

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and equity Division

2023/CLE/gen/00508

B E T W E E N:

RENEE IJEOMA

(BY POWER OF ATTORNEY FOR JOHN RHODRIQUEZ)

Claimant

AND

RANDOLPH ROLLE

Defendant

Before: The Honourable Justice C.V. Hope Strachan

**Appearances: Roshar G. Brown for the Claimant
Carlton A. Martin for the Defendant**

Hearing date: 8th April 2025; 17th April 2025

*adverse claim, limitation period, exclusive factual, adverse and uninterrupted possession;
possession of land with permission of owner, nemo dat non habet, jus tertii, baseless claim,
abuse of the process of the court, mortgagee interest in land under adverse claim.*

RULING

Introduction and Background

- [1.] This claim concerns Crown Allotment No. 13, Flamingo Bay, near Harts Settlement, Great Exuma (“the Allotment”). The Allotment was later subdivided into six lots. The dispute principally concerns Lots 5 and 6.
- [2.] By Fixed Date Claim filed on 29th June 2023, the Claimant seeks injunctions restraining further construction and obstruction of the access road to Lots 1–5, declarations of ownership, removal of the Defendant, and an order preventing further works on Lot 5. On 19 July 2023, the Court granted an interim injunction restraining further construction and obstruction of the access road, pending the inter partes hearing.
- [3.] The Defendant’s defense and counterclaim, filed on 19th September, 2023, deny the Claimant’s case and assert a possessory title by adverse possession. He claims that his parents placed him in possession of the land in 1966, that he constructed a shop in 1972 and a conch stand in 1988, and that he and his family have thereafter been in open, exclusive, continuous and undisturbed possession. He seeks possession, a declaration of ownership, further relief and costs.
- [4.] The issues are whether the Claimant has a title better than that of the Defendant; whether the Defendant has acquired title by adverse possession; whether the Claimant’s failure to reply to the counterclaim is fatal; and, in light of those matters, what declaratory, possessory and injunctive relief should be granted.

The Evidence

- [5.] The Claimant’s root of title is a Crown Grant dated 12th January, 1973 from the Crown to Lucayan Estates Ltd, concerning an undivided parcel shown on Exuma Plan No. 44. The parcel was conveyed to Cavalier Construction Company Ltd on 29 July 1980 and, by deed of

gift dated 16th November, 1992, to the Claimant. A February, 1993 plan records the subdivision of the Allotment into Lots 1–6.

[6.] The Claimant’s evidence was that, before 2010, the Defendant had constructed and operated a wooden conch stand on Lot 6. The Claimant says that he told the Defendant that the land belonged to him but permitted him to continue operating that business from Lot 6. The Claimant said that he also warned the Defendant not to obstruct the access road. In September after Covid had caused him to curtail his visits between 2020 and 2021. He visited the property in 2022, when he observed an enlarged structure, including a wooden platform concealing a concrete foundation, which he suspected extended from Lot 6 onto Lot 5. He became concerned. Right away he moved to confirm his suspicions that the Defendant was without his permission expanding the structures onto Lot No. 5 of the subdivision. He also spoke of making several overtures to the Defendant to purchase the land prior to 2022, in particular Lot 6, but the Defendant told him he would get back to him. He says that he neither gave permission to the Defendant to occupy Lot No. 5, nor did he consent to any construction there.

[7.] The Claimant instructed Shurn Henry (“Ms. Henry / Henry”), a land surveyor, to ascertain whether an encroachment had occurred. When she attended in February/March 2023, the Defendant denied her access to the property, claiming that he thought her to be a trespasser. Her sketch plan, admitted in evidence at trial by agreement of the Defendant, depicts the subdivision, the conch stand, and a further structure crossing between Lots 6 and 5. After the Henry sketch, the Claimant then caused a cease-and-desist letter to be issued on 16th March, 2023 to the Defendant. The Defendant, through his counsel, responded by stating an intention to commence proceedings but did not then advance a claim of ownership. No such proceedings were ever commenced.

[8.] John Rhodriguez gave evidence, assisted by the evidence of Renee Ijeoma, who acted under an enduring power of attorney granted to her by him on 17th March, 2023. Ijeoma’s evidence was clear and consistent with the Claimant’s case. Ms. Shurn Henry’s witness statement was admitted without challenge.

