

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2024/CLE/gen/00224**

**B E T W E E N**

**TOMLINHESS INVESTMENTS INC.**

**Claimant**

**AND**

**LAMALOT LTD**

**Defendant**

**Before:** The Hon. Chief Justice Sir Ian R. Winder

**Appearances:** Al-Leecia Delancy with Avrom Thompson for the Claimant  
Timothy Eneas KC and Ava LaRoda for the Defendant

**Hearing date(s):** 4 March 2024, 5 March 2024, 6 March 2025, 6 August 2025, 5 October  
2025 and 24 April 2026

**JUDGMENT**

## WINDER, CJ

This is the claim of Tomlinhess Investments Inc. (Tomlinhess) seeking injunctions, damages, and costs against Lamalot Ltd. (Lamalot) for nuisance, trespass, negligence, and interference with riparian rights arising from alleged unauthorized dock construction at Dick's Point, New Providence, Bahamas.

[1.] Tomlinhess owns Lot 2 Lucy's Lane, Dick's Point while Lamalot owns Lots 10, 11 and the Eastern portion of Lot 12 Lucy's Lane, Dick's Point (the Lamalot property). Dwelling homes are built on these properties as Dicks Point is a residential community. The principal of Tomlinhess is Wendy Tomlin Hess (Wendy) who resides on Lot 2 Lucy's Lane with her family. Robert Meister is a principal in Lamalot and resides on the Lamalot property with his family. The properties both abut the sea.

[2.] Tomlinhess commenced this action by Standard Claim Form on 28 October 2024. The Claim seeks the following relief:

- a. An injunction to restrain the Defendant(s) from causing nuisance on land located at Lot 2, Lucy's Lane, Dick's Point on the island of New Providence one of the islands of the Commonwealth of The Bahamas.
- b. Further and/or alternatively, an injunction to restrain the Defendant from commencing and/or continuing construction on a dock in breach of the Claimant's riparian rights insofar as the construction extends to the waters directly in front of the Claimant's land and/or interferes with the Claimant's right to privacy.
- c. Damages against the Defendant, either directly or through its servants and/or agents for nuisance and/or trespassing or interfering with the Claimant's property rights, including riparian rights.

[3.] The Statement of Claim (as Amended) provided, in part, as follows:

5. On 11 March 2024 the Defendant wrongfully caused or permitted the construction of a dock leading to the Defendant's property, which dock commences on that part of the sea abutting the Defendant's property and which said construction extends onto that portion of the sea abutting the Claimant's property.

6. This construction and resulting dock represent a substantial interference to the claimant's use and enjoyment of its premises:

### PARTICULARS Nuisance

- b. The Defendant has permitted their dock construction to extend to the sea in from of the Claimant's property.
- c. The dock causes interference with the Claimant's reasonable enjoyment of their land by obstructing their access at any point to the sea and obstructing their view and privacy. This significantly hinders the Claimant's enjoyment of their land as they did before the construction. Alternatively, the dock interferes with

the Claimant's right of navigation that it has as a member of the public and/or as a riparian owner of land abutting the sea.

- d. The Defendant's construction extending to the sea abutting the Claimant's property prevents the claimant from constructing a dock for access to its property from sea.
  - e. The matters complained of committed nuisance and at all material times the Defendant(s) knew or ought to have known of the nuisance but permitted it to remain.
  - f. The circumstances surrounding the construction of the dock including its location and impact on the Claimant's property.
  - g. The Defendant has failed to obtain planning approval and/or comply with regulatory requirements, including failure to obtain a seabed lease and failure to obtain necessary approvals.
7. The construction and resulting dock extending to the sea abutting the claimant's property has interfered with the claimant's riparian rights:  
PARTICULARS – Interference with Riparian Rights
- a. Riparian rights include the right to reasonable access to and use of the water body adjoining the property. The construction of the dock obstructs the Claimant's riparian rights by limiting the access to the sea directly in front of their property.
  - b. The Defendant's construction extending to the sea abutting the Claimant's property prevents the Claimant from constructing a dock for access to its property from sea.
  - c. The Defendant's use of the sea is not in accordance with the principle of a reasonable user and exceeds what is necessary for the common and ordinary use and occupation of land.
8. The Defendant has been negligent in its construction of the dock based on the particulars contained in paragraph 6 and 7 in failing in so far as reasonable and proper to ensure that no undue inconvenience is caused to the Claimant and/or in the design of the dock.
9. By letter dated 19 March 2024 and served on the Robert Meister, one of the occupiers of the property located at Lots 10 – 12, Lucy's Lane, Dick's Point, the Claimant demanded that the Defendant(s) cease its construction of the dock. The Defendant(s) indicated their refusal to cease construction. The defendant still continues and threatens and intends unless restrained by injunction to continue to create nuisance and interfere with the Claimants rights.

[4.] In its Amended Defence, Lamalot denied the claim and stated, in part, as follows:

4. The Defendant denies paragraph 5 of the Statement of Claim and contends that the construction undertaken by the Defendant commenced on the 12th March, 2024. The location of the construction works related to the reinstatement of an existing dock which adjoins the northern portion of the eastern boundary of the Defendant's Property ("*the Dock*") and continues in an eastward direction over the foreshore and seabed comprising the property of the Crown.

