

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

Cle/gen/001514/2015

PETER FERGUSON

Plaintiff

AND

ELDA NORELUS

1st Defendant

AND

JONAH NORELUS

2nd Defendant

Before: The Honourable Mr. Justice Gregory Hilton

Appearances: Darren O. Bain for the Plaintiff

Charles Mackey for the Defendant

**Hearing Date: 22nd and 25th October 2018; 20th and 27th
November 2018; 7th December 2018**

**Civil – Land – Owner of Land – Documentary Title of
Plaintiff – Defendants claim possessory title and built
wooden structure – whether Defendants are
trespassers – whether Defendants have an interests in
the land? – Whether Injunction should be granted?**

HELD: The Defendants are declared as trespassers on the property and are liable to the Plaintiff in damages.

1. On a balance of probabilities the Plaintiff has demonstrated the he was and is at all material times the owner of lots 93 and 108 of Barletts's subdivision situate in the Eastern District of the Island of New Providence by virtue of a conveyance executed by Lipatha Investments Ltd. to the Plaintiff dated 28th March 2012 and recorded in the Registry of Records.
2. The Defendant's have adduced insufficient evidence to demonstrate that the 1st Defendant's late grandfather owned the disputed property (which she alleges he verbally gave to her); nor have the Defendants adduced sufficient evidence that their physical possession of the disputed property has ousted the legal title of the Plaintiff to the property.
3. The Defendants are liable for damage as trespassers and a perpetual injunction is granted restraining the Defendants their heirs or otherwise from trespassing and/or occupying the Plaintiff's property.

JUDGEMENT

HILTON, J.,

1. This action was commenced by an Ex Parte Summons, supported by an Affidavit of the Plaintiff filed 24th September 2015 seeking an injunction against the Defendants. The Affidavit verifying service on the Defendants was filed on 22nd October 2015 and at the hearing on 4th November 2015 the Defendants did not appear and I granted the injunction

sought by the plaintiff (pending trial) restraining the Defendants from entering or interfering with the Plaintiff's land.

2. The Plaintiff filed a Writ of Summons on 26th November 2015 and a statement of claim on 13th June 2016 which was settled in the following terms:

STATEMENT OF CLAIM

- 1) THE Plaintiff is citizen of The Bahamas and the legal and beneficial owner of **ALL THAT** piece parcels of lots of land being Lot. No 93 Barlett's Addition Subdivion, Eastern District New Providence ("Property 1") and Lot No. No. 108 Barlett's Addition Subdivision, Eastern District New Providence ("Property 2").
- 2) The 1st and 2nd Defendants are Haitian Nationals or of Haitian descent.
- 3) The Plaintiff by virtue of two conveyances both dated 28th March A.D. 2012, between Lipatha Investments Limited and Peter Ferguson recorded in Volume 12397 at pages 381 to 387 and Volume 12397 at pages 388 to 393 is the owner of and entitled to possession of Property 1 and Property 2 aforesaid.
- 4) The title of the Plaintiff is derived from the following:-

Property 1 and 2

- a) Certificate of Title issued on the 3rd day of January A.D. 1997 by the Supreme Court of The Bahamas of Equity Action Number 20 of 1984 recorded at the Registrar General's Department in Volume 7156 at pages 313 to 315.
- b) Conveyance dated 23rd day of March A.D.

1998 between Pigeon Cay (Exuma) Limited and Lipatha Investments Limited recorded at the Registrar General's Department in Volume 7315 at pages 454 to 459.

- 5) The Plaintiff at the purchase of the Property 1 and 2, there was bush alone. There was no structure on the land, road, clearing down or any evidence of occupation.
- 6) The 1st and 2nd Defendants by themselves or their servants or agents wrongfully and unlawfully encroached upon an excavated the said properties, cut a trench into the same and have constructed a wooden structure on the 1st and 2nd Property.
- 7) The 1st and 2nd Defendants by themselves or their servants or agents have constructed a wooden structure on the said Properties and are living in the shanty structure.
- 8) The 1st and 2nd Defendants are jointly and severally trespassers of Property 1 and Property 2.
- 9) An Order restraining the Defendants, their agents, servants, family members and/or employees from living, entering, crossing or interfering with 1st and 2nd Property restraint of the Defendants, their agents, servants, family members and/or employees restrain from constructing a home and/or any structure on the subject land.
- 10) The above order was served on the 1st and 2nd Defendants on the 14th day of December A.D., 2015.
- 11) By reason of the matters aforesaid the Plaintiff has been deprived of the use and enjoyment of the said land and has thereby suffered damages.

