

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA 1833 of 2004

BETWEEN

**NATIONAL SPIRITUAL ASSEMBLY OF
THE BAHAI'S OF TRINIDAD AND TOBAGO**

Plaintiff

AND

WINSTON EUGENCE CHEN

Defendant

BEFORE: The Hon. Mr. Justice A. Mon Désir

APPEARANCES:

Ms. A. Francis led by Mr. G. Peterson S.C.- for the Plaintiff

Mr. A. Mohammed led by Mr. H. Seunath S.C.- for the Defendant

JUDGMENT

Delivered: November 12, 2012

INTRODUCTION

1. The Plaintiff is a body corporate created under S. 2 of the ***National Spiritual Assembly of the Baha'is of Trinidad and Tobago (Incorporation) Act, 1972***. By Deed of Gift made on 18th March, 1976 and registered as No. 4056 of 1976 (hereafter referred to as “the 1976 Deed”) one Dr. Henry Collymore (now deceased¹) conveyed to the Local Assembly of the Baha'is of Palmyra one (1) parcel of his eight (8) acre parcel of land situate in the County of Naparima. Dr. Collymore was, at the time, a practising member of the Baha'i faith and an elected member of the Plaintiff from 1975 to April 2000. He at times served as Chairman or Vice Chairman of the Plaintiff.
2. The parcel of land conveyed (hereafter referred to as “the conveyed land”) is described in the schedule to the Deed as follows:

“ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Naparima, in the Island of Trinidad, (being portion of a larger parcel of land comprising Eight Acres One Rood and Seventeen Perches) comprising Forty Thousand Five Hundred and Ninety Four Superficial Feet ... and bounded on the North partly upon lands of the Donor and partly upon a Private Road on the South partly upon lands formerly of Mulchan but now of Seegobin Sawh and partly upon lands now or formerly of Ste Madeleine Sugar Co. Ltd. on the East upon lands of Dr. H. Collymore the Donor and on the West upon a Private Road or howsoever otherwise the same may be known butted bounded or described.”
3. In 1978 the Palmyra Baha'i Centre (“the Centre”) was erected on the conveyed land.
4. In 1996, the late Dr. Collymore sold his remaining seven acres of land to Bancassurance Company Limited. Thereafter, by Deed dated 7th January, 2003 and registered as No. DE200301078021D001, Bancassurance Company Limited conveyed the said seven (7) acres of land² to the Defendant, Eugene Chen and his wife Ann Chen. The conveyed land abuts the southern boundary of these lands.

¹ He passed away in 2001

² Described in the schedule to the Deed registered as No. DE200301078021D001 as: “***ALL AND SINGULAR*** that parcel of land together with the building thereon situate in the Ward of Naparima, in the Island of Trinidad, being a part of Toruba Estate comprising ***SEVEN***

THE DISPUTE

5. The Plan, (prepared by Mr. Albert Haynes on 26th June, 1975 and marked 'A'), that is attached to the 1976 Deed of the conveyed land, shows a road described as a "Right of Way" running north from the Naparima Mayaro Road into to another road described as a "Private Road" and which is coloured pink on the Plan. The Private Road runs along the western boundary of the conveyed land and leads to the southern boundary of the Defendant's land. The Plaintiff is claiming that it has a right of way over the "Private Road" and that its use and enjoyment thereof have been unlawfully interrupted by the Defendant. The Plaintiff is also contending that the Defendant, by digging a trench on the eastern boundary of the Right of Way, has trespassed on its land.

Plaintiff's Case³

6. The Plaintiff has fleshed these claims out in their pleading. In particular, it has pleaded that by virtue of Deed No. 4056 of 1976 it became the duly registered owner of the conveyed land. More than 25 years ago, it erected the Centre on the said conveyed land. The Centre is used to host events including Sunday school every Sunday, conferences, weddings and funerals. Its members and guests have always, the Plaintiff contends, gained access to the Centre from the Naparima Mayaro Road, travelling north along the Right of Way and then into the Private Road. They further argued that their members also accessed the grounds of the Centre via a vehicular gate that is situated along the Private Road on the western boundary of the conveyed land and also by means of a pedestrian gate. That pedestrian gate is located further north along the said Private Road and along the western boundary of the conveyed land, almost to the northern boundary. The Plaintiff pleaded that-

"...its members and invitees have at all material times enjoyed the uninterrupted use of the Right of Way and the Private Road as shown on the Plan attached to Deed No. 4056 of 1976 with the consent and approval of Dr. Collymore of the Langmore Foundation for over 25 years and in particular from the date of the conveyance in Deed No. 4056 of 1976".