5. The Defendant denies paragraph 6 of the Statement of Claim in its entirety including the particulars thereof and contends as follows:

- (a) The design of the Dock and the hours of operation for the construction works undertaken in connection therewith were at all material times reasonable and consistent with the dock designs utilized for the locale and the within the times customary and acceptable industry practices for the marine construction work required to be performed.
- (b) The Defendant denies having constructed the original Dock and contends that it was constructed prior to the acquisition of the Defendant's Property. The site of the reinstated Dock is situate on top of the footprint of the existing Dock structure in accordance with the approval granted to the Defendant on the 23rd September, 2023 pursuant to its application dated 20th April, 2023.
- (c) The Dock is situate on the seabed immediately east of the Defendant's Property and in no way interferes with the Claimant's access to the sea nor navigable waters nor does it any way howsoever interfere with any legally recognized and enforceable private right of the Claimant. The complaint concerning the alleged interference with the Claimant's right of navigation relates to the public right of navigation.
- (d) The Defendant denies (i) any alleged right of the Claimant to construct a dock on the seabed adjoining the Defendant's Property as a riparian owner or otherwise and (ii) the Claimant's contention that the Dock or any portion thereof prevents the Claimant from constructing a dock adjoining its property utilizing a standard design or a design with a similar configuration to the docks in the vicinity.
- (e) The Defendant denies each and every allegation of nuisance on the grounds set out herein and puts the Claimant to the strict proof of the matters and circumstances giving rise to the alleged nuisance.
- (f) The allegation set out in the particulars in paragraph 6(f) of the Statement of Claim is incomplete and ought to be struck from the claim.
- (g) The Defendant denies the allegations set out in paragraph 6(g) of the Statement of Claim and contends that (i) no seabed lease is required under the applicable law and (ii) it has obtained all necessary government approvals.

6. As to paragraph 7 of the Statement of Claim, the Defendant denies that the construction and location of the Dock has obstructed or otherwise interfered with the Claimant's riparian rights as asserted or otherwise and furthermore, the Defendant relies upon the approval obtained from the Port Department dated 23rd September, 2023 and section 7 of the Port Authorities Act which authorizes the construction of the Dock.

7. The Defendant denies paragraph 8 of the Statement of Claim and contends that no actionable duty of care is alleged or owed to the Claimant nor has any such duty of care (if

established) been breached by the Defendant. The Defendant relies upon paragraphs 5 and 6 above in answer to this allegation.

8. The Defendant denies paragraph 8 of the Statement of Claim and contends that neither it nor its authorized representatives communicated expressly any intention regarding the construction of the Dock to the Claimant as alleged.

9. Furthermore, the Defendants contends that any alleged claim, cause of action, right or entitlement to relief or damages pleaded in the Statement of Claim resulting from any alleged tort including nuisance or any other right whether tortious or otherwise including the alleged interference with riparian rights prior to the 21st March, 2018 is barred by the provisions of the Limitation Act, 1995 or in the further alternative by the doctrine of laches.

10. Save as expressly admitted the Defendant denies each and every allegation of fact contained in paragraphs 1 to 28- of the Statement of Claim as if the same were set forth herein and specifically traversed.

[5.] On 30 September 2024 the Court granted an interlocutory injunction in favor of Tomlinhess in the following terms:

[Lamalot], whether acting by itself, its servants or agents, is restrained pending trial or further order from further construction of its dock beyond 15 feet from the end of the dock as drawn on the plan appearing at page 47 of the electronic hearing bundle provided to the Court in relation to [Tomlinhess'] application. Any construction activity related to the dock falling outside of that restriction shall only take place between the hours of 8:00 am to 5:30 pm.

#### The Evidence

[6.] Tomlinhess called two witnesses, Wendy and Dave Taylor (Taylor). Taylor was deemed an expert witness. Witness statements were filed for Captain Roy Carlisle Newbold and Maggie Anne Newbold however these witnesses did not attend at trial. Tomlinhess closed its case without calling these witnesses.

[7.] Robert, Donald Thompson (Thompson) and Captain Roman Laing (Captain Laing) gave evidence on behalf of Lamalot. Captain Laing was deemed an expert witness.

#### Wendy's evidence

[8.] Wendy gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[9.] Wendy, who resides at 2 Lucy Lane, is a retired clinical data manager. She is a permanent resident of The Bahamas, spending 7-8 months a year at the property. Tomlinhess acquired the property in early 2014.

[10.] The dispute concerns a dock which Wendy claims was illegally placed in the seabed abutting Lamalot's property and extending over into her property. The dock predated her ownership of the property in 2014. The dock was later destroyed by a hurricane, leaving remnants in the water. In March 2024, Lamalot began constructing a new dock over the remnants, which she alleges caused disruption and breached her riparian and navigation rights, and was a nuisance due to lack of proper approvals.

[11.] After acquiring the property, Wendy says that she and her husband noticed a possible encroachment and communicated with the Department of Physical Planning (Mr. John Davis) in 2015. They were advised to obtain a survey, and Mr. Davis was to contact Lamalot for legitimacy and permits for the dock. Wendy provided Mr. Davis with Robert's email for further inquiries. She says that extensive email correspondence with Mr. Davis and other government officials followed, with her persistently following up on the status of the dock and the government's response.

[12.] Wendys says that The Town Planning Committee determined the complaint to be legitimate and instructed the Department of Physical Planning to refer the matter for removal of the encroaching structure. However, subsequent correspondence from government officials indicated that no removal could proceed without due process and legal guidance from the Attorney General. Wendy claims she was not aware of a letter advising her to commence legal proceedings and believed the government would handle the demolition.

[13.] Wendy was challenged in cross-examination about whether she had directly informed Lamalot (Robert) of her complaints or the government's actions. She stated she believed Mr. Davis had communicated with Lamalot and did not recall direct communication herself. She also stated that a meeting between the parties and their attorneys occurred in 2018, where responsibility for the dock was discussed, but there was disagreement about what was said and who was responsible for the dock's removal.

