

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF THE
COMMONWEALTH OF THE BAHAMAS
B E T W E E N

JCPC 2025/0050

WATER AND SEWERAGE CORPORATION

Appellant

AND

CARLA ANITA CECILIA BRAYNEN TURNQUEST

Respondent

PRECIS

This appeal concerns the competing titles of the Appellant, the Water & Sewerage Corporation and the Respondent, Carla Anita Cecilia Braynen Turnquest to a parcel of land (approximately 15,192 Square Feet in size) ("**the Parcel**") situated in the Settlement of Mangrove Cay on the Island of Andros, The Bahamas.

The Respondent brought a claim against the Appellant for Trespass. The Appellant claimed to have a possessory title to the Parcel dating back to 1983 and the Respondent claimed to have a documentary title to the Parcel emanating from a 1963 Conveyance. The first instance Judge dismissed the Respondent's Trespass claim finding principally that the Respondent had not proven a good and marketable title to the Parcel, that the Respondent was not the documentary title owner of the parcel, that the 1963 Conveyance was not a good root of title and that the Appellant had factual and physical possession of the Parcel.

The Respondent appealed and the Court of Appeal reversed these findings and found principally that the 1963 Conveyance was a good root of title, that the Respondent's documentary title was the only documentary title to the Parcel, that the Respondent's title was superior to that of the Appellant, that the Appellant's posture of wanting to purchase or lease the Parcel from the Respondent and its payment of \$20,000 to the Respondent for use of the Parcel demonstrated that the Appellant lacked the requisite intention to acquire a possessory title and that the Appellant acknowledged that it was not the owner of the Parcel and had no interest.

The Appellant now appeals the Court of Appeal's reversal of the first instance dismissal of the Respondent's Trespass claim.

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STATEMENT OF FACTS AND ISSUES

References to the Record of Proceedings are in the format: [Electronic bundle page number/line or paragraph number (where applicable)]. Note that annexed to this Statement of Facts and Issues is a Chronology containing a list of key dates and cross-references to the Record of Proceedings

A. PARTIES

1. The Appellant (“WSC”) is a body corporate established and existing under the laws of the Commonwealth of The Bahamas which is engaged in the business of controlling and ensuring the optimum deployment and use of water resources, and providing adequate supplies of suitable water, within the Commonwealth of The Bahamas.
2. The Respondent, Carla Anita Cecilia Braynen Turnquest (“CBT”), is a private individual and citizen of the Commonwealth of The Bahamas.

B. THE DISPUTED LAND

3. This appeal concerns the competing titles of WSC and CBT to a parcel of land (approximately 15,192 Square Feet in size) (“**the Parcel**”) situated in the Settlement of Mangrove Cay on the Island of Andros, The Bahamas. The Parcel is a portion of a larger tract of land comprising a portion of the Crown Grant (F-28) to Joseph Evans.

C. STATUTORY MATERIAL

C1. *The Conveyancing and Law of Property Act 1901*

4. The appeal involves, inter alia, consideration and construction of section 3 of the Conveyancing and Law of Property Act.

C2. *The Limitation Act*

5. WSC contends that the appeal also involves consideration and construction of the Limitation Act, 1995, in particular sections 16 and 38.

D. FACTUAL BACKGROUND

D1. *The alleged root of documentary title*

6. CBT claims to be the documentary title owner of land comprising approximately 660 acres in the settlement of Mangrove Cay, Andros, which includes the Parcel.
7. CBT says the “root” of her documentary title to the 600-acre tract (including the Parcel) is an Indenture of Conveyance dated 7th January 1963 (“**the 1963 Conveyance**”)¹ [EB/81], prepared by Carl Braynen (her father) by which Lauretta Braynen (her paternal grandmother), acting then as Administratrix of the Estate of Albert Braynen (her paternal great-grandfather), sold to Mr Carl Braynen for the sum of “£1,000 cash and other good and valuable consideration” a parcel of land described as follows:

...the Vendor as Administrator of the Estate of Albert Braynen deceased ... hereby grants and conveys to the Purchaser all that piece parcel or lot of land containing Six hundred and Sixty (660) acres more or less being a portion of a 860 acres out of tract of land granted to Joseph Evans and situated in the Settlement of

The Indenture is recorded in the Registry of Records in the City of Nassau on the Island of New Provided at Volume 1124 pages 247 to 249.)

