

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2021/CLE/gen/00186**

**IN THE MATTER** of a portion of land located on Honey Comb Street in the Central District of New Providence one of the Islands of the Commonwealth of The Bahamas and being a portion of a larger parcel of land previously owned by the **UNITED PENTECOSTAL CHURCH OF THE BAHAMAS INCORPORATED** but by a resolution as noted in a Certificate of change of Name and Incorporation as per registration No. 36004 of the COMPANIES ACT, 1002 (No. 18 of 1992) this parcel is now owned by the Claimant.

**AND**

**IN THE MATTER** of an Application on the part of the Claimant for an Order of Possession and a Declaration that the Claimant is the fee simple owner of the said piece, parcel or lot of land and the Defendant is encroaching on a portion of the said piece or Lot of Land.

**BETWEEN**

**THE FIRST CHURCH OF OUR LORD JESUS CHRIST OF THE BAHAMA ISLANDS  
INCORPORATED**

**Claimant**

**AND**

**ANGELA MCPHEE**

**Defendant**

**Before:** Her Ladyship The Honourable Madam Senior Justice Deborah Fraser

**Appearances:** Mr. Vincent Peet for the Claimant  
Mr. Norwood A. Rolle for the Defendant

**Hearing Date:** 16 November 2023

**Closing Submissions: 20 March 2024**

## JUDGMENT

**FRASER, SNR J:**

### **Introduction**

[1.] This is an action in trespass concerning an encroached area on a parcel of land situated at Honeycombe Street in the Southern District of the Island of New Providence. The First Church of Our Lord Jesus Christ of The Bahamas Islands Incorporated (“**the Claimant**”) alleges that the land belongs to them. In her Defence, Ms. Angela McPhee (“**the Defendant**”) avers that she has occupied the “subject property” since 2005, denies trespassing, and claims to have possessory title to the property.

### **Background**

[2.] By an Originating Summons filed on 24 February 2021, the Claimant commenced this action against the Defendant, alleging that she is a trespasser on a portion of a parcel of land with a totaled dimension of 8,485 square feet situated on Honey Combe Street. The Claimant alleges that the Defendant is encroaching on a portion of the said property and seeks the following orders and relief:

- a) An Order for Possession granting the Claimant possession of the portion of the property occupied by the Defendant (“**encroached area**”);
- b) An Order for eviction, requiring the Defendant to vacate the encroached area.
- c) An Order for mesne profits, requiring the Defendant to compensate the Claimant for the time she has been occupying the encroached area.
- d) An Injunction restraining the Defendant, whether by herself, her servants, or agents from entering and or occupying the encroached area.
- e) An Order requiring the Defendant to remove all of her belongings and structures that she illegally erected on the encroached area.
- f) Further or other reliefs as this Court deems just.
- g) Costs.

[3.] The Originating Summons, filed on 24 February 2021, was supported by the Affidavit of Humphrey Ferguson, filed on 23 March 2021, and a Supplemental Affidavit, filed on 19 August 2021.

[4.] In her Defence, the Defendant filed an Affidavit on 14 May 2021, opposing the Claimant's Originating Summons.

### **EVIDENCE**

### *Claimant Evidence*

[5.] The Claimant filed the Affidavit of Humphrey Ferguson (“Ferguson Affidavit”) on 23 March 2021. The Ferguson Affidavit provides: (i) that on 9 December 2002, the Claimant purchased the property on Honeycombe Street, Central District of the Island of New Providence recorded in Vol 010929, pages 365 to 371; (ii) that the Claimant name was later changed to First Church of Our Lord Jesus Christ of the Bahamas Islands Incorporated; (iii) that property dimension are North:103.27 feet, East: 98.75 feet, South: 54.72 feet, and West: 98.88 feet; (iv) that the Defendant’s property, located south of the Claimant’s property, is enclosed by a wall on the East measuring (51.23 feet), South (50.04 feet), and a partially completed chain link fence on the West (53.43 feet), encroaching on the Claimant’s property; (v) that a discrepancy exists between the Defendant’s stated property dimensions (3,168 square feet) and the Claimant’s plot plan (2,450 sq. feet.), raising concerns over the boundary; (vi) that the Defendant is using the encroached area for personal purposes, including a clothesline and storage area. (vii) that the Ferguson Affidavit includes copies of the Conveyance, survey plan and photographs of the encroached area.

