

IN THE SUPREME COURT

Common Law & Equity Side

BETWEEN

FAIRNESS LIMITED

Plaintiff

AND

LARRY PHILIP DAVIS

Defendant

Before: Madam Justice Ruth M.L. Bowe-Darville

**Appearances: Keith Bell and Sharon Lady Wilson – Plaintiff
Cathleen Hassan and Khadra Sawyer – Defendant**

Hearing Dates:

J U D G M E N T

Trespass to land

1. By the Plaintiff's Amended Writ of Summons filed on 20th July, 2020, the

Plaintiff seeks the following:

1. *A declaration that the Plaintiff is the owner of the property;*
2. *A declaration that the Defendant is not entitled to occupy the said property;*
3. *An injunction restraining the Defendant whether by himself, his servants and/or agents from entering upon the said property;*
4. *Possession of the said property;*
5. *Damages for loss of rent from Cable Bahamas Ltd.;*
6. *Other damages;*
7. *Costs; and*
8. *Further and other relief.*

2. The Plaintiff claims to be the fee simple owner of Lot No. 54 and Lot No. 55 Ellis Addition Subdivision by virtue of a Conveyance dated the 1st day of August, A.D. 2017 and made between Sunshine Holdings Limited and

Fairness Limited. In the beginning the conveyance was presented to the Court as an unstamped and unrecorded conveyance. The same was duly stamped and lodged for recording during the currency of the hearing. Up to the presentation of that conveyance, the Plaintiff's predecessor in title claimed to be the owner of the subject property by possessory title and purported to have erected a wall delimiting the subject property for a period in excess of twelve (12) years and used the said property as a parking lot for its own use and that of its tenants.

3. By its Amended Statement of Claim the Plaintiff lodged the negative defence of the Defendant maintaining that *"The Defendant knew or ought to have known that he was not the true legal and documentary owner of the said property or that he was acting on behalf of the true owner of the said property or was the Defendant vested with a beneficial interest of the said property."*
4. The Plaintiff further submitted that the Defendant ought to have known, that: -
 - (i) On 12th day of March, A.D. 1943, the father of the Defendant, the late Lallie (Eldridge) Davis became seised of the several lots including lots Numbered 54 and 55 situate in Ellis Addition Subdivision form one Albertina (Larry) Grenidge;
 - (ii) On 15th day of April, A.D. 1944 the late Lallie (Eldridge) Davis sold lots numbered 54 and 55 to Augustus Williams for the sum of seventy (70) pounds;
 - (iii) The late Lallie Eldridge Davis, by his last will and testament dated 5th day of January, A.D., 1999 specifically devised lots of land that he owned at the making of the will - that is lots of land situate at Theodora Land and Spring Hill in New Providence;
 - (iv) On 30th May, A.D., 2006 the Defendant along with his sister, Ingrid Davis Bartlette, the co-executors of the estate of the late Lallie Eldridge Davis, included in the Oath of the Executor in

the Probate application, the lots numbered 54 and 55 as lands being owned by the deceased.

5. The Plaintiff's claim arose as a result of a proposition by Cable Bahamas to erect a cell tower on the site behind what is known as the "Sunshine Twin Theatre" property on Blue Hill Road. The Court refers to the witness statement of Tavares K. Laroda filed on 12th November, 2020 for much of the background of the Plaintiff's claim. He stated that the Plaintiff owned the larger tract of land being 7,686 square feet and known as the Sunshine Plaza. He claimed that this land included "portions of lots 54 and 55 of Ellis Addition Subdivision". Further, at the date of the conveyance from Sunshine Holdings Limited to the Plaintiff, the predecessor in title was at all material times the owner of the subject property by possessory title having occupied the land for some thirty-one (31) years and that the property was completely enclosed. Sunshine Holdings Limited was seised of the plaza land by virtue of a conveyance made 23rd day of January, 1976 made between Roywest Banking Corporation Limited and Sunshine Holdings Limited and as such were the owners of Lots 46 to 53 of Ellis Addition Subdivision. It is the Plaintiff's case that in or about 1986 Sunshine Holdings Limited erected a six (6) foot wall around its perimeter and which it claimed included Lots 54 and 55, the adjacent parking lot. Of note the witness says "*No other person occupied the land*".
6. 2005 Sunshine Holdings Limited entered into a lease agreement with New Destiny World Outreach Ministries which occupied the original theatre building and had the use of the parking lot surrounding the building. Then on 3rd April, 2014 New Destiny entered into an agreement with Cable Bahamas Ltd. for the use of a portion of the land leased from Sunshine Holdings Limited for the purpose of erecting thereon a cell tower. A site plan was prepared for Cable Bahamas by Donald Thompson locating the tower site. This plan was produced for inspection by the Court.
7. Mr. Laroda also produced photographs taken by him and which showed the wall and fencing on Lots 52, 53, 54 and 55. These photographs showed

