

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

2012/CLE/qui/FP/00272

IN THE MATTER OF ALL THAT piece parcel or lot of land situate in the Island of Abaco one the said Commonwealth of The Bahamas and being in the Subdivision called and known as “Treasure Cay” and being Lot Number One (1) in Block Number One Hundred and sixty-eight (168) which said piece parcel or lot of land has such position boundaries shapes marks and dimensions as are shown on the diagram or plan attached to an Indenture dated the 10th October, A.D., 1973 and recorded in the Registry of Records of the Commonwealth of The Bahamas in Volume 2217 at pages 309 to 323 and delineated on that part of the said diagram or plan which coloured pink and bearing the Number Three (3) together with the dwelling house situate thereon and known as House Number Three (3).

AND

IN THE MATTER of the Quieting Titles Act, 1959

AND

IN THE MATTER of the Petition of Karl Michael Kliem of the Subdivision of Treasure Cay on the Island of Great Abaco, one of the Islands of the Commonwealth of The Bahamas

Before: The Honourable Madam Justice Constance Delancy

Appearances: Darzhon J. R. Rolle, Jr. for the Petitioner

Hearing date(s): 17 December 2025

JUDGMENT

DELANCY, J

[1.] This quieting action relates to a lot of land being Lot 1 in Block 168 in Treasure Cay Subdivision situate on the Island of Great Abaco (“the Property”).

[2.] The Petitioner prays that his title to the Property be investigated under the Quieting of Titles Act (“the QTA”) and that a certificate of Title with respect thereto be granted to him

[3.] The Petition was filed on 10 August 2012 supported by an Affidavit sworn by the Petitioner on same date and a Supplemental Affidavit sworn by the Petitioner filed on 11 November 2022. The Petitioner asserts that he is entitled to a possessory title to the Property.

[4.] The Petition is also supported by Affidavits sworn by Ruth Mae Albury and Stafford M. Symonette and filed on 10 August, 2012; and an Affidavit sworn by Marcellus Roberts and filed on 11 December 2025.

[5.] An Abstract of Title was filed on 11 November 2022; in which, the Petitioner distills his interest in the Property partly by documentary title and possessory title to the Property.

[6.] The Petitioner also filed a survey plan delineating the boundaries of the Property and its position in relation to adjoining properties.

[7.] A Notice of the Petition was advertised pursuant to the Directions Order made 12 June, 2023. An Affidavit of Compliance sworn by Wynsome Carey verifying that the publications of the Notice were filed on 11 December, 2024.

[8.] There are no adverse claimants.

The Abstract

[9.] The documentary title of the Petitioner may be summarized as follows:

1	14 June 1973	Conveyance from Treasure Cay Villas Limited to Brigantine Beach Homeowners Association Limited of lot of land a part Brigantine Beach Estates being Lot 1 Block168 of Treasure Cay Subdivision together with dwelling house known as House No.3 (“the property”). Vol. 2205 at p. 224 - 234
2	10 Oct. 1973	Lease from Brigantine Beach Homeowners Association Limited to the Petitioner, Guenter Geortz (“Geortz”) and Norbert Balzer (“Balzer”) of certain rights of amenity areas for 99 years’ subject to a yearly rent/service charge. Vol.2217 at p. 289-308
3	10 Oct. 1973	Conveyance from Treasure Cay Villas Limited to the Petitioner, Geortz and Balzer of the property in fee simple in equal share as tenants in common. Vol. 221 p. 309-323
4	28 Nov. 1973	Equitable Mortgage from the Petitioner, Geortz and Balzer to Bahamas Commonwealth Bank Limited (“BCBL”) over the property. Vol. 2220 at p. 311-319
5	7 Oct. 1976	Conveyance from Geortz to the Petitioner and Balzer of his interest in the property in fee simple in equal share as tenants in

		common subject to the equitable mortgage. Vol.2674 at p. 185-192
6	7 Oct. 1976	Assignment of Lease from Geortz to the Petitioner and Balzer of his interest in the unexpired lease term. Vol.2674 at p. 185-192
7	8 Oct. 1980	Balzer died in Germany
8	29 May 1996	Release between Michael Hilton Fielder as liquidator for BCBL to the Petitioner. Supreme Court No.1027 of 1972
9	29 May 1996	Transfer of Equitable Mortgage from Michael Hilton Fielder as liquidator for BCBL to the Petitioner. Vol. 6845 at p. 369-376.