[6.] The Ferguson Affidavit further provides: (i) that in January 2005, the Claimant built a foundation attached to the Church, 20 feet from the southern boundary; (ii) that when the Defendant and her mother purchased their property in June 2005, the foundation was already in place; (iii) that the survey plan appears to mistakenly included in the Claimant’s property; (iv) that the Claimant’s attorney issued a letter notifying the Defendant of the encroachment; (v) that the Defendant later offered to sell her property, but the title was defective, preventing the Claimant from completing the purchase; (vi) that the Claimant requested the Defendant to vacate the encroached area, but the Defendant refused; (vii) that as a result the Claimant seeks a court order for removal of the Defendant’s belongings and an injunction against further trespass

[7.] On 19 August 2021, the Claimant filed the Supplemental Affidavit of Humphrey Ferguson (“**Supplemental Affidavit**”) stating: (i) that the affiant, as National Overseer of the Church, was authorized to represent the Claimant; (ii) that the Defendant offered to sell her property, and the Claimant agreed to purchase it for \$72,000.00; (iii) that an Agreement for Sale was executed, contingent on the Defendant providing a clear and marketable title; (v) that the Claimant paid a deposit, which was held in escrow by the Defendant’s attorney; (vi) that upon legal review, a title defect was discovered, making the sale unfeasible, and the deposit was returned.

[8.] The Supplemental Affidavit further states: (i) that the Claimant’s attorney advised that the Defendant’s title defect could be resolved by applying for a Certificate of Title; (ii) that the attorney suggested that if the Claimant purchased the Defendant’s property, the encroachment issue would be resolved; (iii) that the Claimant offered financial assistance to help the Defendant obtain the Certificate of Title, with the amount credited toward the purchase price; (iv) that the Defendant’s son insisted on an upfront deposit before pursuing the title claim, and the Claimant refused; (v) that the Claimant remains interested in purchasing the property, but will not proceed until the title

defect is resolved; (vi) that had the Defendant pursued the Certificate of Title earlier, the sale could have already been completed.

### *Defendant Evidence*

[9.] On 14 May 2021, the Defendant filed the Affidavit of Angela McPhee (“McPhee Affidavit”) stating: (i) that the subject property referenced in paragraph 6 of the Claimant’s Affidavit originally belonged to her mother, Melena Rolle; (ii) that the Defendant and her mother lived there since she was 8 years old, along with Ms. Olive Todd; (iii) that Ms. Todd left the property in 1984, after which the Defendant and her mother took full occupancy; (iv) that Ms. Todd’s daughter, Janice Ramsey, and her husband lived there briefly; (v) that Janice Ramsey sold the property to the Defendant and her mother for \$34,000.00, under a Conveyance dated 8 June 2005; and (vi) that a receipt dated 17 April 1998 shows payments were made towards the purchase.

[10.] The McPhee Affidavit further states: (i) that after paying Janice \$34,000, no further payments were made; (ii) that Defendant has lived on the property her entire life and remained after her mother’s passing on March 20, 2020; (iii) that she continued to live there with her children and grandchildren; (iv) that in 2008, Minister Humphrey Ferguson expressed interest in purchasing property for church parking; (iv) that on 3 June 2020, during her mother’s funeral, she discussed selling the property to Mr. Ferguson for \$15,000 down payment; (v) that a deposit of \$15,000 was made to her attorney; (vi) that Mr. Ferguson made no further payments pending confirmation of a clear title; (vii) that the Defendant received a legal notice from the Claimant’s lawyers in September 2020 but continues to live on the property.

### **ISSUE**

[11.] The issues that arise for consideration and determination are:

- 1. Whether the Claimant has proven that the Defendant’s shed and other items on the disputed property amount to unlawful interference and trespass.**
- 2. If so, whether the Defendant, having encroached on the property, can rely on the defence of adverse possession.**

### **Submissions**

#### *Claimants Submissions*

[12.] The Claimant's Counsel, Vincent Peet (“Mr. Peet”), asserted that the Defendant's property is located south of the Claimant’s property and that the Survey Plan describe the property as 3168 square feet. Counsel further stated that the plot plan in the Claimant conveyance describes the Defendant’s property as 2450 square feet. Additionally, Mr. Peet avers that in January 2005, the Claimant built a foundation which is joined to the existing structure of the Church.