(i) the wall enclosing the Sunshine Plaza property; (ii) the cell tower within these walls; (iii) demolition of 18 ft of wall along Lot 53 on Baker St. as well as 54 feet of wall along lots 54 and 55; and (iv) the perimeter fence of Lot 55 with razor top fencing.

8. The Plaintiff's claim was supported by the evidence of Shurn Henry, the land surveyor who prepared a survey plan dated April, 2018. Having conducted the necessary survey she concluded "*... that Lots 54 and 55 form part of the area known as the Sunshine Plaza. There is a wall and fencing enclosing Sunshine Plaza on the Western portion of Lot 55 and there is also a fence enclosing a residential home and yard located to the eastern portion of Lot 55. The southern portion of Lot 55 is enclosed by a wall and fencing and is occupied by persons unknown.*" She went on to say "*... seventy-two (72) feet of the northeastern boundary wall of the Plaintiff's property has been demolished. Eighteen feet (18) of the demolished boundary wall enclosed Lot 53.*"
9. Basil Damianos, the Director of Security for Sunshine Holdings Limited, gave testimony that on 4th January, 2018 he discovered that the northern boundary wall of the Sunshine Plaza has been damaged and a "For Sale" sign affixed to the wall. On 2nd April, 2018 while doing a routine inspection he came upon persons demolishing a portion of the wall along Baker Street. He introduced himself and was told by the Defendant that he owned the property and that the same was not the property of Sunshine Holdings Limited. He immediately called the police and on doing so the demolition workers stopped. The following day Mr. Damianos and his crew sought to secure the property in the area of the demolition. In anger the Defendant tore down the fencing wire and in so doing destroyed several poles. The fencing was re-installed in an effort to secure the property further. Mr. Damianos proffered photographs of the site after these two incidents. These were not challenged.
10. Mr. Warren Pinder, the Vice-President of Construction for Arawak Homes Limited, a subsidiary of Sunshine Holdings Limited, in his witness

statement filed on 12th November, 2020 stated that he had supervised the construction and renovations of the buildings and additions at the Sunshine Plaza. He testified that in or around 1986 Sunshine Holdings Limited erected a six (6) foot masonry wall along the perimeter of Lots 46-55 Ellis Addition Subdivision which enclosed the plaza site. He pointed out that in order to facilitate the various tenants in the premises he and his team carried out certain improvements to the site inclusive of placing a chain link fence on top of the wall along Baker Street. He too was present on 2nd and 3rd April, 2018 for the encounter with the Defendant. It was Mr. Pinder who secured the one estimate of the damage to the wall from Joffre & Sons for \$15,825.00.

11. The title search in respect of the disposition of the said lots 54 and 55 was conducted by Mr. Luther Darville, an employee of Sharon Wilson & Co. and it was he who produced the documents of title to the several lots in the Ellis Addition Subdivision and, in particular, those relating to the late Lallie Eldridge Davis. Copies of the documents were exhibited to his witness statement. The Court's attention was drawn to further documents in respect of the subject lots being a conveyance dated 9th April, 1953 made between Augustus Williams to Arrandale Seymour Griffith for Lots 54 and 55 Ellis Addition Subdivision and recorded in Volume 120 at pages 385 to 388; Probate in the Estate of Arrandale Seymour Griffith dated 12th October, 1976 and recorded in Volume 2679 at pages 259 to 262; and Deed of Assent in the Estate of the late Arrandale Seymour Griffith dated 15th November, 1976 and recorded in Volume 2671 at pages 170 to 173.