ACRES ONE ROOD AND SEVNTTEEN PERCHES be the same more or less and bounded on the North and on the West by lands of Ste. Madeleine Caroni Sugar Company Limited and on the South partly by Naparima Mayaro Road, by lands formerly of Dr. H.M. Collymore now of the Local Spiritual Assembly of the Baha'is of Palmyra and by lands of Ste. Madeleine Sugar Company Limited and by lands formerly of Mulchan now of Seegobin Sawh which parcel of land so described is delineated and coloured pink on the plan annexed to Deed registered as No. 4719 of 1958".

³ Statement of Claim filed on 8th March, 2005

7. The Plaintiff complains, however, that in or about June 2004 the Defendant began constructing a gate in the vicinity of the “Right of Way” and “Private Road” thereby impeding and interrupting its access to and use of the said Right of Way and Private Road. The Plaintiff also complains that the Defendant wrongfully and unlawfully dug a trench on the eastern boundary of the “Right of Way”, which is along the western boundary of the conveyed land, thereby committing a trespass against the Plaintiff’s property.
8. As a consequence on 5th July, 2004 the Plaintiff commenced these proceedings against the Defendant for- (i) a declaration that it is entitled to a right of way from the road known as “Right of Way” over the “Private Road”; (ii) an injunction to restrain the Defendant from denying the Plaintiff the use of the “Private Road” or from interfering in any way whatsoever with the use by the Plaintiff of the “Private Road” or from erecting any structure or gate on or across the said road; and (iii) Damages for trespass.

Interim Order

9. On 5th July, 2004 the Honourable Mr. Justice Best granted an *ex parte* injunction restraining the Defendant whether by himself, his servants and/or agents from- (i) obstructing or denying the Plaintiff, its members, servants and/or agents the use of or interfering in any way whatsoever with the Plaintiff’s use of the said “Private Road”; and (ii) erecting any gate or other structure on or across the said Right of Way pending the determination of the summons.
10. The injunction has been ordered⁴ to continue in effect until the hearing and determination of this matter.

The Defendant’s Case⁵

11. The Defendant’s case is that by virtue of Deed registered as No. DE200301078021D001 dated 7th January, 2003 he and his wife Ann Chen, became the owners in fee simple in possession of the seven (7) acre parcel of land that abuts the southern boundary of the Baha’s

⁴ By Order of the Honourable Mr. Justice Jamadar (as he then was) dated 27th September, 2004 and entered on 8th November, 2004

⁵ Defence filed on 25th March, 2005

land. He contends that the late Dr. Collymore (the previous owner of his land) only *permitted* the Plaintiff's members and guests to have *limited* use of the said Private Road. Therefore, the Plaintiff has no right of way or any other right over that road. He denies that members and guests of the Plaintiff used the Private Road to access the grounds of the Centre. He says that access to the Centre was always gained through the Centre's main gate located on the south western end of the Conveyed land. In fact, according to the Defendant, up to August 2003, there was no pedestrian gate along the Private Road as alleged by the Plaintiff. He contends further that the Private Road belongs to him and denies that he acted unlawfully or committed any trespass when he commenced the construction of a gate thereon.

12. The Defendant complains that the interim injunction issued by the Court on 5th July, 2004 has prevented him from completing the work that he commenced on his property and from proceeding with his plans to develop his lands. As a result of this he contends that he has suffered and continues to suffer financial and other loss and damage. He has counterclaimed for damages and a declaration that the Private Road is not subject to any right of way or any other right in favour of the Plaintiff.

Plaintiff's Reply to Defence and Counterclaim⁶

13. The Plaintiff denies that the Private Road is owned by the Defendant or that he has exclusive right over the Right of Way or the Private Road. It is also denied that access to the Centre was *always* gained through the Centre's main gate. According to the Plaintiff, that main gate was *the more frequently used* entrance. However, it is, in any event, entitled to use *any gate* to enter its property. The Plaintiff further says that contrary to what the Defendant alleges, the pedestrian gate was constructed before August 2003 and the Plaintiff's use of the Private Road was never restricted or limited in any way by Dr. Collymore.

⁶ Filed on 13th May, 2005

ISSUES

14. The primary issues that arise for determination from the Pleadings are as follows:
- (1) Whether the Plaintiff has a right of way over the Private Road.
 - (2) If the Court finds that a right of way exists, whether the Defendant has unlawfully obstructed or interfered with the Plaintiff's enjoyment of the said right of way.
 - (3) Whether the Defendant is liable for trespass.

EVIDENCE

The Plaintiff

15. In support of these contentions, the Plaintiff called four (4) witnesses. The Court therefore, heard from Keith Scott, Doreen Anderson, Stephen Burris and Lawrence Rooplal.