[13.] Mr. Peet contends that when Defendant purchased her property in June 2005, the existing foundation was already in place, located 20 feet from the Southern boundary of the Claimant’s

property. Counsel further aver that the Defendant was notified by a letter, sent to her Attorney, regarding her encroachment on a portion of the Church's property.

[14.] Counsel asserts that the Defendant offered to sell her property to the Church; however, upon reviewing her Conveyance, a defect in the title was discovered. As the Defendant could not pass a good marketable title, she subsequently refunded the Claimant's deposit.

[15.] Mr. Peet avers that the Defendant is trespassing on the Claimant's property and, therefore, seeks a Declaration for Possession from the Court. Counsel submits that the Defendant is a Trespasser ab initio and referenced **Black's Law Dictionary** definition of 'Trespasser Ab Initio' which states:

**"Trespasser from the beginning. A term applied to a tortfeasor whose acts relate back so as to make a previous act, at the time innocent, unlawful; as if he enter peaceably, and subsequently commit a breach of the peace, his entry is considered a trespass".**

[16.] Mr. Peet relied on the ruling in **James Wallace & Martha Wallace v Addington Nairn Jr. SCCivApp. No. 206 of 2015**, where the Court of Appeal held that a Declaration for Possession should stand because the Respondent was in undisturbed possession of the land for more than 12 years, and the Limitation Act applied. Mr. Peet argues that the Claimant was in undisturbed possession of the property for 20 years and is the paper title owner, intending to take formal possession. This position aligns with the ruling in **Ocean Estates Ltd v Pinder [1969] 2 AC 19**, where the court held that if a Defendant enters land as a trespasser, a Claimant who can prove any documentary title is entitled to recover possession. Mr. Peet further stated that documentary title is sufficient to support an action for trespass against a Defendant entering the land without legal title.

[17.] Mr. Peet referred the Court to the case of **J A Pye (Oxford) Ltd and Others v Graham and Another [2002] UKHL 30**, where Lord Browne-Wilkinson said:

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

[18.] Counsel submits that the burden of proof rests on the Defendant to demonstrate that she had actual possession of the property for a continuous period. Counsel reference the case of **Re Roman Catholic Apostolic of the Bahamas [1984] BHS J No. 34** where in paragraph 2, Adams J cited the standard set out in **Sherren v Pearson 14 Can. S.C.F. 581**. Ritchie C.J. stated at p. 585:

**"To enable the trespasser to recover he must show an actual possession, an occupation exclusive, continuous, open or visible, and notorious for the twenty years. It must not be equivocal, occasional or for a temporary or special purpose."**

[19.] Mr. Peet submits that the Claimant must prove factual possession of the property and relies on the dicta of Lord Browne-Wilkinson in **J A Pye**, which defines factual possession. Mr. Peet asserts that the Claimant is the paper title owner, having purchased the property on December 9, 2002, while the Defendant acquired her property later, in June 2005. Before the Defendant's purchase, the Claimant had already built a foundation onto the existing church structure in January 2005, which was located 20 feet from the southern boundary. Mr. Peet contends that the encroached area lies between the foundation and the south boundary on which the Defendant has placed a shed and other items. Mr. Peet further avers that the Defendant as a trespasser ab initio, has been notified of the encroachment, and has refused to vacate or remove her belongings, continuing to trespass. He concludes that given the Claimant's clear documentary title and continuous possession, the Claimant seeks a Declaration of Possession of the property.

#### *Defendant's Submission*

[20.] Mr. Norwood Rolle ("Mr. Rolle"), appearing as Counsel for the Defendant, objects to the Claimant's trespass claims. He argued that Defendant has proven possession of the subject property for over 12 years and that Defendant has had long exclusive and undisturbed possession which falls within the confines of **section 16 (3) Limitation Act 1995 ("LA 1995")**. Mr. Rolle submits that **LA 1995** establishes the general rule that no action can be brought by the paper owner to recover the land after the expiration of the relevant limitation period. This period starts to run from the day that a right of action accrues to the paper owner, which is the day the Claimant first obtains the right to initiate proceedings for possession. Mr. Rolle further argues that a title owner is barred from recovering the right to property from a squatter or trespasser after the expiration of the limitation period.