[9.] The Defendant and his witnesses, including Everette Hart, Floyd Armbrister, Kenneth Nixon and Glenn Davis, maintained that the Defendant and his family had possessed the land from the 1960s. Their case was that he used the land between the public highway and the sea for residential and commercial purposes, planted trees, stored boats, and operated the conch stand and the like. The evidence also referred to adjoining land occupied by descendants of the Defendant's sisters.

[10.] Several matters are not materially disputed, the 1992 conveyance to the Claimant and the existence of the 1993 subdivision plan. The Claimant identified Number Lot 6 thereon as the Lot where the wooden conch stand is located. The Defendant did not resist the assertion. The Complainant, according to the Henry sketch plan, identified the wooden structure and what is identified as concrete structures attached to or adjourning the conch stand but encroaching onto Lot Number 5. The Defendant did not deny the existence of the structure but did not readily accept that the Henry Sketch was a true depiction of the allotment and what is contained thereon. He admitted to receiving the Claimant's 2023 letter and that he prevented Ms. Henry from surveying the land. He also admitted to not bringing proceedings when the Claimant gifted Lot 3 of the subdivision to his brother Sherman Rhodriguez, or when Sherman later sold Lot 3 to the Larsen's. He alluded to some town meeting held to protest the Larsen's erecting a fence around Lot 3 but it was not he who was complaining it was his sister. That issue was apparently resolved by the Island administrator.

[11.] There is also evidence from the Claimant that **Lot 6** was mortgaged to British American Insurance Company Ltd in 2007 by the Claimant and Sherman Rhodriguez. The lender has issued a demand in respect of that mortgage to the Claimant. Sherman Rhodriguez is now deceased. The mortgage is relevant to Lot 6 but does not of itself determine the title to Lot 5. Moreover, the Defendant appears to be oblivious to this paper transaction.

Applicable Law

THE LIMITATION ACT 1995

[12.] Section 16(3) of the Limitation Act 1995 provides that an action to recover land may not be brought after twelve years from the date on which the Right of Action accrued. Under section 17(1), where the person entitled to recover land has been dispossessed or has discontinued possession, the right accrues on the date of dispossession or discontinuance. By section 25(1), on expiry of the prescribed period, the former owner's estate or interest vests in the person then in adverse possession, within the meaning of section 24. Sections 29, 38, 39 and 40 address, respectively, the insufficiency of a merely formal entry or continuing claim, and the consequences of a qualifying written acknowledgment of title.

[13.] The governing principle in a land-title dispute in The Bahamas is that title is relative. In **Ocean Estates Ltd v Pinder** [1969] 2 AC 19 ("**Ocean Estates**"), *Lord Diplock* explained that, in the absence of a system of registered absolute title, the Court considers the relative strength of the competing titles.

"At common law as applied in the Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an "absolute title". Where questions of title of land arise in litigation, the court is concerned with the relative strength of the titles proved by rival claimants."

[14.] A claimant who proves documentary title may recover against a trespasser unless barred by limitation. That principle was applied in **Edward O'Donnell and another v Pauline Chestnut** [2024] 1 BHS J No 146 and recently restated by the *Privy Council* in **Rolle and another v Meadows (The Bahamas)** [2026] 1 All ER 752 ("**Rolle and another**").

[15.] In a quieting or possessory-title dispute, however, the Court must not stop at comparing the parties' cases: it must determine which claimant, if either, has actually established title. That is the effect of **Bannerman Town et al v Eleuthera Properties Ltd** [2018] UKPC 27 ("**Bannerman Town**"). A documentary owner and an adverse claimant each bear the burden of establishing the title on which they rely. Adverse possession can extinguish a documentary

owner's title once the statutory requirements are satisfied. However, the remedy of a documentary title holder whose attempts to re-enter into possession and forcibly resisted by a squatter in possession, was to commence legal proceedings for possession which would stop time running, or if it could be done without breach of the Criminal Law, to re-enter, to re-take possession and to throw the squatter out, see **Kenneth McKinney Higgs Sr v Leshel Maryas Investment Company Ltd** [2009] UKPC 47.

