

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2023/Qui/No.566

IN THE MATTER of ALL THAT piece, parcel, or tract of land situate in Dunmore Town on the island of Harbour Island, one of the Islands of the Commonwealth of The Bahamas and containing Two Thousand Eight Hundred and Fifty Five (2,855) Square Feet more or less, all of which form the eastern portion of Lot 86 of the Subdivision known as Dunmore Town, which said piece parcel or tract of land is bounded on the NORTH by a public road reservation known as Dunmore Street and running thereon 77.35 feet SOUTHERLY by a public road reservation known as King Street and running thereon approximately 79.65 feet and WESTWARDLY by the other portion of Lot 86 and running thereon approximately 59.55 feet.

AND IN THE MATTER of the Quieting Titles Act Chapter 393 Statute Law of the Commonwealth of The Bahamas

AND IN THE MATTER of the Petition of VALERIE JANE nee Albury

Petitioner

-and-

CHARLES NESBITT and TYRONE NESBITT

Adverse Claimants

Before: **The Honourable Justice Darron D. Ellis**

Appearances: **Ms Camille Cleare for the Petitioner;**

Mr Fedner Dorestal for the Adverse Claimants

Hearing dates: 3 December 2024, 28 February 2025, 29 January 2026

Quieting Titles Act, Ch. 393 — Possessory title — Adverse possession — Factual possession — Animus possidendi — Limitation Act, Ch. 83, s.16(3) — Whether long possession sufficient to establish title — Adverse Claimant

The Petitioner applied under the Quieting Titles Act for the investigation of title and the grant of a certificate of title in respect of land on Harbour Island. She relied on documentary and possessory title, asserting long, continuous, open, and undisturbed occupation dating back to approximately 1926. The Adverse Claimants subsequently filed a notice of adverse claim, asserting documentary title.

Held: granting a certificate of title to the Petitioner:

1. In proceedings under the Quieting Titles Act, the Court performs an investigative function. It determines title by assessing the relative strength of competing claims; **Ocean Estates Ltd v Pinder** [1969] 2 AC 19 relied upon.
2. Where a documentary title is not established, a petitioner may succeed by proving adverse possession, which requires (i) factual possession and (ii) an intention to possess, **Powell v McFarlane** (1977) 38 P & CR 452 relied upon.
3. Factual possession requires an appropriate degree of exclusive physical control, assessed in light of the land's nature and use. Long-term physical control, together with the Petitioners' open, peaceful, and exclusive use of the land, was inconsistent with any competing control.
4. Whether the applicable limitation period is twelve years or twenty years, the Petitioner's possession from December 1997 to the filing of the Petition in 2023 exceeds both periods. Accordingly, any competing possessory or documentary claim by the Adverse Claimants had, by then, been extinguished.
5. The Adverse Claimants did not prove a superior documentary title and did not establish acts of possession sufficient to defeat or interrupt the Petitioner's possessory claim. The Adverse Claimant's claim fails. The Petitioner is entitled to a Certificate of Title in respect of the Property

JUDGMENT

Ellis J,

Introduction and Background

- [1.] This is the Court's judgment on the Petition of Valerie Jane Neely née Albury to quiet title to land situated in Dunmore Town, Harbour Island, Eleuthera, being the eastern portion of Lot 86 and referred to in this judgment as "the Property".