[21.] Mr. Rolle avers that the Defendant has lived on a part of the property since she was 8 years old and up to the date she swore the affidavit, she was 51 years old. He argues that the Conveyance that the Defendant obtained and exhibited to the affidavit is recorded in the Registry of Records at Volume 9287 pages 179 to 182 and attached to the Conveyance is a plan of the property where the Defendant and her mother lived. Mr. Rolle contends that the Defendant was not disturbed on the property and that in 2020, the Claimant offered to purchase the property from the Defendant. However, the Claimant withdrew after determining that the Defendant was unable to give good and marketable title. Mr. Rolle argues that the Claimants did not have the portion of land.

[22.] Mr. Rolle referred the Court to **Ocean Estates Ltd v Pinder [2003] 1 WLR p 31**, which established that at the expiration of the requisite period, a dispossessed owner's title to the unregistered estate in the land is extinguished immediately. Counsel submits that the barring of all rights of recovery and the extinction of all prior titles leaves the successful adverse possessor with a relatively better title than anyone else and that the common law freehold that the squatter has held since the inception of possession is now rendered unchallengeable.

[23.] Mr. Rolle submits that it is settled law that a person in apparent possession has all rights, remedies, and immunities of possession as against strangers, which cannot be disturbed except by

the owner or paper title who is able to show a present right to possession. He further submits that if the owner, who has a better right to possession, takes no action within the time limited by law, in this case, twelve years, their right of action becomes barred, and their title is extinguished by limitation.

[24.] Mr. Rolle relied on **Leach v Jay [1878] 9 Ch. D. 42**, where the Court held that a person who wrongfully takes possession of another's land becomes entitled to an estate in fee simple. If the possessor builds a hut on it, they are seised of the land, and the owner of the wasteland is disseised. However, unless the length of possession pursuant to the statute confirms their title, they may be removed through legal process.

[25.] Mr. Rolle argued that the burden is on the person claiming adverse possession to show that they had both factual possession and intention to possess (*animus possidendi*). He cited **J A Pye (Oxford) Limited v Graham [2002] 3 All ER 865** where it states that in order to establish title by adverse possession, a squatter must be shown to have both factual possession and the requisite intention. Mr. Rolle submits that the Defendant, having erected a house, a shed and a septic tank on the property demonstrated the requisite intention.

[26.] Mr. Rolle concluded that it is clear that the Defendant intends to possess the land and that the Claimant's claim is barred by virtue of LA 1995.

## **LAW**

[27.] The **Halsbury's Law of England Volume 97A (Tort to Land) (2021) Fifth Edition**, provides the legal definition of Trespass. At paragraph 161, it is stated:

**“161. A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or take possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it or fixes anything on it, or if he erects or suffers to continue on his own land anything which invades the airspace of another. He also commits a trespass to land, if, having entered lawfully, he lawfully, he remains after his authority to be there expires.”**

[28.] Section **16(3) Limitation Act 1995** extinguishes a land owner's title if he has been dispossessed by the adverse possession of a trespasser. It reads:

**“No action shall be brought...to recover any land after the expiration of twelve years from the date on which the right of action accrued. ...or, if it first accrued to some other person through whom such person claims, to that person...”**

[29.] In **J A Pye (Oxford) Ltd and another v Graham and another [2002] UKHL 30** Lord Browne-Wilkinson approved the following passage from the judgment of Slade J in **Powell v McFarlane (1977) 38 P A & CR 452, 470** stated at paragraph 40:

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

**(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).... The two elements necessary for legal possession :“(1) a sufficient degree of physical custody and control (‘factual possession’); (2) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (‘intention to possess’). What is crucial is to understand that, without the requisite intention, in law, there can be no possession.”**

[30.] With respect to factual possession element, in paragraph [40] of **Pye**, Lord Browne-Wilkinson quoting the following pronouncement of Slade J in **Powell v McFarlane (1977) 38 P A & CR 452** stated:

**“(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land and at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”**

[31.] Further in paragraph 43 Lord Browne-Wilkinson quoting Slade J on the requirement of intention, states:

**“intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far, as is reasonably practicable as so far as the processes of the law will allow.”**

[32.] In **Ocean Estates Ltd v Pinder [1969] 2 AC 19** the Privy Council clarified the legal requirement for adverse possession, particularly in cases where the trespasser seek to claim ownership against a title holder. The ruling emphasized the necessity of exclusive, continuous, and undisturbed possession for the required statutory period. The court found that sufficient acts by the owner can interrupt any claim of adverse possession. At paragraph 26 of the states:

**“The plaintiffs had, by use of the land by their predecessors from 1941 to 1946, by their architect’s inspection in 1957 and the surveys from 1959 to 1960, established sufficient possession to bring an action for trespass to land and to negative any intention on their part to abandon possession.”**



[33.] The Privy Council in **Dean and Another v Arawak Homes Ltd [2014] UKPC 24** also examined key principles regarding trespass and adverse possession by reaffirming the Lord Diplock dicta in **Ocean Estates** stated:

**“...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 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.”**

### **Discussion and Analysis**

**Whether the Claimant has proven that the Defendant’s shed and other items on the disputed property amount to unlawful interference and trespass. If so, whether the Defendant, having encroached on the property, can rely on the defence of adverse possession.**

[34.] The law is clear that trespass is unlawful presence on another’s land, and the paper title owner has the right to possession. However, this right can be defeated if a person proves a better right to possession through adverse possession (**Ocean Estates Ltd v Pinder [1969] 2 AC 19**). In this case, both parties claim entitlement to the disputed land. The Claimant asserts legal title through a documentary Conveyance, whereas the Defendant claims possessory title based on continuous occupation. The Court must determine which party has the stronger claim based on the evidence presented.

#### *Findings of Fact*

[35.] The Claimant purchased the subject property on 9 December 2002, as evidenced by the Conveyance and plot plan, which describes two parcels totalling 8,485 square feet. In January 2005, the Claimant constructed a foundation attached to the existing church structure, extending 20 feet from the southern boundary. The Defendant purchased her property on 8 June 2005, under a Conveyance between Janice Ramsey and Melena Rolle & Angela McPhee, with a plot describing a 3,168 square foot tract. However, it was determined that Janice Ramsey was not in a position to convey title to the property. Nevertheless, the Defendant and her mother continued to live on the property. After the Defendant's mother passed away, she continued to live on the property. Subsequently, the Defendant erected a shed and other personal items on the encroached area, claiming continuous occupation of the property.

[36.] In September 2020, the Claimant’s attorney sent a letter to the Defendant, notifying her of the encroachment and requesting removal of her belongings within 90 days. The Defendant does not deny occupying the encroached area but asserts possessory title, claiming she has lived there continuously since childhood alongside her late mother, Melena Rolle. It is noted that the Claimant had entered into an Agreement for Sale with the Defendant for the purchase of the property. However, it was determined that the Defendant could not provide good and marketable title, and

the Claimant withdrew their offer. It is also noted that the Claimant are still interested in purchasing the property.

*Whether Adverse Possession is proven*

[37.] With these facts in mind, the Court must now determine whether the Defendant's occupation meets the legal test for adverse possession. This Court deems it appropriate to first address the issue of adverse possession, as its resolution is determinative of the Claimant's entitlement to the disputed land. If the Claimant fails to establish ownership, their title may be defeated by the doctrine of adverse possession, rendering any further inquiry unnecessary. It is therefore prudent to assess whether the Defendant has acquired possessory title before considering any other issues.

[38.] In determining whether the Defendant has established adverse possession, the Court must assess both factual possession and intention to possess. While factual possession requires a sufficient degree of physical control over the land, adverse possession cannot be established without the additional element of intention to possess. The Court must determine two things: whether the Defendant physically controlled the land (factual possession) and (2) whether she intended to take ownership by excluding the Claimant (intention to possess).

*Factual possession*

[39.] The Defendant's occupation of the encroached area lacked the outward or unequivocal acts necessary to establish factual possession. The central issue is whether the erection of a shed and clothesline between the church foundation and the southern boundary line constitutes mere occupation or actual possession of the disputed area over time.

[40.] Upon careful examination of the Claimant's Conveyance and survey plan, as well as the photographic evidence (Exhibits HF5 – HF8), the Court finds that the encroached area is bordered by the Claimant's foundation, a wall, and a partial fence. These physical demarcations contradict any assertion that the Defendant exercised exclusive possession over the land. Mere occupation, evidenced by the storage of personal belongings, does not amount to taking physical control of the property as an owner would.