Evidence

Petitioner's Affidavit

[10.] The Petitioner's evidence is contained in the Affidavit filed on 10 August 2012 and Supplemental Affidavit filed on 11 November 2022 and may be summarized as follows:

- (1) The Petitioner is a second homeowner and has been visiting Treasure Cay since 1973;
- (2) The Petitioner purchased the property along with Guenter Geortz ("Geortz") and Norbert Balzer ("Balzer") on 10 October 1973;
- (3) Geortz sold his interest in the property to the Petitioner and Balzer on 7 October 1976;
- (4) Balzer died in Germany on 13 October 1980;
- (5) Since the death of Balzer the Petitioner has been in sole quiet and undisturbed possession of the property;
- (6) Since the death of Balzer the Petitioner has been solely responsible for the maintenance and upkeep of the property and payment of real property taxes related to the property;
- (7) That at the time of death of Balzer his widow refused to administer his estate due to outstanding debts and estate was dissolved as a bankrupt due to lack of funds;
- (8) That since the death of Balzer no other person, including any heirs of beneficiaries of Balzer, has ever claimed the property and he regards the property as his alone and seeks a Certificate of Title for the same.

The Symonette Affidavit

[11.] The evidence of Stafford M. Stafford which is contained in his Affidavit may be summarized as follows:

- (1) That he lived in Treasure Cay continuously since 1972 and was very familiar with the property;
- (2) That he recalls the property being owned by the Petitioner, Geortz and Balzer;
- (3) That in October 1976 the Petitioner and Balzer purchased Geortz's interest in the property;

- (4) That Balzer died sometime in 1980, leaving the Petitioner the sole surviving owner of the property;
- (5) Since Balzer's death, the Petitioner took care of the property and paid all maintenance and property tax related thereto.

The Albury Affidavit

[12.] The evidence of Ruth Mae Albury may be summarized as follows:

- (1) That she lived in Treasure Cay continuously since 1976;
- (2) That she knew the property being owned originally by the Petitioner, Geortz and Balzer as tenants in common;
- (3) That according to the conveyance dated 7 October 1976 Geortz sold his interest in the property to the Petitioner and Balzer;
- (4) That sometime in 1980 Balzer died, leaving the Petitioner the sole surviving owner of the property;
- (5) Since Balzer's death, the Petitioner has been in sole, undisturbed possession of the property and solely responsible for payment of real property taxes and caretaking of the property.

The Roberts Affidavit

[13.] The evidence of Marcellus Roberts is contained in his Affidavit and viva voce evidence may be summarized as follows:

- (1) He is a real estate professional and worked in the real estate industry, specifically in the beachfront community of Treasure Cay, for over 25 years where the Petitioner is the owner of multiple properties throughout the area;
- (2) Personally known the Petitioner for over 20 years and has extensive knowledge of area where the property is located;
- (3) He can confidently confirm that the Petitioner has been sole and undistributed possession of the property during the 20 years' period in which he knew the Petitioner;
- (4) That the house located on the property was extensively damaged from the passage of Hurricane Dorian.

[16.] In accordance with the provisions of Practice Direction 2 of 2025, the Court determined that it was impractical and unnecessary to conduct physical site visit. The Court considered the size of the property and the fact that it is located in a developed area. The Court also took into account that it was more cost effective to utilize drone footage along with the colour photographs exhibited to the Second Affidavit of Wynsome Carey filed on 30 September, 2025 to conduct a virtual site visit of the property.

Law and Analysis

[14.] The Court has the power to conduct an investigation of title to property upon application from any person asserting title thereto under Section 3 of the QTA:

Any person who claims to have any estate or interest in land may apply **to the court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted by the court** in accordance with the provisions of this Act.

[Emphasis added]

[15.] Section 8 of the QTA sets out the framework of the investigation:

(1) **The court in investigating the title may receive and act upon any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.**

(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.

(3) **The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court.**

[Emphasis added]

[16.] In **Powell v McFarlane** (1977) 38 P & CR 452 *Slade, J.* at p. 470-471 posited the threshold which an Applicant must reach to succeed in his application:

(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. **The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.**

(2) **If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").**

(3) **Factual possession signifies an appropriate degree of physical control.** It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. **Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question of what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.** In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. **What**

is a sufficient degree of sole possession and use must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": West Bank Estates Ltd v. Arthur, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession.