Keith Scott

16. Land Surveyor, Mr. Keith Scott, was commissioned by the Plaintiff to carry out a survey of the parcel of land conveyed in the 1976 Deed. He produced a Survey Plan dated 16th June, 2008. According to his survey, the area of the Conveyed land is actually 40,962 square feet, which is 368 sq. ft. more than what is indicated in the plan prepared by Albert Haynes that is attached to the said 1976 Deed. Based on Mr. Scott's survey, the Conveyed land extends further west of points A, E and D on Mr. Haynes' plan. Mr. Scott's Plan was extremely detailed and showed various features including the Plaintiff's 'building with shed', chain link wire fences on the western and southern sides, concrete walls and the edges of the paved portion of the Private Road to the west of the Conveyed land. His Plan clearly showed that the wall erected by the Defendant to the west of the chain link wire fence and to the east of the Private Road is built entirely on the Plaintiff's parcel of land.

Doreen Anderson

17. Ms. Doreen Anderson, the Plaintiff's Secretary at the time, said that she has been a member of the Baha'i faith for the past 38 years. She testified that the Centre was constructed in 1978 and that since that time the Plaintiff has had continuous and uninterrupted use of the Private Road to access the subject parcel of land, which has been used for Baha'i activities such as

devotional meetings, children's classes, study sessions and seminars. The Centre is a regional centre which serves the Baha'is of South Trinidad. Attendance at the Centre ranges from 25 – 250 persons depending on the event. She was asked whether she worshipped at the Palmyra Centre and she said she did so, sometimes.

18. She gave evidence that access to the Centre is gained from the Naparima Mayaro Road via the "Right of Way" into the "Private Road" and that there is a vehicular access gate that is approximately 15 ft wide. Sixty-three (63) ft away from that vehicular access gate is the pedestrian gate which is about 4ft wide. Worshippers and attendees to the Centre, she said, have always parked both on the grounds of the Centre as well as along the Private Road which runs along the western boundary of the conveyed land. She said that the property can accommodate only up to about twelve (12) vehicles. The eastern 2/3 of the conveyed land has a steep slope.
19. She said that she first met Dr. Collymore, in 1975. He was also a practising member of the Bahai's faith and an elected member of the Plaintiff from 1975 until April 2000. He also served at times as Chairman or Vice Chairman. He passed away in February 2001.
20. She said that in or about August 2003 when the Defendant began work in preparation for the construction of a wall and the erection of a gate to control access to the Private Road, the then secretary of the Plaintiff wrote to the Defendant requesting that he desist from any further interference with the Plaintiff's enjoyment of free access to the Private Road. The Defendant did not respond to that letter but, a few months later, in November 2003, the Defendant proceeded to erect two large pillars and a wall measuring 11ft in width, just north of the vehicular access to the conveyed land and east of the Private Road.
21. Ms. Anderson also said that there is a grass verge measuring between 9 to 14ft that lies between the boundary of the Private Road on the east and the fence on the western side of the Conveyed land. This grass verge forms part of the lands conveyed to the Plaintiff by the 1976 Deed. It is on this grass verge that the Defendant built the two (2) large concrete pillars.

She said that the erection of a gate across the Private Road and Right of Way will interfere with the Plaintiff's use of the Private Road and that it would prevent worshippers from accessing the conveyed land. This evidence is inconsistent with the Plaintiff's pleaded case that there is also a big gate that is used to access the grounds.

Stephen Burris

22. Stephen Burris said he has been a practising member of the Baha'i faith for almost 38 years and served as an elected member of the Plaintiff from July 2000 to April 2007. He held the position of Secretary from early 2004 to April 2006. He said that he attends the Palmyra Centre from time to time as a devotee.

23. He also gave evidence of the Defendant having erected two concrete pillars just north of the vehicular access gate, towards the east of the Private Road. He said that on 27th June 2004 he visited the Centre where he observed a trench being dug on the eastern side of the Private Road just north of the vehicular access to the Centre. According to him, the Defendant had erected the two pillars and dug a trench on a small piece of land (about 4-6ft wide) between the Private Road and the fence that encloses the Centre on the west.

Lawrence Rooplal

24. Lawrence Rooplal, who worked as a Caretaker for the Plaintiff for 20 years, also gave evidence. He said that for the time he had worked with the Plaintiff he always knew the Plaintiff's members to use the pedestrian gate to the north to enter and exit the property and that the larger gate to the west was used for vehicular access.

The Defendant

25. In respect of the Defendant's case, the Court heard from the Defendant himself, Winston Chen, John Tuitt and Roodal Samaroo.