12. Ms. Kyron Strachan, was the last witness for the Plaintiff. She testified that she was a director of Sunshine Holdings for more than forty-five years. She seemed to be most familiar with the corporate workings of the company having been hands on with the Sunshine Twin Theatre and its environs. She confirmed the original lots as per the conveyance from Roywest Banking Corporation, that is lots 46 - 53. She also confirmed

that in and around 1986 the company built the perimeter wall which included lots 43-55 Ellis Addition Subdivision. This wall was meant to enclose the Sunshine Twin Theatre Building and the commercial building and the adjoining parking lot.

13. While the other Plaintiff's witnesses went without major contention on cross-examination, the latter witness provided better insight as to the Plaintiff's predecessor in title's possessory claim. On cross-examination she stated that she had heard the name of Lallie Eldridge Davis mentioned at the board meetings and that he owned Lots 46-55. She was keenly aware of the construction of the theatre building and its various tenants/occupants. She stated also that up to August, 2017 Sunshine Holdings Limited only had a possessory title and thereafter it transferred its title to the Plaintiff. It was her evidence, and confidently, that Lots 54 and 55 were privately owned and that the said lots were being used as parking spaces with the permission of the owner. In her position as Corporate Secretary to Sunshine Holdings Limited, she was aware that Sunshine had gotten permission from Harry Griffith, [the man to whom Mr. Augustus Williams sold] to use the lots for its overflow parking. This arrangement she claimed was done on a handshake with the late Bismark Coakley. Her evidence was that the company paid Griffith \$100 per month or \$1200 per year for the use of the space until about 2000. When challenged she said that she was not asked for corporate notes or minutes and could not produce the same without going into the company's archives. She continued that post Mr. Griffith's death the company then paid Griffith's widow the lease rent. It was her recollection that the widow was paid by cheque and after some time she began to send her daughter, Eula Griffith Forbes to collect the payments. She did not, however, remember if or when the company stopped paying the rent. In the end she was firm to state that she did not know of any lease arrangement between Davis and Sunshine Holdings Limited nor any payments to him.

14. The Defendant's defence was that he always believed his father, the late Lallie Eldridge Davis, to be the legal and documentary owner of the subject properties, Lots 54 and 55. This belief was founded in a conveyance dated 12th March, 1946 and it was in this regard that he listed the properties in the Probate application and because he thought that it was an oversight by his father when making his will. He claimed to have occupied/used the lots at different periods of his life. Surprisingly, he was aware of Mr. Augustus Williams' occupation and use of the land and in his words, *"...he was one of my father's friends so I allowed him to use the property since I did not use it exclusively."* He claimed that he allowed New Destiny the use of the lot (parking lot) when it ran out of space on Sundays. *"I don't know anyone who wouldn't have allowed a church to use their property, especially as a church is beneficial to all those in the neighbourhood."*
15. He contended that there was a short wall on the border of the Sunshine property and that it ended at the boundary between lots 53 and 54 and *"a fence at lot 53 and 54 beyond the boundary of lot 55"*. Confusing to say the least. Further, he stated that the wall was not raised to six (6) feet until 2006 and that it did not extend beyond lot 53. He claimed that it was not until 2015 with the installation of the cell tower that the wall was extended to lots 54 and 55 and raised to six (6) feet. Once he became aware of the activity on the property, he immediately had his attorneys contact the attorneys for Cable Bahamas and New Destiny with a view to resolving any possible ownership dispute. It was at that time that he entered into a lease arrangement with Cable Bahamas for the cell tower site and for which he was paid.
16. It is the Defendant's firm stand that he and his attorneys were in negotiations with the Arawak Home Ltd/Sunshine Holdings Limited regarding the ownership of the land and their possible purchase of the same. A meeting in this regard was held in July 2017 prior to the execution of a conveyance in favor of the Plaintiff.