- [2.] The Petition was filed under the Quieting Titles Act, Ch. 393. The Petitioner seeks an investigation of title and the grant of a certificate of title in respect of the Property. The Petitioner claims to be the owner of the Property and requests that the Court investigate, determine, and declare her title to the Property.
- [3.] Charles Nesbitt and Tyrone Nesbitt entered an adverse claim on 31 October 2023. They contend that the Property forms part of land which descended to them through their mother, Presilettia Nesbitt, from her father, Joseph Russell.
- [4.] The Petitioner claims through the Albury family. She says that the Property has long been regarded, maintained, and controlled by members of that family and that, from about December 1997, she personally assumed responsibility for its care and control.
- [5.] The central issue is whether the Petitioner has established a title sufficient to justify the grant of a certificate of title and, in particular, whether she has established possessory title as against the Adverse Claimants.
- [6.] The Property is more particularly described in the Petition as the eastern portion of Lot 86 of the subdivision known as Dunmore Town, Harbour Island, containing approximately 2,855 square feet and bounded by Dunmore Street to the north, King Street to the south, and the remaining portion of Lot 86 to the west.
- [7.] The Petitioner's evidence is that she entered into occupation of the Property in or around December 1997 with the permission of her grand-uncle, Sidney Albury. Since then, she has been maintaining the Property. That evidence explains the origin of her occupation and the family basis upon which she claims the Property.
- [8.] However, the Petitioner has not produced a complete documentary chain of title sufficient, by itself, to establish documentary title. The Petition must therefore be determined principally on the basis of possessory title.
- [9.] The Petitioner also filed an Abstract of Title, which sets out, in chronological form, the historical events and acts of possession relied upon in support of the Petition. The Abstract traces the Petitioner's case from approximately 1926 to the filing of these proceedings in 2023. As the Abstract forms part of the evidential record before the Court, it is unnecessary to reproduce it in full in this judgment. The Court has, however, considered it in its entirety.
- [10.] The Property is described in a plan filed on 17 July 2023 and is shown below.

The Petitioner's Evidence

The Petitioner

- [13.] The Petitioner's evidence is that she is the owner in fee simple and is in possession of the Property. The Petitioner's case is that the Property has long been regarded, occupied, maintained and controlled by her family, the Albury family. She accepted that she had not personally seen documents of title and that her knowledge of the earlier devolution of title came from family history, particularly information from her grand-uncle, Sidney Albury.
- [14.] She stated that when she moved to Harbour Island around 1997, she was aware that the Property was in her family and that her grand-uncle had maintained it for many years before she began maintaining it. She described the Property as having a concrete wall around it, and as vacant of buildings, though containing plants and trees.
- [15.] The Petitioner testified that she planted trees on the Property, regularly cut the grass, and maintained the wall surrounding the Property.
- [16.] The Petitioner gave evidence that Wesley Methodist Church, which is adjacent to the Property, used the Property only with permission from her and her family, initially from Sidney Albury and later from her as she took over maintenance responsibilities. The church would hold an annual fair, with overflow activities, booths, and bouncy castles set up on the Property.
- [17.] The Petitioner denied that Tyrone Nesbitt had approached her several times about ownership, and denied that she told him to contact the Wesley Methodist Church. She said that she had never met him.
- [18.] The Petitioner testified that sometime in November 2022, she encountered a surveyor named Linden Newbold who was attempting to survey the Property on behalf of the Adverse Claimants. She advised him that the Adverse Claimants do not own the Property.
- [19.] The Petitioner acknowledged becoming aware of a sign placed on the Property, but said she did not remove it. She recalled a sign being removed by Sidney Albury around the year 2000, and explained how she dated that event by reference to her work pattern at her shop.

[20.] In re-examination, she clarified that her great-grandfather lived with his wife, Clara Johnson, on the Property since before he died in 1926, and he was survived by Clara Johnson, who continued to live on the Property until her death. Upon her death, Clara's brother-in-law, Harry Albury, tore down the house on the Property and erected a wall around it. Harry Albury maintained the wall until his death. After which, Sidney Albury took possession and continued to look after the property.

Jackswell Percentie

[21.] Jackswell Percentie (74 years old) testified that he is a member and Senior Sexton of Wesley Methodist Church, and that he has been a church member for approximately 70 years and Senior Sexton for approximately 17 years. He distinguished between Temperance Square (the Church's property next to the Property), which he described as church property, and the Property, which he associated with the Petitioner and her family.

[22.] He gave evidence that, as Senior Sexton, he would ask the Petitioner to use the Property for church functions. He denied ever seeing lumber stored on the Property or Temperance Square, denied that a homeless man lived on either property, and denied that there were dilapidated structures on the Property as alleged by the Adverse Claimants.

[23.] Under cross-examination, he explained that, to his knowledge, the Albury family owned the Property.

[24.] Mr Percentie did not claim to have seen documents of title. His evidence of ownership of the Property was based on long-standing conduct, community recognition, the operation of the Albury family store opposite the Property, and the Alburys' cleaning and care of the Property.