AND THE PLAINTIFF CLAIMS:

- i) An injunction that the Defendants be restrained until the trial of the action or further order by themselves, servants, family members, agents or otherwise, from entering in or remaining or cohabiting or making use of the Properties 1 and 2 or entering in or remaining or causing or permitting persons, motor vehicles, trailers, caravans or other vehicles or structures whether permanent or temporary, to be placed or remain upon the Plaintiff land particularly the Properties 1 and 2.
 - ii) A declaration the Defendants are not entitled to enter or use the said properties at all;
 - iii) Possession of said Properties;
 - iv) Mesne profits;
 - v) Special Damages
 - vi) Loss of use;
 - vii) Interests thereon pursuant the Civil Procedure (Award of Interests) Act 1992;
 - viii) Costs;
 - ix) Any further and other relief as the honourable courts deems just.
3. The Plaintiff obtained a Judgement in Default of Defence filed on 1st June 2017; which was set aside by this court on 3rd October 2017 and the Defendants filed a Defence on 26th October 2017 settled in the following terms:

DEFENCE

1. No Admissions are made as to the assertions stated at paragraph 1 of the Plaintiff's claim that he is the legal and beneficial owner of ALL THAT piece parcels of lots of land being LOT NO: 93 Barletts's Addition Subdivision, Eastern District, New Providence (Property 1) and Lot No: 108 Barlett's Addition Subdivision, Eastern District, New Providence ("Property 2") and the Plaintiff is put to strict proof of all matters alleged in the said paragraph.
2. Paragraph 2 of the Statement of Claim is denied in that the 1st and 2nd Defendants aver that the 1st Defendant is a Bahamian Citizen and the 2nd Defendant is a Haitian National with permission to reside in The Bahamas.
3. The 1st and 2nd Defendant neither admit or deny the Plaintiff's claim in Paragraph 3 of his Statement of Claim and the Plaintiff is put to strict proof of all matters which he has alleged therein.
4. Paragraph 4 of the Plaintiff's Statement of Claim is neither admitted nor denied and the Plaintiff is put to strict proof of all matters which he has alleged therein.
5. The 1st and 2nd Defendants neither admit not deny Paragraph 5 of Statement of Claim.
6. Except to say that the 1st and 2nd Defendants constructed a structure on the property which is now claimed by the Plaintiff in Paragraph 6 of the Statement of Claim is denied; furthermore the 1st and 2nd Defendants state that the property on which the structure stands was given to the 1st Defendant by her grandfather, Leonard Joseph, about 17 years ago and that the 1st and 2nd Defendants have occupied it ever since and they deny that the Property on which they built the structure belongs to the Plaintiff.

7. Paragraph 7 of the Statement of Claim is admitted except to say that the structure on the said property is not a shanty structure but is partly made of wood and partly made of stone.
 8. Paragraph 8 of the Statement of Claim denied.
 9. The 1st and 2nd Defendants state that the Plaintiff is not entitled to the relief claimed in Paragraph 9 of the Statement of Claim and request the Honourable Court to deny the Plaintiff such relief.
 10. Paragraph 10 of the Statement of Claim is neither admitted nor denied.
 11. Paragraph 11 of Statement of Claim is denied.
 12. The 1st and 2nd Defendant deny that the Plaintiff is entitled to any of the reliefs claimed in items (i) to (x) under the heading "AND THE PLAINTIFF CLAIMS" in the Statements of Claim.
 13. Save for any admission hereinbefore expressly made, the 1st and 2nd Defendants deny each and every allegation contained in the Statement of Claim as though the same were herein set forth and traversed seriatim.
4. At the trial the Plaintiff (in addition to the documents filed in his bundle of documents) relied upon his witness statements filed 19th March 2018 and the witness statements of Antoine Adderley (a real Estate Appraiser who conducted appraisals of Lots 98 and 108 in Bartlett's subdivision on behalf of the Plaintiff) also filed on 19th March 2018. They were both cross examined on their respective statements.

5. At the trial the Defendant relied upon their respective Witness statements filed 15th March 2018 and the witness statements of Moses Joseph, and Joshual Davis all filed on 15th March 2018. They were each cross –examined on their respective statements. The Defence also utilised the witness statement of Daniel Wilkinson who was not cross – examined by the Plaintiff.