*Intention to Possess (Animus Possidendi)*

[41.] However, even if factual possession had been established, the Defendant must also demonstrate an intention to exclude the true owner and the world at large (**Pye v Graham**). The court finds that the Defendant's erection of a shed a clothesline, without more, does not demonstrate an intention to exclude the Claimant or assert ownership over the encroached area. Instead, these activities appear to have been temporary and insubstantial, lacking the deliberate assertion of ownership necessary to satisfy animus possidendi. Further, as explained by **Sampson Owusu (Commonwealth Caribbean Land Law, pp. 283 – 284)**:

**“The character and sufficiency or degree of user necessary to constitute possession so as to pass title under the statute therefore depends on many factors... acts of possession which may amount to possession in one case may be wholly insufficient to constitute possession in another.”**

[42.] Applying this principle, the Defendant’s storage shed and placement of personal belongings do not meet the requisite standard for adverse possession. Her use of the land, which appears to have commenced sometime after June 2005, was neither sufficiently continuous, exclusive, nor indicative of an intent to possess the encroached area. Accordingly, on the balance of probabilities, the Defendant’s use of the encroached land was insufficient to establish adverse possession and the Claimant’s rightful ownership of the encroached area is not defeated.

*Statutory Limitation*

[43.] For a claim of adverse possession to be successful, the squatter must satisfy not only the elements of factual possession and intention to possess, but also the statutory limitation period. The law imposes a time requirement ensure that adverse possession claims are based on long term, uninterrupted use of the land.

[44.] Under **section 16(3) of the Limitation Act, 1995**, a claimant must demonstrate that they have been in exclusive, continuous possession and undisturbed possession of the land for the required statutory period of 12 years. As elucidated by **Sampson Owusu, in the text Commonwealth Caribbean Land Law, at page 276**, the limitation period for adverse possession only begins to run when the following two conditions are met:

**“1. Absence of possession – this occurs when the paper owner is:**

- (i) Dispossessed, where a person drives out the paper owner from possession of the disputed land; or**
- (ii) Discontinued, where the paper owner vacates, abandons or goes out of the disputed property and leaves it vacant.**

**2. Adverse possession of the squatter- the squatter has assumed and retained possession of the land for the statutory period before the institution of the action.”**

[45.] In this case, it is clear the Claimant obtained legal title since 2002 and has never abandoned possession of the land. The evidence indicates that in January 2005, the Claimant built a foundation onto the Church, which extends 20 feet from the southern boundary.

[46.] The Defendant, by contrast, only acquired the property in June 2005 and began using the encroached area at some point thereafter. The Claimant subsequently requested a copy of the survey plan from the Defendant and in September issued a formal legal notice demanding the Defendant vacate the encroached area within 90 days. These actions when considered together establish that the Claimant retained possession of the land, preventing the statutory period from commencing. Since the claimant has never relinquished control, the Defendant cannot establish the uninterrupted and exclusive possession required to satisfy the limitation period for adverse possession.

[47.] I find that the limitation period has not been met and that the Defendant has no basis for an adverse possession claim. The Claimant's title remains intact, and the Defendant's continued occupation of the encroached area constitutes trespass.

*Trespass*

[48.] Trespass arises when a person wrongfully enters or remains on another's property without legal authority. Encroachment, such as the erection of a fence, shed, or placement of personal items, constitutes trespass if done without the property owner's consent (**Re Roman Catholic Apostolic of the Bahamas [1984] BHS J No. 34**).

[49.] Since the Defendant has failed to establish adverse possession, the Claimant remains the legal owner of the encroached area. The Court, therefore, finds that the Defendant is trespassing.

[50.] I note that the Claimant sought the relief of mesne profit which was not pleaded. It is settled law that special damage must be pleaded and proven.

[51.] In the circumstances, the Claimant succeeds in this action for possession and the Defendant's Defence of adverse possession fails.

[52.] The Court makes the following Orders:

1. Order that Possession of the subject property ("the encroached area") as claimed in the Originating Summons filed on 24 February 2021 Writ is granted to the Claimant.
2. The Defendants are to pull down and remove the shed, clothesline and all personal belongings from the encroached area of the Claimant's property, and to deliver up possession of the encroached area within three (3) months from the date of this ruling.
3. An Injunction is granted against the Defendant restraining her by herself, her servants or agents from trespassing and/or occupying the encroached area.
4. Damages for trespass are to be assessed by the Court upon an application by the Claimant.
5. The Defendant shall pay the Claimant costs, to be taxed if not agreed.

**Senior Justice Deborah Fraser**

**Dated this        day of February 2025**