Reverend Jacinta Neilly

[25.] Reverend Jacinta Neilly testified that she served on Harbour Island at the Wesley Methodist Church from 2004 to 2010 and again from 2019 to the date of the hearing. She gave evidence that the Methodist Church owned the square (known as Temperance Square) next to the Property and that Sidney Albury, and later the Petitioner, took care of the Property by maintaining it, including mowing the lawn and painting the wall.

She stated that during her time there, when church functions spilt over into the Property, permission was first sought from Sidney Albury and later from the Petitioner.

[26.] Under cross-examination, Reverend Neilly accepted that there was no written agreement for the church's use, but said there was a verbal agreement and a consistent practice of asking permission from the Petitioner and her family to use the Property for years.

Reverend William Higgs

[27.] Reverend William Higgs (71 years old) was superintendent minister for the North Eleuthera district, including the Harbour Island Methodist Church, from 1982 to 1990. He was born on Harbour Island and remains a resident. He gave evidence that, during his tenure, the Church sought permission from the Albury family to use the Property, as it was understood to be their property.

[28.] Reverend Higgs accepted that he had not seen documentary proof of the ownership of the Property. He said, however, that both the Methodist Church's ownership of the property known as Temperance Square and the Albury family ownership of the Property formed part of community knowledge passed down over generations, and that, from childhood, he remembered the Albury family maintaining the Property.

Reverend Henry Knowles

[29.] Reverend Henry Knowles took over Wesley Methodist Church in 2014. He testified that the Petitioner and her family owned the Property, and that the church and he, out of courtesy, personally made the Petitioner aware of its functions and sought permission to use the Property. He explained his reference to ownership or control by citing Sidney Albury's and the Petitioner's maintenance, lawn care, beautification, and painting of the Property and its walls.

The Adverse Claimants' Evidence

Charles Nesbitt

[30.] Charles Nesbitt said that the Property belonged to his mother, Presilettia Nesbitt, who received it from her father, Joe Russell. He accepted that he had never visited the

Property. His knowledge was based on what his mother had told him, including that Joseph Russell had given or conveyed the Property to her, and that she had probated her father's property.

[31.] In cross-examination, Mr Nesbitt accepted that Presiletta had approximately ten siblings; that Joseph Russell did not leave a will; that Presiletta was not the oldest child; and that she had an older brother.

Barbara Bullard

[32.] Barbara Bullard said that her mother, Presiletta Nesbitt, was the heir of the property in question, and that she knew of the Property because she had often heard her mother speak about it. Ms Bullard said Presiletta died in 2012 at about 94 or 95, and that when Presiletta died, she had no brothers or sisters left living.

[33.] In cross-examination, Ms Bullard did not know when Presiletta had last gone to Harbour Island; did not know where Joseph Russell was born; was not sure whether Joseph Russell had a will; did not know whether he had sold any properties; and could not say how many properties he had on Harbour Island.

Tyrone Nesbitt

[34.] Tyrone Nesbitt gave the most detailed evidence for the Adverse Claimants. He said that his mother, Presiletta Nesbitt, had property in Eleuthera and Harbour Island, that she had spoken to the family about it, and that he visited the Property with her around 1984 or 1985.

[35.] He identified landmarks in the area, including the lumber place, Tip Top shop, a real estate business office and a church. He said he later visited the Property sometime in 2014 after a real estate person told him that the Albury family were claiming ownership of the Property. He said during that visit, he met the Petitioner for the first time.

[36.] Mr Nesbitt said that on that visit, he found a man in an old house on the Property, who said he lived there and had bought the Property from the Albury family. He said the man directed him to the Tip Top shop, where he spoke with the Petitioner. According to Mr Nesbitt, Ms Albury told him she knew nothing about the Property and

that the church owned the Property. He said that on a subsequent visit, he told her he wished to put up a sign, and she told him to go ahead.

[37.] Mr Nesbitt's evidence conflicted with the Petitioner's evidence in important respects. The Petitioner denied ever meeting him and denied directing him to the Methodist Church. Mr Nesbitt maintained that he spoke to her three times and put up the signs on his second visit.

[38.] Mr Nesbitt said he believed, or knew, that the Property belonged to his family based on probate documents. He also accepted that after putting up signs, he took photographs of himself on the Property with the signs; and that when he later returned, the signs were gone, but he did not pursue the matter because he had already photographed them.