[14.] Wendy described the dock as derelict and crumbling for years, with further damage after the hurricane. She maintained that Lamalot's new construction in 2024 was the trigger for the current legal action, as she was unaware of any permits or approvals until construction began.

[15.] Lamalot's counsel challenged Wendy on the chronology of her complaints, her persistence with government authorities, her lack of direct communication with Lamalot, and her understanding of the legal and factual status of the dock and the property boundaries. There was also a dispute over whether a letter from her former attorneys to Lamalot existed, with Wendy stating she believed such a letter was sent but could not produce it.

Taylor's evidence

[16.] Taylor gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[17.] Taylor was accepted by the court as an expert in land surveying and geomatics engineering. He prepared a report dated 14 February 2025. He was instructed to determine the proper location of the boundaries of the properties owned by Tomlinhess, Lamalot and the Government of The Bahamas (if any), in the area of Lucy's Lane, Dick's Point, New Providence. He was also asked to determine where the point of navigability starts in relation to these properties and to assess whether the Lamalot dock interfered with navigation to Tomlinhess' property or the general public.

[18.] Taylor reviewed various documents, including survey plans (notably a 1972 O'Brien Engineering plan), back title documents, an appraisal report, aerial imagery from the Department of Lands & Surveys and Google Earth images. He did not review any hydrographic (bathymetric) plans and did not make any assessment of water depth or sea floor contours, noting that such would require a specific type of survey he was not instructed to perform.

[19.] Taylor explained that his survey focused on the northern boundary of Tomlinhess' property and its extension seaward, particularly in relation to the location of the dock. He used a total station with reflector-less capability, allowing him to take measurements remotely from Tomlinhess' property without physically entering the Lamalot property or dock.

[20.] Taylor stated that, based on his review of the 1972 O'Brien plan, it appeared that efforts were made at the time to contain the entire dock structure within the extension of the property's boundary lines, though the plan did not include dimensions for the dock itself. He noted that it is common for survey plans to show property dimensions but not necessarily dimensions for existing infrastructure like docks unless specifically requested. He reviewed aerial photographs from 1995, 1999, and 2004, and found no observable change in the size or location of the dock during that period.

[21.] When asked about the extension of boundary lines, Taylor clarified that he followed standard surveying practice by extending the upland boundary line across the seabed, rather than drawing a line perpendicular to the shoreline, as the two are not always the same due to the meandering nature of shorelines. He confirmed that, based on the plans and overlays shown to him, when lines are drawn perpendicular to the shore from the high water mark, they do not intersect the dock.

[22.] Taylor explained that the absence of dock dimensions on the 1972 plan did not necessarily mean the dock's location was an approximation, as survey plans titled "survey plan" are generally based on field measurements unless otherwise noted. He also commented that the configuration of

docks in the area (extending out and then sweeping southward) is typically determined by coastal engineering studies, current flows, and wave action.

#### Robert's evidence

[23.] Robert gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[24.] Robert is the principal of Lamalot and is its president. He resides at Lamalot's property since 2005, after acquiring the property from his father's company in 2003. He confirmed that the dock in question pre-dated his ownership and was originally built before 1972. The dock was in good condition and regularly used by him and others until it was severely damaged by Hurricane Matthew in 2016. After the hurricane, the dock was largely unusable, with only remnants remaining, and it could not be used for docking boats.

[25.] Robert first became aware of the Tomlinhess's (Wendy's) concerns about the dock shortly after Hurricane Matthew in 2016, when she confronted him about being on her property while he was inspecting hurricane damage. He denied being aware of any complaints prior to this and did not recall any communication from Mr. John Davis in 2015, despite it being put to him that such communication occurred.

[26.] In 2018, a meeting took place between the parties and their attorneys regarding the remnants of the old dock. Robert stated he did not agree with removing the dock, as he had not built it and believed there had been no due process or representation for him in the decisions made by authorities. Robert admitted he was not aware of the need for a jetty license for the dock until after the hurricane and did not pay annual fees prior to that time. When he sought to repair or reinstate the dock in 2019, he made inquiries with the Port Department and subsequently obtained a jetty license and other approvals, though he acknowledged some confusion about the specific permits required, particularly regarding the need for a building permit from the Ministry of Works.

[27.] He believed, based on advice from consultants and government communications, that all necessary permits were in place when construction of the new dock commenced in March 2024, but later discovered a building permit was also required and obtained it after being advised.

[28.] Robert described the new dock as a repair or reinstatement of the pre-existing dock, using the same footprint, though he agreed that the certificate of environmental clearance and other government documents referred to the "removal of existing dock structure and construction of a timber dock." He stated that part of the old concrete structure was to remain and be refurbished, while the timber portion would be new.

[29.] Under cross-examination, Robert acknowledged that the plans submitted for approvals did not specifically show the dock's placement relative to the boundary with Tomlinhess' property. He agreed that the dock, as constructed, extended beyond the line marked as the continuation of Hess's northern boundary, thus crossing into the area in front of the Tomlinhess' property.

[30.] Robert admitted that he did not contact Tomlinhess' or inform her of his intention to reinstate or construct the dock, citing a contentious relationship and his belief that communication would not be productive. His evidence was that he acted in good faith, believed he had the necessary approvals, and that any failure to obtain a building permit before commencing construction was inadvertent and promptly rectified. He maintained that the dock was a repair of a pre-existing structure and that he had not intentionally disregarded any government requirements.