17. The Defendant called as his witness Robert Nelson Moss, a neighbour and long time Davis family friend. He too was of the opinion that Lallie Eldridge Davis owned the subject lots. Importantly, he stated that until 2014 there was *“only a fence around lots 54 and 55 and that the wall was only extended that far due to the erection of the cell tower.”* The evidence of Geoffrey Rolle was similar in nature as was the evidence of Brenda Ingraham.
18. The Court puts no credence to the evidence contained in the witness statement of Cecil Bowe.
19. The Plaintiff, by its Statement of Facts and Issues filed herein, has reduced its case to a single triable issue for the Court to determine - Who has title to Lots No. 54 and 55 in Ellis Addition Subdivision?
20. The Defendant maintained that Sunshine Holdings Limited, the predecessor in title to the Plaintiff, at no time held the fee simple of Lots 54 and 55 Ellis Addition nor any documentary title to the said lots. Its claim to possessory title was founded on its erection of a perimeter wall around the subject property. The Defendant asserts that he has been in possession and behaved as owner of the subject lots since on or about 1974.
21. The Defendant sets out as its issues: (1) Can the Plaintiff rely on the alleged possessory title of Sunshine Holdings Limited? (2) Does the Plaintiff have a good and marketable root of documentary title to the lots 54 and 55 Ellis Addition Subdivision as claimed/Who has title to Lots 54 and 55?
22. The Plaintiff claims that *“the Defendant without lawful authority, trespassed and intentionally caused damage to the said wall and affixed a “For Sale” sign with a view to interfere with Plaintiff’s use and ownership of the said property.”* The Defendant did not deny that he and others caused damage to the wall. The attitude projected was that the Defendant felt justified in what he was doing and in so doing he was asserting his ownership of the subject lots.

23. The Production of plans were very important to the location of the boundaries and the existence of a wall on the said properties. The Plaintiff relied firstly on the plans produced by Kyron Strachan in her supplemental witness statement and which was prepared by Alexiou and Associates dated 30th September, 1986 when the City Meat Market lease was being negotiated. The plan does show three (3) sections of solid walls along Baker Street but does not indicate the height nor does it indicate which lots were included in the plan
24. Mr. Donald Thompson, another registered land surveyor, testified that he had been commissioned by Cable Bahamas Ltd. in 2014 to conduct an inspection and prepare a survey plan to establish the placement of a cell tower on the Sunshine Plaza site. In November, 2014 he personally carried out his instructions and was satisfied that there was a wall running along the northern boundary of the Sunshine property that is running along Baker Street to the western boundary of Lot 56 Ellis Addition Subdivision. It was only when the ownership dispute arose that Cable Bahamas instructed him to do a further survey to determine the lot allocation for the placement of the cell tower. Using the original plot plan for the Ellis Addition Subdivision obtained from the Department of Lands and Surveys, he was able place the cell tower on a specific lot. His initial recommendation for placement was the northeastern corner of the Sunshine Plaza site. On 17th November, 2015 he was able to produce an amended plan. Mr. Thompson confirmed that his inspection had not changed since his visit in 2014. He noted the following as the outstanding features: *(i) The northern boundary wall along Baker Street; (ii) The paved parking lot on the entire property including Lots 54 and 55; and (iii) The drains and deep wells on the property including the drain on lot 55.*
25. The Plaintiff submitted that it is the documentary title holder of the said lots by virtue of the conveyance of 1st August, 2017 between Sunshine Holdings Limited and itself, a document which was regularized during the currency of the proceedings. The Plaintiff, it is contended by the

Defendant, received its title from Sunshine Holdings Limited by virtue of its possessory title for a period in excess of 12 years having erected a perimeter six (6) foot wall and having only lately in 2018 enclosed the opening in the existing wall to include lots 54 and 55.

26. The Defendant maintained that the Plaintiff wrongly induced the court to issue an injunction in February, 2018 knowing that the conveyance was not in compliance with the provisions of Section 18 of the Stamp Act which prohibits the pleading of unstamped deeds or adducing the same as evidence in Court.