[16.] Recently in **Rolle and another v Meadows (The Bahamas)** [2026] 1 All ER 752 the *Privy Counsel* reiterated:

“[17] The legal principles applicable to adverse possession are not in dispute. The Commonwealth of the Bahamas does not have a land registration regime where the land register provides documentary absolute title to a person so recorded on the land register. It bears noting however, that even under such regimes the common law principles of adverse possession remain applicable. In the Bahamas, the common law applies in respect of possessory titles. Possession gives a good title except as against a person having a better legal right to possession. As *Lord Diplock* said in **Ocean Estates**.

[17.] The requirements are settled. The claimant must prove factual possession, an intention to possess to the exclusion of others so far as reasonably practicable, and continuous possession for the statutory period. The possession must be without the owner's permission. In **J A Pye (Oxford) Ltd v Graham** [2003] 1 AC 419 (“**J A Pye**”), affirming **Powell v McFarlane** (1977) 38 P & CR 452 and **Buckinghamshire County Council v Moran** [1990] Ch 623, *the House of Lords* confirmed that the acts relied on must show the control which an occupying owner might ordinarily exercise, coupled with the requisite intention. This formulation was adopted in **Beaulane Properties Ltd v Palmer** [2005] EWHC 817 (Ch), at [47], and is reflected in **Milton Keynes Council v Wilsher and another** [2022] All ER (D) 79 (Mar). Permission is inconsistent with adverse possession: **Healey v Fraine and others** [2023] All ER (D) 90 (May).

[18.] Formal assertions of title do not, without more, stop time. Section 29 of the 1995 Act and **Pye** distinguish actual resumption of possession or effective proceedings from a token entry,

a verbal assertion, or a continuing claim. Conversely, an acknowledgment that satisfies sections 38–40 may affect the limitation period.

EFFECTS OF THE MORTGAGE ON LOT NO. 6

“s.29. LA For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right to recover the land.”

[19.] The mortgage over Lot 6 calls for separate treatment. A mortgagee holds an independent security interest. The existence of the mortgage, the timing of the mortgagee’s right to enforce, and any payment or acknowledgment may affect the mortgagee’s position. Authorities cited by the parties include **Ashe v National Westminster Bank plc** [2008] EWCA Civ 55; [2008] 1 WLR 710, **Ofulue v Bossert** [2009] 3 All ER 93, and **J Pereira Fernandes SA v Mehta** [2006] 2 All ER 891. The Defendant may, in principle, establish a possessory title as against the paper owner while taking subject to an enforceable mortgage. The mortgagee is not simply a stranger whose rights may be ignored under the doctrine of *jus tertii*.

[20.] The general *jus tertii* principle is that a defendant cannot ordinarily defeat a possessor’s claim merely by alleging a better title in a third person from whom the defendant derives no authority. **Tower Hamlets London Borough Council v Barrett** [2005] EWCA Civ 923 confirms the importance of possession against a person without a superior right. But that principle does not extinguish or determine a mortgagee’s separate proprietary security. The enforceability of British American Insurance Company Ltd.’s mortgage must be determined, if necessary, in proceedings to which it is properly joined or otherwise heard.

[21.] The Defendant also relied on the principle “*nemo dat quod non habet*,” which means “no one can transfer what he does not own” in submitting that the Claimant divested himself of his documentary title in respect of the land when he sold whatever interest he owned in the

land to his brother Sherman Rhodriguez. He said, consequently he has no right to make any claim with respect to the land, that he can no longer act as though he has documentary title. He relied on the case of **Dennis Dean and anor v Arawak Homes Ltd** [2014] UKPC 24 (Dennis Dean). I find this argument is misconceived and unsupported. There is no evidence before the court that the Claimant sold or conveyed Lot No. 6 to his brother Sherman. True, he and Sherman did obtain a mortgage from British American Insurance Company Ltd. in 2007, but neither the Defendant nor the Claimant produced a conveyance or any document evidencing a transfer of title to Sherman Rhodriguez. Clearly, the Claimant retains an interest in Lot 6 by virtue of the mortgage between he and his brother Sherman to British American by way of the equity of redemption. There are numerous covenants in the mortgage obligating the mortgagors (Claimant and Sherman) to the mortgagee. Chief among the relevant covenants is the Claimant's duty to protect the bank's security against all claims against the property. It is therefore incorrect to say the transfer of Lot 6 to his brother invokes *nemo dat non habet* or the principle in *Dennis Dean*. The fact of the mortgage also raises the specter of the Defendant's inaction to dispossess the documentary title holder even during 2007. This mortgage qualifies as an interruption of possession, even if the defendant was deemed to be in possession.