Mangrove Cay Andros one of the Bahama Islands between Middle and Southern Bight more particularly described in the Will of William Henry Sweeting late of Mangrove Cay Andros which Will is recorded in Book R-8 pages 418 to 424

8. There was no plan attached to the 1963 Conveyance.
9. CBT says that the documentary root of title is traceable to her through the following documents:
 - 9.1. The Last Will & Testament of Mr Carl Braynen dated 13 September 2007 [EB/95], in which Carl appointed CBT as Executrix of his Will and devised and bequeathed to her “*all [his] real and personal property whatsoever and wheresoever which [he] [had] any power of testamentary disposition in fee simple absolute*”².
 - 9.2. A Deed of Assent dated 14 October 2009 (“**the Deed of Assent**”) [EB/101] by which CBT assented to the aforementioned devise contained in the Last Will & Testament of Mr Carl Braynen³. (The Deed of Assent was executed following a Grant of Probate issued on 19 August 2009 to CBT as the sole Executrix of the estate of Mr Carl Braynen by the Supreme Court of the Commonwealth of the Bahamas on its Probate Side in Matter No. 00437 of 2009.)

D2. WSC’s occupation of the Parcel

10. WSC claims that in 1978, WSC entered the Parcel and took possession and control over approximately 15,192 sq. ft. and made use of the land for certain purposes inclusive of the erection of water holding tank with its related apparatus and fencing [EB/25].

² The Last Will & Testament of Mr Carl Braynen is recorded in the Registry of Records in the City of Nassau on the Island of New Providence at Volume 109015 pages 509 to 511.

³ The Deed of Assent is recorded in the Registry of Records in the City of Nassau on the Island of New Providence at Volume 11157 pages 89 to 91.

11. WSC also claims that it had undisturbed visible and physical possession of the 15,192 sq. ft. of the Parcel since 1978.

D3. CBT discovery of WSC water plant

12. Between 2009 and 2011, CBT instructed Mr. Emile Ledee of Bahama Geometric Limited to conduct a survey of the 660 acre tract and Mr. Ledee prepared Plan 600 AN [EB/105] which is registered in the Department of Lands & Surveys.
13. During the course of conducting the survey, Mr. Ledee discovered WSC's water holding tank/storage apparatus on the Parcel [EB/162] and advised CBT of the same.

D4. Communications between CBT and WSC after discovery of the water plant

14. On 6th November, 2012 CBT (via her Counsel) wrote to WSC [EB/107] asserting that WSC's occupation of the Parcel was unauthorized and was a trespass and claimed Mesne Profits.
15. On 12th November, 2012 [EB/109] WSC responded to CBT stating that WSC did not view the matter as contentious and required time to investigate the title to the Parcel after which the parties could have meaningful discussions about the claim.
16. On 17th January, 2013 [EB/113] and on 7th January, 2016 [EB/117], CBT again wrote to WSC asserting their unauthorized occupation of the Parcel and on 22nd April, 2016 [EB/119] WSC responded by requesting proof of CBT's ownership of the Parcel and also requested that CBT provide WSC with her proposal for WSC's outright purchase or lease of the Parcel.
17. On 27th May, 2016 [EB/121] CBT again wrote to WSC and on 30th May, 2016 WSC responded [EB/124] again requesting that CBT provide proof of ownership and a proposal for WSC to purchase or lease the Parcel.

18. In November 2017, after having had the Parcel appraised, CBT submitted a claim to WSC for mesne profits for past use of the Parcel and a proposal for WSC's ongoing occupancy, and rental of the Parcel at \$4,000.00 pcm.
19. On 25th May 2018, CBT submitted to WSC an invoice **[EB/151]** for \$20,000.00 expressed to be "*in respect of her property situated at Mangrove Cay, Andros Bahamas and pending the final amicable settlement and resolution of the same*".
20. On the same day, WSC issued a cheque for \$20,000.00 **[EB/157]** expressed to be "*the initial payment for use of private land by the Corporation in Mangrove Cay, Andros*" and paid it to CBT (via her Counsel) under cover of letter dated 4th June, 2018 **[EB/156]**.
21. After having received no further payment from WSC for the use of the Parcel, on 17th October, 2018 CBT commenced legal action against WSC in the Supreme Court for trespass **[EB/4-9]**.
22. WSC entered an appearance in the legal proceedings on 31st October, 2018 **[EB/10-13]**.
23. On 11th February 2019, WSC wrote to CBT rejecting her documentary title and demanding the return of the \$20,000.00 **[EB/154-155]**.