“18. No instrument which is required by any Act to be stamped shall be pleaded or given in evidence in any court unless the said instrument shall be duly stamped and the stamps thereon cancelled, except as hereinafter provided.”

27. This same conveyance was reproduced in the witness statements of several of the Plaintiff's witnesses and the court is left to determine what weight to put to the same. The Defendant also says at the date of the said conveyance the Plaintiff could not have established possession having only acquired the lots by the 1st August, 2017 conveyance and, further, Sunshine Holdings Limited had not at that date establish its possessory claim. Sunshine Holdings Limited could only convey that which it owned.

28. The Defendant continued to challenge the Plaintiff's good root of title and referred to the Conveyancing and Law of Property Act at section 3(4) thereof

“(4) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by the Crown or a certificate of title granted by the court in accordance with the provisions of the Quieting Titles Act, whichever period shall be the shorter.”

29. Continuing the Defendant submitted that in accordance with section **6 (4) of the Conveyancing and Law of Property Act**, that the Plaintiff's purported predecessor in title could not have transferred to the Plaintiff any better title to the property than that which the purported predecessor itself claimed to have. Section 6 (4) states:

“(4) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.”

30. This is clearly a case of competing land interests. The Court is guided by Lord Diplock in the case of ***Ocean Estates Ltd. v Norman Pinder [1969] 2AC 19.***

“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 a 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 the 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.”

31. There is no question that the limitation period in respect of real property actions is twelve (12) years. The Plaintiff asserts its possessory claim through its predecessor in title, Sunshine Holdings Limited. The Defendant was unable to challenge the Plaintiff’s peaceful and undisturbed occupation of the said lots since 1986 and even more so after the Sunshine had gotten permission from the land owner to use the said lots for parking. Certainly, the Defendant was not aware of this arrangement. The Plaintiff’s witness, Strachan, stated that rents were being paid to the Griffiths up to about 2000. Even at that date the Plaintiff has acquired the necessary years for a possessory claim (2000 -2018). The Court does not find the Defendant’s witnesses to be credible. Save for the Defendant’s sister, the other witnesses had already moved away from the area. For the most part their memories were selective, especially as it related to the erection of the boundary wall.

32. The text *Elements of Land Law, Fifth Edition by Keith Gray and Susan Francis Gray* described Possession of land as follows:

2.1.28 Throughout the development of the common law, the behaviour reality of 'possession' has been regarded, in default of any better methodology, as the ultimate basis of 'title' to an 'estate' in land.

...

The unchallenged arrogation of possessory control over the land served for centuries as the authentic foundation of real ownership and, in all truth, unregistered conveyancing has never comprised much more than the handing on from seller to buyer of a title evidenced by undisturbed possession (JA Pye (Oxford) Ltd v United Kingdom (2008) 46 EHRR 1083).

2.1.29 Factual control over land has long been regarded as connoting ownership of either a freehold (see *Metropolitan Railway Co v Fowler [1892] 1 QB 165*) or a leasehold estate. Possession generates its own title, and English law came, in particular, to apply a pragmatic presumption that, unless and until the contrary were shown, this title was a title to the full freehold estate. The law gives credit to possession unless explained and possession is 'prima facie evidence of seisin in fee simple'. Even today possession, whether or not tortuously acquired, still throws up for the possessor (or 'squatter') a 'common law freehold' which, in the absence of any superior title to a fee simple estate, is enforceable against the world. Thus - from the moment of its inception - 'possession' confers a title to a fee simple estate which is valid and effective except in the face of a better claim advanced on behalf of somebody else. Herein lies the essence of the common law principle relative to title. This principle predicates that the best title to an estate in land is that of the person whose claim to 'possession' is superior to that of all others.

33. In defining "fee simple" McHugh, J observed in *Newington v Windeyer (1985) 3 NSWLR 555 at 563E*, that 'an estate gained by wrong is nevertheless an estate in fee simple'. This case is analogous to the instant case with Fairness.