THE INJUNCTION

[22.] The Court's jurisdiction to grant an injunction arises under section 21 of the Supreme Court Act 1997, which permits interlocutory or final injunctions whenever it is just and convenient to do so, including to prevent threatened or apprehended trespass regardless of whether the respondent is in possession under a claim of title.

THE SUPREME COURT ACT, 1997

"s. 21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so. (2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit. (3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction

is sought is or is not in possession under claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any color of title, and whether the estates claimed by both or either of the parties are legal or equitable.”

Discussion and Analysis

The question of who has the burden of proof in these proceedings is material to determining the issue.

[23.] Here the paper-title holder brings an action to recover land and the occupier relies on limitation/adverse possession, the evidential burdens operate in stages:

1. The paper-title holder bears the initial burden of proving a documentary title that is better than the occupier’s. It need not prove an indefeasible or “absolute” title.
2. The adverse claimant / occupier then bears the burden of proving the facts necessary to defeat that title by limitation: factual and exclusive possession of the particular land, the requisite intention to possess, absence of permission, and continuity for the statutory period.
3. If the adverse claimant establishes those elements, the paper-title holder must identify any legally effective answer—such as permission, an interruption of possession, a valid acknowledgment, disability, or another event preventing or restarting the limitation period.

On the facts of the ruling, that means the Defendant bears the burden of proving adverse possession of each discrete lot claimed, not merely long occupation of the wider Allotment.

Relevant Authorities

[24.] The strongest authority is the *Privy Council* decision in **Rolle and another**. The Board considered sections 16(3) and 25(1) of the Bahamian Limitation Act 1995 and held that title vests by operation of law upon expiry of the relevant limitation period; a prior Quieting

Titles Act petition is not required before adverse possession can be relied upon as a defense. The case also confirms that the adverse possessor must establish actual possession of the disputed land from a date sufficiently early to complete the twelve-year period before the possession action was issued.

[25.] The Board stated at paragraph 17 that possession gives a good title except against someone with a better legal right to possession. It then quoted **Ocean Estates**, a claimant with documentary title is entitled to recover possession against a trespasser unless barred by the statutory period of the trespasser's continuous and exclusive possession. Thus, proof of documentary title establishes the paper holder's prima facie case; the alleged adverse possessor must establish the limitation defense.

[26.] In **Bannerman Town**, the *Privy Council* described the trial judge's correct approach as treating documentary title as capable of displacement only if a competing claimant proved that it had been barred by adverse possession. The Board further explained that the Quieting Titles Act permits a certificate reflecting title already established under principles outside that Act; it does not create title. This supports the proposition that the adverse claimant bears the burden of proving the possessory title asserted.

Common-law authorities on what the adverse claimant must prove

[27.] Although the following are English authorities, they articulate the common-law requirements which the *Privy Council* applied in **Rolle v Meadows supra**.

[28.] In **J A Pye (Oxford) Ltd v Graham [2002] UKHL 30; [2003] 1 AC 419, [5], [27], [40]–[41]**, the House of Lords held that the persons asserting a possessory title had to show that they had dispossessed the paper owner more than twelve years before the proceedings. The alleged adverse possessor must prove factual possession—exclusive physical custody and control appropriate to the nature of the land; and intention to possess—an intention to exercise that control for oneself, to the exclusion of the world at large, including the paper owner so far as reasonably practicable.

[29.] The paper owner is prima facie treated as being in possession by virtue of the paper title. A person with no paper title must displace that prima facie position with evidence of both factual possession and the necessary intention.

