

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2016/CLE/gen/00413

BETWEEN

I.F. PROPCO HOLDINGS (ONTARIO) 39 LTD.

Plaintiff

AND

SHEILA ELIZABETH HUYLER

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mrs. Michela Barnett-Ellis of Graham Thompson for the Plaintiff
Mr. Sidney Dorsett of Miriam Curling & Co for the Defendant

Hearing Dates: 20 November 2017, 24 January, 12 February 2018

Civil – Land – Owner of land – Documentary Title of Plaintiff – Documentary Title of Defendant – Insufficient evidence that Defendant have interest in property

Trespass – Did Defendant committed acts of trespass - Damages

The Plaintiff brought this action in trespass alleging that the Defendant, her employees, agents, heirs or otherwise have trespassed on its property comprising three lots of land namely Lots 47, 49 and 51 in the South West Bay Subdivision situate in the Western District of the Island of New Providence (“the disputed property”) causing damage to the said property.

The Defendant denied that she or her employees, agents, heirs or otherwise caused heavy equipment to enter upon the disputed property on or about 20 September 2015 and caused tractor paths to be pushed and fence-posts to be erected thereby causing damage to the disputed property. She says that if indeed she trespassed on the disputed property, it is because it is owned by her deceased husband’s family. She bought one of the relatives to testify on her behalf. Their testimony is that their title is derived from the Last Will & Testament of Clothilda Huyler and it is historically older than the documentary title relied upon by the Plaintiff to establish its title to the disputed property.

The issues before the Court are two-fold namely (i) who is the owner of the disputed property and (ii) if the Defendant is not the owner, whether she trespassed on the disputed property?

HELD: declaring that the Defendant trespassed on the property and is therefore liable to the Plaintiff in damages.

1. On a balance of probabilities, the Plaintiff has demonstrated that it was and is at all material times the owner of lots 47, 49 and 51 in the South West Bay Subdivision situate in the Western District of the Island of New Providence.
2. The Defendant has adduced insufficient evidence to demonstrate that her late husband's relatives owned the disputed property. She and her witness relied on the Last Will and Testament of Clotilda Huyler which makes no reference to the disputed property. It is passing strange that such a vast acreage was omitted from Will of Clothilda Huyler. The only reference is to be found in the Oath of the Executor in the Estate of Clotilda Huyler which included in the Schedule of Real Property owned by Clotilda Huyler "an **interest** 1100 acre tract situate at South West Bay New Providence known as Moss tract". There is no evidence as to the nature of the "interest."
3. Having seen, heard and observed the demeanour of the witnesses, the Court found the Defendant to be evasive and confusing in her testimony. The Court accepted some parts and rejected other parts of the evidence of the Defendant's witness. On a balance of probabilities, the Court was more impressed with the testimony of the witness for the Plaintiff who was found to be truthful and candid. The Court finds that the Defendant trespassed on the Plaintiff's property and cause damage to it.
4. The Defendant is liable for the damages caused to the Plaintiff's property and a perpetual injunction is granted restraining the Defendant, her employees, agents, heirs or otherwise from trespassing and/or occupying the Plaintiff's property.
5. Damages will be assessed by the Registrar.

JUDGMENT

CHARLES J:

Introduction

[1] The Plaintiff, I.F. Propco Holdings (Ontario) 39 Ltd ("Propco") brought this action in trespass against the Defendant ("Mrs. Huyler") seeking principally the following relief: (1) a Declaration that Mrs. Huyler, her employees, agents, heirs or otherwise is not entitled to enter upon or cross over Lots 47, 49 and 51 in the South West Bay Subdivision situate in the Western District of the Island of New Providence ("the disputed property"); (2) An Injunction restraining them from trespassing and/or occupying the disputed property; (3) Damages for trespass and (4) Costs.