It is also about tort, trespass to land, and the rights of the possessor. The facts are - Windeyer (together with other persons) was the owner and occupier of properties next to some land called, The Grove. The Grove was an asset in a deceased person's estate. Windeyer had no title to The Grove, but claimed to be in possession of it. Windeyer had treated this land as his own for nearly 50 years, pruning trees, employing someone to cut the grass, and paying the rates. Then Newington, who owned another property adjoining The Grove, rebuilt her fence to give herself access to The Grove. Windeyer brought an action in trespass against her. The issue raised was: *Did Windeyer, as possessor rather than owner of The Grove, have the right to sue in trespass?* The Court held that Windeyer was entitled to sue in trespass even though he did not own The Grove. The same was upheld on appeal. The trial judge found that Windeyer was in legal possession of The Grove, and was able to sue in trespass on the basis of his possessory title. The Court of Appeal upheld this finding.

33. In The Bahamas, there is the landmark Privy Council case of ***Bannerman Town, Millars and John Millars Eleuthera Association [2018] UKPC 27***, in which the Board said the following at paragraph 50 of their decision:

“50. While occupation and use of land is a familiar non-technical concept, possession of land is a legal term of art. Possession for however short a time may be sufficient to found a cause of action in trespass against someone thereafter coming upon the land. But possession sufficient to bar a prior title (whether itself documentary or possessory) must be proved for the whole of the time prescribed by the relevant Limitation Act: see Perry v Clissold [1907] AC 73, Per Lord McNaughton at p.79”.

34. Grey and Grey in the text, ***Elements of Land Law*** (*supra*) had the following to say on the subject matter:

“2.1.36 Trespass to land is ‘essentially a wrong against possession, not against ownership’ (Simpson v Fergus (2000) 79 P & CR 398 at 401 per Robert Walker LJ). It follows that the person who currently enjoys possession of land may bring an action in trespass against anyone who enters the land without his consent, with the sole exception of a person who

has a better title than himself (Hunter v Canary Wharf Ltd [1997] AC 655 at 703E per Lord Hoffman). Indeed, it used to be said that trespass to realty is actionable only at the instance of a person with a present right to possession of land. However, in what seems an unprincipled erosion of the historic concept of possession, English courts are nowadays beginning to accord some of the attributes of ‘possession’ to certain categories of licensee (and even to ‘tolerated trespassers’). With the consequence that such persons have been allowed to sue independently in trespass.”

35. **In Fairness Limited v Steven Bain et al SCCiv No. 30 of 2015** Allen PA defined a trespasser as “...one who has unlawfully entered the land in the possession of another without a defence to such entry and so long as that person remains on the property, he remains a trespasser no matter how long he is in possession.” Allen PA continued on in her judgment to provide a definition of trespass as found in **Halsbury’s [Volume 97 (Tort) of the Fifth Edition of Halsbury’s Laws of England (2015)**

“... as the unlawful presence on land in the possession of another. Indeed, according to that text, a person trespasses on land “if he wrongfully sets foot on it, or rides or drives over it, or takes possession of it, or expels the person in possession...”

36. At paragraphs 573 and 574 the authors of Halsbury’s Laws say further:

“573.If the defendant intends to enter the land on which he trespassed it is no defence that he mistakenly thought that it was his own land; mistake is no defence in trespass.

574. Any form of possession, so long as it is exclusive and exercised with the intention to support a claim of trespass is sufficient to support a claim of trespass against a wrongdoer. It is not necessary, in order to maintain trespass, that the claimant’s possession should be lawful, and actual possession is good against all except those who can show a better right to possession in themselves. However, a mere trespasser who goes into occupation cannot by the very act of trespass, and without acquiescence give himself possession against the person he has ejected...

37. Halsbury also goes on further to discuss the defences available against a claim for trespass and the same is set out at paragraphs 581, 583, 584, and 587:

581. A defendant may plead and prove that he had a right to the possession of the land at the time of the alleged trespass, or that he acted under the authority of some person having such a right; but he may not set up the title of a third person unless he claims under or by authority of such a person

...

583. It is a good defence to a claim of trespass for the defendant to plead and prove that he entered on land in the exercise of a legal right whether statutory or otherwise... The defence of justification must be specially pleaded and must cover all of the acts done.