[39.] Mr Nesbitt gave evidence that there had been an old stone or rock house on the property, with four rooms and a roof, and that a gentleman was living in it. This was directly contrary to the evidence of the Petitioner and Jackswell Percentie, who denied knowledge of any such structures or homeless occupants.

[40.] He further said that the lumber business had stored lumber on part of the Property, and that his mother had a handyman clean the Property. The Petitioner's witnesses denied seeing lumber stored there, and the alleged handyman had not been located by the date of the hearing.

Locus in Quo Visit

[41.] On 28 February 2025, the Court travelled to Harbour Island, conducted a locus inspection of the Property, and heard further oral evidence from witnesses called on behalf of the Petitioner.

[42.] One such witness was Brenda Jan Higgs (89 years old), a longstanding resident of Duke Street, Harbour Island, where she was born and raised. Ms Higgs testified that she was familiar with both the Albury family, in particular Harry and Laura Albury, and the Property in question. She stated that following the deaths of Harry and Laura Albury, the house previously situated on the Property was removed and a boundary wall was erected around it. She further testified that Sidney Albury thereafter assumed responsibility for the Property and maintained and beautified it by, among other things, ensuring that the walls were painted and the Property kept in good condition. Ms Higgs also confirmed that Wesley Methodist Church was situated immediately adjacent to the Property. She expressly stated that she was not related to the Albury family. Her testimony corroborated the Petitioner's testimony.

[43.] The Court also heard evidence from Joseph Saunders (99 years old), a lifelong resident of Harbour Island, who testified that he was familiar with Sidney Albury, having attended the Church with him in their younger years. Mr Saunders confirmed that Sidney Albury maintained the Property over many years and planted fruit trees thereon. His evidence was consistent with the broader body of evidence that Sidney Albury exercised a significant degree of control and responsibility over the upkeep and appearance of the Property.

[44.] The Court found both witnesses to be credible and independent, and their evidence, particularly regarding the longstanding maintenance and use of the Property by the Albury family, provided important corroboration of the Petitioner's claim of continuous possession.

[45.] During the locus inspection, the Court had the opportunity to observe the Property firsthand and found it to be substantially as described by the Petitioner and her witnesses. The Court observed a well-maintained parcel of land enclosed by a boundary wall and situated adjacent to Wesley Methodist Church. The physical condition and appearance of the Property were consistent with the evidence that it had been cared for and maintained over a prolonged period.

[46.] Significantly, the Court did not observe any lumber being stored on the Property, nor did it observe the presence of homeless persons residing there or any structures erected upon the Property, notwithstanding the assertions made by the Adverse Claimants. Those allegations were not borne out by the Court's observations during the locus inspection and, to that extent, undermined the reliability of certain aspects of the Adverse Claimants' evidence.

[47.] The Court's observations during the locus inspection were instead consistent with the Petitioner's evidence that the Property had been maintained as an open, enclosed, and aesthetically cared-for parcel of land, and supported the testimony that members of the Albury family had exercised dominion and control over it for many years.

Submissions

Petitioner's Submissions

[48.] Counsel for the Petitioner submits that the Petitioner has established possessory title through longstanding, open, continuous and exclusive possession by the Petitioner and her predecessors. Reliance is placed upon evidence that the Property was maintained, enclosed, beautified and controlled by successive members of the Albury family over a period substantially exceeding the applicable limitation period. It is

further submitted that the Petitioner exercised acts of dominion consistent with ownership, including granting permission for church functions and objecting to attempts by others to survey or market the Property for sale.

[49.] As to the Adverse Claim, counsel submits that the Adverse Claimants have failed to establish any documentary title to the property. It is argued that although the Adverse Claimants rely on the estate of their late mother, Presietta Nesbitt, they have failed to establish any documentary nexus among themselves, their mother, and the alleged original grantee, Joseph Russell. It is further submitted that no evidence has been produced to demonstrate that Mrs. Nesbitt inherited any interest in the Property through the rules of intestacy.

[50.] Counsel further submits that the evidence given by Tyrone Nesbitt was confusing, inconsistent and lacking in credibility. In particular, it is argued that many of the activities upon which he relied occurred on the adjoining church property known as Temperance Square rather than on the Property itself, and that his evidence concerning structures, occupants and use of the land was inconsistent with what the Court observed during the locus visit.