PLAINTIFF'S EVIDENCE

6. The facts in this matter are for the most part undisputed; where there is a departure from any agreed facts then what is stated are my findings as to the facts.
7. The Plaintiff's evidence is that in 2011 he saw an advertisement in a Local newspaper for the sale of Lots 93 and 108 in Bartletts Subdivision and contacted the Vendor who took him to view the property which at that time was bush, vacant with no sign of occupation or structures.
8. In January 2012 the Plaintiff engaged the services of PGF Realty Limited and had the Lots appraised by Antoine Adderley a Broker employed by PGF Realty Limited.
9. It was verified by Ministry of Environment that the Lots were a part of an Approved Subdivision under the Private Roads and Subdivision Act by letter dated 3rd March 2009.
10. The Plaintiff purchased the properties by conveyance dated 28th March 2012 from Lipatha Investments Limited which conveyances were recorded in the Registry of Records in Volume 12397 at pages 381 to 387 and 388 to 393.
11. The history of the documentary title to the properties is as follows:
 - a) Certificate of Title granted to Bahamas Variety (1989) Company Limited on 3rd January 1997

and recorded in the Registry of Records in Volume 7156 at pages 313 to 315;

- b) Indenture of Release from Bahamas Variety (1989) Company Limited to Pigeon Cay (Exuma) Limited executed on 17th March 1997 and recorded in the Registry of Records in volume 7163 at pages 68 to 73.
 - c) Indenture of Conveyance from Pigeon Cay (Exuma) Limited to Lipatha Investments Limited executed on 23rd March 1998 and recorded in the Registry of Records in Volume 7315 at pages 454 to 459.
 - d) Indenture of Conveyance from Lipatha Investments Limited to Peter H. Ferguson (the Plaintiff) for Lot No. 108 Bartletts Addition Subdivision executed in 28th March 2012 and recorded in the Registry of Records in Volume 12397 at pages 381 to 387.
 - e) Indenture of Conveyance from Lipatha Investments Limited to Peter H. Ferguson for Lot No. 93 Bartletts Addition Subdivision executed 28th March 2012 and recorded in the Registry of Records in Volume 12397 at pages 388 to 393.
12. The Plaintiff produced Real Property Tax certificates for Lots 93 and 108 dated 15th March 2012 verifying that the Lots were vacant land; and a Plan of the two Lots 93 and 108 produced by Donald E. Thompson showing them as a part of the Barletts Addition Subdivision.
13. The Plaintiff's unchallenged evidence is that in July 2013 he visited the properties and noticed a trench had been cut on part of the property and encountered Mr. Leonard Joseph (the

grandfather of the 1st Defendant) on the property. The Plaintiff took out a court action against Leonard Joseph and obtained an injunction against him on 26th August 2013 (which was never challenged or set aside prior to the death of Mr. Leonard Joseph in 2018).

14. The Plaintiff subsequently visited the property in 2014/2015 and noticed a wooden building had been constructed on the property and in June 2015 sought to enforced the injunction that had been ordered against Mr. Leonard Joseph; It was at this time that it was discovered that the persons occupying the wooden structure were the 1st and 2nd Defendants.
15. In September 2015 the Plaintiff commenced this present action and obtained an injunction against the Defendants on 9th December 2015 restraining the Defendants from entering, crossing or interfering with the property until the trial.
16. The Plaintiff asserted that he has suffered and continues to suffer loss by the occupation by the Defendants on the property.
17. The Plaintiff called one witness Mr. Antoine Adderley (the Appraiser) who verified that he appraised Lots 93 and 108 in January 2012 for the Plaintiff; that he walked the property and at that time the properties were vacant land, overgrown with bush. He presented his appraisal report which contained photographs of the property which was only bush at that time.

DEFENCE EVIDENCE

18. The 1st and 2nd Defendant's evidence is that the 1st Defendant is a Bahamian and the 2nd Defendant is a Haitian National and they were married in December 2012 and commenced construction on the property (specifically part of lot 108) in 2012.