Winston Chen

26. The Defendant said that when he and his wife purchased the lands from Bancassurance Caribbean Limited, he was shown a plan to his property which shows the conveyed land as being bounded on the west by a Private Road. He said that at the time when he and his wife purchased the land there was only one access to the conveyed land and that was via a gate, which he referred to as the “big gate” on the south western end of the Baha’is land.
27. He said that he had planned to install a sliding gate and so in August 2003, he constructed two concrete pillars at the entrance of his property and laid the track for the gate. In June 2004, he constructed two (2) concrete walls.
28. The Defendant said that sometime around the end of June he saw a newly erected wrought iron gate installed along the western fence of the conveyed land and towards the northern end thereof. He said that prior to that date, there was no gate or entrance to the Conveyed land other than the “big gate”.
29. He also said that since he purchased the property he has seen persons visiting the Centre and occasionally entering his lands, mainly for turning their vehicles, but that as far as he knew the Private Road was not used by the Plaintiff’s guests for parking. He said that even after the small gate was installed, the said gate was not used to access the Centre.

John Tuitt

30. Mr. Tuitt testified that in August 2003 he was contracted by the Defendant to construct what he described as two (2) columns and to install tracks for a sliding gate at the entrance of the Defendant’s his property. He said that during the time that he worked for the Defendant there was only one gate to the Centre, the big gate on the southern side of the conveyed land. He said also that in late June 2004, he saw a small gate that was constructed along the western chain link fence of the conveyed land, more towards the northern end thereof.

Roodal Samaroo

31. Mr. Smaroo's evidence was that he was contracted by the Defendant in June 2004 to construct a concrete wall and a gate. He said that up to 7th June, 2004 the big gate was the only entrance to the Centre. About two weeks after that, he saw a small gate erected near to the northern end of the fence and north of the point at which he and his workmen were preparing to erect the gate to the Defendant's property. He said he and his workmen continued with their work until around 6th July, 2004. Between 8th June and 6th July, he did not see any one using the small gate that was erected along the western fence of the conveyed land nor did he see any vehicles parked on the Private Road.

DISCUSSION OF ISSUES

Trespass

32. For purely expository convenience, I will first address the question of whether the Defendant is liable for trespass.

33. It is trite law that trespass to land is the unwarranted intrusion upon land and interference with certain interests in land *in the possession of*, or *belonging to*, another. The intrusion may take the form of entry onto the land itself by foot or vehicle or other means⁷. In order to succeed in its claim the Plaintiff must therefore, satisfy the Court on a balance of probabilities that- (i) at the time of the alleged trespass it was in lawful possession of the land that is the subject matter of the complaint; and (ii) the Defendant wrongfully entered the said land. The Plaintiff's claim as pleaded is that:

*"In or about the month of June 2004 the Defendant, his servants and/or agents wrongfully and unlawfully dug a trench on the eastern side of the Right of Way and along the western boundary of the Plaintiff's parcel of land thereby effectively committing a trespass thereon"*⁸.

⁷ David Elvin Q.C. and Jonathan Karas *Unlawful Interference with Land* 2nd Ed. (2002) Para 1-001

⁸ Para. 7 of Statement of Claim filed on 8th March, 2005

Argument Advanced on Behalf of Defendant

34. Learned Senior Counsel for the Defendant, Mr. Seunath, argued that the Plaintiff's Statement of Claim did not disclose a cause of action in trespass. Mr. Seunath's submission was that while the word "trespass" is used in the Plaintiff's Statement of Claim, the context and the manner in which it is used does not satisfy the requirement that the land must be sufficiently identified. He argued that the statement that the Defendant "dug a trench on the eastern side of the Right of Way and along the western boundary of the Plaintiff's parcel of land thereby effectively committing a trespass thereon" does not allege that the trench was dug on the conveyed land. According to learned Senior Counsel, "along the western boundary of the Plaintiff's land", construed in accordance with the ordinary meaning of those words mean no more than that the trench ran along the western boundary and not on the western boundary (which Mr. Seunath argues is not unlawful) nor on the "Plaintiff's land". Mr. Seunath further argued that the use of the phrase "thereby effectively committing a trespass thereon" does not make any positive claim of wrongful entry upon the conveyed lands.
35. Although I am of the view that the Plaintiff's Pleadings could have been more tidily or elegantly drafted, I find that the Pleadings when read as a whole, and in conjunction with the very cogent and compelling evidence of Mr. Scott were sufficient to support the Plaintiff's claim that the Defendant encroached on its land. There is no difficulty with the Plaintiff's case, in so far as that issue is concerned. Indeed, in that regard, the Court accepts and was greatly assisted by the evidence of the Plaintiff's surveyor, Mr. Scott.