#### Thompson's evidence

[31.] Thompson gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[32.] Thompson is a Land Surveyor, registration number #037, from the year 1986 to present. He was asked by Counsel for Lamalot to prepare a survey showing the location of the dock/jetty adjoining the eastern boundary of the property known as Lot 10 Dick's Point.

[33.] Thompson's Report, dated 5 February 2025, which was attached to his witness statement provided, in part, as follows:

The purpose of the survey was to locate the existing dock in relation to the boundaries of the lots.

Survey: (i) the boundaries of the lots were identified.  
(ii) the dock, the seawall along the eastern boundary and portion of the H.W.M along the eastern boundary of the Hess's property.

All of the measurements and angles were taken electronically by a Leica Total Station 302 and collected on a Topcon Data Collector. The field information was then downloaded to our survey software, and the final plan was produced.

We were instructed to show a perpendicular transect line from the existing H.W.M on the Hess's property line taken 10 December, 2024 and also from the H.W.M shown on Target survey (April, 1951). The transect lines from the H.W.M are shown in red (10 December, 2024 H.W.M.) and green and yellow (April, 1951 H.W.M.). Each line is drawn from the northern most point for each section of the referenced H.W.M. None of the transect lines intersect the existing dock.

We overlaid our survey over aerial photographs and google imagery for the years 1999-2024. There is no discernible expansion or change to the length or location of the dock for the said period.





[35.] Thompson’s cross examination was confined to confirming that his evidence was limited to the fact that he conducted a survey and took photographs, and that he was not giving any opinion evidence as an expert.

Captain Laing’s evidence

[36.] Captain Laing gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[37.] Captain Laing is a licensed marine pilot based in Grand Bahama, qualified to operate vessels of unlimited tonnage as a navigational officer. He was accepted by the court as an expert in boat navigation and piloting.

[38.] Captain Laing stated that he was requested by Lamalot, to give his professional opinion concerning the meaning of “navigable waters” in the context of the sea situate to the west of the property owned by Tomlinhess and whether direct access to “navigable waters” is obstructed by the dock/jetty constructed by Lamalot and adjoining its property. He was instructed to provide an expert opinion on the navigability of the waters in front of the Tomlinhess and Lamalot properties, and to address issues relating to riparian rights and access to navigable waters.

[39.] In the report, Captain Laing stated that:

#### 5. Use of the Lamalot and Tomlinhess properties

5.1 I am advised by Mckinney, Bancroft & Hughes that the Lamalot and Tomlinhess properties are residential in nature with access to the sea. The Lamalot property, as well as several of the neighbouring properties, have docks/jetties which extend from their shorelines into the shallow seabed adjoining the respective properties

5.2 Based on the visual observations and charted data, the recommended use for the Tomlinhess property shoreline and the shallow waters extending approximately 200 feet off the shore is recreational wading, swimming, fishing and the operation of small non motorized pleasure crafts.

5.3 Due to the rocky seabed and the shallow depth of water, the area extending 200 feet from the Tomlinhess property shoreline is not suitable for powered boating activities using vessels with propellers. This area presents a natural hazard to safe navigation in respect of watercrafts with drafts exceeding twenty-four (24) inches when approaching the shore.

5.4 In the event that the owner chose to access the shallows from the Tomlinhess property shoreline via watercraft/vessel, the only type of watercraft/vessel recommended to attempt such access would be the following:

- (a) Jet ski;
- (b) Non-Displacement craft (airboat); and
- (c) Canoe or paddleboard/pedal boat.

#### 6. Location of the “Navigable Waters” in the context of the sea adjoining the Lamalot and Tomlinhess properties

##### Maritime Context

6.1 The waters within 200 feet of the Tomlinhess property shoreline are not waters which are ordinarily described as navigable waters in a Maritime Context. Due to the shallow and rocky nature of the waters adjoining the property that area comprises non-navigable Waters.

6.2 Navigable waters in a Maritime Context would begin at the area near or slightly west of the Lamalot dock in the area known as the Eastern Channel. The Eastern Channel runs southeasterly along the outskirts of the shallows west of the Tomlinhess property.

6.3 Accordingly, in a Maritime Context there is no direct access to navigable waters from the Tomlinhess property shoreline due to the restrictive depth of the shallows comprising the area to the west of the property. The shoreline for the Tomlinhess property is naturally cut off from navigable waters in a Maritime Context.

#### Riparian Access Context

6.4 The only vessels capable of safely navigating from the Tomlinhess property shoreline are the watercrafts/vessels described above in paragraph 5.4. A watercraft/vessel of the description mentioned would be able to safely navigate in the waters adjacent to the Tomlinhess property shoreline at a distance of approximately fifty (50) feet from the shoreline. That area would constitute navigable waters for those watercrafts/vessels.

7. Does the Lamalot dock/jetty obstruct direct access to “Navigable Waters” from the Tomlinhess property?

7.1 In a Maritime Context, there is no direct access to navigable waters from the Tomlinhess property shoreline. Access to navigable waters may only be achieved through dredging or the construction of a dock/jetty. A dock/jetty may, with the appropriate government approval, be constructed on the Tomlinhess property shoreline to gain access to navigable waters.

7.2 In a Riparian Access Context, there is direct access to navigable waters (50 feet off the Tomlinhess shoreline) using a watercraft/vessel of the description described above in paragraph 5.4. The Lamalot dock/jetty does not in any way obstruct this access.

7.3 The transect lines in the Thompson Survey demonstrate that there is unobstructed access to the Eastern Channel which is located to the west of the red, green and yellow transect lines.