[30.] **Ocean Estates** is particularly useful on the need to prove possession of the precise land claimed. The defendant alleged adverse possession of an entire 144-acre parcel, but the *Privy Council* found that his intermittent cultivation of various plots did not establish continuous and exclusive possession of the whole. Nor had he advanced an alternative claim to identified portions. His possessory claim therefore failed. Applied to the present matter, the Defendant cannot establish title to Lot 5 merely by proving use of a conch stand or other activities on Lot 6 or on the broader Allotment.

[31.] The fact that occupation was initially permitted is also crucial. **J A Pye** confirms that time cannot run while use remains with the paper owner's consent. The occupier must prove the point at which possession became adverse. If the Court accepts the Claimant's evidence that the Defendant was permitted to operate the conch stand on Lot 6, the Defendant must prove a later, clear change from permitted occupation to exclusive possession inconsistent with that permission, and must then prove twelve years from that change.

[32.] To put it succinctly the Claimant bears the initial burden of proving a documentary title better than that of the Defendant. Once that burden is discharged, the Defendant, having pleaded and counterclaimed on the basis of adverse possession, bears the burden of proving the statutory facts which would bar the Claimant's recovery claim and vest title in him. He must prove, in respect of the particular land claimed, factual and exclusive possession, the requisite intention to possess, possession without the Claimant's consent, and continuity for the statutory period. **Ocean Estates ; Bannerman Town; Rolle v Meadows and J A Pye.**

[33.] The Claimant has established documentary title to the original Allotment through the Crown Grant and the chain of conveyances culminating in the 1992 Deed of Gift. He also proved the subsequent subdivision plan. The Defendant did not adduce persuasive evidence

impeaching those documents. The question is whether he has nonetheless acquired a superior possessory title to either Lot 5 or Lot 6.

[34.] I do not accept that the Claimant divested himself of the entirety of the Allotment by conveying Lot 3 to Sherman Rhodriguez in 1993. That conveyance concerned Lot 3 alone. The Claimant has no continuing title to that lot merely by virtue of the former conveyance; but Lot 3 is not the land in issue. The Claimant retained his documentary title to Lot 5. His continuing interest in Lot 6 is affected by the mortgage and any other disposition, but that does not establish the Defendant's counterclaim.

[35.] The Defendant's case that his parents gave him the entire disputed land in 1966 lacks the specificity required for a claim that depends upon factual possession and a continuing intention to exclude others. No evidence was given of the Defendant's age in 1966 of the exact boundaries of the land allegedly given to him. He indicated in his evidence that the land given to him by his father and mother in about 1966 is bounded on the North by the sea and running thereon **Ninety-five (95)** feet more or less on the East by land given by his parents to his sister and now in the possession of her son Glenn Davis and running thereon **Two Hundred and Forty (240)** feet more or less on the South by King's Highway and running thereon **Ninety-five (95)** feet more or less and on the West by land given by his said parents to his late sister, Oralee Rolle Martin and running thereon **Two Hundred Forty (240)** feet more or less. Try as the Defendant with his witnesses tried to demonstrate the situation of the property on the Henry plan, they were unsuccessful. The Defendant resorted to denouncing the plan as a correct depiction of the allotment, the subdivision and the placement of the conch stand and the concrete structure which encroaches on lot No. 5, This notwithstanding that he agreed for it to be admitted into evidence, unchallenged. He also continually referred to it during the trial to demonstrate the placement of other parts of allotment No. 13 and what is located thereon. More importantly the Defendant did not speak to any acts which speak to dispossession of the Claimants documentary title by which he exercised possession of Lots 5 and 6 during the relevant statutory periods. The assertion that the land was landlocked by other land of his sisters is neither proof of title nor proof of exclusive possession.

[36.] I am satisfied that the Defendant has not established any title superior to the Claimants’.

His evidence falls short of proving exclusive possession accompanied by the necessary intention to possess. I find further that the Defendant’s operation of the conch stand, storage of the fishing boat, and related use of Lot 6 were carried out with the Claimant’s permission. There is no evidence that the Claimant ever withdrew that permission. Such permission is inconsistent with adverse possession and defeats any claim founded on that occupation. I found the Claimant to be a credible witness. I also regard the Defendant’s conduct on the property and surrounding lands as significant. Although he built his residence, apartments, and food and liquor store across the road from Lot 6 and the conch stand, he refrained for many years from undertaking similar activities on the subject land beyond the permitted conch stand and boat storage. I infer from that conduct that the Defendant knew the land did not belong to him and that the Claimant held the legal title. That inference is reinforced by the Claimant’s repeated offers to sell Lot 6 to the Defendant, which the Defendant either refused or failed to address promptly. Over time, the Defendant became more assertive and eventually expanded his structure onto Lot 5.