19. Mr. Leonard Joseph was the grandfather of the 1st Defendant and her evidence is that Mr. Joseph was the owner of some 40 acres of land which was reduced to 19 acres and part of which comprised lots 93 and 108. She was unable to say how Mr. Joseph came to “own” the land other than stating that he had occupied the land for some 50 years and used to farm on the land.
20. The 1st Defendant’s evidence is that her grandfather gave her the property on which she now occupies by word of mouth some seventeen years ago and she began to construct the house on the land in 2012 and prior to that had planted fruit trees on the property.
21. The 1st Defendant admitted that neither she nor the 2nd Defendant have any documentary title to the land nor did they have any approved construction plans, occupancy certificate or electrical or water supply for the building which they occupy on the property.
22. The Defendant’s two witnesses: Mr. Moses Joseph (also a grandson of Mr. Leonard Joseph) and Mr. Joshua Davis (a person who lived in the general area) gave evidence that Mr. Leonard Joseph owned some 40 acres now reduced to 19 acres in the area of the properties neither of them could speak to the specific boundaries of the purported acreage nor to any deeds they know of evidencing Mr. Leonard Joseph’s ownership of the acreage. Mr. Moses Joseph said he was present when Mr. Leonard Joseph told the 1st Defendant by word of mouth that he was giving her the property.

Factual Findings

23. This is a civil case where the standard of proof is a balance of probabilities. The court had the opportunity of seeing and hearing the witnesses who testified.

In examining the evidence presented the court was more impressed with the evidence given by the Plaintiff and his

witness Mr. Adderley and I accept their evidence as truthful regarding the events spoken of in 2011 and 2012 regarding the state of the properties.

I do not accept the evidence of the 1st Defendant and her witnesses that the properties were being farmed by the grandfather of the 1st Defendant and while I accept that the 1st Defendant had an honest belief that her grandfather owned the property I do not accept her evidence when she stated that part of the disputed property was being farmed with fruit trees.

I accept the oral and photographic evidence of the Plaintiff and his witness that the disputed property was just bush, without any fencing or enclosures prior to and at the time of the Plaintiff's purchase of the property in 2012.

ISSUES

24. 1. Whether the Plaintiff was at all material times the beneficial owner of the disputed property.
2. Whether the documentary title to the disputed property was ousted by the 1st Defendant's occupation of the property first through her grandfather and then herself.

Issue 1

25. The Defendants have not challenged the documentary title of the Plaintiff; nor have they sought to lead any evidence of documentary title to the disputed property in themselves or through the grandfather.

The documentary title of the Plaintiff to the disputed property has been detailed above and in my view is unimpeachable by the Defendants.

Issue 2

26. For the Defendants to successfully oust the Plaintiff's ownership (by documentary title) of the disputed property they

must be able to show exclusive Adverse possession for a minimum of 12 years under the Limitation Act.

27. In the Limitation Act 1995 chapter 83 of the statute Laws of the Bahamas sections 16 (3) and 17 (1) specify the possessory periods of time or limit whereby a person can acquire or recover land.

Section 16 (3) provides:

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

Section 17 (1) provides:

“Where the person bringing an action to recover land, or some person through whom such person claims, has been in possession thereof and has while entitled thereto been dispossessed or discontinued possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.”

28. With respect to the Law as it relates to Adverse Possession, which the Defendants are claiming is applicable in this case, I have found helpful the case of *Farrington v. Bush* 1974 12 JLR 1492 where at page 1492 Graham-Perkins JA summarised the position as follows:

“Adverse possession of Land is, and always has been, a complex concept. It involves the co-existence of two essential elements, namely the assumption of actual physical possession by, and the presence of a particular mental element directed towards, the true owner in the adverse possessor.

It is our view, a mistake to think that mere entry upon, and user of the land of another can, without more, be equated with an assumption of possession.....To support a finding of adverse possession there must be positive and affirmation evidence of acts of possession unequivocal by their very nature and which are demoustrably consistent with an attempt, and an intention, to exclude the possession of the true owner.”

29. The Privy Council in the noted case of *Ocean Estates Limited v. Pinder* [1969] 2 A.C. 19 pages 24 and 25 gave its views regarding disputed titled to land as follows:

“Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have 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.”

In the present case, where the defendant made no attempt to prove a documentary title in himself or in any third party by whose authority he was in occupation of the land it would been sufficient for the plaintiffs to rely upon the conveyance of the land to themselves on 30th March, 1950, for where a person has dealt in land by conveying an interest in

it to another person there is a presumption, until the contrary is proved, that he is entitled to the estate in the land which he purports to convey. In fact, however, the plaintiffs went further than was strictly necessary. They proved a devolution of title going back through a series of intervening conveyances to the conveyance of the fee simple in the land to Mrs. Key to the Chipper Orange Co. Ltd. of May 3, 1937.....Put at its highest against the plaintiffs it is clear law that the slightest act by the person having title to the land or by his predecessors in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title unless there can be shown a subsequent intention on the part of the person having the title to abandon the constructive possession so acquired.”