On the particular facts of **Cadija Umma v. S. Don Manis Appu** the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the **Red House Farms** case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per *Cairns, Orr and Waller L.JJ.* Everything must depend on the particular circumstances, but broadly, **I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.**

(4) The *animus possidendi*, which is also necessary to constitute possession, was defined by *Lindley, M.R.*, in **Littledale v. Liverpool College** (a case involving an alleged adverse possession) as "**the intention of excluding the owner as well as other people.**" This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, **the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.**

[Emphasis added]

[17.] The fact that there was no adverse claimant does not automatically entitle the Petitioner to the grant of a Certificate of Title. The Court must still be satisfied that the Petitioner has some claim to the title of the Property. The Court is guided by the dictum of *Fraser, Snr. J.* (as she then was) at paras. [43] – [44] in **Bahamas Trading Post Inc.** 2013/CLE/qui/01041, that the Court's investigation is not intended to be constrained by the rigid rules of evidence which are required under certain statutory regimes:

[43.] Firstly, the Petitioner avers that the evidence it submitted proves that it has documentary title to the subject land. The Court, mindful of the dicta of *Winder CJ* in **F.A.R.** [2023], at paragraph 9, notes **that a petitioner must demonstrate some form of**

documentary title to the land in order to move the Court to grant a Certificate of Title.

[44.] **This Court, according to Section 8(1) of QTA has considered the evidence of the Petitioner during its investigation of the title to the subject land. More so, the Court has considered the evidence upon a balance of probabilities as required and reiterated by Crane-Scott JA in Jason Strachan et al v Camperdown Holdings Ltd [2016] SCCiv App No. 224 of 2012 at paragraph 78. While comprehensive and disciplined, the Court's investigation of title under the QTA is not required to be as stringent as required by other statutory regimes** according to *Lord Briggs in Bannerman Town* [2018] at paragraph 36 and reiterated by the **Board of the Privy Council in Armbrister** [2012] at paragraph 8.

[Emphasis added]

[18.] The Petitioner herein relies on the Abstract, which sets out the documentary title to the Property, which states that:

- (i) the property was originally purchased by the Petitioner, Geortz and Balzer in 1973 at tenants in common in equal shares;
- (ii) (ii) the Petitioner, Geortz and Balzer also entered into an equitable mortgage with BCBL over the property in 1973;
- (iii) Geortz transferred his interest to the Petitioner and Balzer in 1976 as tenants in common in equal shares subject to the equitable mortgage;
- (iv) Balzer's interest in the property fell into his estate upon his death in 1980;
- (v) the equitable mortgage between the Petitioner, Geortz, Balzer and BCBL was transferred to the Petitioner in 1996.

[19.] The Petitioner avers that Geortz died in 1980 in Germany and that the spouse declined to administer his estate due to outstanding debts. In **Eleuthera Land Company Limited** 2012/CLE/qui/00579, *Charles, J.* (as she then was) at para. [8] posited that the provisions of Section 8 of QTA allows the Court to consider hearsay evidence and determine what weight to give to it:

Hearsay evidence is admissible. However, the court will determine what weight, if any, is to be given to it. In **Kenneth McKinney Higgs and Another (Substituted for Clotilda Eugenie Higgs, Deceased)** Appellants v **Nassauvian Ltd** Respondent [1974] UKPC 24 at page 4 of the UK PC Judgment, *Sir Harry Gibbs* said: "...**In part, this evidence was hearsay – a circumstance which, under the Quieting Titles Act 1959 (section 8 (1) did not render it inadmissible but which of course affected its weight....**"

[Emphasis added]

[20.] A petitioner seeking to establish possessory title is not bound by the requirement of establishing a root of title that spans at least 30 years (required by Section 3(4) Conveyancing and Law of Property Act). A petitioner who claims possessory title is bound to prove undisturbed possession of at least 12 years as set out in Section 16(3) of the Limitation Act.

[21.] The Petitioner relies on the Affidavit and viva voce evidence to support his claim of undisturbed possession of the property following the death of Balzer in 1980. The affiant of the Albany affidavit died prior to the hearing of the matter; and the affiant of the Symonette Affidavit could not be located to attend Court. The Petitioner gave evidence on his own behalf that he has been solely responsible for the property since 1980. Mr. Marcellus Roberts swore an Affidavit and gave viva voce evidence in support of the Petition averring that he is aware of the Petitioner having been in possession of the Property for over 20 years.

Disposition

[22.] The Court, having regard to the evidence on a balance of probabilities and the Court's review of the drone footage and photographs of the property, is satisfied that the Petitioner demonstrated some documentary title and undisturbed possession of the property for a period exceeding 30 years. The Court finds that it is sufficient to extinguish and bar the rights of any other person holding a prior title or interest in the Property.

[23.] The Court hereby orders and directs that a Certificate of Title in the prescribed form in respect of the Property described in the Petition and shown on the Plan filed therewith do issue to the Petitioner.

Dated the 13 day of May, 2026

[Original Signed and Sealed]

Constance Delancy
Justice