The Relationship Between the Plaintiff & the "LSABP"

36. However, the more substantive argument raised by learned Senior Counsel, relates to what I shall describe as the relationship between the Plaintiff and the Local Spiritual Assembly of the Baha'is of Palmyra (the LSABP).
37. Mr. Seunath submitted that the Plaintiff has not established that it, as distinct from the LSABP, was in lawful possession of the conveyed land. According to Counsel, section 7(1) and (2) of the National Spiritual Assembly of the Baha'is of Trinidad and Tobago (Incorporation) Act,

1972 (“the 1972 Act”) do not operate to vest the conveyed land in the Plaintiff, but rather in the NSABTT. These sections provide as follows:

“7. (1) Upon the commencement of this Act all land and other property of every kind, including things in action vested or deemed to be vested immediately before the commencement of this Act, in the Local Spiritual Assembly of the Baha’is of Port of Spain (Incorporation) Act, 1970 are hereby vested in the Assembly⁹.

(2) A reference in any deed, contract, bond or security or other document to the Local Spiritual Assembly of the Baha’is of Port of Spain shall, upon the commencement of this Act, be construed as reference to the Assembly¹⁰.” [Emphasis]

38. I have sifted Mr. Seunath’s arguments on this point of their substance and this is essentially what he has argued:

- (1) The 1972 Act did not operate to vest the conveyed land in either the Plaintiff (“the NSABTT”) or the Local Spiritual Assembly of the Baha’is of Port of Spain (“the LSABPOS”) as referred to in Sections 7(1) and 7(2).
- (2) In the 1976 Deed, the conveyed land was specifically vested in the LSABP, (a company duly registered under the Companies Ordinance), and not in the NSABTT or the LSABPOS, each of which is a separate and distinct legal entity.
- (3) The Plaintiff pleaded that all the lands of the NSABTT, (a separate legal entity from the LSABPOS and the LSABP), became vested in the Plaintiff by the 1972 Act.
- (4) However, there is no pleading or averment that the property of the LSABP became vested in the Plaintiff by the 1972 Act or at all.
- (5) In any event, section 7(1) of the 1972 Act refers to land and other property vested or deemed to be vested immediately “before the commencement of the Act on 23rd August 1972”.

⁹ Alternatively referred to herein as “the Plaintiff”; or the “National Spiritual Assembly of the Baha’is of Trinidad and Tobago”; or “the NSABTT”.

¹⁰ Alternatively referred to herein as “the Plaintiff”; or the “National Spiritual Assembly of the Baha’is of Trinidad and Tobago”; or “the NSABTT”.

while the deed of conveyance is dated 18th March, 1976 which is subsequent to the commencement of the 1972 Act.

39. In substance therefore, the Defence has contended that the Plaintiff has not established any nexus between itself and the conveyed land and are not entitled to assert and rights in trespass or otherwise over it.
40. The Plaintiff has not answered or replied to these contentions.

Relevant Chronology

41. In order to properly understand and appreciate the strength or otherwise of the Defendant's contentions on this point, it is perhaps necessary to examine the development of these various entities in their historical context.

The LSABPOS

42. The LSABPOS was a *local* assembly and came into existence by Act No. 10 of 1970- the *Local Spiritual Assembly of the Baha'is of Port of Spain (Incorporation) Act, 1970-* ("the 1970 Act"). It was a local or "representative body" of the Baha'is of Port of Spain. Prior to March 24, 1970 it was merely an unincorporated entity called "the Local Spiritual Assembly", consisting of a Chairman, Secretary, Treasurer and five (5) other members. When however, it was incorporated by the 1970 Act, this was specifically done for the benefit of the local assembly of the *Baha'is of Port of Spain* and gave its elected members the power to hold lands and other property in trust specifically and only for that local assembly. There also existed at that time another entity known and recognised by the 1970 Act, as the "National Spiritual Assembly". Under section 3 of the 1970 Act, therefore, the LSABPOS had the power, subject to the rules, regulations and control of the "National Spiritual Assembly" to-

"(a) acquire by purchase, transfer, donation, exchange, devise, bequest, grant, gift, conveyance, lease or howsoever otherwise, any real or personal property or interest therein; (b) to accept surrenders and reconveyances and to enter into and perform contracts; and (c) subject to any rules or regulations and any restraint reservation or condition contained in any document under which the assembly shall have

acquired title thereto to sell, demise, mortgage or otherwise dispose of and deal with property which may from time to time be vested in it.”:

The NSABTT

43. The NSABTT is *the National Assembly*. It was formally established as a “body corporate” on August 23, 1972 by virtue of section 2 of Act No. 24 of 1972- the *National Spiritual Assembly of the Baha’is of Trinidad and Tobago (Incorporation) Act, 1972* (“the 1972 Act”), and serves as the governing body for Baha’is in Trinidad and Tobago. Prior to that, it was an unincorporated entity loosely known as the “National Spiritual Assembly” which consisted of a Chairman, Vice-Chairman, Secretary, Treasurer and five (5) other members. When however, it was formally incorporated by the 1972 Act, a number of things were also done.
44. First of all, it repealed the 1970 Act¹¹. The LSABPOS therefore, ceased to exist from then on.
45. Secondly, by virtue of section 7(1) of the 1972 Act, all land and other property that were vested in the LSABPOS prior to August 23, 1972, became vested in the NSABTT on that date. Additionally, by virtue of section 7(2) of the 1972 Act, a reference in any deed, contract, bond or other document to the LSABPOS was, as from August 23, 1972, to be construed as a reference to the NSABTT.
46. Thirdly, the 1972 Act recognised the existence of a body called the “Universal House of Justice” (“the UHJ”)¹² and section 4 of the 1972 Act provided that the NSABTT is subject to the control of the UHJ and the bye-laws set out in the 1972 Act. The NSABTT must also exercise its functions in accordance with such bye-laws. According Article 1 of the Bye-Laws, the NSABTT has “*exclusive jurisdiction and authority over all the activities and affairs of the Baha’i Cause throughout Trinidad and Tobago including paramount authority in the administration of this Trust*”.
47. The NSABTT therefore, operates as the governing body for the Baha’is in Trinidad and Tobago as a whole and is empowered by section 3 of the 1972 Act, to exercise the same

¹¹ Section 8, 1972 Act.

¹² The international administrative head of the Baha’is faith

powers that were vested in the LSABPOS by virtue of section 3 of the 1970 Act. Notwithstanding that however, the 1972 Act continued to recognise the existence of what the bye-laws describes as “the local spiritual assemblies” and “other individual Baha’is in Trinidad and Tobago.”¹³

48. The NSABTT is a creature of statute and as such, its powers are circumscribed by the 1972 Act. The powers of the NSABTT under the 1972 Act are extensive, the most relevant aspects of which are that- (1) it is charged with the recognition of local spiritual assemblies across Trinidad and Tobago; and (2) it shall decide whether any matter lies within its own jurisdiction or within the jurisdiction of any local spiritual assembly. However, there are no specific or general powers vested in the NSABTT either to enter into legal relations on behalf of, or to represent and act for any local spiritual assembly in legal proceeding. It may obviously do so on its own behalf, but not on behalf of any of its “spiritual subsidiaries”. Further, and more specifically, there is no power vested in the NSABTT to exercise any rights and privileges, or to bear any liabilities and obligations in relation to *land or any other kind of property* on behalf of any local spiritual assembly- except for the former LSABPOS. Indeed, by virtue of section 7(3) of the 1972 Act, all rights, privileges and advantages, and all of the liabilities and obligations relating to land and other property of every kind that immediately before August 23, 1972 the LSABPOS was entitled or subject, were transferred, conferred and imposed on the NSABTT. That therefore, is the connection between the LSABPOS and the NSABTT (the Plaintiff).
49. What however, of the relationship or connection, between the LSABP and the NSABTT? The LSABP only came into existence on March 15, 1976 when it was duly incorporated under the Companies Ordinance Chapter 31 No. 1. Three (3) days later, by Deed of Gift dated March 18, 1976 the conveyed land was transferred to the LSABP. There is no evidence or indication as to what has happened to the legal ownership of the conveyed land after that date. There is indeed no indication that it was ever transferred or conveyed to any other entity.

¹³ Section 7 of the 1972 Act and Article 1 of the bye-laws.

There is some evidence from Ms. Doreen Anderson¹⁴, who testified for the Plaintiff that from August 23, 1972 the conveyed land became vested in the Plaintiff/NSABTT. However, such a contention is a legal impossibility since the transaction involving the conveyed land did not take place until some four (4) years later in 1976. How then could the conveyed land have been vested in the Plaintiff/NSABTT on August 23, 1972, as suggested by the Plaintiff/NSABTT, when the conveyed land, was at that time still legally vested in Dr. Colleymore, until it was conveyed to the LSABP in 1976? I therefore, find that this contention by the Plaintiff is entirely unsupported by the evidence and simply defies logic.