Background facts

- [2] Most of what I now outline reflects uncontradicted and unchallenged evidence of the parties. To the extent that there is a departure from any agreed facts, then what is expressed must be taken as positive findings of fact made by me.
- [3] Propco is a company registered in Ontario, one of the provinces in Canada. Propco says that it is the beneficial owner of the disputed property. Its documentary evidence is contained in the "Plaintiff's Bundle of Documents" filed on 16 June 2017: Tabs 1 to 9 contains copies of the Indentures which Propco relies upon to demonstrate its ownership from 1963 to 2009.
- [4] Mrs. Huyler resides on a tract of land adjacent to the disputed property. In or about September 2015, portions of the disputed property were cleared by heavy equipment. Poles were also erected on the disputed property.
- [5] By letter dated 25 September 2015 and addressed to Mrs. Huyler, Messrs. Graham Thompson, acting on behalf of Propco, demanded that she ceased the unauthorized occupation and trespass of the disputed property. Mrs. Huyler did not respond to the letter.
- [6] On 23 March 2016, Propco filed a Specially Indorsed Writ of Summons alleging that Mrs. Huyler has unlawfully trespassed on the disputed property. Propco also seeks an injunction to restrain Mrs. Huyler, her employees, agents, heirs or otherwise from entering upon or crossing over the disputed property.
- [7] Mrs. Huyler filed a Re-Amended Defence on 22 March 2017. It is not what I may term a conventional defence since a defence must contain certain pleadings. For example, a defence must (a) state: (i) which parts of the statement of claim the defendant admits; (ii) which part he denies; (iii) which part he neither admits nor denies because he does not know whether they are true but which he wishes the plaintiff to prove; (b) give the defendant's version of the facts in so far as they differ from those in the statement of claim; (c) give reason (s) why the defendant disputes

the plaintiff's entitlement to the remedy sought and (d) specify any document which is critical to the defence.

- [8] The principal reason for these essentials is to bring the parties by their pleadings to an issue, and indeed, to narrow them down to definite issues, and to reduce time and expense: per Jessel M.R. in **Thorp v Holdsworth** (1876) 3 Ch.D. 637.

The Re-Amended Defence

- [9] The Re-Amended Defence is not only complicated but it addresses other issues beyond what is contained in the Statement of Claim without providing the supporting documentation. For example, at paragraph 1 of the Statement of Claim, Propco averred that it is a company registered in Ontario, one of the provinces in Canada. In her Re-Amended Defence, Mrs. Huyler averred that it is admitted that Propco is a Company. However, she puts Propco to the "strictest proof of the *bona fides* of the alleged loan disbursed to the New South Ocean Development Company Limited ("NSODC"), the alleged defaulter."

- [10] Then, at paragraph 2 of the Statement of Claim, Propco alleged that Mrs. Huyler resides on a tract of land adjacent to the several parcels of land owned by Propco. This is how Mrs. Huyler responded to that allegation. At paragraph 2 of the Re-Amended Defence, she stated: "Paragraph 2 of the Statement of Claim is denied, as regards the allegation that the Plaintiff's (sic) residence is near land owned by the Plaintiff. For, the Defendant is unaware of any land owned by the Plaintiff near her and her late husband Ernest Huyler's residence having been reliably informed by her husband and his relatives of old Court documents and the names of old slave ancestors on the Moss tracts, the historical name of the subject-land."

- [11] At paragraph 4 of the Re-Amended Defence, Mrs. Huyler denied that she hired a tractor or authorized anyone to do so on her behalf. She denied causing poles to be erected anywhere on the disputed property.

- [12] At paragraph 9 of the Re-Amended Defence, Mrs. Huyler averred that "*the Plaintiff's Attorneys, servants or agents negligently accepted three conveyances*

from New Providence Development Company Limited although ostensibly pulled out of thin air related to land quieted or historically claimed by slave descendants of James Moss related in blood to the Defendant's husband through Clotilda Huyler or Mitchell Balfour." She particularized the alleged negligence of Propco in disbursing "over \$20 million to New Providence Company Ltd to buy land historically documented by the Colonial government of The Bahama Islands as "...claimed by the descendants of slaves of James Moss...." If in fact the alleged transaction was genuine; and allegedly to pay legal fees and stamp duty knowing any alleged title satisfied only the barest legal requirements."

[13] At paragraph 11, she repeated that she does not occupy the disputed property, never cleared it or erected any poles or barbed-wire fencing. She averred that she had never trespassed on the disputed property even though historically, 1,000 acres were claimed by her husband's relatives. She next averred that, in any event, *"if she occupies any land claimed by Propco, she does so as of right having been put there with her husband by the true owners whose title is historically older than Propco."*

[14] At paragraph 12, Mrs. Huyler claims damages, interest and costs.