[37.] Another telling, revealing fact which enforces my view that the Defendant knew that he did not own Lots 5 or 6 is the Claimant’s evidence, that “I returned to Exuma during the period of mid-2022. Upon visiting the property, I noticed that the Defendant had extended his structure with a wooden platform. It also appeared that the wooden platform was concealing a concrete foundation.” The Claimant visited the property in 2022 and noticed the encroachment, and it was as he described, a concrete structure hidden by a wooden platform. A finding of fact of this nature made by *Allen SJ* (as she then was at para 56 of her judgment at first instance was upheld by the *Privy Council* in **Dennis Dean**. His *Lordships* quoted from the speech of *Lord Cranworth LC* in **Ramsden v Dyson** (1866) LR HL 129,141:

“If a stranger build on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights”

[38.] The Defendant's occupation of Lot 5 is materially different from the position as to Lot 6. The Defendant has not, however, proved twelve years' factual possession of Lot 5. His evidence and that of his witnesses centered on the conch stand, the shop, trees and boat storage generally. It also does not escape the court that the defendant acknowledged that the conch stand was "a public place where people come and buy stuff and socialize" or that the coconut trees and fruit trees were "just like a garden decoration, not actually farming." These activities do not depict specific, exclusive acts of control over Lot 5, the commencement of any occupation of that lot, or acts demonstrating an intention to exclude the Claimant from Lot 5 for the statutory period. There is no corroborative evidence, such as dated building materials, invoices, receipts, photographs or other records, to establish that the concrete structure on Lot 5 had existed for twelve years.

[39.] The Henry sketch depicts a structure bridging Lots 5 and 6. I accept the Claimant's evidence that the concrete foundation and extension onto Lot 5 came to his attention in 2022. He acted without undue delay by retaining a surveyor, issuing a cease-and-desist letter, and commencing these proceedings. The Defendant's prevention of a full survey does not strengthen his adverse-possession case.

[40.] The Defendant's inactivity when Lot 3 was transferred to Sherman Rhodriguez and later sold to the Larsens is also relevant. The Defendant's evidence of objections to the Larsens' fence was not sufficiently particularized to convince the court that he asserted a possessory title against them; the evidence suggests instead that the disagreement concerned the erection of a fence. Although silence alone cannot decide title, this evidence does not support the broad assertion that the Defendant exercised exclusive control over the whole Allotment as owner from 1966.

[41.] I further find that the Claimant's evidence of permission in relation to the conch stand cannot be extended to Lot 5. Nothing establishes that the Defendant's entry onto Lot 5 was permitted. But the absence of permission does not itself establish adverse possession; the Defendant must still prove the necessary factual possession, intention and duration. He has failed to do so.

[42.] The Defendant's argument that the Claimant's failure to file a reply defeats the claim is rejected. While pleadings define the issues, the Defendant's counterclaim required him to establish the asserted possessory title. In accordance with **Bannerman Town**, the Court must decide the title shown by the evidence. The parties fully litigated the documentary and adverse-possession issues at trial. No injustice arises from determining them on their merits.

Abuse-Of-Process Argument

[43.] The submission that the claim is baseless or an abuse of process is rejected. A claim by a documentary title holder seeking relief against an occupier who asserts adverse possession presents a genuine dispute requiring adjudication. The authority **Financial Conduct Authority v Papadimitrakopoulos and others** [2023] 1 All ER (Comm) 804 ("**Financial Conduct**"), **JSC VTB Bank v Skurikhin** [2020] EWCA Civ 1337 ("**JSC VTB**"), and **Walsham Chalet Park Ltd (t/a The Dream Lodge Group) v Tallington Lakes Ltd** [2014] EWCA Civ 1607 ("**Walsham Chalet** ")—all concern the careful and proportionate exercise of the Court's power to strike out abuse. They do not support a finding of abuse here as submitted by the Defendant. There is no collateral attack, misuse of procedure, unfairness, or other conduct justifying a strike out.