30. In the present case the acts relied upon by the Defendants to seek to establish their claim of exclusive adverse possession were:
- a) The planting of fruit trees by the 1st Defendant's grandfather for some 40 years on the property;
 - b) The “giving” of the property to the 1st Defendant by her grandfather by “word of mouth” approximately 17 years prior to the commencement of this action;
 - c) The construction of a Wooden house on the property by the Defendants in 2012 and the occupation of the house from 2012.

31. As stated earlier in this decision there was nothing produced by the Defendants, other than their belief, that the 1st Defendant's grandfather owned the property: No documentary evidence of title was adduced in the grandfather or the Defendants.
32. The disputed property was bush when the Plaintiff acquired it in 2012 with no evidence of farming orchards of any sort; and no enclosure of the property by fencing or otherwise.
33. It is clear to me that whatever possession the grandfather may have had over the property would have come to an end in 1997 when the Certificate of Title was granted to the Plaintiff's predecessor in title.

No acts of actual possession by the Defendants after 1997 was undertaken until January/February 2012 when they began construction of the wooden house and moved into it in December 2012.

34. The Plaintiff obtained an Injunction from the Supreme court against the grandfather in 2013 (which was never set aside) and obtained an Injunction against the Defendants in 2015 pending the determination of this action.
35. I repeat what was stated by Lord Diplock in *Ocean Estate Limited v. Pinder ante*:

“the slightest acts by the person having title to the land, or by his predecessor in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title.....”

36. In the most recent Privy Council decision emanating from the Bahamas regarding adverse possession and title to land: *Bannerman Town, Millars and John Millars Eleuthers Association v. Eleuthera Properties Ltd.* [2018] UKPC 27 their Lordships stated at para: 73:

“.....but to establish exclusive possession under English Law requires much more than a declaration of intention, however plain that declaration is. Actual occupation and enclosure by fencing is the clearest, and perhaps the most classic, way of establishing possession (through even enclosure is not invariably enough)”.

37. I have also had the opportunity to consider the recent decision of Winder, J. (delivered on 27th November 2018) in *Rosena Smith v. Leonard Joseph and Moses Joseph* 2013/cle/gen/01908 which underscores the futility of the Defendants claim to a possessory title derived from their continued “purported possession” of the property from Leonard Joseph.

The relatively short decision is set out here.

“This is a land dispute concerning an approximately 2 acre tract of land (‘the Property’) situate to the east of Graham Acres in the Eastern District of the Island of New Providence.

1. The Plaintiff is the executrix of Thomas Bertie (Davis) who died in September 2004.
2. The Property was a portion of larger tract of 24.52 acres situate north of Bernard Road, West of Adderley St. and East of Graham Acres which was the subject of a quieting action No. 20 of 1984. At the conclusion of the quieting action on 3 January 1997 a Certificate of Title was granted to Bahamas Variety Limited.
3. Davis had been entitled to a 2-acre portion of the quieted property but a transfer to him was not concluded prior to his death in 2004. The

Property was subsequently conveyed to the plaintiff following the conclusion of probate proceedings in August 2013.

4. The Plaintiff complains in this action that on 3 September 2013 she attempted to access the Property by was prevented from doing so as the Defendants had erected a huge solid wooden double gate which was secured by a lock keyed from the inside of the Property. The lock was also supported by a heavy chain that held the gates together thereby totally blocking access to the Property.
5. The first defendant (Leonard) was an unsuccessful adverse claimant in the 1984 quieting action. Subsequent proceedings were brought in action 289 of 1984 for Leonard's removal from the Property. In that action Dunkley J (ag) ordered, on 15 September 1998, as follows:

“PREMIMINARY

On the 23rd March 1998, the Plaintiff issued the Originating Summons in these proceedings, wherein the Plaintiff claims: (1) a declaration that the Adverse Claim filed in Equity Action No. 20 of 1984 (“the Quieting Action”) by the Defendant is ineffective and (2) an order that the Defendant do quit the deliver up to the Plaintiff such parts of the land described in the Certificate of Title issued in the Quieting Action as the Defendant presently occupies

CONCLUSION

The Adverse Claim of the Defendant in the Quieting Action was not filed within the time required by the Act. Accordingly, the claim, if any, of the Defendant is extinguished or barred under the provisions of section 7 (2) of the Act. The Plaintiff has demonstrated a good title, rooted in the Certificate of Title, which by section 19 (2) of the Act, is binding on all persons, including the Defendant.