E. THE PARTIES' DISPUTING TITLES

E1. The Documentary Title asserted by CBT

24. CBT claims to be the documentary title owner of the tract of land comprising approximately 660 acres which includes the Parcel.
25. CBT's chain of documentary title is alleged to start with an Indenture of Conveyance dated 7th January 1963 ("**the 1963 Conveyance**")⁴ **[EB/81]** which she asserted conveyed the 660 acre tract of land to her father, Carl Braynen and

⁴ The Indenture is recorded in the Registry of Records in the City of Nassau on the Island of New Provided at Volume 1124 pages 247 to 249.)

culminates with the Deed of Assent to herself in 2009 by which she asserted she acquired the 660 acre tract including the Parcel.

E2. The Possessory Title asserted by WSC

26. WSC relied upon a Memorandum dated 14th April, 1983 **[EB/85]** (“**the 1983 Memorandum**”) which makes reference to a wellfield and to water distribution at Mangrove Cay.
27. On the basis of the 1983 Memorandum WSC asserted that it had been in possession of the Parcel from at least 1983 and continuing.
28. WSC also relied upon the testimony of Mr Cyprian Gibson, Family Island Manager of WSC, who made reference to the Memorandum in his evidence and explained that WSC had maintained and enjoyed uninterrupted possession of the Parcel for as long as he had been employed by WSC (25 years).

F. PROCEDURAL HISTORY

F1. The Supreme Court proceedings

29. By CBT’s Writ of Summons she alleged that WSC had trespassed (and continued to trespass) upon the Parcel **[EB/4-9]**.
30. CBT filed her Statement of Claim on 8th November, 2018 setting out her documentary title **[EB/14-22]**.
31. CBT filed a Summons on 14th November, 2018, seeking, inter alia, an Order of the Court for Summary Judgment and Judgment on Admissions **[EB/1509-1512]**.
32. The application was heard on 22nd March, 2019, the trial Judge dismissed the summary judgment application and allowed WSC to resile from its admission **[EB/1513-1532]**. CBT does not agree that the Summary Judgment application is relevant to this appeal, but WSC rely upon it as being relevant to the Court of Appeal’s erroneous approach to the Limitation Act 1995.

33. WSC filed its Defence on 9th July, 2019 **[EB/23-28]** denying that CBT possessed documentary title and setting out its claim of a possessory title. In particular, WSC noted in its defence that there was no document which evidenced the acquisition of the property in question by the late Albert Braynen from the late Joseph Evans or another party, and no evidence of how the late Albert Braynen came to own property in Mangrove Cay, Andros.
34. CBT filed a Reply in which she joined issue with the Defence **[EB/29-31]**.
35. CBT relied on the Witness Statement of Emile Ledee filed on 26th November, 2018 **[174-181]**, the Supplemental Witness Statement of Emile Ledee filed on 18th March, 2020 **[EB/182-188]**, the Witness Statement of Alvan K. Rolle filed on 4th December, 2019 **[EB/200-213]** and her own Witness Statement filed on 26th November, 2019 **[EB/158-173]**.
36. WSC relied on the Witness Statement of Cyprian Gibson filed on 26th November, 2019 **[EB/189-191]**, the Witness Statement of Gilbert A. Thompson filed on 26th November, 2019 **[EB/192-200]**, the Witness Statement of Stafford Coakley filed on 20th November, 2019 **[EB/214-217]**. and the Witness Statement of Alvin K Young filed on 30th June, 2020 **[EB/218-224]**.