[44.] I find that the Defendant has identified no misuse of the Court's process, collateral attack, dishonesty, unfairness, or other basis on which this ordinary title dispute could properly be characterized as abusive. That is the relevant standard under **Financial Conduct**, **JSC VTB**, and **Walsham Chalet**.

[45.] The Defendant sought to rely on **Dennis Dean** to support the view that the Claimant's claim is an abuse of the court's process. He determined that the Claimant had sold the subject property so his claim was impossible. That already mentioned case emphasizes that proprietary or possessory claims must be properly pleaded and proved. On the facts found, I am of the view that it is in fact the Defendant who has not properly pleaded or proved his adverse possession to the subject properties. The Claimant acted promptly and swiftly once he discovered the encroachment to oust the Defendant who to all intents and purposes was

trespassing on Lot 5 and to the extent that the concrete building was not part of the permission given by the Claimant on Lot 6 as well.

[46.] The Defendants evidence failed to establish the boundaries of Lot 6 he claims in adverse possession. He did not establish the acts relied upon sufficient to oust the Claimant's documentary title to Lot 5 or 6. He created a great degree of uncertainty in his counterclaim when he grounded his claim in the entire allotment No. 13 and insisted on including as part of his evidence occupation of other alleged property owners. To that end the evidence of his occupation is fraught with uncertainty particularly as it relates to his factual, exclusive, adverse, and uninterrupted possession of either of the lots since his occupation and adverse claim must be against the world.

Failure to file a reply to the counterclaim

[47.] As previously stated the Defendant bears the burden of proving the affirmative case in his counterclaim. The essential issues were fully ventilated in the evidence and at trial. There was no procedural unfairness identified in the pleadings or at trial and the Court must decide the title dispute on the evidence. The failure to reply to the counterclaim was not fatal to the Claimant's case because the parties litigated the adverse-possession issue fully and the Defendant's counterclaim was deficient of the requisite proof necessary to oust the documentary title holder, the Claimant.

Conclusion on the Issue of Title

[48.] In arriving at this conclusion, I find that the Defendant's assertion of long occupation of the wider area does not discharge the burden of proving adverse possession of the particular land claimed by the Claimant. He has failed to prove factual, continuous, open, exclusive, and undisturbed possession or to put it another way, adverse possession of Lot 5 or Lot 6. No intention to possess Lot 5 or Lot No. 6 to the exclusion of the Claimant and indeed anyone else was proven. No possession of those distinct lots for the statutory period of Twelve (12) years has been established. Of greater moment not only did the Defendant fail to establish a better title than the Claimant he failed to establish any title at all.

Injunctive Relief

[49.] Under section 21 of the Supreme Court Act 1997, the question is whether it is just and convenient to grant the injunction. The equitable nature and breadth of that jurisdiction are affirmed in **Wolverhampton City Council v London Gypsies and Travellers** [2023] UKSC 47, drawing on **Broadmoor Special Hospital Authority v Robinson** [2000] QB 775, **Cartier International AG v British Sky Broadcasting Ltd** [2016] EWCA Civ 658, and **Convoy Collateral Ltd v Broad Idea International Ltd** [2021] UKPC 24; [2023] AC 389. The discretion must nevertheless be exercised consistently with established equitable principle: **MeesPierson (Bahamas) Ltd v Grupo Torras SA** [2000] 1 LRC 627.

[50.] Relevant considerations include delay, acquiescence, clean hands, clarity of the order, and whether damages would be an adequate remedy. The Circumstances for grant of injunctive relief was stated in **Fisher v Brooker** and another [2009] 4 ALL ER 789 at 796 where Lord Neuberger explained;

"Where there is trespass to land or goods, or a comparable invasion of intangible property rights, the court's natural response is to grant injunctive relief, and not to leave the claimant to his remedy in damages. In **Shelter v City of London Electric Lighting Co, Meux's Brewery Co v City of London Electric Lighting Co** [1895] 1 Ch 287 at 322, sub nom **Meux's Brewery Co v City of London Electric Lighting Co, Shelter v City of London Electric Lighting Co** [1891-4] All ER Rep 838 at 847, *AL Smith LJ* made a much-quoted statement of principle beginning as follows:

'Many Judges have stated, and I emphatically agree with them, that a person by committing a wrongful act (whether it be a public company for public purposes or a private individual) is not thereby entitled to ask the Court to sanction his doing so by purchasing his neighbors' rights, by assessing damages in that behalf, leaving his neighbor with the nuisance, or his lights dimmed, as the case may be.'