In the result, I grant an order in the terms of the prayer in the Originating Summons.”

6. Leonard through whom the Second Defendant (Moses) claimed, admit that they did not quit and deliver up the property as ordered by the Supreme Court. Their case is purely possessory and assert that they went into possession on the day after the Court made the order for the removal.
7. It is not seriously contested that the plaintiff has good documentary title to the Property. The simple issue here therefore is whether the possessory claim of the Defendants is sufficient to oust the documentary title of the Plaintiff to the Property.
8. The appropriate starting point in any title contest is the Privy Council decision in **Ocean Estates Ltd. v. Pinder [1969] 2 AC 19**. In that decision Lord Diplock opined at page 25 paragraph A, as follows:

“Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party 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.”

9. Having heard the evidence of the witnesses and observed their demeanour as they gave their evidence, I have no hesitation in indicating that I prefer the evidence of the Plaintiff and her witnesses where they differ. For the most part, this case turns on a very simple legal proposition. This proposition is that possession for the purpose of supporting a claim of adverse possession cannot be sustained in breach of a Court Order.
10. In the case of **Neelys of Nassau Limited v. Kenneth Higgs [2005] 4 BHS J 78** the Defendant claimed a right, under the limitation Act, not to be removed from property they occupied on the basis that they had extinguished the Plaintiff’s title. The claim was asserted notwithstanding an outstanding court order. At paragraphs 31 and 32 of the decision in *Neelys*, Lyons J, stated:

31 In action 627 of 1962 (*Caves Company Limited v K. Higgs and O Higgs and others*), an injunction was obtained by Caves against K. Higgs and O Higgs for entering Cave’s land. This injunction remains. Both K. Higgs and O.Higgs have defied that

injunction. They have been previously held in contempt of court in relation to a previous trespass.

32 It goes without saying (and it has been said often enough to both K. Higgs and O. Higgs by courts in The Bahamas) that a person cannot claim a benefit from their own contempt. In simple terms that K. Higgs and O. Higgs hopefully can understand, they cannot come to this court claiming to be entitled to land by virtue of a possession which has been carried on in open defiance of a court order against them.

33 K. Higgs has no valid possessory claim to Neely's land.

11. Similarly, in the context of this case, Leonard (through whom Moses claims), having been ordered to quit and deliver up title to the Property, a claim to having been in possession in open defiance of the Order of this court cannot be countenanced. Orders of this Court are meant to be obeyed and the court cannot close its eyes to such blatant disregard.
12. I am satisfied that the defendants do not have a good possessory claim, therefore I give judgement to the plaintiff as follows:
 - (1) an injunction to restrain the defendants, whether by themselves, their servants or agents or howsoever otherwise from continuing to build a gate, fence, wall or any other obstruction the effect of which would prevent the Plaintiff's access to her land situated adjacent to Graham

Estates in the Eastern Division of the
Island of New Providence.

- (2) an Order that the Defendants do within 21 days pull down, demolish and remove the Gate and structure that is currently erected and failing to do so the Plaintiff shall have the absolute right to remove any obstruction that prevents her from access to her property.
13. The defendants shall pay the plaintiff's reasonable costs to be taxed if not agreed.
38. What is patently clear from this decision is that Leonard Joseph could claim no possessory title in the subject property post 1997/1998 after his adverse claim was dismissed in the Quieting Action which granted a certificate of title to the subject property to Bahamas Variety Limited. The Bahamas Variety Limited Certificate, as outlined in para: 11 ante, forms the root of the present Plaintiff's documentary title which I have already found to be unimpeachable.
39. While the acts of the Defendants in 2012 initially may have amounted to exclusive possession as they constructed and occupied the property from 2012; They have failed to oust the Plaintiff's documentary title as they would have had to be in exclusive occupation for a minimum of 12 years to do so.

CONCLUSION

40. In the circumstances the Plaintiff succeeds in his action for possession and the Defendant's Defence fails.
41. I make the order for possession of the property as claimed in the statement of claim and I also grant a perpetual injunction against the Defendants restraining each of them, their agents,

heirs or otherwise from trespassing and/or occupying the Plaintiff's property.

42. The Defendants are liable for damages as trespassers. As far as damages are concerned (as much as can be established by the Plaintiff) they are to be assessed by the Registrar.
43. Costs to the Plaintiff to be taxed if not agreed.

Dated this 12th day of February A.D. 2019

The Hon. Mr. Justice Gregory Hilton