[51.] Accordingly, counsel submits that any documentary title which may once have existed has long since been extinguished by operation of the Limitation Act through the Petitioner's uninterrupted possession and that the Adverse Claim should be dismissed. The Court is therefore invited to grant the Petitioner a Certificate of Title, declaring her to be the legal and beneficial owner in fee simple of the Property.

The Adverse Claimants' Submissions

[52.] Counsel for the Adverse Claimants submits that the Petition ought to be dismissed and that the Adverse Claimants' documentary title should prevail over the Petitioner's claim. Counsel submits that the Petition should be dismissed because the Petitioner has failed to establish the elements necessary to prove exclusive possession. It is argued that her case rests principally upon family history, community reputation and circumstantial evidence, all of which are insufficient to displace a documentary title. It is further submitted that the Petitioner has produced no documentary chain of title and no documentary evidence connecting her to those predecessors through whom she claims possession. Counsel argues that no wills, grants of probate, birth certificates or other pedigree documents were produced to establish any lawful entitlement to the Property.

[53.] Counsel also submits that several of the Petitioner's witnesses merely assumed that the Albury family owned the Property and that such evidence cannot, without more, establish title or exclusive possession. It is further argued that permitting Wesley Methodist Church to use the Property is inconsistent with a claim of exclusive possession.

[54.] As to the Adverse Claimants' own case, counsel submits that they derive title through Joseph Russell and their late mother, Presiletta Nesbitt, and that their visits to the Property, acts of maintenance, erection of "for sale" signs, and efforts to market the Property constituted assertions of ownership inconsistent with any claim of uninterrupted possession by the Petitioner. Accordingly, the Court is invited to dismiss the Petition, uphold the Adverse Claim and award costs to the Adverse Claimants.

Findings of Fact

[55.] Having considered the oral and affidavit evidence, I make the following findings. First, it appears to the Court that the Property was, for decades, treated by the Albury family and by members of the local community as being under the control and ownership of the Albury family. The Court therefore finds that the Petitioner's occupation formed part of a continuous pattern of family possession rather than a new or independent claim commencing only upon her entry onto the Property.

[56.] Secondly, I accept the Petitioner's evidence that from about December 1997 she assumed responsibility for the Property and maintained it openly and continuously by cleaning it, mowing the lawn and painting the wall while tending to the trees and plants.

[57.] Thirdly, I accept the evidence of all of the Petitioner's witnesses that Wesley Methodist Church sought permission from Sidney Albury and later from the Petitioner when its activities extended onto the Property. I also accept that they witnessed the Albury family cleaning and maintaining the Property, including mowing the lawn, painting the walls and tending to the trees and plants. This evidence is significant because it demonstrates that the Petitioner and her family exercised practical control over the Property and that third parties recognised and accepted that control.

[58.] Fourthly, I am not satisfied that the Adverse Claimants possessed the Property or interrupted the Petitioner's possession. Their evidence of possession was limited, sporadic, and in material respects inconsistent with the evidence accepted by the Court and with the Court's observations during the locus inspection.

Applicable Legal Principles, Analysis and Disposition

[59.] The Court's function under the Quieting Titles Act is investigative. The Court is not merely resolving a private dispute between parties but determining whether the Petitioner has established a title sufficient to justify the grant of a certificate of title.

[60.] In assessing competing claims, the Court considers the relative strength of the titles advanced. A Petitioner may succeed by documentary title, possessory title, or a combination of both.

[61.] Where a possessory title is relied upon, the Petitioner must prove factual possession and an intention to possess. Factual possession requires a sufficient degree of physical custody and control, assessed having regard to the nature, location, and ordinary use of the land. The intention to possess requires an intention, in one's own name and on one's own behalf, to exclude the world at large, including the paper owner so far as reasonably practicable.

[62.] Pursuant to **Section 3 of the Quieting Titles Act**, 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.

[63.] **Section 8 of the Quieting Titles Act** empowers the Court to investigate title and to receive such evidence as satisfies it of the relevant facts, whether by affidavit, oral testimony, or otherwise. **Section 8** provides:

“(1) The court in investigating the title may receive and act upon any evidence that the court receives 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."

[64.] Under **Section 16(3) of the Limitation Act, Ch. 83**, an action to recover land may not be brought after the expiry of twelve years from the date on which the right of action accrued, subject to the proviso stated in that subsection. **Section 16(3)** provides that:

"(3) No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person:

Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires."