[40.] Captain Laing concluded that the waters within 200 feet of the Tomlinhess property shoreline are not ordinarily described as navigable waters in a maritime context. In his expert opinion, navigable waters begin at approximately 250 feet from the shoreline, where the eastern channel starts. Up to 200 feet from the shoreline, the water is too shallow for average residential vessels, and only non-motorized craft (such as jet skis, canoes, or paddle boards) could traverse this area.

[41.] Captain Laing distinguished between riparian waters (the area from the shoreline up to where navigable waters begin) and navigable waters (starting at 250 feet out). He accepted that the riparian waters start at the property boundary and end where navigable waters begin.

[42.] He confirmed that the Lamalot dock extends approximately 200 to 215 feet from the shoreline, meaning it is located within the riparian waters, not the navigable waters.

[43.] When asked about the property boundaries, Captain Laing stated that, based on the extended boundary line, he did not accept that the dock crossed from Lamalot's riparian waters into Tomlinhess's riparian waters, though he acknowledged this was ultimately a legal issue.

[44.] He opined that the area in front of the Tomlinhess property is different from that in front of Lamalot, but both have direct access to the water, albeit limited to non-displacement craft in the shallow areas.

[45.] Captain Laing clarified that while he could provide expert evidence on navigation and the physical characteristics of the waters, the legal definition of riparian rights was outside his expertise.

## **Issues**

[46.] The issues may be describes as follows:

- 1) Whether Tomlinhess' ownership of Lot 2 Lucy's Lane constitutes a riparian tenement giving rise to riparian rights at common law;
- 2) Whether the dock (in its present or proposed form) constitutes a partial or complete interference with Tomlinhess' riparian rights;
- 3) Whether such interference (if established) also affects the public right of navigation in navigable waters adjacent to Lot 2.

## **Law Analysis and Disposition**

[47.] Tomlinhess' case is that it is the owner of Lot 2 Lucy's Lane, and as its land is bounded on the eastern side by the sea, this gives rise at common law to a riparian tenement and associated riparian rights. Tomlinhess says that Lamalot's dock begins from the sea abutting Lamalot's property but extends into the sea abutting Tomlinhess' property, and that this factual position was either admitted or not properly challenged.

[48.] On the law, Tomlinhess relies on Halsbury's Laws of England and Bahamian and other authorities to submit that a riparian owner enjoys private common law rights of access to and regress from the sea, rights to pass over the shore or bed for that purpose, rights to moor vessels adjacent to the land, and a right to the removal of obstructions which interfere with those rights, without proof of actual damage. It also submits that riparian rights are distinct from the public right of navigation.

[49.] As to the geographical extent of those rights, Tomlinhess submit that, on the facts of this case, riparian waters extend from the shoreline to the point where navigable waters begin, which Tomlinhess says is approximately 250 feet offshore near the Eastern Channel. It argues that the Lamalot dock, extending approximately 200 to 215 feet from the shoreline, lies within those riparian waters rather than within navigable waters.

[50.] Tomlinhess' central submission on breach is that the dock extends across the seaward extension of Tomlinhess' northern boundary and into the waters abutting its property, thereby obstructing direct access from Tomlinhess' shoreline out to navigable waters. It says this constitutes an actionable interference with its riparian rights because riparian rights include access from any point along the shoreline boundary to navigable waters beyond, and any structure blocking that route is an infringement, even if only partial. Tomlinhess further argues that the interference arose because Lamalot curved the dock laterally into the area abutting Tomlinhess' property, and that the obstruction would not have occurred had the dock proceeded straight out from Lamalot's own boundary.

[51.] Tomlinhess also submits that the same encroachment affects the public right of navigation, because the dock reaches the end of riparian waters and the beginning of navigable waters and extends some 12 feet into the seabed abutting the Claimant's property.

[52.] In answer to Lamalot's reliance on governmental or regulatory approval, Tomlinhess submits that construction of the new dock began in March 2024 without all necessary permits and approvals, notwithstanding assertions to the contrary. It points to the Certificate of Environmental Clearance dated 12 April 2023, which expressly stated that all other necessary permits still had to be sought from relevant agencies. Tomlinhess submits that Lamalot nevertheless commenced works without the requisite permit and later sought approvals without disclosing the injunction already in force or the alleged encroachment dispute.

[53.] Finally, on relief, Tomlinhess submits that the proper remedies for infringement of riparian rights are damages and an injunction, and that the appropriate order is an injunction prohibiting Lamalot from carrying out construction in the waters abutting Lot 2 Lucy's Lane. In substance, Tomlinhess's overall case is that Lamalot has constructed a new unauthorized timber dock which extends into the waters abutting the Tomlinhess property, infringes Tomlinhess' riparian rights and public navigation rights, is not saved by statutory approval, and is not protected by limitation or laches.

## Lamalot's case

[54.] Lamalot's case is this action should be dismissed in its entirety because, on the evidence, the reinstated dock is lawful, occupies the same location and footprint as the pre-existing dock, and does not establish any actionable interference with Tomlinhess' rights.

[55.] Lamalot's case begins from the position that the dock has existed for decades adjoining Lot 10 Dick's Point, that it was in place before 1975, that it was used by the Meister family for over 42 years until it was damaged by Hurricane Matthew, and that no complaint had been made about its existence or placement until the present dispute arose. Lamalot further relies on survey evidence said to show that there was no discernible expansion or change to the dock's length or location between 1999 and 2024, and that the reinstated dock occupies the same space as the original structure.