[15] Stripped to its bare essentials, Mrs. Huyler denied that she trespassed on the disputed property but if she did, she is entitled to it as of right.

The evidence

[16] Propco presented one witness, Mr. Ricardo Rolle ("Mr. Rolle") to testify on its behalf. From 2009, he has been the consultant manager of property belonging to Propco situated at South Ocean. His evidence is contained in an Affidavit filed on 16 December 2016. He averred that on or about 20 September 2015, he was advised by Propco's security guard that portions of its property were being cut and cleared by heavy equipment. As a result, he proceeded to the area which was being cleared but all of the heavy equipment had left for the day. However, he was able to speak to the neighbours who occupy the adjoining property. He was

informed that Mrs. Huyler was the one clearing the disputed property. Mr. Rolle said that while he was speaking to the neighbours, Mrs. Huyler, who lives adjacent to Propco's property, arrived home. He said that Mrs. Huyler informed him that the disputed property belonged to her and her family and she was clearing it so she can divide it into lots. Mr. Rolle said, upon speaking with Mrs. Huyler, he advised his superiors of the matter.

[17] Mr. Rolle testified that, subsequently, Propco engaged the services of a surveyor to determine whether the land being cleared belonged to Propco or Mrs. Huyler. The surveyor concluded that Mrs. Huyler cleared portions of Propco's property along with the property that belonged to her. Mr. Rolle exhibited to his affidavit a Survey Plan with his markings: Exhibit RR1. He stated that the areas which he hatched are the areas cleared by Mrs. Huyler. Mr. Rolle also took photographs of the areas which were cleared: Exhibit RR2.

[18] Mr. Rolle said that prior to the clearing, Propco's property was just bush. He would go to the property about once a month.

[19] Under cross-examination, Mr. Rolle maintained his account that Mrs. Huyler told him that the disputed property belonged to her and her family.

[20] Under re-examination Mr. Rolle said that when Mrs. Huyler pulled up into the driveway, he waved at her and said that he is representing South Ocean. Mrs. Huyler said that the disputed property is hers and her family. At that point, Mr. Rolle said *"ma'am, that's all I need to know. I just have to report back to the owners."*

[21] This was the evidence adduced on behalf of Propco.

[22] Mrs. Huyler came to the witness stand to testify on her own behalf. She also called one witness, James Alexander Fernander ("Mr. Fernander").

[23] Mrs. Huyler filed an affidavit on 16 December 2016 and a witness statement on 5 September 2017. At the trial, she relied on her witness statement. At paragraph 2

of her witness statement, Mrs. Huyler averred that she hired no heavy equipment, did not contribute to land clearing expenses and gave no instructions to the equipment operator on what was to be cleared.

[24] At paragraph 3, she averred that she resides to the East of a dirt road on the North side of South West Bay Road, where her deceased husband' ancestors once had a wooden building. She stated that Propco says that she lives near their land and not on it.

[25] Mrs. Huyler further testified that the land on which she resides is part of a 1,000 acres tract granted by the Crown to John Moultrie around 1785. Thereafter, from paragraphs 4 to 10 of her witness statement, she appeared to be claiming ownership of the disputed property.

[26] She recalled a conversation with Mr. Rolle but, according to her, that was before her husband died. She said that she did not have any conversation with Mr. Rolle about a tractor on the property.

[27] Mrs. Huyler stated that she recalled signing a document saying that she was placed on the land with her husband, the late Ernest Huyler by his cousin James Fernander, the grandson of Mitchell Balfour and the Defendant in Action No. 40 of 1925.

[28] Further, Mrs. Huyler denied that she told Mr. Rolle that her husband's family hired the tractor as they intended to divide up the land. She denied that she caused a tractor to go on the disputed property, tractor paths to be pushed and fence-posts to be erected on the disputed property. She also denied that she caused any damage to the disputed property.

[29] Under cross-examination, she was asked the following questions by learned Counsel Mrs. Ellis (at page 31 of the Transcript of Proceedings on 20 November 2017):

“Q. Sorry, Ms. Huyler, your husband was Ernest Huyler?”