[65.] Applying the law to the evidence, the Court is not satisfied that either party has established a complete documentary title to the Property. Accordingly, these proceedings fall to be determined principally on the basis of possessory title and the relative strength of the parties' competing claims.

[66.] The relevant inquiry is whether the Albury family's possession, including the Petitioner, taken cumulatively, remained continuous, exclusive, and adverse to the interests of the paper owner throughout the statutory period.

[67.] The Court does not regard the Petitioner's evidence that she initially occupied the land with the permission of her grand-uncle as inconsistent with her claim. The evidence does not suggest that the grand-uncle was granting a licence as the paper owner. Rather, he was one of a succession of family members who had long exercised control and dominion over the land. In those circumstances, the grant of permission is more properly characterised as a continuation or transfer of possession within the family rather than a licence derived from the true owner.

[68.] In matters involving possession, the law requires proof of (i) factual possession and (ii) the requisite intention to possess (*animus possidendi*) as per **Powell v McFarlane** (1977) 38 P & CR p452.

[69.] The appropriate starting point in considering competing claims remains the Privy Council's decision in **Ocean Estates Ltd v Pinder** [1969] 2 AC 19; *Lord Diplock* opined at page 25 as follows:

“Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B, he is entitled to succeed notwithstanding that C may have better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.”

[70.] A party may succeed by establishing a documentary title or by proving possession adverse to the person with the paper title for the applicable limitation period. A claimant who cannot establish paper title may nevertheless succeed by proving possession adverse to the paper owner for the relevant limitation period. In **Powell v McFarlane**, *Slade J* explained that such a claimant must establish both factual possession and the requisite intention to possess, or *animus possidendi*. Factual possession requires an appropriate degree of exclusive physical control, assessed by reference to the nature of the land and the manner in which such land is ordinarily used. The Petitioner must show that he or she dealt with the land as an occupying owner would be expected to, and that no one else did so. The requisite intention is an intention, in one's own name and on one's own behalf, to exclude the world at large, including the paper owner, so far as reasonably practicable.

[71.] In addressing the competing claims, it is necessary to distinguish between documentary title, succession and possessory title. Although those concepts may overlap, they engage separate legal inquiries. The inability of the Petitioner to establish a documentary chain of title does not, without more, defeat a claim founded upon adverse possession, just as the existence of an historic documentary title does not answer a claim that such title has been extinguished by operation of the Limitation Act.

[72.] Several independent witnesses materially corroborated the Petitioner's evidence. Jackswell Percentie, Reverend Jacinta Neilly, Reverend William Higgs and Reverend Henry Knowles each drew a clear distinction between the Property and the Church's property. Their evidence established a longstanding and consistent practice whereby Wesley Methodist Church sought permission from either Sidney Albury or the Petitioner whenever church functions extended onto the Property. Their evidence also demonstrated that the Albury family maintained, beautified and controlled the Property over many years.

[73.] As stated above, the Court accepts the evidence of the Petitioner and her witnesses that the Property was treated in the community as being under the control

of the Albury family and, later, the Petitioner. Their evidence was consistent on the central matters of occupation, maintenance, permission granted to the church, and the absence of any meaningful control by the Adverse Claimants.

[74.] The Court attaches particular weight to Reverend William Higgs' evidence because it significantly predates the present dispute and supports the conclusion that the Albury family's association with the Property was longstanding and not just adopted for the purposes of litigation.

[75.] The Court also places significant weight on Jackswell Percentie's evidence. His longstanding duties as Sexton and his decades-long membership in the Church gave him unique insight and practical contact with the Property, the Church's property, and the community. His evidence that he sought the Petitioner's permission to use the Property provides direct evidence of conduct consistent with ownership and control.

[76.] Reverend Jacinta Neilly and Reverend Henry Knowles provided further support for this conclusion. Although some of their knowledge was derived from information passed down within the church, their evidence principally rested upon repeated practice. In the Court's view, the longstanding practice of seeking permission from the Albury family before using the Property is of considerable probative value, particularly given that there is no evidence that the church itself ever asserted ownership of the land.