F2. The agreed issues at trial

37. On 4th December 2019, the parties filed a Statement of Agreed Facts and Issues **[EB/508-511]**. The agreed issues for the Court to determine were:

37.1. Whether the land on which WSC's water holding tank and related apparatus and access road (defined in the Statement of Agreed Facts and Issues as "the Subject Land") are constructed on land described in the 1963 Conveyance?

37.2. Whether WSC have any claim, title or interest in the Subject Land?

37.3. Whether CBT's claim of right, title or interest in the Subject Land is superior to WSC's?

37.4. Whether WSC has trespassed upon the Subject Land.

37.5. If WSC has trespassed, whether CBT is entitled to:

- 37.5.1. Recover from WSC mesne profits in relation to WSC's past use and occupancy of the Subject Land?
If so, what amount?
- 37.5.2. A mandatory injunction requiring WSC to remove its water holding tanks and related apparatus from the Subject Land?
- 37.5.3. Damages in lieu of a mandatory injunction? If so, what amount?
- 37.5.4. Interest on mesne profits and/or damages? If so, at what rate and for what period?

F3. The documentary evidence before the Court

38. At trial, the Court had before it bundles of documents which included the following documents:

38.1. A Crown Grant F-28 dated 7 July 1787, by which a larger tract of land of 1,500 acres was conveyed to a certain Joseph Evans [EB/42].

38.2. The Will of William Henry Sweeting dated 30 June 1881 ("**the Sweeting Will**") [EB/44-45] which states in relevant part:

"...I give, devise, and bequeath to my Son Arthur Thomas for his natural life, at his death to be equally divided among his lawful children eight hundred and sixty acres of my tract of land on Andros Island situate between Southern and Middle Bights opposite Mangrove Cay, part of a tract originally granted to a certain Joseph Evans, the said eight hundred and sixty acres to adjoin the Eastern line of said original tract and land granted John Kemp. To Phoebe Ann Braynen I give devise and bequeath for her life time and at her death to be equally divided among her lawful children six hundred and sixty acres to adjoin a portion of that Western line of said original tract. To my sister Seva Butler, widow, I give, devise and bequeath one hundred acres of the aforesaid original tract on said Island which

is to adjoin on the West land formerly granted to Thomas Hodgson and fronting on the sea...".

38.3. The Schedule of the Personal Estate and Effects of Albert Braynen, attached to the Renunciation of Letters of Administration filed 10 April 1952 by Laurretta Braynen, the Return filed 16 April 1952, and the Administration Bond filed 16 April 1952 [EB/61].

38.4. An affidavit dated 18 October 1957 and sworn by Laurretta Braynen ("the Affidavit") [EB/77-78], stating that she knew of a forty six acre tract of land at Fresh Creek which was purchased by Peter Coakley, Maurice Minnis, William Cargill and Joseph A. Braynen; and that she had worked the land from the year 1910 to 1951, first with her father the late Albert Braynen until his death in 1929, and thereafter with her husband the late Herbert Leonard Braynen until 1951, whereupon the Andros-Bahamas Development Company Limited took over.

39. The trial was heard by the Honourable Madam Justice G. Diane Stewart on 11th and 12th December 2019, 24th January 2020 and 19th November 2020.

F4. Judgment of the Supreme Court

40. The Judge handed down her judgment on 2nd December 2022, in which she dismissed CBT's claim for trespass [EB/687-718]. In dealing with the issues the trial Judge, in summary, found as follows:

40.1. WSC's Water holding tank and related apparatus was on the Parcel (para 151) [EB/713].

40.2. There was no proper description of the property being conveyed in the 1963 Conveyance (para 142) [EB/712].

40.3. CBT did not prove a good and marketable documentary title to the Parcel as is required to be shown by section 3(4) of the Conveyancing and Law of Property Act (para 143 [EB/712].

40.4. The 1963 Conveyance was not a good root of title and was not proof of CBT's ownership (para 148) **[EB/713]**.

40.5. CBT had not produced any document which provided a description or identified the land to which her title related (para 148) **[EB/713]**.

40.6. CBT was not the documentary title owner of the Parcel (para 148) **[EB/713]**.

40.7. WSC had factual and physical possession of the Parcel (paras 155 and 156) **[EB/714]**

40.8. The Judge held that there was "*a large gap between the Crown Grant to Joseph Evans and the 1875 Sweeting Will*"; she found there was "*no evidential connection*" between them; she also found there were "*no documents submitted which show how the Property ["Parcel"] came to be owned by the late Albert Braynen*" (para 140) **[EB/711]**.

