff the purported purchaser.
15. My Search uncovered that the properties formerly owned by the late Samuel Louis Bowe were sold to KX Company Limited. I am now shown and produced a true copy of the Will of to the late Samuel Louis Bowe marked and exhibited as Exhibit "LD-2".
16. That upon further search of the Registry of Records, I discovered that Kevin Andrew Ferguson entered into a mortgage on the 21st of October, AD.,2004 with Scotiabank (Bahamas) Limited in which he mortgaged the properties being Lots "C" and "D" in the vicinity of Blair Addition Subdivision, also known as "Bowe's Cove". I am now shown and produced a true copy of the aforesaid mortgage between Kevin Andrew Ferguson and Scotiabank (Bahamas) limited marked and exhibited as Exhibit "LD-3".
17. That I also found a conveyance between Scotiabank (Bahamas) Limited, of one part and Genell Hanna of the other part, was entered into for all that piece parcel of lot being Lot "C" in the vicinity of Blair Addition Subdivision, also known as "Bowe's Cove" and recorded in Volume 12171 at pages 451 to 455. I am now shown and produced a true copy of the mortgage between Genell Hanna the Mortgagor and Scotiabank (Bahamas) limited, the Mortgagee, marked and exhibited as Exhibit "LD-4".
18. I am further verily informed that the aforementioned Lot "C" had been purchased from ScotiaBank (Bahamas) Limited by Genell Hanna and that later, Genell Hanna and Shanique Frazier entered into a mortgage on the 15th January, AD., 2007 with FirstCaribbean International Finance

Corporation (Bahamas) Limited and recorded in Volume 12391 at pages 48-57 and that a duplex apartment has been? constructed on the said property which is currently occupied by Genell Hanna, family members and other tenants. I am now shown and produce a true copy of the mortgage relating to Genell Hanna and Frazier along with FirstCaribbean International Finance Corporation (Bahamas) limited marked and exhibited is Exhibit "LD-5".

- [15.] In considering what constitutes trespass, it is helpful to distinguish between mere contractual permission relating to land and a possessory right sufficient to found a claim.
- [16.] In **Entick v Carrington (1765) 19 St Tr 1030**, King's messengers forcibly entered the home of John Entick under a general warrant, broke open locks, and seized papers alleged to be seditious. The Court of King's Bench, led by Lord Camden CJ, held the warrant unlawful and awarded damages, affirming that any unauthorized entry upon land is trespass unless expressly permitted by law. The case did not turn on whether Entick was freehold owner or tenant; his lawful occupation of the premises was sufficient to ground the action.
- [17.] In **Manchester Airport plc v Dutton [2000] QB 133**, the claimant had been granted a licence to enter and occupy land for the purpose of carrying out works, and the defendants entered and remained on that land without permission in order to obstruct those works. The Court of Appeal held, in substance, that a claimant need not be the freehold owner in order to obtain relief against trespassers; it is sufficient that the claimant has an immediate right to occupy and control the land, superior to that of the defendant, and that the defendant's presence unlawfully interferes with that right. The decision therefore illustrated that trespass consists of an unjustified physical intrusion upon land in the possession or control of another, and that the law will protect a right of occupation even where it arises under licence rather than ownership.
- [18.] That principle must, however, be applied with care. In **Vehicle Control Services Ltd v The Commissioners for HM Revenue & Customs [2013] EWCA Civ 186**, the Court of Appeal emphasised that trespass protects possession, or an immediate right to possession, rather than a purely contractual or commercial interest in land. A person who merely provides services on land, without sufficient possessory control, cannot ordinarily maintain a claim in trespass.
- [19.] Therefore, when considered together, these authorities establish that unauthorized entry onto land will constitute trespass only as against a person with possession, or with an immediate right to occupy or control the land sufficient to exclude others; a bare licence or commercial arrangement, without such control, will not by itself suffice.
- [20.] The Court pursuant to Part 15 of the Civil Procedure Rules, is empowered to summarily dispose of claims that have *no real prospect of success*. The Claimant's pleaded trespass depends upon establishing ownership or an immediate right to occupy Lots "C" and "D." However, and in any event the evidence of the Defendant and Luther Darville, demonstrated that the Defendant occupied only Lots "A" and "B," and not lots "C" and "D".

[21.] Accordingly, the Claimant's case in trespass is unsustainable and devoid of any realistic prospect of success. Even if ownership of Lots "C" and "D" were established by the Claimant, the Defendant's evidence makes plain that he is not in occupation of the disputed lots. The essential element of trespass—unauthorized entry upon land in the possession of another—is not made out.

[22.] The action must be dismissed.

[23.] It is hereby ordered:

- (i) The standard claim filed on 7 May 2024 is summarily dismissed pursuant to Part 15 of the Supreme Court, Civil Procedure Rules, 2022.
- (ii) Costs to the Defendant to be paid by the Claimant, to be assessed by the Court on the papers, if not otherwise agreed.

Dated the 22nd day of May, 2026



Camille Darville Gomez
Justice