50. The Court is further fortified in this view when one considers the fact that by March 18, 1976 when the conveyed land was vested in the LSABP, the NSABTT was already in existence. Had the parties intended that the conveyed land should be vested in the NSABTT, the transaction could easily have been between Dr. Colleymore and *that entity*, rather than the LSABP. I find therefore, that at the time of the commencement of this action by the Plaintiff/NSABTT on July 5, 2004, the Plaintiff/NSABTT was not the legal owner of the conveyed land and therefore, could not properly or accurately be described as such in any of the pleadings or documents before this Court. Therefore, whether or not the LSABP was, as a separate legal entity, still in existence on that date, the short point is that the Plaintiff/NSABTT did not actually own the land as at the time of the commencement of this action in on July 5, 2004, but rather, LSABP- on the basis of the documentation placed before this Court.
51. It must be stated however, that the fact that the Plaintiff/NSABTT do not *own* the land, is not sufficient in itself, to make them disentitled to assert any rights over the conveyed land. Trespass is also against he who is in possession. However, even on this basis the Plaintiff's claim must fail, since there is absolutely no evidence that the Plaintiff/NSABTT was either in possession of or exercised any possessory rights over the conveyed land. Indeed, according to Ms. Anderson the Centre that is located on the conveyed land is known as "the Baha'i Centre Palmyra"- a title which, if nothing else, reflects and underscores the connection of the conveyed land with the LSABP rather than the Plaintiff/NSABTT.

¹⁴ Para. 7 of her statement dated May 31, 2007

Decision on Issue of Trespass

52. In the circumstances, I hold that the 1972 Act did not operate to vest the conveyed land in either the Plaintiff/NSABTT”) or the LSABPOS”. I also hold that in the 1976 Deed, the conveyed land was specifically vested in the LSABP, which is a company duly registered under the Companies Ordinance, Chapter 31 No. 1, and *not* in the Plaintiff/NSABTT or the LSABPOS, each of which is a separate and distinct legal entity.
53. There is no evidence before this Court that the Plaintiff/NSABTT was either in possession of or exercised any possessory rights over the conveyed land at the date of the commencement of these proceedings or ever at all.
54. The Plaintiff’s claim is trespass therefore fails, as they lack the requisite *locus standi* and are not a proper party to these proceedings.

Right of Way

55. The Plaintiff has sought to establish its entitlement to a right of way over the Private Road by (i) an express grant; (ii) by an implied grant; and (iii) by prescription. The Court has already ruled that the Plaintiff is not a proper party to these proceedings, having failed to establish any legal or possessory title to the conveyed land. However, even if the Plaintiff could have established the relevant *locus standi* in respect of this aspect of their claim, I hold that their claim, even on this point is doomed to failure for the following reasons.

Express Grant

56. The Plaintiff submits that the right of way was expressly granted to it by the late Dr. Collymore and that this can be derived from the schedule to the 1976 Deed, which reads as follows:

“ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Naparima, in the Island of Trinidad, (being portion of a larger parcel of land comprising Eight Acres One Rood and Seventeen perches) comprising FORTY THOUSAND FIVE HUNDRED AND NINETY FOUR SUPERFICIAL FEET be the same more or less delineated and coloured pink and shown on the Plan hereto attached and marked “A” and bounded

*on the north partly upon lands of the Donor and partly upon a Private Road on the South partly upon lands formerly of Mulchan but now of Seegobin Sawh and partly upon lands now or formerly of Ste. Madeline Sugar Co. Ltd. on the East upon lands of Dr. H. Collymore the Donor and **on the West upon a Private Road or howsoever otherwise the same may be known butted bounded or described.***”[Emphasis]

57. I do not agree with the Plaintiff’s arguments on this point. The schedule merely describes the boundaries of the parcel of land that was being conveyed. There are no words therein that show that an easement was created or that there was any intention to create an easement. Even if that were not the case, the Plaintiff’s claim to an express grant would still fail because it was not pleaded in the Statement of Claim. A person asserting an easement must state in his pleadings the nature of the title under which he claims it, that is to say, whether by statute or by grant, express or implied, or by prescription, and if he alleges by prescription how he alleges the prescription arose. If the easement is being claimed by grant, the words of the grant must be referred to and it must be shown how title is derived under it¹⁵.

Implied Easement

58. The Plaintiff has also submitted that a right of way existed over the Private Road by implication. There are three ways by which an easement may be implied: (i) under the rule in Wheeldon v Burrows¹⁶; (ii) as an easement of necessity; and (iii) as an easement of common intention.

Wheeldon v Burrows

59. The rule in Wheeldon v Burrows was explained by Lord Thesiger¹⁷ as follows; “*On the grant by the owner of a tenement of part or that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which of course I mean quasi easements) or in other words all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted*”

¹⁵ *Atkin’s Court Forms* 2nd Ed. 17(1) 2009 Issue Para [19] – [20]

¹⁶ (1879) 12 CH D 31.