40.9. The Judge further held that reliance upon the 1963 Conveyance was questionable as there was no plan attached to describe the property referred to, nor any proper description of it; whilst reference was made to 660 acres from Joseph Evans to Phoebe Ann Braynen, failure to mention any conveyance from Phoebe Ann Braynen on to anyone else raises doubt as to the validity of title (para 142) **[EB/712]**; and it was concerning that no mention was made of the Parcel in the will of the late Albert Braynen (para 146) **[EB/712]**.

40.10. The Judge held that given the inaccuracies identified by her in her investigation of CBT's title she was not satisfied that CBT can prove a good and marketable documentary title to the Parcel as is required to be shown by section 3(4) of the CLPA (para 143) **[EB/712]**.

40.11. The Judge held that the survey evidence was "*secondary*" only (para 149) **[EB/713]**. Nonetheless, she made a factual finding that the water

holding tank and storage apparatus was situated on the Parcel (para 152) **[EB/713]**; and that the Survey Plan produced by Mr Ledee set out the boundaries of the Parcel but was not determinative of who owned it (para 166) **[EB/717]**.

40.12. The Judge dealt also with WSC's possessory title claim **[ref]**. As to this:

40.12.1. The Judge held she could place considerable weight upon the 1983 Memorandum as it was made prior to the claim by CBT and prior to her acquiring property which her father had devised (para 156) **[EB/714]**; she concluded WSC had been in possession of Parcel for thirty-eight years (para 156) **[EB/714]**; and had been using the water tank and water storage facility units from at least 1983 and thus had factual and physical possession for more than the requisite period set out in the Limitation Act (paras 165-166) **[EB/717]**

40.12.2. The Judge concluded there was no evidence Carl Braynen had physically possessed the land (para 156) **[EB/714]**; and that according to the Affidavit of Laurretta Braynen any prior possession ended in 1951 at which point the Andros-Bahamas Development Company Limited took possession (para 156) **[EB/714]**. The Judge found that even though the CBT had the *intention* to possess the Parcel from 2009, she had not done so to the exclusion of others as she did not seek to remove the school or residential homes also situated upon the Parcel (para 163) **[EB/716]**.

40.12.3. The Judge found that payment by WSC of \$20,000 to the Respondent in May 2018 confirmed its intention to possess (paras 157-160) **[EB/714-716]**; she later said the payment in May 2018 meant WSC "*did not have the intention to possess the [Dispute Parcel] to the exclusion of the [Respondent]*" but that this was "*short lived*" as by letter dated 11 February 2019 WSC requested return of the sum (para 161) **[EB/716]**;

41. The trial Judge accordingly ordered that: (i) CBT's Writ of Summons be dismissed; (ii) CBT return to WSC the sum of \$20,000; and (iii) CBT pay WSC's costs (paras 167-169) **[EB/718]**.

F5. Appeal to the Court of Appeal

42. CBT appealed against the trial Judge's decision by a Notice of Appeal dated 13th January 2023 in which there were twenty-seven separate grounds of appeal **[EB/736-774]**. In summary, the grounds of appeal were that:

42.1. In determining CBT's trespass claim against WSC, CBT was only required to show that her title was superior to that of WSC and the trial Judge erred by requiring CBT to show a good and marketable title to the Parcel as is required by section 3(4) of the Conveyancing and Law of Property Act.

42.2. The trial Judge erred in finding that the 1963 Conveyance did not have a description of the property conveyed and also erred in finding that the 1963 Conveyance was not a good root of title.

42.3. The trial Judge erred by failing to properly consider the evidence that there was no other documentary title to the Parcel other than CBT's documentary title and also erred when she found that CBT was not the documentary title owner of the Parcel.

42.4. The trial Judge erred by requiring CBT to adduce title prior to the 1963 Conveyance (a conveyance which was more than 30 years old) in circumstances where WSC had not challenged the validity of the 1963 Conveyance.