In such cases the well-known rule is not to accede to the application, but to grant the injunction sought, for the plaintiff's legal right has been invaded, and he is *prima facie* entitled to an injunction.

[51.] In the circumstances it would be appropriate to deem the Defendant a "trespasser upon Lot No. 5." Clearly, the Claimant did not acquiesce in the act of trespass which was the construction on Lot No. 5. Upon discovering the apparent encroachment, he sought a survey, issued a demand, and commenced proceedings. Damages would not adequately address continued unauthorized construction of a permanent structure on land to which the Claimant has established the better title. The grant of an injunction is well within the claimant's right and entitlement, and is the best practical solution.

[52.] It is therefore just and convenient to restrain further construction on Lot 5 and to require the Defendant to vacate that lot. The Defendant must remove any structure, materials or chattels from the subject Lot 5 and Lot 6 of Allotment No. 13 situate in the Settlement of Harts in the Island of Exuma within **Thirty (30)** days of the date hereof.

In Answer To The Claimant's Conclusions as Counsel Submitted:

[52.] In answer to the conclusions posited by the Claimant the Court finds that there was no evidence adduced by the Defendant prior to March 2023, that dispossessed the Claimant's paper title.

[53.] I find that the Defendant nor any member of his family, either in the 1960's or later, constructed any fence, wall or barrier to cordon off the property. No survey plan in evidence contained any demarcation of the properties as evidence of the Defendants claims.

[54.] I am satisfied that the Claimant nor his agents and/or servants, prior to March 2023 were ever denied entry to the property.

[55.] I find in accordance with the Claimant's position that, since the Claimant's 16th November 1992 conveyance, the Claimant conveyed property to Sherman Rhodriguez and mortgaged one of the subject properties. Nothing the Defendant did prior to the Claimant's actions or subsequent to (with the exception of March 2023)

challenged the Claimant's paper title or extinguished it.

[56.] I hold that the Claimant's paper title is superior to any claim of adverse possession by the Defendant. Also that other than planting some trees and storing old boats on the property the Defendant has adduced no evidence that he either dispossessed the Claimant or that by his actions, he intended to extinguish the Claimant's paper title and has done so.

DISPOSITION

In all the circumstances of the case the court holds that;

1. As between the Claimant and the Defendant, the Claimant has title to Lot 5 and 6 superior to that of the Defendant.
2. The Court grants to the Claimants an injunction that the Defendant, his servants and/or agents be restrained from further construction on Lot No. 5 of Allotment No. 13 situate near Harts Settlement in Flamingo Bay on the Island of Great Exuma, in the Commonwealth of the Bahamas.
3. The Defendant is prohibited from any further construction on the said Lot No. 6 of Allotment No. 13 situate near Harts Settlement in Flamingo Bay on the Island of Great Exuma, in the Commonwealth of the Bahamas.
4. The Defendant is hereby ordered to vacate the said Lot No. 5 and 6 of allotment No. 13 situate near Harts Settlement in Flamingo Bay on the Island of Great Exuma, in the Commonwealth of the Bahamas within **Thirty (30)** days of the date hereof.
5. The Defendant must remove any structure, materials or chattels from the subject Lots 5 and 6 of Allotment No. 13 situate in the Settlement of Harts in the Island of Exuma within **Thirty (30)** days of the date hereof.

6. Costs of these proceedings to the Claimant to be assessed on a summary basis after receipt of brief submissions by counsel due within **Seven (7)** days of the date hereof failing which costs are to be taxed if not agreed.

Dated the 7^m day of October, 2026



The Honorable Justice C. V. Hope Strachan