[77.] During the locus visit, the Court also heard sworn evidence from additional elderly community witnesses, with both parties present and afforded the opportunity to ask questions. Their evidence corroborated the earlier testimony of the Petitioner's witnesses.

[78.] The Adverse Claimants' case rests principally upon the assertion that Joseph Russell owned the Property, that Presiletta Nesbitt inherited an interest in the Property, and that they, in turn, derive their entitlement through her.

[79.] Charles Nesbitt testified that he never visited the Property, and his evidence was therefore of limited assistance on issues of occupation, maintenance, or possession. His evidence concerning title was largely derived from family history and probate records. He accepted, however, that Joseph Russell died intestate, that Presiletta had numerous siblings, and that she was not the eldest child. Those admissions make it difficult to conclude that Presiletta alone inherited the entirety of any interest Joseph Russell may have possessed.

[80.] Barbara Bullard's evidence was similarly derived from family history. She was unable to identify when Presiletta last visited Harbour Island, how many properties Joseph Russell owned there, whether any had been sold, or whether he

left a will. While her evidence may have some relevance to succession, it does not establish that Presileta alone became entitled to the Property in dispute.

[81.] Tyrone Nesbitt's evidence presented further difficulties. His assertions that there was a stone structure on the Property, that lumber was stored there, and that a homeless person resided there were contradicted by the Petitioner's witnesses. Further, the Court's observations during the locus inspection revealed no present physical features supporting those assertions.

[82.] The Court also places limited weight on the evidence concerning the erection of "for sale" signs. Mr Nesbitt accepted that he transported the signs from Nassau, erected them during a visit, photographed them, and took no further steps regarding them. The Court regards this as an isolated assertion of ownership rather than evidence of settled occupation, possession, or management of the Property.

[83.] The Adverse Claimants also argued that the use of the Property by the Wesley Methodist Church was not consistent with the Petitioner's continuous exclusivity. The Court does not agree. The occasional permitted use of the Property by Wesley Methodist Church did not negate exclusivity. On the contrary, the fact that permission was sought and granted supports the conclusion that the Petitioner and her predecessors exercised control over the Property.

[84.] Finally, the Adverse Claimants' documentary foundation remains incomplete. While reference was made to probate documents and an historical grant to Joseph Russell, the evidence falls short of establishing the necessary chain connecting Joseph Russell to the disputed triangular parcel and thereafter to Presileta Nesbitt and the Adverse Claimants. On the evidence before the Court, those links have not been satisfactorily established.

Limitation Period

[85.] The evidence of the Petitioner establishes a continuous pattern of occupation, maintenance and control by successive members of the Albury family extending over many decades. The evidence places such occupation at least as far back as the mid-twentieth century. It demonstrates that, following Harry Albury, responsibility for the Property passed to Sidney Albury and thereafter to the Petitioner.

[86.] The evidence further establishes that members of Wesley Methodist Church routinely sought permission from Sidney Albury and, later, from the Petitioner, before utilising the Property for church functions. This practice persisted for many years and is highly probative of exclusive control.

[87.] By contrast, the Adverse Claimants produced no convincing evidence of occupation or management of the Property during the relevant period.

[88.] Although the Petitioner's occupation began with the permission of Sidney Albury, the Court does not regard that fact as inconsistent with her claim to possessory title. The evidence does not suggest that Sidney Albury granted permission as the paper owner or on behalf of the Adverse Claimants. Rather, the Petitioner's entry onto the Property formed part of a continuing pattern of possession by members of the Albury family. The proper inquiry is whether, as against the Adverse Claimants and any competing paper owner, the Petitioner and those through whom she claims exercised factual possession together with the requisite intention to possess.

[89.] The Court is satisfied that members of the Albury family, and later the Petitioner, exercised open, continuous and exclusive control over the Property with the necessary intention to possess. In any event, the Petitioner's own acts of control from at least December 1997 to the filing of the Petition in 2023 were sufficient to satisfy the statutory period and were inconsistent with any possession or control by the Adverse Claimants.

[90.] The Court therefore finds that any action by the Adverse Claimants or those through whom they claim to recover the Property is barred by section 16(3) of the Limitation Act. To the extent that any competing title once existed, it has been defeated by the Petitioner's possessory title. The Court is therefore satisfied that the Petitioner and her predecessors exercised continuous, open, peaceful and exclusive possession of the Property for a period substantially exceeding the limitation period prescribed by section 16(3) of the Limitation Act.