¹⁷ *ibid* at 49

60. In proving that an easement has been created under the rule in Wheeldon v Burrows it is therefore necessary for the Plaintiff to show:
- (1) that the dominant and servient tenements have at some time been in common ownership;
 - (2) that the common owner disposed of one tenement, retaining the other, or disposed of both simultaneously;
 - (3) that the right claimed is such that it could form the subject matter of an express grant;
 - (4) that it was continuous and apparent;
 - (5) that it was necessary for the reasonable and convenient enjoyment of the property conveyed;
 - (6) that at the time of the grant it had been used by the grantor for the benefit of the part conveyed.
61. An easement cannot be acquired under the rule in Wheeldon v Burrows unless there is evidence of actual use by the common owner prior to and at the time of the grant. The Plaintiff has not provided any evidence of this. Therefore it cannot rely on this doctrine to establish its claim. Accordingly, on this basis, the Plaintiff's claim must fail.

Necessity

62. A right of way of necessity arises where there is no other way by which the grantee can get to the land that has been granted to him. It would not be implied merely on the ground that it would be necessary to the reasonable enjoyment of the property¹⁸. In the words of Hamel-Smith J (as he then was) in Boisson v Letrean¹⁹: "*If other means of access exist, no matter how inconvenient, an easement of necessity cannot arise, for the mere inconvenience of an alternative way will not itself give rise to a way of necessity*". It is not the Plaintiff's case that there is no other means of accessing the conveyed land. In fact, the Plaintiff has admitted that there is a main gate to the property, located at the south-western end of the said property and that it is the more frequently used entrance to the Centre. It has not even been suggested that it is inconvenient

¹⁸ Manjang v Drammeh (1990) 61 P & CR 194

¹⁹ HCA No. 4435 of 1985

to use the main gate. It is quite clear, therefore, that the Plaintiff has not established that it is entitled to a right of way by necessity. Accordingly, on this basis also the Plaintiff's claim must fail.

Common Intention

63. The requirements for establishing an intended easement were set out in the judgment of Nourse LJ in *Stafford v Lee* (1992) 65 P&Cr 172 at page 175:

"The law will readily imply the grant or reservation of such easements as may be necessary to give effect to the common intention of the parties to a grant of real property, with reference to the manner or purposes in and for which the land granted or some land retained by the grantor is to be used. See Jones v Pritchard and Lyttleton Times Co. v Warners. But it is essential for this purpose that the parties should intend that the subject of the grant or the land retained by the grantor should be used in some definite and particular manner. It is not enough that the subject of the grant or the land retained should be intended to be used in a manner which may or may not involve this definite and particular use There are ... two hurdles which the grantee must surmount. He must establish a common intention as to some definite and particular user. Then he must show that the easements he claims are necessary to give effect to it".

64. It is quite clear that there was a common intention between the parties at the time of the conveyance that the property was to be used for purposes related to the Baha'is faith. The question therefore, is whether the easement claimed was necessary to give effect to it. In other words, whether it was necessary for the Plaintiff to use and enjoy the land in the way it was intended. In this Court's view it has not been established on the evidence that use of the Private Road is necessary for the Plaintiffs to enjoy the land the way it was intended. Accordingly, on this basis as well, the Plaintiff's claim must fail.

Prescription

65. The Plaintiff pleads that for more than twenty-five (25) years and in fact since the date of the conveyance in 1976 it has been enjoying the uninterrupted use of the Right of Way and Private Road. The Plaintiff also pleads that its use was with the permission and approval of Dr. Collymore. To establish an easement based on prescription the Plaintiff must prove (i)

that the user was of right, that is to say, that the enjoyment was not by force, in secret or by permission; (ii) that it was continuous; and (iii) it was in fee simple. The Plaintiff has not crossed the first hurdle because on its case, its user was with Dr. Collymore's permission. It appears therefore, that at most what the Plaintiff had was a mere gratuitous license to use the road, which license would have been, in any event, revoked when Dr. Collymore sold his lands to Bancassurance in 1996.

Decision on Issue of Right Away

66. In my judgment therefore, the Plaintiff has not established that it acquired a right of way over the Private Road. At most what the Plaintiff had was a mere gratuitous license to use the said road. That license was revoked when Dr. Collymore sold his lands to Bancassurance in 1996. Accordingly, the Plaintiff's claim on this basis must fail.

Cost

67. The Plaintiff will pay the Defendant's costs of this action, which cost are to be taxed in default of agreement.

André A. Mon Désir
Judge

November 12, 2012