A. Ernest Huyler, yes.

Q. And you intend to be the personal representative of his estate? You intend to probate his estate?

A. Yes.

Q. And you also intend to probate the estate of Frank Huyler?

A. Yes. Grant (sic) Huyler is my husband's grandfather.

Q. And you said you have inherited- - you and the children have inherited your husband's interest in the land? Your evidence is that the land belongs to your husband's family"

A. Yes.

Q. And when your husband died, you and your children get his portion?

A. Yes.

[30] What is palpable from Mrs. Huyler's evidence is that she is of the opinion that the disputed property belongs to her husband's family and consequently, she inherited her husband's interest in that property. Mrs. Huyler insisted that she was unaware of the plan to clear the disputed property and for tractors to be used to clear it.

[31] It was suggested to Mrs. Huyler that there is no conveyance or other title documents for her husband's family's interest in the disputed property. She stated that they have three Wills and about three Probates. She emphasized that the Will of Clotilda Huyler gives them the right to own the disputed property. Clotilda Huyler was her late husband's great grandmother.

[32] Mrs. Huyler denied having a conversation with Mr. Rolle about the tractor on the disputed property. She said that the tractors came twice. It was there for two and one-half days on the first occasion and no one said anything. She said that on the second occasion, Alfred Fernander brought a different tractor. Alfred was directing

the driver of the tractor what to do. There was a man standing up talking to Alfred. He was there with the security and the man had a camera.

[33] At page 39 of the Transcript of Proceedings, Mrs. Ellis questioned Mrs. Huyler. It went this way:

“Q: And did the security man ask you any questions? Did he say anything to you or was he just talking to Alfred?”

A: I told you what happened when I pull up, right. They were talking. The conversation was going on, so I say, Alfred, what happened. Because I saw the man with the camera. He said he is the security from over there and he ask me who give me permission to bring the tractor here. So I told him, if he didn't have his documents, he wouldn't put the tractor in there....

Q: So at any point did you say anything to the security man?

A: The security man?

Q: Did you ever say anything?

A: All I said was well, he said what happened to Mr. Rolle, why he didn't come over” He sent you. You only the security. Why you came over?

Q: So you asked the security where is Mr. Rolle?

A: Yes. Mr. Rolle didn't come over there. Mr. Rolle is my family. I know him from Exuma. I am a Rolle marry a Huyler. Y'all have the white man title....

The Court: Ms. Huyler, I just need to clarify something from you. In paragraph 8 of your witness statement. Read that for me please.

The Witness: I didn't tell him a lie like that.

The Court: Sorry

The Witness: I never told Mr. Ricardo this here.

The Court: That's your witness statement.

The Witness: Never told him nothing about sharing no land.

The Court: But that's in your witness statement that you just confirmed is true and correct. That is your witness statement.

The Witness: I always tell them the place belong to my husband's family, but I didn't tell them that we were sharing it.

The Court: I don't know what went on. But I am just looking at your witness statement which you made, which you said is true and correct and you told the court that you have a very good memory like a computer. So, what is the court to make of that? I told Ricardo Rolle my husband's family hired the tractor. That they intended sharing up the land.

The Witness: Well, maybe I did say that. I mean that's the way it is. It's my husband's family in the will."

[34] Mrs. Huyler called her relative, Mr. Fernander to testify on her behalf. He is a Justice of the Peace and lives at Gambier Village. He swore an affidavit on 16 December 2016. He stated that he is 80 years old having been born on 9 October 1936 to Ellen Fernander neé Huyler and Arthur Joseph Fernander, both of whom are deceased. He is well acquainted with the land which Mrs. Huyler occupies. He has known the land for 63 years. The land is part of what was traditionally called Moss Tract. He stated that he grew up knowing that the land was owned by his great grandmother, Clotilda Huyler. He honestly believes that she had an interest in 1,100 acres which was part of her residuary estate. He stated that relatives including the late Ernest Huyler, the husband of Mrs. Huyler, have researched the interest of their family. He stated that the late Ernest Huyler lived on the land until his demise in 2014.

[35] Mr. Fernander said that, over the years, parts of the land had lain fallow. No trespasser has been on that land continuously for 12 years. He heard that one Moses Ferguson attempted to quiet a part of the land but he has no further information regarding it, except to say that he never occupied it continuously to bar the title of the heirs of Clotilda Huyler.