Factual Possession

[91.] As already stated in **Powell v McFarlane**, it is well established that a claim for adverse possession requires proof of two elements: (i) factual possession; and (ii) an intention to possess (*animus possidendi*).

[92.] I am satisfied that the Petitioner exercised the requisite degree of physical control over the Property. The evidence demonstrates that the Property was continuously maintained, beautified, and managed by the Petitioner and her predecessors in possession. Members of the surrounding community recognised their authority over the Property and sought their permission before making use of

it. Such conduct goes far beyond equivocal acts and strongly supports a finding of exclusive possession.

- [93.] The acts of the Petitioner are unequivocally referable to possession and are entirely consistent with the conduct expected of an occupying owner. They are equally inconsistent with the proposition that any other person was exercising competing dominion over the Property during the relevant period.

Animus Possidendi

- [94.] The second requirement, animus possidendi, is the intention to possess the land in one's own name and on one's own behalf, and to exclude the world at large, including the paper owner, so far as reasonably practicable. A claimant need not demonstrate an intention to own the land but rather an intention to exercise dominion and control over it. As *Slade J* explained in **Powell v McFarlane**, the relevant intention is an intention to possess and not necessarily an intention to own.
- [95.] Applying the principles in **Powell v McFarlane**, I am satisfied that the Petitioner's conduct demonstrates the requisite intention. The longstanding maintenance and beautification of the Property, the Petitioner's objection to the survey, her statement to the surveyor that the Adverse Claimants were not the owners, and the evidence that members of the community sought permission to use the Property all support the same conclusion. They are consistent with an intention to exercise dominion over the land for the benefit of the Petitioner and her predecessors in possession.
- [96.] There is no evidence that the Petitioner's occupation was referable to any permission, licence, or acknowledgement of title from the Adverse Claimants or any other competing paper owner.
- [97.] It bears emphasis that adverse possession is not established merely because members of the community believe a person to be the owner of land. Community reputation, standing alone, cannot determine title. However, where such evidence is accompanied by decades of open, exclusive and uninterrupted acts of possession, it becomes powerful corroborative evidence supporting the existence of factual possession and animus possidendi. That is precisely the position in the present case.
- [98.] Drawing those matters together, I am satisfied that the Petitioner and her predecessors exercised factual possession of the Property and did so with the requisite intention to possess. The Property is a small vacant parcel adjoining Wesley Methodist Church. Its nature did not require residential occupation or construction. In the circumstances, the acts of cleaning, maintaining, beautifying, controlling access, granting permission for occasional use by the Church, and

objecting to competing assertions of ownership were acts consistent with ordinary possession of land of this character.

[99.] The Adverse Claimants have not established a superior documentary title or any competing possessory title. Nor have they shown possession or control sufficient to interrupt the Petitioner's possession. The Petitioner's possession from at least December 1997 to the filing of the Petition in 2023 exceeds the applicable limitation period. Accordingly, any competing claim by the Adverse Claimants is statute-barred, and the Petitioner has established possessory title sufficient to support the grant of a certificate of title.

Conclusion

[100.] The Adverse Claimants have failed to establish either a documentary title or a competing possessory title superior to the Petitioner's.

[101.] Having considered all the evidence, I find that the Petitioner has established factual possession of the Property, together with the requisite intention to possess, for a period exceeding that required by the Limitation Act. The Petitioner has therefore established possessory title sufficient to defeat the Adverse Claimants' competing claim. The Petitioner has demonstrated a better title than the Adverse Claimants and is entitled to the relief sought.

[102.] Accordingly, I conclude that the Petitioner has proved possession sufficient to obtain the relief sought in these proceedings.

[103.] It is hereby ordered that:

- i. The adverse claim of Charles Nesbitt and Tyrone Nesbitt is dismissed.
- ii. A Certificate of Title shall issue to the Petitioner, Valerie Jane Neely née Albury, pursuant to the Quieting Titles Act, Ch. 393, Section 16 (b) in respect of the Property described in the Petition and shown on the plan filed on 17 July 2023.
- iii. Cost to the Petitioner to be summarily assessed if not agreed.

Dated 4th day of August 2026

Darron D. Ellis

Justice