42.5. The trial Judge erred because she found that when WSC made the payment of \$20,000.00 in May 2018 it "did not have the intention to possess the Property to the exclusion of the Plaintiff", she made a finding that WSC had a possessory title (if she so found) by failing to properly consider the conduct of WSC in repeatedly offering to purchase or lease the Parcel and by paying

\$20,000 as an initial payment for its use of the Parcel since this conduct was inconsistent with an intention to exclude the paper owner.

42.6. The trial Judge erred by failing to properly consider whether WSC's possession of the Parcel could be adverse to CBT given its repeated offers to CBT to purchase or lease the Parcel and its payment of \$20,000 to CBT for its use of the Parcel.

43. The appeal was heard by the Court of Appeal (Sir Michael Barnett, President; Madam Justice Charles and Mr Justice Turner JJA) on 12th September 2023.

F6. Judgment of the Court of Appeal

44. In a judgment delivered on 5th December 2023, the Court of Appeal (Madame Justice Charles JA, with whom Sir Michael Barnett P and Mr Justice Turner JA agreed) allowed CBT'S appeal [EB/895-922]. In summary, the Court of Appeal found as follows that:

44.1. CBT having brought a claim against WSC alleging that WSC was a trespasser and having put forth the 1963 Conveyance and her Deed of Assent, only needed to demonstrate that her title was superior to that of WSC (para 50) [EB/908].

44.2. Any documentary title put forth by CBT "(even with defects)" was a better title than WSC's title (para 51) [EB/908-909].

44.3. CBT only needed to demonstrate that her documentary title was superior to WSC's possessory title. It matters not that her documentary title may not have been perfect as there is no such thing as a perfect title. Shortly put, it is a simple matter of "*the relative strengths of the titles proved by the rival claimants*" (para 59) [EB/910].

44.4. The trial judge erred in law by holding CBT to too high a standard under section 3(4) of the CLPA in circumstances where there is no such requirement on an appellant relative to a claim in trespass since her

documentary title is superior to WSC's alleged possessory title (para 53) **[EB/909]**.

44.5. The 1963 Conveyance (and Deed of Assent) were sufficient to give CBT the locus standi to bring her action in trespass (para 54) **[EB/909]**.

44.6. WSC's, Attorney Gilbert Thompson acknowledged during cross examination that the only documentary root of title which existed to the Parcel was CBT's title. There is no other documentary root of title to the Property except CBT's. (para 72) **[EB/914]**.

44.7. Since there was no other documentary title to the Parcel before the Court, the judge ought to have found that the 1963 Conveyance was a good root of title and she erred in concluding otherwise (para 73) **[EB/914]**.s

44.8. The 1963 Conveyance did contain a recognisable description of the land to be conveyed, and the judge erred in concluding otherwise (para 74-76) **[EB/914]**.

44.9. The learned judge erred in law by requiring CBT to deduce title prior to the 1963 Conveyance where WSC's Defence in no way impugned or challenged the validity of the 1963 Conveyance (para 77) **[EB/914]**.

44.10. Applying Section 3(4) of the CLPA and the reasoning in the cases as well as the lack of challenge to the validity of the 1963 Conveyance, the learned judge was not entitled to require CBT to deduce a title beyond her 1963 Conveyance (para 81) **[EB/915]**.

44.11. The property surveyed by Plan 600 AN was the property described in the 1963 Conveyance and the 1963 Conveyance, being a valid conveyance whose validity or efficacy was not called into question, effectively conveyed the property which the CBT inherited and ultimately conveyed onto herself by the Deed of Assent (para 82) **[EB/916]**.