[36] Under cross-examination by Mrs. Ellis, Mr. Fernander testified that there was a conveyance for the 1,100 acres of land owned by Clotilda Huyler. He however

does not know the complete boundaries to the 1,100 acres. He stated that his family was in possession of the land because they were farming it. They were growing sugar cane, bananas, citrus and other crops. He said that he does not farm the land anymore although Mrs. Huyler does.

[37] Mrs. Ellis suggested to Mr. Fernander that there is no farming on the land, and particularly, the portion owned by Propco. He said that there are portions of the land that his family works on. He maintained that Clothilda Huyler owned the land and that she has documentary title to it. He does not have the documents now in Court but he said that the family has documents showing that the land was given to her sons; one of them was his grandfather. He acknowledged that Mrs. Huyler is one of the matriarchs of the family.

[38] Under re-examination, Mr. Fernander was asked if he recalled the name of any documents that he had seen. Mr. Fernander gave no response. He was referred to the Last Will and Testament of Clotilda Huyler (Exhibit 4 of the Bundle of Documents of the Defendant filed on 8 August 2017) and in particular, to paragraph 4 which reads "*All the rest residue and remainder of my estate both real and personal of whatsoever kind the same might be and wheresoever situate I give devise and bequeath unto my ten children above named their heirs executors administrators and assigns as tenants in common and in equal shares and proportions.*"

[39] Then at Exhibit 5 of the said Bundle of Documents of the Defendant, Mr. Fernander was referred to the Oath of Executor in the Estate of Clotilda Huyler in Probate Action No. 28 of 1922 and in the Schedule of the Real Property owned by the said deceased, it is stated "*an interest 1100 acres tract situate at South West Bay New Providence known as Moss' tract.*"

[40] Mr. Fernander confirmed that when he said that Clotilda Huyler owned the land, those were the documents that he was alluding to. To cut a long story short, Mr.

Fernander maintained that his family owned the disputed property. He mentioned a court case involving relatives concerning the land: No. 40 of 1926.

[41] Under further cross-examination by Mrs. Ellis, Mr. Fernander was interrogated about the Last Will and Testament of Clotilda Huyler and the reference to 1,100 acres of land. He further stated that his family did not farm the entire area. They do what is called “pothole farming” since they do not have the machinery to cultivate the land as they would like to. When all is said and done, Mr. Fernander maintained that some of his cousins and nephews are still farming the disputed property.

[42] He confirmed to the Court that he has an interest in the disputed property. His interest comes from his mother, Ellen Huyler whose father was James Huyler.

[43] This was the evidence advanced by the Defendant.

Factual findings

[44] This is a civil case wherein the standard of proof is based upon a balance of probabilities. The Court had the opportunity of seeing, hearing and observing the demeanour of the witnesses who testified. In examining the evidence presented, I was much more impressed with that given by Mr. Rolle who testified on behalf of Propco. He impressed me as a witness of truth and I accepted his testimony as a candid version of what occurred on 20 September 2015 when he went to the disputed property. On the other hand, I found Mrs. Huyler to be very evasive and confusing in her testimony. With respect to Mr. Fernander, I think that his evidence represented his honest belief that his family owns the property. I do not accept all of his evidence as being true particularly when he stated that parts of the disputed property is being farmed. I accept Mr. Rolle’s evidence that the disputed property was just bush.

The issues

[45] Having come to these factual findings, I shall address the issues which arise for consideration. They are as follows:

1. Whether Propco is and was at all material times the beneficial owner of the disputed property and;
2. Whether Mrs. Huyler, her agents, employees or assigns caused heavy equipment to enter upon the disputed property on or about 20 September 2015 and caused tractor paths to be pushed and fence-posts to be erected, vegetation destroyed and causing damage to the disputed property?

Issue 1 - Who is the owner of the disputed property?

[46] The disputed property comprises three lots namely Lot 47, Lot 49 and Lot 51 in the South West Bay Subdivision. The question which arises for determination is who owns the disputed property? Mrs. Huyler was somewhat confusing in her testimony. Upon examination, she indicated to the Court that *“I always tell them the place belong to my husband family....”*

[47] Then, in her witness statement, she alluded to being placed on the land with her husband by his cousin, Mr. Fernander. She stated that her husband died on the land in 2014 and she remained in possession. Her dwelling house is on the land.