[56.] On the issue of riparian access, Lamalot submits that Tomlinhess has failed to prove any interference with a private riparian right of access. Lamalot relies principally on the report of Donald Thompson, the Thompson survey, and the evidence of Captain Laing to say that none of the transect lines drawn perpendicular to Tomlinhess' shoreline intersects the dock, and that the dock does not touch or impede access to or egress from Tomlinhess' shoreline when travelling perpendicularly from any point on that shoreline. The Defendant also points to the cross-examination of Tomlinhess' expert, Dave Taylor, which it says confirmed that the perpendicular transect lines on Thompson's plan did not intersect the dock and that Taylor had not himself drawn a perpendicular line in accordance with his instructions.

[57.] Lamalot further submits that the allegation that the dock prevents Tomlinhess from constructing its own dock is speculative and cannot amount to the special damage required to support a public nuisance claim. Lamalot contends that Tomlinhess has no legal right to build a dock without ministerial permission, that no application for such permission was made, and that Captain Laing's evidence was that a dock or jetty may, with appropriate government approval, be constructed on Tomlinhess' shoreline and that there was ample room along that shoreline for such a structure.

[58.] A central plank of Lamalot's submissions is that the dock was constructed pursuant to ministerial authority under section 7 of the Port Authorities Act, and that this provides a complete statutory defence or immunity to the tort claims advanced. Lamalot says that the Port Controller confirmed by letter dated 7 September 2023 that the Docks Committee had no objection to the application subject to final ministerial approval, that final approval was communicated by letter dated 26 September 2023, and that Lamalot then commenced reinstatement works on 12 March 2024. It also says that the completed structure was inspected by the Port Department and that a Dock/Jetty License was issued on 3 December 2024. On that basis, Lamalot submits that the works

were lawfully made pursuant to statutory authority, and that claims in nuisance, negligence, and trespass are therefore not actionable.

[59.] In response to the allegations that planning or regulatory approvals were lacking, Lamalot contends that all requisite approvals were in fact obtained, including a Certificate of Environmental Clearance dated 12 April 2023, Docks Committee approval, ministerial approval under section 7 of the Port Authorities Act, a Building Permit dated 26 April 2024, and the Dock/Jetty License dated 3 December 2024. It also says there was no legal requirement for a seabed lease to accompany the ministerial grant, and that the post-construction issue of the Dock/Jetty License confirmed the Crown's consent and the dock's compliance under the regulatory scheme.

[60.] On trespass, Lamalot submits that the claim is unsustainable because the dock is situated on the seabed owned by the Crown and does not touch the Claimant's land. It says that Tomlinhess' boundary extends only to the sea and abuts the foreshore, and that no allegation or evidence establishes any wrongful entry by Lamalot onto Tomlinhess' property.

[61.] As to negligence, Lamalot argues first that any complaint concerning the location or existence of the original dock is statute barred, because Tomlinhess' own survey from November 2015 showed knowledge of the historical position of the disputed portion, while Lamalot's survey evidence showed no enlargement of the dock's footprint. Secondly, it says that no duty of care arises in respect of the design or location of the dock because those matters fall within the statutory immunity conferred by section 7 of the Port Authorities Act. Thirdly, it submits that no negligent design or construction was proved, and in that regard it relies on Taylor's acceptance in cross-examination that the dock's configuration was consistent with neighbouring docks and was the kind of configuration usually determined by current flows and wave action. Finally, Lamalot says that no causation or loss attributable to the 2024 reinstatement works has been shown, because any alleged inability by Tomlinhess to construct its own dock would, on Lamalot's case, have pre-existed those works and not have been caused by them.

[62.] In conclusion, the Defendant's overall submission is that Tomlinhess has failed to prove any substantial obstruction or interference, any actionable nuisance, negligence, or trespass, or any basis for injunctive relief or damages; and that, in any event, the ministerial approval granted under section 7 of the Port Authorities Act and Tomlinhess' delay provide further complete answers to the action.

[63.] The primary question for determination in this dispute is whether the dock being constructed/restored by Lamalot infringes the riparian rights of Tomlinhess. The relevant law on the question of riparian rights may be found in the Belizean Supreme Court case of **National Fisherman Producers Co-operative Society v Brown Sugar Market Place (formerly River Duty Free Limited)** Claim No. 540 of 2006. In that case the claimant owned Lot 755 on Angel

Lane, Belize City, which fronts the Belize River, while the defendant owned adjoining Lots 754 and 756 intended for tourism development. The defendant planned a boardwalk linking its lots and a T-shaped pier extending into the river, with gazebos for public use, and obtained official approvals. However, the boardwalk would abut directly in front of the claimant's property, leading the claimant to object and propose an overpass instead. Despite this, the defendant began construction in October 2006, prompting the claimant to secure an interim injunction restraining further work until trial or further court order.

[64.] *Awich J* (as he then was), sitting in the Supreme Court of Belize, considered riparian rights in some detail. At paragraph [21] - [23] he states as follows:

[21] I understand the principle of riparian right to be this. By the fact that his land abuts on a river, lake or sea, a riparian owner is entitled *ex jure naturae* to a bundle of rights known as riparian right. The right is incidental to the ownership or possession of the riparian land, and is a private right, not owned together with the public — see *Rose v. Groves* (1843) 5 Man & 613; *Miner v. Gilmour* 12 Moe P.C. 131; *William Lyon v. The Warden & Co of the Fishmonger's Co. and the Conservators of the River Thames* (1876) 1 App. Cas. 662 H.L.; and *Michael Feinstein and Others v. Carlos Romero and Laura Thompson, Civil Appeal No. 10 of 2003*. The last case is a case in which I granted an interlocutory injunction order based on riparian right. The Court of Appeal confirmed my decision.