- 44.12. The 1983 Memorandum, taken at its highest, would only demonstrate factual possession but not the requisite intention to possess the Property to the exclusion of all others (paras 87-95) **[EB/917-919]**.
- 44.13. The trial judge erred in failing to identify how and when WSC's possessory title had crystallised, who the documentary title holder of the land was (since she had concluded it was not CBT), and therefore whom WSC had dispossessed to acquire such possessory title (para 96) **[EB/919]**.
- 44.14. WSC's, repeated offers to purchase or lease the Parcel and, its payment to CBT of \$20,000.00 for the use of the Parcel, is evidence that it did not have possession of the Parcel which was adverse to CBT (para 108(iii)) **[EB/921]**.
- 44.15. WSC's constant offers to purchase or lease the Parcel (pending verification of the true owner) and the payment of the \$20,000.00 could never be indicative of an intention by WSC to exclude the true owner and the world from the Property. (para 97) **[EB/919]**.
- 44.16. WSC lacked the necessary intention to possess the Parcel in its own name and on its own behalf to exclude the world at large, including the owner with the paper title. Thus, the finding by the learned judge that WSC had a possessory title (if she so found) is plainly wrong (para 100) **[EB/919]**.
- 44.17. WSC's payment of \$20,000.00 to CBT and request for confirmation of title or ownership in 2018 was both inconsistent with an intention to possess the land to the exclusion of others and a written acknowledgement by WSC that it was not the owner of and had no interest in the Parcel (paras 97-101) **[EB/919-920]**.
45. The Court of Appeal accordingly reversed the order of the trial Judge and made the following orders for the relief sought in CBT's Writ of Summons (paras 109-110) **[921-922]**.

45.1. A declaration that WSC has no right, title or interest in the Parcel.

45.2. Mesne profits for each year of WSC's unlawful use and occupation, as well as interest.

45.3. Damages in lieu of a mandatory injunction to dismantle the infrastructure (the assessment of damages relative to mesne profits, interest and damages in lieu of injunctive relief was remitted by the Court of Appeal to the Registrar of the Supreme Court).

45.4. Interest.

45.5. Costs.

46. By a Notice of Motion dated 19th December 2023, WSC sought leave to appeal to the Judicial Committee against the decision of the Court of Appeal as of right within the meaning of section 23(1) of the Court of Appeal Act since the value of the Parcel is over the prescribed value of \$4,000.00 and the appeal also raises a point of law of general public importance **[EB/925-942]**.

47. The Court of Appeal granted conditional leave to appeal on 27th June 2024 **[EB/959]**. Final leave to appeal was granted by order of the Court of Appeal on 8th April 2025 **[EB/960]**.

G. ISSUES IN THE APPEAL (AGREED)

48. The following principal issues arise in the appeal to the Board:

48.1. Whether the Court of Appeal erred in determining that CBT for the purpose of her trespass claim against WSC only had to demonstrate that her title was superior to that of WSC.

48.2. Whether the Court of Appeal erred in finding that CBT was the documentary title owner of the Parcel.

48.3. Whether the Court of Appeal erred in finding that CBT's documentary title (even with defects) was superior to the possessory title claimed by WSC.

48.4. Whether the Court of Appeal erred in finding that WSC had not disputed the validity of the 1963 Conveyance by its Defence.

48.5. Whether the Court of Appeal erred in finding that the trial Judge was wrong to require CBT to deduce title prior to the 1963 Conveyance in circumstances where the validity of the 1963 Conveyance had allegedly not been challenged by WSC.

48.6. Whether, given the trial judge found that there was no document or other evidence which showed how the Parcel came to be owned by Albert Braynen, the Court of Appeal erred in holding this defect (and indeed any defect) "matters not".

48.7. Whether the Court of Appeal erred in finding that there was no other documentary title to the Parcel besides that of CBT.

48.8. Whether the Court of Appeal erred when it found that the 1983 Memorandum taken at its highest demonstrated factual possession but not the requisite intention to possess the Parcel to the exclusion of all others.

48.9. Whether the Court of Appeal erred in finding that WSC by its conduct demonstrated that it lacked the intention to possess the Parcel to the exclusion of all others and that WSC thereby acknowledged that it was not the owner of the Parcel and had no interest

H. ISSUES IN THE APPEAL (NON-AGREED)

49. WSC is of the view that the following additional issue arises for the Board's determination:

49.1. Whether the Court of Appeal erred in its application of section 38 of the Limitation Act 1995 to the facts, in particular WSC rely in their Case upon the following propositions:

- 49.1.1. By holding that WSC's request for confirmation of title or ownership and/or payment of \$20,000 constituted an "acknowledgement" within the meaning of that term under section 38.
- 49.1.2. By holding that a written acknowledgement in 2018 (which finding is anyway challenged) could 'reset the clock' for *limitation* purposes in this case. This was an obvious error since it ignored the fact that for the 35-year period prior (i.e., well over the statutorily prescribed period for adverse possession of 12 years) WSC had occupied and operated the water holding tank, storage apparatus and road without interruption.
- 49.1.3. The trial Judge already considered the issue of acknowledgement and ruled that WSC could resile from such acknowledgement and CBT never appealed such ruling.