[48] During the course of the trial learned Counsel Mr. Dorsett who appeared for Mrs. Huyler repeatedly and unequivocally expressed that Mrs. Huyler does not own the disputed property. That prompted the Court to inquire whether it should declare Propco to be the beneficial owner of the land to which Mr. Dorsett replied (at page 4 of the Transcript of Proceedings of 24 January 2018):

“The Court: And she is not the owner of the land?”

Mr. Dorsett: That is correct, my Lady.

The Court: And you still maintain that she is not the owner of the land?

Mr. Dorsett: That is correct, my Lady.

The Court: Why don't I make the order that Ms. Ellis is seeking that the plaintiff be declared the owner of the land?

Mr. Dorsett: No, because you have one of the owners present and available.

The Court: Who is the owner?

Mr. Dorsett: One of the owners is Mr. James Fernander and he is present.”

[49] In his testimony Mr. Fernander stated that he honestly believed that his family owns the disputed property. Three bundles of documentary evidence were filed to substantiate Mrs. Huyler’s case that her deceased husband and his family own the disputed property. The first bundle of documents which Mrs. Huyler relied upon was filed on 8 August 2017. The documents appear in the left-hand column of the Table below:

Bundle of Documents for the Defendant Filed 8 August 2017	
1. Colonial Plan #2B of South West End of New Providence	Shows certain large parcels of land and their owners
2.Crown Plat of 1,000 Acres to John Moultrie	Shows certain large parcels of land granted to John Moultrie
3. Commutation Certificate for 1,000 acres to William Moss	The copy is illegible and the Defendant did not lead any evidence as to its contents.
4. Grant of Probate in the Estate of Clotilda Huyler with Will annexed	There is no reference to the land the subject of this action in the Last Will and Testament of Clotilda Huyler
5. Oath of Executor in the Estate of Clotilda Huyler	The person who filled out the Oath included in the Schedule of Real Property owned by the deceased “An interest 1100 acre tract situate at South West Bay New Providence known as Moss Tract”. There is no evidence as to the nature of the “interest”.
6. Letter: Norwood Rolle Esq to Sidney Dorsett dated 10 March 2017	No evidence was lead as to this letter. Mr. Norwood Rolle was not called to give the source of his information.

[50] In the right-hand column of the Table are the submissions of learned Counsel Mrs. Ellis. I agree with them. I further observed that there is no reference to the disputed property in the Last Will and Testament of Clotilda Huyler. I found it rather strange that such a vast acreage of land (1,100 acres) was omitted in her Will and Last Testament. Mrs. Ellis next submitted that the person who filled out the Oath of Executor included in the Schedule of Real Property owned by the deceased Clotilda Huyler “An interest 1,100 acre tract situate at South West Bay New Providence known as “Moss Tract”. There is no evidence as to the nature of the “interest.” An interest does not mean the whole interest in the 1,100 acre tract.

[51] Additionally, I agree with Mrs. Ellis that the letter from Mr. Norwood Rolle to Mr. Dorsett dated 10 March 2017 is of no evidential value as Mr. Rolle was not called to give the source of his information and, more importantly, to be cross-examined.

[52] The Defendant filed a supplemental bundle of documents on 15 September 2017 namely Quieting Petition of Capital Control Limited No. 7 of 1980. There is no evidence that a Certificate of Title was granted to the Petitioner over lots 47 and 49.

[53] Then, on 17 November 2017, the Defendant filed yet another bundle of documents termed “Defendant’s Further Supplemental Bundle of Documents as shown below:

Defendant’s Further Supplemental Bundle of Documents filed 17th November 2017	
Items 1 though 5	We submit that pleadings are not evidence, to the world at large, of the facts contained therein. The land the subject of the action is only defined as “Certain land of the Plaintiff called “Moss” tract situate at South West Bay in the Island of New Providence”: see page 5, Defendant’s Further Supplemental Bundle of Documents. There is insufficient information to determine

	if the land is the same land that is the subject of this action. The Moss tract is frequently described as 1100 acres.
6. Plan of the Petitioner in Quieting Title Action No 7 of 1980	We repeat that pleadings are not evidence of the facts and there is no evidence that a Certificate of Title was granted to the Petitioner over lots 47 and 49.