[22] Riparian right is distinct from the right of navigation which is a public right, a point stressed in the *William Lyon v. Fishmongers' Co.* case. The expression that a riparian owner is entitled *ex jure naturae* to access to the water that abuts on his land, and to take the water that flows or washes on his land, emphasises the point that riparian right is derived from the fact that the land abuts naturally on natural surface water, not on water of artificial channel or pond.

[23] Over the years, the commonly identified rights in the bundle of riparian rights have been these.

(1.) The right of the riparian owner of egress to and regress from the water to the riparian land. It is separate from the public right of navigation that the riparian owner may enjoy together with the public — the *William Lyon v. The Fishmongers'* case,

(2.) The right to land and depart from his bank, and pass and repass over the shore or bed at all times even if the shore or bed is not vested in the riparian owner — *Macey v. Metropolitan Board of Works* (1864) 3 New Rep 669; *Marshall v. Ulleswater Steam Navigation Company* [1871] 7 Q.B. 166; and *Attorney General of Southern Nigeria v. John Holt and Company (Liverpool) Limited* [1915] A.C. 599;

(3.) The right to moor vessels adjacent to his land for such period as is necessary to load and unload, but the riparian owner must not interfere with the right of access

of another riparian owner, or with the public right of navigation — the *Mercey v. Metropolitan Board of Works* case, and *Original Hartlepool Collieries Co. v. Gabb* (1877) 5 Ch D 713. Further more, the riparian owner must not construct or put down anything which disturbs the foreshore or riverbed, which he does not own, or which will interfere with the right of the public to navigation — *Iveagh (Earl) v. Martin and Another* [1960] 2 All E.R. 668.

(4.) The right to have the water of the river flow in its natural state and flow without sensible diminution or increase, and further, the right to take and use the water that abuts on his land for ordinary use, and for restricted extraordinary use, subject to the same rights of other riparian owners. The Privy Council appeal case from *Trinidad and Tobago, Stollmeyer v. Trinidad Lake Petroleum Company Limited and Others* [1918] A.C. 487, and *Attwood v. Llay Main Collieries* [1926] Ch. 444, illustrated the rule. In the latter case, it was held that, the defendant riparian owner had no right to take river water to land too far away that he had interest in.

[65.] The private riparian right of access must be distinguished from the public right of navigation. In **Attorney-General v Conservators of the River Thames** 1 H&M 1, *Wood VC* discussed and applied the distinction at pages 33 to 34:

Independently of the authorities, it appears to me quite clear that the right of a man to step from his own land on to a highway is something quite different from the public right of using the highway. The public have no right to step on to the land of a private proprietor adjoining the road. And though it is easy to suggest metaphysical difficulties when an attempt is made to define the private as distinguished from the public right, or to explain how the one could be infringed without at the same time interfering with the other, this does not alter the character of the right. ... The Fishmongers' Company say that they have a right of access to this wharf, coupled with a right of access to the river; and I agree that, if this access were taken away, they would be within the provisions of the 179th section, and would be entitled to an injunction. But, in truth, the access is not blocked up. The wharf will not be as readily and easily approached, and perhaps not at all by the same route; but that is a mere interruption to the navigation of the river which they enjoy in common with the public, and not as part of their special right of access. Persons who frequent either this or any other wharf will be impeded, to a certain extent, in the navigation of the river; but that is an injury to the general right of navigation. It amounts only to this, that the Plaintiffs' goods will have to take a longer and less convenient course in coming up to their wharf; an inconvenience the same in kind, though not in degree, as that which the rest of the public will be exposed. The right interfered with is not the private right of access, which still remains, but the right of approaching from a distance, which forms part of the public right of navigation.

[66.] In his discussion of riparian rights in **National Fisherman Co-operative Society**, *Awich J* noted that a riparian owner must not construct or put down anything which disturbs the foreshore or riverbed which he does not own, or which will interfere with the right of the public to navigation. It appears to be clear on the authorities that a riparian owner is not entitled to construct or put down a dock or pier which disturbs the foreshore or riverbed without the consent of the Crown as the owner of the same: (See **Halsbury's Laws of England** (5<sup>th</sup> edn), **Volume 100** (2018) [para 129] and **section 7** of the **Ports Authorities Act**.)

[67.] Tomlinhess and Lamalot both rely on the Supreme Court of Nova Scotia case of **Day et al v Valade et al** 2017 NCSC 175. The Valades had been residents of Rocky Lake, Halifax, since 1996. Rocky Lake is a residential area where homeowners enjoy recreational use of the water. The Valades obtained government approval in 2000 to construct a seasonal wharf and floating dock, which they installed most summers and extended to 57 feet to reach deeper water. In 2012, Shaun and Erin Day purchased the neighboring property, Huckleberry Cove, and later objected when the Valades dock was reinstalled in 2015, claiming it crossed the extended property boundary and interfered with their access to the lake. The Days sued seeking removal of the wharf and dock, alleging infringement on their rights and enjoyment of their property. At paragraph [31] and [32] the Court stated:

[31] The Days' riparian right of access entitles them to place a boat in the lake at any point along their shoreline and travel directly out from the shore to reach a depth of at least three feet. If the Valade wharf and dock obstructs them from doing so, it is a breach of their riparian rights. It is clear from the sounding plan prepared by Mr. Giovannetti and the photographs attached to the Day and Valade affidavits, that a boat launched at any point along the Day shoreline can reach depths in excess of four feet without any interference by the wharf and dock.