50. As to 49.1.1 and 49.1.2, CBT does not agree that these additional issues arise for the Board's determination. CBT is of the view that the Court of Appeal determined the appeal on all of the other issues and not on the issue of Acknowledgment in the context of Section 38 of the Limitation Act. CBT is of the view that this issue was only considered by the Court of Appeal "*for completeness*" (para 101) **[EB/919-920]** and was not the basis for the Court allowing CBT's appeal as set out in its Judgment at paragraphs 100 and 108 **[EB/919-921]**.

51. As to 49.1.3, CBT does not agree that this additional issue arises for the Board's determination firstly because it is not a ground of WSC's appeal and secondly because this issue was not raised by WSC at first instance nor before the Court of Appeal. WSC disagrees: the point was raised in WSC's written submissions before the Judge and is open for WSC to take on the basis of the grounds of appeal.

2 June, 2026

COUNSEL FOR THE APPELLANT

DYWAN RODGERS
KATHARINE BAILEY

COUNSEL FOR THE RESPONDENT

KRYSTAL D ROLLE KC
DARRON B. CASH

ANNEX: CHRONOLOGY

DATE	EVENT	REF
17.10.2018	Generally Indorsed Writ of Summons	[4-9]
08.11.2018	Statement of Claim	[14-22]
14.11.2018	Summons seeking, inter alia, Summary Judgment	[1509-1512]
22.03.2018	Hearing of Summary Judgment application	[ref]
01.07.2019	Ruling of the Honourable Madam Justice G. Diane Stewart dismissing the Respondent's application for summary judgment	[1513-1532]
09.07.2019	Defence	[23-28]
05.11.2019	Agreed bundle of Documents	[32-152]
06.11.2019	Reply	[29-31]
20.11.2019	Witness evidence of Mr Stafford Coakley (on behalf of the Appellant)	[214-217]
26.11.2019	Witness evidence on behalf of the Respondent:	
	- Witness statement of the Respondent	[158-173]
	- First witness statement of Mr Emile Ledee	[174-181]
	Witness evidence on behalf of the Appellant:	
	- Witness statement of Mr Gilbert A. Thompson	[192-199]
	- Witness statement of Mr Cyprian Gibson	[189-191]
04.12.2019	Statement of Agreed Facts and Issues	[508-511]
	Witness statement of Mr Alvin K. Rolle (on behalf of the Respondent)	[200-213]
05.12.2019	Supplemental Agreed Bundle of Documents	[152-157]
11.12.2019	Transcript of Day 1 of Trial before the Honourable Madam Justice G. Diane Stewart	[309-385]
24.01.2020	Transcript of Day 2 of Trial	[386-476]
12.03.2020	Directive given by Judge Diane Stewart for (limited discovery to be given by) supplemental evidence from Mr. Ledee and responsive evidence from the Appellant (to be given in respect of the limited discovery of evidence)	[182]

18.03.2020	Second witness statement of Mr Ledee (on behalf of the Respondent)	[182-188]
30.06.2020	Witness statement of Mr Allan Alvin Young (on behalf of the Appellant)	[218-224]
19.11.2020	Transcript of Day 3 of Trial	[477-507]
02.12.2022	Judgment of the Supreme Court	[687-718]
13.01.2023	Notice of Appeal Motion	[719-735]
12.09.2023	Transcript of hearing before the Court of Appeal	[875-894]
05.12.2023	Judgment of the Court of Appeal	[895-922]
19.12.2023	Notice of Motion for Leave to Appeal to the JCPC	[925-924]
27.06.2024	Judgment of the Court of Appeal granting conditional leave to appeal to the JCPC	[943-958]
08.04.2025	Judgment of the Court of Appeal granting final leave to appeal to the JCPC	[960]