[54] I have carefully examined all of these documents and I agree with the submissions advanced by Mrs. Ellis that the disputed property is only defined as “Certain land of the Plaintiff called “Moss” tract situate at South West Bay in the Island of New Providence.” I agree that there is insufficient information to determine if the land is the same land as the disputed property. The Moss tract is frequently described as 1,100 acres.

[55] In contrast, the documentary evidence produced by Propco, which is contained in the “Plaintiff’s Bundle of Documents” filed on 16 June 2017, includes copies of Indentures which comprise Propco’s chain of title from 1963 to 2009. Further, on 16 May 2012, it was ordered by consent that New South Ocean Development Company Limited and Seaside Heights Limited deliver up to Propco possession of the properties secured under the Mortgage: Tabs 9 and 10 of the Plaintiff’s Bundle of Documents.

[56] In my opinion, Propco has satisfied the Court that it is the beneficial owner of the disputed property and I so find.

[57] For the sake of argument, I will go a step further. If this were a Quieting Petition whereby the task of the Court will be to determine who has a stronger title, there is no doubt in my mind that Propco will be granted the Certificate of Title. Its documentary title cannot be ousted by the documentary title that Mrs. Huyler has produced. I also find as a fact that the disputed property was bush prior to Mrs. Huyler’s clearing of it so the issue of adverse possession might be an insurmountable task for Mrs. Huyler to prove to the Court.

Issue 2 – Did the Defendant trespass on the Plaintiff’s property?

[58] The next issue to be decided is whether Mrs. Huyler, her agents, employees or assigns caused heavy equipment to enter upon Propco’s property (as I shall refer to the disputed property henceforth) on or about 20 September 2015 and caused tractor paths to be pushed and fence-posts to be erected, vegetation destroyed and damage to Propco’s property?

[59] As previously stated, I found Mr. Rolle to be a credible witness and I accepted his testimony. I accepted his version of events as it related to 20 September 2015. Mr. Rolle advised Mrs. Huyler that it was Propco’s property. Mrs. Huyler would have none of that. She was resolute that Propco’s property belonged to her and her husband’s family. She was clearing it to divide it into lots: see also paragraph 8 of her witness statement where she asserted *“I told Ricardo Rolle “my husband’s family” hired the tractor. That they intended sharing up their land.”*

[60] I did not believe Mrs. Huyler that her husband’s family hired the tractor to clear Propco’s property. In fact, her evidence is replete with untruths and inconsistencies. I agree with learned Counsel Mrs. Ellis that, on a balance of probabilities, it is reasonable to conclude that Mrs. Huyler participated in the decision to put a tractor on Propco’s property. Being the matriarch of the family, a fact admitted by Mr. Fernander, she is mistakenly adamant that Propco’s property belongs to her deceased husband and her family. In addition, she lives near the property and believes that she inherited an interest in Propco’s property from her late husband and her larger extended family.

[61] For all of these reasons, I find that Mrs. Huyler, her employees, agents, heirs or otherwise entered upon and/or cross over on Propco’s property causing damage to it.

Conclusion

[62] On a balance of probabilities, Propco has shown that it was and is at all material times the owner of Lot 47, Lot 49 and Lot 51 in the subdivision called and known

as South West Bay Subdivision and that Mrs. Huyler, her agents, employees or assigns caused heavy equipment to enter upon its property causing damage and the entry onto Propco's property was done without the consent of Propco.

[63] In the circumstances, I will make the following orders:

1. A Declaration is granted that the Defendant, Mrs. Huyler, by herself, or by her employees, agents, heirs or otherwise, is not entitled to enter upon or cross over Lot 47, Lot 49 and Lot 51 in the subdivision called and known as "South West Bay Subdivision" situate in the Western District of the Island of New Providence ("Propco's property");
2. A perpetual Injunction restraining Mrs. Huyler whether by herself or by her employees, agents, heirs or otherwise, from trespassing and/or occupying Propco's property.
3. Damages to be assessed to the Registrar; and
4. Costs to the Plaintiff in the sum of \$17,000.

Dated this 7th day of December, A.D., 2018

**Indra H. Charles
Justice**