[32] There was much discussion in the parties' written materials and at the hearing about the significance of the extended boundary line as drawn by Mr. Giovannetti. The Days argued that this represents their "direct line" access to Rocky Lake as that term is used in *Cockrum*. In my view, such access refers to traveling in a direction that is perpendicular to the shore. The Day/Valade boundary forms an angle of approximately 45 degrees with the high waterline, which means that the extension crosses the front of the Valade property. That is the reason for its intersection with the wharf which runs perpendicular to the shore. In this case the boundary extension drawn by Mr. Giovannetti is irrelevant in determining the limits of the Days' riparian right of access which does not include traveling at a 45 degree angle from the shore in front of the Valade property. As a result I must dismiss this aspect of their claim.

[68.] I have no hesitation in expressing that having heard and observed the witness, I preferred the evidence of Lamalot's witnesses.

[69.] It is appropriate to make reference to the expert evidence and how it ought to be treated by the Court. In **National Justice Compania Navierasa S.A v Prudential Insurance Company (Ikarian Reefer) (1993) 2 LLR 68**, Justice Creswell examined the duties and responsibilities of the expert. He stated:

- (i) Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation;
- (ii) An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within its expertise. An expert witness in the High Court should never assume the role of advocate
- (iii) An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion;
- (iv) An expert witness should make it clear when a particular question or issue falls outside his expertise;
- (v) If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more a provisional one. In cases when expert witnesses who has prepared a report could not assert that the report contain the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report;
- (vi) If after the exchange of reports, an expert witness changes his view on a material matter having read the otherside's expert report or for any other reasons, such change of view should be communicated (through legal representatives) to the otherside without delay and when appropriate to the court.

Ordinary witnesses of fact are not allowed to give opinion evidence. They can only say what they saw and what they heard unlike expert witnesses who are able to give opinion evidence. They are nonetheless witnesses and in the same way that I must assess the evidence of every witness, I assess the evidence of these professional witnesses, including their expert testimony. The caution here is that before throwing out or discarding the evidence of an expert witness I must think carefully before doing so. But because an expert expresses an opinion, it doesn't mean that I have to accept it. Here however, where competing opinions are lined up on the two sides of this dispute, it's really a matter of assessing and attributing weight to the various opinions.

[70.] While I accepted Taylor as a truthful witness his expertise in land surveying and geomatics engineering was of assistance, but only in a limited sense. His survey focused on the northern boundary of the Tomlinhess' property and its extension seaward, particularly in relation to the location of the dock. He was also asked to determine where the point of navigability starts in relation to these properties and to assess whether the Lamalot dock interfered with navigation to

Tomlinhess' property or the general public, but did not make any assessment of water depth or sea floor contours.

[71.] I accepted and preferred the evidence of Captain Laing, a navigational officer, which I find to be truthful and more helpful. I accepted Captain Laing's evidence that there was no direct access to navigable waters from the Tomlinhess property shoreline due to the restrictive depth of the shallows comprising the area to the west of the property. His evidence was that currently the only vessels capable of safely navigating from the Tomlinhess property shoreline are jet skis, airboats and canoe or pedal boats. According to Captain Laing, access to navigable waters by Tomlinhess may only be achieved through dredging or the construction of a dock/jetty. A dock/jetty may, with the appropriate government approval, be constructed on the Tomlinhess property shoreline to gain access to navigable waters. There is direct access to navigable waters some 50 feet off the Tomlinhess shoreline and the Lamalot dock/jetty does not in any way obstruct this access. There is unobstructed access to the Eastern Channel which is located to the west of the red, green and yellow transect lines on the Thompson plan.

[72.] Putting aside the issues that might flow from the fact that Tomlinhess acquired its property in 2014, at a time when Lamalot's existing dock had long been in place, I am not satisfied, on a balance of probabilities, that the dock being constructed or resurrected, infringes the riparian rights of Tomlinhess. I am also not satisfied that there is any interference with Tomlinhess' public right of navigation.

[73.] Tomlinhess' original contention was that the continuation of its northern boundary would intersect with last 15 feet of the Lamalot dock, and as such there was a clear infringement of the waterway fronting its property. This was the basis upon which I granted the injunction to limit the construction to that point in the dock. I am not satisfied that that approach of continuing the boundary should be a dominant consideration in this case. I prefer however the reasoning of the Canadian court in the case of *Day v Valade*, where it found that perpendicular lines drawn to the shore were more relevant in the case of irregular shaped properties, which I find the adjoining properties are.

[74.] All of the witnesses who gave evidence in this case accepted that when lines drawn perpendicular to the shore, at Tomlinhess' northern boundary, such lines do not intersect with the Lamalot dock.

[75.] That however, is not the end of the consideration because ultimately, as Tomlinhess accepts, these are mere considerations to reaching a determination of whether Tomlinhess right to:

- (1) egress to and regress from the water to its property, the riparian land;
- (2) land and depart from his shore, and pass and repass over the shore or bed at all times;

- (3) moor vessels adjacent to his land for such period as is necessary to load and unload;  
and,
- (4) have the water of the river flow in its natural state and flow without sensible diminution or increase,

has been infringed. Lamalot describes it as a determination of whether there has been material interference with reasonable access to navigable waters, not whether a projected boundary line intersects the Dock situate on the Crown seabed. I am satisfied on the evidence and the considerations expressed above, that there has been no infringement and no material interference with Tomlinhess' reasonable access to navigable waters. No riparian rights of Tomlinhess has therefore been infringed.

### **Conclusion**

[76.] Having determined that that no riparian rights have been infringed, I am likewise satisfied on the same facts that there has been no nuisance, public or otherwise and no actionable interference with the public right of navigation. In the circumstances Tomlinhess' claim is dismissed and the injunction granted is hereby discharged. Lamalot shall have its costs of the action, such costs to be assessed in default of agreement.

Dated the 4th day of June 2026

  
Sir Ian Winder  
Chief Justice