584. Mere delay by the claimant in complaining of the defendant's actions is not of itself sufficient to establish the defence of acquiescence or estoppel. It must further be shown that the defendant had been misled to his detriment so that it would be unconscionable for the plaintiff to assert his rights. However, the claimant is not debarred by acquiescence from enforcing legal rights of which he was unaware.

587. A claim of trespass to land is barred by lapse of the statutory period of limitation, which, except in certain specified cases, is six years from the cause of action arose."

38. As noted in **Fairness**, this too is not a Quieting Titles action. There is no question of adverse possession on the part of the Plaintiff. It is for the Defendant to raise a defence against the Plaintiff's claim. The Court has reviewed the Defendant's Defence and Counterclaim filed in the action. The Defendant has presented no viable defence to the claim. The Defendant's purported documentary claim to the subject lots fell away as early as 1943 when his father sold the lots to Mr. Griffiths. Further, despite the Defendant's contention that he operated his different businesses from the site between 1974 and 1985, he seemed to have abandoned the property until he became aware of the Cable Bahamas Ltd's proposition of building the cell tower. For a while he benefited from the lease rents paid to him as the purported "beneficial owner" of the

property. [See also **George Nathaniel Hall v Anthony Dean SCCiv Appeal No 12 of 2020**]

39. This Defendant cannot show that he entered the subject land under some lawful authority of someone having a legal right. He cannot and did not plead that he was under a misapprehension as to his legal entitlement to so enter the land. It was simply that he assumed he had a legal right to so enter without more.

40. The Plaintiff, by its witnesses, showed that it had been in physical possession of the lots since the opening of the theatre on the site and that it had recognised the owner of the subject lots by paying rent to the Griffiths. These payments presumably ceased in or about 2000. Moreover, the Plaintiff delimited its boundaries by erecting a perimeter wall around what it considered its property and thereby enclosed the same for security purposes for itself and its tenants. As noted by Thompson, the surveyor, Sunshine had also dropped necessary drains and wells on the property and in particular on lot 55. It is certain from the evidence given that the Plaintiff did not acquiesce or act to the Defendant's detriment.

41. Sadly, the Defendant was misled as to his legal rights and as such he had nothing to enforce as against the Plaintiff. In **Arawak Homes Ltd. v John Sands and Smith, Smith 1991/CLE/qui/00027** Lyons, J had this to say:

“A trespasser has no title to land unless and until the same is confirmed in a Certificate of Title issued after an investigation of title by the Court

42. Moreover, the Defendant had done nothing to show that he was at all times in continuous and exclusive possession of the said lots. He had not yet acquired the necessary twelve (12) year limitation period in order

to bring a claim and, save for the slight interference in 2014, he did nothing else to disturb the Plaintiff's predecessors in title in their peaceful occupation of the property. By 2014 the Plaintiff's predecessors in title had already accumulated the necessary period of 12 years. In accordance with ***JA Pye (Oxford) Ltd and another v Graham and another [2000] 3 All E. R. 865*** it was incumbent upon the Defendant to show that (i) *he had a certain degree of physical custody and control establishing his factual possession and (ii) an intention to exercise such custody and control being his intention to possess the subject property.* The actions of the Plaintiff's predecessors in title were plainly to possess the subject property and as such it did its best to define and secure the area.

43. In conclusion the Defendant's acts of trespass were not continuous, exclusive and sufficient enough to dislodge the Plaintiff's documentary title which in and of itself rested in a possessory claim.

44. The Court makes the following orders:

- (i) A declaration that the Plaintiff is the owner of Lots 54 and 55 Ellis addition Subdivision by virtue of the conveyance dated 1st August, 2017 made between Sunshine Holdings Limited and Fairness Limited and which is based on its predecessor in title's possessory title thereto;
- (ii) The Defendant's Counterclaim is dismissed;
- (iii) A declaration that the Defendant is not entitled to occupy the said property;
- (iv) Damages to be assessed by the Registrar; and
- (v) Costs to the Plaintiff to be taxed if not agreed.

DATED 3rd day of December, 2021

Ruth M.L. Bowe-Darville
Justice of the Supreme Court